

VIRGIN ISLANDS

INSURANCE (AMENDMENT) ACT, 2015

ARRANGEMENT OF SECTIONS

Section

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4. Section 7 amended.
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I Assent

(Sgd.) John S. Duncan, OBE
Governor
27th November, 2015

VIRGIN ISLANDS

No. 16 of 2015

An Act to amend the Insurance Act (No. 1 of 2008) and provide for other matters connected therewith.

[Gazetted 3rd December, 2015]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and
commencement.

1. This Act may be cited as the Insurance (Amendment) Act, 2015 and shall come into force on such date as the Minister may, by Notice published in the Gazette, appoint.

Section 2
amended.

2. Section 2 of the Insurance Act (hereinafter referred to as “the principal Act”) is amended in subsection (1)

(a) by deleting the definition of “approved form” and replacing it with the following:

““approved form” means a form approved by the Commission in accordance with section 41B of the Financial Services Commission Act, 2001;”;

No. 12 of 2001

(b) by deleting the definition of “auditor” and replacing it with the following:

““auditor” means a person who is qualified to act as an auditor of a licensee in accordance with section 56 of the Regulatory Code, 2009; and is in good standing with respect to that qualification;”;

(c) by inserting alphabetically the following new definitions:

““business plan” means a business plan developed in accordance with sections 11, 12 and 13 of the Regulatory Code, 2009;

“controlling interest”, in relation to a licensee, means the ownership or interest in the licensee or in any holding company of the licensee by a person of

- (a) more than fifty per cent of the voting rights of the licensee; or
- (b) a significant interest in the licensee which, although not constituting more than fifty per cent of the voting rights of the licensee (in aggregate or otherwise), gives the person a considerable advantage in the voting rights of the licensee if the remaining votes in the licensee are not voted on;

“designated representative” means a person who has been appointed to act as a representative of an insurance manager or insurance intermediary in accordance with section 47;

“life and health business” means insurance business of the type referred to in section 3;

“life and health insurer” means a licensed insurer that is authorised by its licence to carry on life and health business;

“property and casualty business” means insurance business of the type referred to in section 3;

“property and casualty insurer” means a licensed insurer that is authorised by its licence to carry on property and casualty business;”.

- (d) in the definition of “BVI insurer” by deleting the word “or” at the end of paragraph (b) and adding after paragraph (c), the following new paragraphs (d) and (e):

“(d) category E; or

(e) category F;”;

- (e) in the definition of “domestic business”

- (i) by deleting the word “or” at the end of paragraph (a);

- (ii) by adding the word “or” at the end of paragraph (b) (ii) after the semi-colon; and

(iii) by adding after paragraph (b), the following new paragraph (c):

“(c) a person who is resident outside the Virgin Islands against risks of any kind in relation to the person or any immovable property or personal property situated or held outside the Virgin Islands, if the BVI insurer carrying on such business holds a category A licence;”;

(f) by deleting the definitions for

“general business”;
“general insurer”;
“long-term business”; and
“long-term insurer”.

Section 3
amended.

3. Section 3 of the principal Act is amended by repealing subsection (2) and replacing it with the following subsection:

“(2) For the purposes of this Act, insurance business may comprise life and health insurance business or property and casualty insurance business.”.

Section 7
amended.

4. Section 7 of the principal Act is amended

(a) in subsection (1), by deleting the full-stop at the end of paragraph (d) and substituting a semi-colon and adding immediately thereafter the following new paragraphs (e) and (f):

“(e) category E, which may be issued only to a BVI business company and which entitles the holder to underwrite related party business only; or

(f) category F, which may be issued only to a BVI business company and which underwrites related party business with a maximum unrelated party business underwritten in order to qualify as an insurer for such purpose as may be allowable under the laws of a foreign jurisdiction.”;

(b) by repealing subsection (2); and

(c) by repealing subsection (5) and replacing it with the following subsection:

“(5) For the purposes of this section,

“open-market reinsurance business” is reinsurance business where the insurer is not connected with the reinsurer;”;

“related party business” refers to a business deal or arrangement between two or more persons who have a common or special interest in the business.”.

5. Section 8 of the principal Act is amended

Section 8 amended.

- (a) in subsection (1) by deleting paragraph (a) thereof and replacing it with the following paragraph:

“(a) in the case of an application for a licence in category A, C, D, E or F, by a BVI business company limited by shares; or”;

- (b) in subsection (2)

(i) in the opening paragraph, by deleting the words “Subject to subsections (3) and (4)” and replacing them with the words “Subject to subsection (4)”; and

(ii) in paragraph (d) by inserting after the words “significant interest”, the words “or a controlling interest”;

- (c) by inserting after subsection (2), the following new subsection:

“(2A) Subject to the conditions outlined in subsections (2), (3) and (4), the Commission may issue an insurer’s licence to an applicant to carry on both life and health business and property and casualty business if the Commission is satisfied that the applicant may be so licensed, having regard to the applicant’s resources and business plan.”; and

- (d) in subsection (4) by inserting after paragraph (a), the following new paragraph:

“(aa) the applicant, in the case of an application to carry on both life and health business and property and casualty business, is authorised under the laws of its home jurisdiction to carry on both types of insurance business;”.

6. The principal Act is amended by inserting after section 8, the following new section 8A:

Section 8A inserted.

"Application to vary a licence.

8A. (1) An insurer may apply to the Commission in writing requesting that its licence be varied to include an additional class of insurance business or to remove a current class of insurance business.

(2) Where the Commission receives an application under subsection (1), it may,

- (a) in the case of an application to include an additional class of insurance business, vary the licence accordingly if it is satisfied that such variation is appropriate, meets the requirements of this Act and is not against the public interest; and
- (b) in the case of an application to remove a current class of insurance business, vary the licence accordingly if it is satisfied that such variation will not absolve the insurer from any obligation or liability to which it would otherwise be bound by and it is not against the public interest to do so.

(3) Where the Commission varies a licence under this section, it may at the same time impose such conditions pursuant to section 40B of the Financial Services Commission Act, 2001 as the Commission considers fit.”.

No. 12 of 2001

Section 9
amended.

7. Section 9 of the principal Act is amended in subsection (2) by deleting the words “forms the opinion” and replacing them with the words “becomes aware”.

Section 10
amended.

8. Section 10 of the principal Act is amended

(a) by inserting after subsection (1), the following new subsection (1A):

“(1A) For the purposes of subsection (1), the Regulatory Code, 2009 may provide for different levels of contributed capital and capital resource requirements for a BVI insurer that is licensed to carry out both life and health business and property and casualty business.”; and

(b) by repealing subsection (3) and replacing it with the following subsection:

“(3) A direction issued under subsection (2) shall specify a reasonable period, not being less than 14 days, for compliance with the direction.”.

Section 12
amended.

9. Section 12 of the principal Act is amended

(a) by repealing subsection (4) and replacing it with the following subsection:

“(4) A direction issued under subsection (2) shall specify a reasonable period, not being less than 14 days, for compliance with the direction.”; and

- (b) in subsection (5), by adding at the end of the subsection before the full-stop, the words “indicating the date as of which the failure to maintain the solvency margin occurred.”.

10. Section 15 of the principal Act is amended in subsection (3), by adding at the end of the subsection before the full-stop, the words “indicating the date as of which the failure to maintain assets in the Virgin Islands occurred.”.

Section 15 amended.

11. The principal Act is amended by inserting after section 16, the following new section 16A:

Section 16A inserted.

"Endorsement on reinsurance contract.

16A. (1) A BVI insurer that carries on domestic business which is not rated A++, A+, A or A- by A.M. Best or other rating agency or institution shall have included in its reinsurance contract an endorsement in the terms set out in Schedule 1 with respect to its domestic business.

(2) For purposes of satisfying the requirements of subsection (1), the endorsement in the reinsurance contract need not reflect the exact words outlined in Schedule 1 so long as the substance of the endorsement is contained in the reinsurance contract.

(3) The Commission may, for the purposes of this section, require a BVI insurer to provide the Commission with a copy of its reinsurance contract.”.

12. Section 18 of the principal Act is amended

Section 18 amended.

- (a) by repealing subsection (4) and replacing it with the following subsection:

“(4) Where a licensed insurer amends its business plan, it shall immediately submit a copy of the amended business plan to the Commission.”; and

- (b) by adding after subsection (5), the following new subsection (6):

“(6) A BVI insurer that contravenes subsection (1) commits an offence.”.

13. Section 19 of the principal Act is amended

Section 19 amended.

- (a) in subsection (1) by deleting the words “A BVI insurer” and replacing

them with the words “Subject to subsection (6), a BVI insurer”;

- (b) in subsection (2) by deleting the words “the Commission’s fit and proper criteria” and replacing them with the words “the fit and proper criteria prescribed”;
- (c) in subsection (5) by inserting after the words “a foreign insurer” wherever they occur, the words “or category E licensee”;
- (d) in subsection (6) by inserting after the words “a foreign insurer”, the words “or category E licensee”; and
- (e) in subsection (7) by inserting after the words “a foreign insurer”, the words “or category E licensee”.

Section 21
amended.

14. Section 21 of the principal Act is amended

- (a) in subsection (1) by inserting after the words “significant interest”, the words “or controlling interest”;
- (b) in subsection (2) by inserting after the words “significant interest”, the words “or controlling interest”;
- (c) in subsection (3) (b) by inserting after the words “significant interest” in sub-paragraphs (i) and (ii), the words “or controlling interest”;
- (d) in subsection (5) by deleting the words “the Commission’s fit and proper criteria” and replacing them with the words “the fit and proper criteria prescribed”;
- (e) by inserting after subsection (5), the following new subsection:

“(5A) Where a change in interest that is not a significant interest or controlling interest occurs in a BVI insurer, the BVI insurer shall, within 14 days of the occurrence of the change, notify the Commission of that fact.”;
- (f) in subsection (6) by deleting the words “subsection (3)” and replacing them with the words “subsection (3) or (5A)”; and
- (g) by adding after subsection (6), the following new subsections:

“(7) Without prejudice to subsection (6), where a person acquires, sells, transfers, charges or otherwise disposes of a significant interest or controlling interest in a BVI insurer contrary to any requirement of this section, the Commission may,

- (a) in the case of an acquisition, require the BVI insurer to rescind the acquisition, notwithstanding anything to the contrary that may be contained in the BVI insurer’s constitutional documents or contractual arrangements;
- (b) in the case of a sale, transfer, charge or other disposition, require the person to
 - (i) rescind or reverse the sale, transfer, charge or other disposition;
 - (ii) modify the sale, transfer, charge or other disposition in such manner as the Commission may direct; or
 - (iii) suspend or rescind any activity that is contingent on the sale, transfer, charge or other disposition until otherwise advised by the Commission.

(8) No liability consequent upon a decision taken by the Commission under subsection (7) shall arise in respect of the Commission or, subject to subsection (6), of a BVI insurer or other person acting on the directive of the Commission.

(9) No action taken by the Commission under subsection (7) shall be construed as a bar to a BVI insurer or other person seeking approval under this section for the acquisition, sale, transfer, charge or other disposition of a significant interest or controlling interest.”.

15. Section 22 of the principal Act is amended in subsection (1), by inserting after the words “significant interest”, the words “or controlling interest”. Section 22 amended.

16. Section 23 of the principal Act is amended in subsection (1), by deleting the words “category C or D” and replacing them with the words “category C, D, E or F”. Section 23 amended.

17. Section 25 of the principal Act is amended Section 25 amended.

(a) in subsection (3) by adding at the end of paragraph (a) before the semi-colon, the words “indicating the date from which it had less than two directors”; and

(b) by inserting after subsection (3), the following new subsections (3A) and (3B):

“(3A) The Commission may, if it receives an application from a BVI insurer before the end of the period stipulated in subsection (3) (b), extend that period for up to another 21 days if any of the conditions

specified in subsection (3B) is satisfied and the Commission is satisfied that such an extension is appropriate and not against the public interest.

(3B) The conditions referred to in subsection (3A) are that

- (a) the BVI insurer was not aware in a timely manner and could not reasonably have known that the director had ceased to be a director of the BVI insurer;
- (b) the director died and the circumstances were of such a nature that it would be unreasonable for the BVI insurer to identify a replacement and submit an application within the stipulated period; or
- (c) the BVI insurer is going through a restructuring (such as a merger or consolidation) which has resulted in the departure of the director before the restructuring could be completed and the identification and appointment of a replacement director is part of the restructuring process.”.

Section 26
amended.

18. Section 26 of the principal Act is amended by adding after subsection (4), the following new subsection (5):

“(5) A BVI insurer that fails to comply with subsection (1) or (2) commits an offence.”.

Section 27
amended.

19. Section 27 of the principal Act is amended

- (a) in subsections (1), (2), (5), (6) and (7), by deleting in each of those subsections the words “long-term insurer” and replacing them with the words “life and health insurer”; and
- (b) by inserting after subsection (6), the following new subsection (6A):

“(6A) The period stipulated in subsection (6) (“the original period”) may be extended for an aggregate period not exceeding three months if the Commission, before the expiration of the original period, receives an application in writing from the insurer requesting an extension and providing reasons for the request.”.

Section 28
amended.

20. Section 28 of the principal Act is amended in subsection (1), by deleting the words “long-term insurer” and replacing them with the words “life and health insurer”.

Section 31
amended.

21. Section 31 of the principal Act is amended by inserting after subsection (1), the following new subsections (1A) and (1B):

“(1A) The Commission shall, before revoking the approval of appointment of an actuary under subsection (1), inform the actuary and the insurer in writing of the Commission’s intention to revoke its approval and give the actuary at least fourteen days within which to make a representation as to why the approval should not be revoked.

(1B) The Commission shall consider any representation it receives pursuant to subsection (1A) in making its decision.”.

- 22.** Section 32 of the principal Act is amended Section 32 amended.
- (a) in the marginal note, by deleting the words “long-term insurer” and replacing them with the words “life and health insurer; and
 - (b) in subsection (1), by deleting the words “long-term insurer” and replacing them with the words “life and health insurer”.
- 23.** Section 33 of the principal Act is amended Section 33 amended.
- (a) in subsection (1) by deleting the words “general insurer” and “long term insurer” in the closing paragraph and replacing them respectively with the words “property and casualty insurer” and “life and health insurer”:
 - (b) in subsection (3) by deleting the words “general insurer” and replacing them with the words “property and casualty insurer”; and
 - (c) by adding after subsection (5), the following new subsection:

“(6) Where a BVI insurer that is the holder of a licence to carry on both life and health business and property and casualty business under section 8 (2A) wishes to transfer or merge any of its business, the approval required under this section for the transfer or merger shall be obtained from the Court.”.
- 24.** Section 34 of the principal Act is amended in paragraph (b), by deleting the words “general insurers” and replacing them with the words “property and casualty insurers”. Section 34 amended.
- 25.** Section 36 of the principal Act is amended by deleting the words “long-term business” and replacing them with the words “life and health business or, the life and health business and property and casualty business under a single licence.”. Section 36 amended.
- 26.** The principal Act is amended by inserting after section 36, the following new section 36A: Section 36A inserted.

“ Segregated **36A.** (1) A BVI insurer, complying with Part VII of the portfolio company. 12

No. 16 of 2004 BVI Business Companies Act, 2004, may submit an application to the Commission to be licensed as a segregated portfolio company.

(2) An application by a BVI insurer under subsection (1) to be licensed as a segregated portfolio company may be submitted at the same time as an application for approval for incorporation or registration as a segregated portfolio company under sections 135 and 136 of the BVI Business Companies Act, 2004.”.

Section 40 amended.

27. Section 40 of the principal Act is amended

- (a) in subsection (2),
 - (i) by inserting in paragraph (d) (i) after the words “significant interest”, the words “or controlling interest”; and
 - (ii) by deleting in paragraph (d) (ii) the words “the Commission’s fit and proper criteria” and replacing them with the words “the fit and proper criteria prescribed”; and
- (b) in subsection (3), by deleting the words “the Commission’s fit and proper criteria” and replacing them with the words “the fit and proper criteria prescribed”.

Section 44 amended.

28. Section 44 of the principal Act is amended in subsection (2), by deleting the words “the Commission’s fit and proper criteria” and replacing them with the words “the fit and proper criteria prescribed”.

Section 45 amended.

29. Section 45 of the principal Act is amended

- (a) in subsection (1), by inserting after the words “significant interest”, the words “or controlling interest”;
- (b) in subsection (2), by inserting after the words “significant interest”, the words “or controlling interest”;
- (c) in subsection (3) (b), by inserting after the words “significant interest” in sub-paragraphs (i) and (ii), the words “or controlling interest”;
- (d) in subsection (5), by deleting the words “the Commission’s fit and proper criteria” and replacing them with the words “the fit and proper criteria prescribed”;
- (e) by inserting after subsection (5), the following new subsection (5A):

“(5A) Where a change in interest that is not a significant interest or controlling interest occurs in a licensee, the licensee shall, within 14 days of the occurrence of the change, notify the Commission of that fact.”;

- (f) in subsection (6) by deleting the words “subsection (3)” and replacing them with the words “subsection (3) or (5A)”; and
- (g) by adding after subsection (6), the following new subsections (7), (8) and (9):

“(7) Without prejudice to subsection (6), where a person acquires, sells, transfers, charges or otherwise disposes of a significant interest or controlling interest in a license contrary to any requirement of this section, the Commission may,

- (a) in the case of an acquisition, require the licensee to rescind the acquisition, notwithstanding anything to the contrary that may be contained in the licensee’s constitutional documents or contractual arrangements;
- (b) in the case of a sale, transfer, charge or other disposition, require the person to
 - (i) rescind or reverse the sale, transfer, charge or other disposition;
 - (ii) modify the sale, transfer, charge or other disposition in such manner as the Commission may direct; or
 - (iii) suspend or rescind any activity that is contingent on the sale, transfer, charge or other disposition until otherwise advised by the Commission.

(8) No liability consequent upon a decision taken by the Commission under subsection (7) shall arise in respect of the Commission or, subject to subsection (6), of a licensee or other person acting on the directive of the Commission.

(9) No action taken by the Commission under subsection (7) shall be construed as a bar to a licensee or other person seeking approval under this section for the acquisition, sale, transfer, charge or other disposition of a significant interest or controlling interest.”.

Section 46A inserted.

30. The principal Act is amended by inserting after section 46, the following new section 46A:

“Authority to act as both agent and broker **46A.** (1) A licensed insurance agent may act as an insurance broker without the need for a separate licence or approval from the Commission.

(2) A licensed insurance broker shall not act as an insurance agent.”.

Section 47 amended.

31. Section 47 of the principal Act is amended

(a) by repealing subsection (1) and replacing it with the following subsection:

“(1) An insurance manager and insurance intermediary shall each appoint and at all times have a designated representative in the Virgin Islands who shall be an individual that

- (a) is fit and proper as prescribed;
- (b) is physically resident in the Virgin Islands; and
- (c) is approved by the Commission.”;

(b) by inserting after subsection (1), the following new subsection (1A):

“(1A) For the purposes of subsection (1) (b), a designated representative shall not be treated as being physically resident in the Virgin Islands if, during the course of any particular year, he has been absent from the Virgin Islands for an aggregate period exceeding 120days.”;

- (c) in subsection (2), by inserting after the words “insurance manager”, the words “or insurance intermediary”;
- (d) in subsection (4), by inserting after the words “insurance manager”, the words “or insurance intermediary”; and
- (e) in subsection (5), by inserting after the words “insurance manager”, the words “or insurance intermediary”.

Sections 47A and 47B inserted.

32. The principal Act is amended by inserting after section 47, the following new sections 47A and 47B:

“Exemption from appointing a designated representative. **47A.** (1) The Commission may, upon an application by an insurance intermediary, exempt the insurance

intermediary from the requirement to appoint a designated representative if the Commission considers that any of the conditions stipulated in subsection (2) is satisfied.

(2) The conditions referred to in subsection (1) are that:

- (a) the total number of employees of the insurance intermediary is three or less;
- (b) the annual turnover of the insurance intermediary is not likely to exceed \$200,000; or
- (c) the nature, size and complexity of the insurance intermediary justifies, in the Commission's opinion, that the insurance intermediary should be exempted.

(3) For the purposes of making a determination as to whether any of the conditions stipulated in subsection (2) has been satisfied, the Commission may require the insurance intermediary to provide such information as the Commission considers fit and within such reasonable period, not being less than fourteen days, as the Commission may determine.

(4) Where an insurance intermediary fails to comply with a requirement under subsection (3) within the specified period, the Commission shall treat the application for exemption as abandoned and shall not act on it.

(5) An insurance intermediary that has been granted an exemption on the basis of any of the conditions stipulated in subsection (2) shall immediately notify the Commission if the condition changes.

(6) Where a condition, on the basis of which the Commission had granted an exemption to an insurance intermediary under subsection (1) has changed, the Commission shall review the change and may affirm or withdraw the exemption.

(7) Where the Commission withdraws an exemption granted to an insurance intermediary under this

section, the insurance intermediary shall, within fourteen days of the date of notification of the withdrawal, appoint a designated representative in accordance with section 47.

(8) An insurance intermediary that fails to comply with subsection (5) or (7) commits an offence.

Exemption to a bar from performing duties and obligations of designated representative. **47B.** Where the Commission exempts an insurance intermediary from appointing a designated under section 47A,

(a) the exemption shall not be treated as exempting representative the insurance intermediary from performing the functions of designated representative; and

(b) the Commission may, if it considers it fit, require the insurance intermediary to identify, and notify the Commission of, a person within the insurance intermediary who will perform the functions of designated representative.”.

Section 48A inserted.

33. The principal Act is amended by inserting after section 48, the following new section 48A:

“Designated representative may act as director or senior officer.

48A. (1) Subject to subsection (2), a person who has been appointed as a designated representative of an insurance manager may act as director or senior officer of a BVI insurer.

(2) A person appointed as a designated representative shall not act as director or senior officer of a BVI insurer if he is a shareholder in the BVI insurer; or for more than ten BVI insurers at any one time unless the prior written approval of the Commission has been obtained.”.

Section 52 amended.

34. Section 52 of the principal Act is amended

(a) in subsection (1), by adding at the end of paragraph (a) before the semi-colon, the words “, including its financial transactions”;

(b) in subsection (2)

(i) by inserting after the words “all transactions” in paragraph (a) (i), the words “, including financial transactions,”; and

(ii) by repealing paragraph (b) and replacing it with the following paragraph:

“(b) notify the Commission in writing of the place where its financial records, other than those specified in paragraph (a), are maintained.”; and

by repealing subsection (4) and replacing it with the following subsection:

“(4) A licensee and, where the licence of a licensee is cancelled or revoked, a former licensee, shall retain the records required to be maintained under this section for a period of at least five years after the termination of the business relationship to which the records relate.”.

35. Section 57 of the principal Act is amended

Section 57
amended.

(a) by deleting the opening paragraph of subsection (1) and replacing it with the following opening paragraph:

“Subject to subsection (1A), the financial statements of a relevant licensee signed by a director in accordance with section 56 shall be submitted to the Commission within 6 months of the end of the financial year to which they relate or within such shorter period as may be prescribed accompanied by”;

(b) by inserting after subsection (1), the following new subsection (1A):

“(1A) The requirement for a director’s certificate in subsection (1) (a) applies only in respect of unaudited financial statements.”.

(c) by inserting after subsection (2), the following new subsections (2B), (2B) and (2C):

“(2A) Where a relevant licensee’s financial statements are prepared in accordance with a currency other than the currency of the United States of America, the relevant licensee shall provide the applicable exchange rate to the currency of the United States of America.

(2B) For the purposes of subsection (2A), the applicable exchange rate shall be the rate of exchange that applied at the end of the relevant licensee’s financial year to which the financial statements relate.

(2C) Regulations made under section 82 of this Act and section 40C of the Financial Services Commission Act, 2001 may exempt any relevant licensee or a category of such licensee from the requirement to provide audited financial statements; and modify or disapply any provision of this Act in relation to an exemption made under subparagraph (a) with respect to an insurance manager or insurance intermediary and make such provision as may be considered necessary.”; and

(d) by adding after subsection (3), the following new subsection (4):

“(4) A relevant licensee does not commit an offence under subsection

(3) if it has been exempted from providing financial statements.”.

Section 58 amended.

36. Section 58 of the principal Act is amended in subsection (2), by deleting the words “section 56” and replacing them with the words “section 55”.

Section 60 amended.

37. Section 60 of the principal Act is amended in subsection (1), by adding at the end of the section before the full-stop, the words “within such period, being not less than fourteen days, as the Commission may specify”.

Section 61 amended.

38. Section 61 of the principal Act is amended

(a) by repealing subsection (4) and replacing it with the following subsection:

“(4) The approval of the Commission in relation to an auditor is not required where the auditor

(a) has already been approved by the Commission in respect of any other financial services business and such approval has not been revoked or withdrawn; or

(b) appointed in respect of a financial year had acted as the auditor of the licensee in the previous financial year and the approval of his appointment by the Commission had not been revoked under section 64 (1).”;

(b) by inserting after subsection (4), the following new subsection (4A):

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“(4A) For the purposes of subsection (4) (a), “financial services business” has the meaning ascribed in section 2 (1) of the Financial Services Commission Act, 2001.”.

Section 63 amended.

39. Section 63 of the principal Act is amended in subsection (1)

- (a) by adding at the end of paragraph (a) before the full-stop, the words “as they fall due”; and
- (b) by deleting the words “the licensee is in breach” in paragraph (c) and replacing them with the words “the licensee may be in breach”.

40. Section 66 of the principal Act is amended by deleting the words “long-term insurer” in the opening paragraph and replacing them with the words “life and health insurer (which includes an insurer licensed to carry out both life and health insurance business and property and casualty business by virtue of section 7)”.

Section 66 amended.

41. The principal Act is amended by inserting after section 69, the following new section 69A:

Section 69A inserted.

“ General obligations of licenses. **69A.** (1) Without prejudice to sections 70 and 71, a licensee shall at all times represent the best interests of the Virgin Islands and its policy holders and other customers and shall not engage in any activity, whether within or outside the Virgin Islands, which

(a) may be damaging to the reputation of the Virgin Islands or any of its systems or services; or

(b) misleads or is likely to mislead its policy holders or other customers, whether current or potential, regarding the services available or provided under this Act or the Regulatory Code or such other enactments or guidelines as are prescribed or are issued pursuant to the Financial Services Commission Act, 2001; or

(c) is against the public interest.

No. 12 of 2001

(2) Where a licensee acts contrary to subsection (1), the Commission may cancel, revoke or suspend its licence in accordance with section 38 of the Financial Services Commission Act, 2001.”.

No. 12 of 2001

42. Section 71 of the principal Act is amended in subsection (2) by deleting the comma after the word “particular”.

Section 71 amended.

43. Section 73 of the principal Act is amended

Section 73 amended.

- (a) by repealing subsection (1) and replacing it with the following subsection:

“(1) The Commission may by written notice, subject to subsection (1A), direct a licensee,

- (a) in the case of a foreign insurer, to change the name under which it carries on business in the Virgin Islands; or
- (b) in the case of any other licensee, to change the name under which it is incorporated or it carries on business.”; and

(b) by inserting after subsection (1), the following new subsection (1A):

“(1A) The Commission may direct a licensee to change its name under subsection (1) only if the Commission forms the opinion that the name

- (a) is identical to the name of any other person, whether within or outside the Virgin Islands, or it so nearly resembles the name of another person as to be likely to deceive; or
- (b) is otherwise misleading or undesirable.”.

Section 75 amended.
S.I. No. 48 of 2013

44. Section 75 of the principal Act is amended in subsection (1), by inserting after the word “prescribed” in paragraph (a) (ii), the words “under the BVI Business Companies (Restricted Company Names) Notice, 2013”.

Section 76 repealed and replaced.

45. Section 76 of the principal Act is repealed and replaced by the following section:

“Restriction on Registrar to register company with restricted S.I. No. 48 of 2013
76. The Registrar of Corporate Affairs shall not register a company under, or register a change of name of a BVI business company to, a name that includes a restricted word under section 75 (1) or the BVI Business Companies (Restricted Company Names) Notice, 2013, unless the written approval of the Commission has been obtained or the use of the name is authorised by another enactment.”.

Section 78 amended.

46. Section 78 of the principal Act is amended

(a) in subsection (1), by repealing paragraph (e) and replacing it with the following paragraph:

“(e) such other registers as may be specified by the Commission in a Notice published in the Gazette or on the Commission’s Internet site.”;

(b) by inserting after subsection (2), the following new subsection (1A):

“(1A) Where the Commission specifies any other register pursuant to subsection (1) (e), it may at the same time provide the information to be maintained in respect of that other register.”; and

(c) by adding after subsection (2), the following new subsection(3):

“(3) For the purposes of subsection (1) (e), “Internet site” means the principal public access Internet site for the time being maintained by, or on behalf of, the Commission.”.

47. Section 80 of the principal Act is amended by repealing subsection (1) and replacing it with the following subsection:

Section 80 amended.

“(1) In this section, a document in electronic form refers to a document generated, sent, received or stored by electronic means or that in any way falls within the scope of the provisions of the Electronic Transactions Act, 2001.”.

No. 5 of 2001

48. The principal Act is amended by inserting after section 80, the following new section:

Section 80A inserted.

“ Payment of **80A.** Regulations made under section 62 of the Financial Services Commission Act, 2001 may provide for the fees chargeable and payable under this Act.”.

No. 12 of 2001

49. Section 82 of the principal Act is amended

Section 82 amended.

(a) by inserting after subsection (3), the following new subsections (3A) and (3B):

“(3A) Without prejudice to the generality of subsections (1) and (3) but subject to subsection (3B), regulations made under subsection (1) may, in particular,

(a) establish a regime for the approval by the Commission of persons who engage in certain types of insurance business or the business of an insurance manager or an insurance intermediary as may be specified in the regulations and, such persons may not be required to be licensed under this Act so long as they continue to be approved or deemed approved as such by the Commission; and

(b) disapply or limit the scope of application of this Act or any provision thereof to any person approved or

deemed approved by the Commission by virtue of paragraph (a).

(3B) Regulations made under subsection (1)

- (a) shall relate to a person approved by the Commission as mentioned in subsection (3A) (a);
- (b) shall take into account risks that may be posed by or associated with approving a person mentioned in subsection (3A) (a) not requiring a licence under this Act;
- (c) may provide such restrictions and conditions as may be considered necessary;
- (d) may provide an asset or gross premium threshold that a person mentioned in subsection (3A) (a) may have in relation to his or her business;
- (e) may require a person mentioned in subsection (3A) (a) to file with the Commission periodic returns on such matters as may be considered necessary;
- (f) may require the keeping and maintenance of a register of persons mentioned in subsection (3A) (a); and
- (g) provide for such other matters as may be considered necessary to the efficient and effective functioning of a regime of persons mentioned in subsection (3A) (a).”;

- (b) in subsection (4) by deleting “\$15,000” in paragraph (a) and replacing it with “\$50,000”.

Section 83 amended.

50. Section 83 of the principal Act is amended in subsection (1), by deleting the word “licenses” in paragraph (c) and replacing it with the word “licensees”.

Schedule 1 renumbered and new Schedule 1 inserted.

51. The principal Act is amended

- (a) by renumbering the existing Schedule 1 as Schedule 1A; and
- (b) inserting the following new Schedule 1:

“SCHEDULE 1

[Section 16A]

**CUT THROUGH ENDORSEMENT CLAUSE ON
REINSURANCE CONTRACT**

1. The (name of reinsurer) hereby agree, at the request and with the consent of (name of reinsured) that in the event of any valid claim arising from this reinsurance contract, the reinsurer shall, in lieu of payment to the reinsured, its successors in interest and assigns, pay to the person(s) named as insured, mortgagee or loss payee under the original insurance effected by the original insured, or any third party under a liability insurance policy that portion of any loss for which the reinsurer would otherwise be liable to pay the reinsured (subject to proof of loss or agreement settling a claim in the case of a third party claim), it being understood and agreed that any such payment shall fully discharge and release the reinsurer from any and all further liability in connection with such claim.

2. The reinsurer reserves the right to set off against any claim payable under this reinsurance contract in accordance with this Clause any outstanding premiums due on this reinsurance.

3. Payment shall be made under this reinsurance notwithstanding:

- (a) any bankruptcy, insolvency, liquidation or dissolution of the reinsured; or
- (b) that the reinsured has made no payment under the original insurance policies.

4. It is a condition that the provisions of this Clause shall not operate in contravention of the laws, statutes, decrees or other legislative measures of the government of the country of domicile of the reinsurer.”.

52. The principal Act is amended in Schedule 1A as renumbered by deleting the words “long-term insurer” where they appear in the second column in respect of sections 27 (7) and 32 (2) in the first column and replacing them, in each case, with the words “life and health insurer”.

Schedule 1A amended.

53. The principal Act is amended in Schedule 3 as follows:

Schedule 3 amended.

- (a) in the first row in relation to the BVI Business Companies Act, 2004, add in the third column the following:

No.16 of 2004

“2. In section 200, delete the words “long term insurance company” in subsections (1), (2) and (3) and in the marginal note and replace them with the words “life and health insurance company”, in each case;”;

(b) in the third row in relation to the Insolvency Act, 2003,

No. 5 of 2003

(i) insert after paragraph 2 in the third column the following:

“2A. In section 237 (1),

(a) delete “general business” and “long term business” and replace them with the words “property and casualty business” and “life and health business” respectively;

(b) delete “general insurance company” and “general business” and replace them with the words “property and casualty insurance company” and “property and casualty business” respectively;

(c) delete “long term insurance company” , “long term business” and “general business” and replace them with the words “life and health insurance company”, “life and health business” and “property and casualty business” respectively;”;

(ii) insert after paragraph 3 in the third column the following:

“3A. In section 239,

(a) delete in subsection (1) “long term insurance company” and replace it with the words “life and health insurance company”;

(b) delete in subsection (2) “general insurance company” and replace it with the words “property and casualty insurance company”;

- (c) delete
 - (i) in subsection (3) (a) “long term insurance company” and replace it with the words “life and health insurance company”; and
 - (ii) in subsection (3) (b) “general insurance company” and replace it with the words “property and casualty insurance company”; and
- (d) delete in subsection (4) “general insurance company” and replace it with the words “property and casualty insurance company”;
- (iii) add after paragraph 4 in the third column the following paragraphs:

“5. In section 242,

- (a) delete from the marginal note “long term business” and substitute “life and health business”;
- (b) “delete in subsection (1) “long term insurance company” and “long term business” and replace them with the words “life and health insurance company” and “life and health business” respectively;
- (c) delete in subsection (2) “long term business” and replace it with the words “life and health business”;
- (d) delete in subsection (3) “long term insurance company” and “long term business” and replace them with the words “life and health insurance company” and “life and health business” respectively; and
- (e) delete in subsection (5)) “long term insurance company” and “long term business” and replace them with the

words “life and health insurance company” and “life and health business” respectively;”;

6. In section 243,

- (a) delete in subsection (1) “long term insurance company” and “long term liabilities” and replace them with the words “life and health insurance company” and “life and health insurance liabilities” respectively;
- (b) delete in subsection (2) “long term liabilities” and replace it with the words “life and health insurance liabilities”;
- (c) delete in subsection (3) “long term insurance company” and substitute “life and health insurance company”; and

(c) at the end of the Schedule, add the following:

“5.	Securities and Investment Business Act, 2010 (No. 2 of 2010)	<p>In paragraph 8 of Schedule 1,</p> <p>delete the heading “Long-term insurance contracts” and substitute “Life and health insurance contracts”; and</p> <p>delete in sub-paragraph (1) “long-term business” and substitute “life and health business”.”.</p>
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Passed by the House of Assembly this 2nd day of November, 2015.

(Sgd) Ingrid Moses-Scatliffe,
Speaker.

(Sgd) Phyllis Evans,
Clerk of the House of Assembly.