



VIRGIN ISLANDS

# **INSURANCE ACT**

## **Statutory Instrument**

### **Revised Edition**

showing the law as at 1 January 2020

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Act 2014.

This edition contains a consolidation of the following laws—

#### **INSURANCE REGULATIONS**

S.I. 62/2009 .. in force 1 February 2010 (S.I. 63/2009)

Amended by S.I.: 51/2011 .. in force 2 September 2011

53/2015 .. in force 1 November 2016

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by  
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For information contact—

Attorney General's Chambers  
Government of the Virgin Islands  
P.O. Box 242  
Road Town  
Tortola, VG1110  
British Virgin Islands

Tel: (284) 468 - 2960  
Email: [agc@gov.vg](mailto:agc@gov.vg)

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**INSURANCE REGULATIONS - SECTION 82**

*(S.I.s 62/2009, 51/2011 and 53/2015)*

**Commencement**

*[1 February 2010]*

*Preliminary*

**Short title**

1. These Regulations may be cited as the Insurance Regulations.

**Interpretation**

2. (1) In these Regulations, unless the context otherwise requires—

“Act” means the Insurance Act;

“approved asset”, with respect to a domestic business trust, means an asset of a type or description that is specified as an approved asset in regulation 14;

“domestic business trust” means a trust established in accordance with regulation 13(1) and a reference to a domestic business trust in relation to—

(a) a specified foreign insurer, means the domestic business trust established by that insurer; and

(b) a trustee, means the domestic business trust of which it is trustee;

“domestic liabilities”, with respect to a specified foreign insurer, means the liabilities of the insurer under contracts of insurance that constitute domestic business calculated and valued on the basis required by the accounting standards in accordance with which the insurer’s financial statements are prepared;

“insured”, with respect to a contract of insurance, means the person insured under the contract of insurance;

“Lloyd’s syndicate” means a member of Lloyd’s or a group of Lloyd’s members underwriting insurance business at Lloyd’s through the agency of a managing agent or a substitute agent to which a syndicate number is assigned by the Council of Lloyd’s;

“qualified BVI bank” means a bank holding a general banking licence issued under the Banks and Trust Companies Act;

“regulatory legislation” has the meaning specified in the Financial Services Commission Act;

“service provider” means—

(a) a person holding a licence under any regulatory legislation;

(b) a person acting as the director of a BVI business company or the partner of a partnership; or

(c) a legal practitioner or accountant carrying on business in the Virgin Islands;

“specified foreign insurer” has the meaning specified in subregulations (2) and (3);

“trustee” means the trustee of a domestic business trust;

“Zone A bank” and “Zone A government” have the meanings prescribed in the Regulatory Code.

(2) A specified foreign insurer is an insurer that—

(a) holds a category B licence; and

(b) does not have a financial strength rating of A++, A+, A or A-assigned to it by the A. M. Best Company or other rating agency. (*Amended by S.I. 53/2015*)

(3) Where a domestic business trust is established by a specified foreign insurer, the insurer is deemed to be a specified foreign insurer, notwithstanding that it no longer falls within subregulation (2), until the Commission issues an order terminating the trust under regulation 20.

#### *Matters required to be specified or provided for by the Act*

#### **Classes of insurance business**

3. The classes of insurance business specified in accordance with section 2(1) of the Act are specified in Parts A and B of the Schedule.

#### **Person resident in the Virgin Islands**

4. (1) Unless the context otherwise requires, this regulation has effect for determining whether a person is resident in the Virgin Islands for the purposes of the Act. (*Amended by S.I. 53/2015*)

(2) An individual is resident in the Virgin Islands if, during the course of any particular year, he has not been absent from the Virgin Islands for an aggregate period exceeding 120 days. (*Substituted by S.I. 53/2015*)

(3) Subject to subregulation (4) and regulation 5, a BVI business company or a partnership or other unincorporated body of persons is resident in the Virgin Islands if it carries on business in the Virgin Islands, whether exclusively or as part of its business carried on in and outside the Virgin Islands.

(4) Where a BVI business company or a partnership or other unincorporated body of persons carries on business in and outside the Virgin Islands, it is not regarded as resident in the Virgin Islands with respect to any risk located outside the Virgin Islands.

(5) A foreign company is resident in the Virgin Islands if it carries on business in the Virgin Islands within the meaning of Part XI of the BVI Business Companies Act, but not with respect to a risk located outside the Virgin Islands.

#### **Provisions relating to regulation 4**

5. (1) For the purposes of regulation 4(4), a BVI business company or a partnership or other unincorporated body of persons, whose principal business or activities are carried on outside the Virgin Islands, shall not be regarded as carrying on business in the Virgin Islands solely by reason of the fact that it contracts with one or more service providers or carries on activities in the Virgin Islands where the contracts



or activities are incidental or ancillary to its business or activities carried on outside the Virgin Islands.

(2) Subject to subregulation (3), for the purposes of, but without limiting the generality of regulations 4 (5) and (6), a risk is considered to be located outside the Virgin Islands if—

- (a) the insurance of the risk would fall within class 1 (Motor Insurance), where the motor vehicle concerned is not, at any time during the term of the insurance contract, situated in the Virgin Islands;
- (b) the insurance of the risk would fall within Class 2 (Property Insurance), where the property concerned is—
  - (i) immovable property situated outside the Virgin Islands; or
  - (ii) other property that, at the time the insurance contract was entered into, was not situated in the Virgin Islands;
- (c) the insurance of the risk would fall within Class 3 (Liability Insurance) or Class 4 (Financial Loss Insurance), where the risk relates to an activity, the material aspects of which are carried on outside the Virgin Islands;
- (d) the insurance of the risk would fall within Class 5 (Marine and Aviation Insurance), where the marine craft or aircraft is used outside the Virgin Islands; and
- (e) the insurance of the risk would fall within Class 6 (Goods in Transit), where the goods are not in transit solely within the Virgin Islands.

(3) Notwithstanding subregulation (2), a risk that falls within regulation 6 is not considered to be located outside the Virgin Islands.

#### **Risks specified for purposes of section 4(2)(a)(ii) and section 5(2) of the Act**

6. (1) Subject to subregulation (2), the following risks or types of risks are specified for the purposes of section 4(2)(a)(ii) and section 5(2)—

- (a) a risk, the insurance of which would fall within Class 1 (Motor Insurance), where the motor vehicle concerned is, at any time during the term of the insurance contract, situated in the Virgin Islands;
- (b) a risk, the insurance of which would fall within Class 2 (Property Insurance), where the property concerned is immovable property situated in the Virgin Islands;
- (c) a risk, the insurance of which would fall within Class 3 (Liability Insurance), where the person insured is required to effect the insurance contract—
  - (i) under the Regulatory Code or any other enactment; or
  - (ii) by reason of a requirement imposed by a professional body or trade association prescribed in the Regulatory Code, of which he or she is a member; or
- (d) a contract of insurance effected by an employer for the benefit of any of his or her employees in the Virgin Islands.

(2) A risk referred to in subregulation (1) is not a specified risk for the purposes of section 5(2) of the Act, where the risk is insured by a licensed insurer, as the insured, with an approved reinsurer.

### Relevant licensee specified

7. For the purposes of section 53(1)(b) of the Act, the following are specified as relevant licensees—

- (a) a licensed insurance manager; (*Amended by S.I. 53/2015*)
- (b) a licensed insurance intermediary; and (*Amended by S.I. 53/2015*)
- (c) a licensed foreign insurer. (*Inserted by S.I. 53/2015*)

### Registers

#### Registers

8. The Registers required to be maintained by the Commission under section 78(a), (b) and (c) of the Act shall contain the following information—

- (a) the address of the principal office in the Virgin Islands of the licensee;
- (b) if appropriate, the address of the head office of the licensee outside the Virgin Islands;
- (c) the type and category of licence granted to the licensee and, in the case of an insurer, the classes of insurance business authorised by its licence;
- (d) the full name and address of each director of the licensee and the date of the director's appointment and, in the case of a former director, the date that the director ceased to hold office; and
- (e) such other information as the Commission considers appropriate.

#### Public records

9. The following records are specified as public records for the purposes of section 79 of the Act—

- (a) the audited financial statements of an insurer that holds, or has held, a category A licence; and
- (b) the audited financial statements of an insurer that holds, or has held, a category B licence.

### *Approval of Lloyd's members and syndicates*

#### Approval of Lloyd's members and syndicates

10. (1) Application may be made in writing to the Commission by Lloyd's for the Commission's approval for Lloyd's syndicates to carry on insurance business in the Virgin Islands without a licence in accordance with section 4(4)(a) of the Act.

- (2) An application under subregulation (1) shall be—
- (a) in such form, contain such information and be accompanied by such documents as the Commission may specify; and

(b) accompanied by a list specifying each Lloyd's syndicate that, at any time in the period of 12 months prior to the date of the application, has insured a risk located in the Virgin Islands or has otherwise carried on insurance business in the Virgin Islands.

(3) The Commission may approve an application made under subregulation (1) if it is satisfied that the supervision and regulation of Lloyd's and its managing agents is appropriate to protect the interests of Virgin Islands' policyholders and prospective policyholders of Lloyd's syndicates.

(4) An approval under subregulation (3) is subject to such conditions as may be imposed by the Commission under section 40B of the Financial Services Commission Act.

(5) Where an approval is granted under this regulation, section 4(1) of the Act is disapplied with respect to every Lloyd's syndicate.

### **Revocation of approval under regulation 10**

11. (1) The Commission may revoke an approval granted under regulation 10 if—

- (a) Lloyd's is in contravention of regulation 12;
- (b) there has been a contravention of any condition imposed by the Commission under section 40B of the Financial Services Commission Act; or
- (c) there is any substantial change in the constitution, powers, rights or obligations of Lloyd's or Lloyd's members or syndicates, whether such change occurs as a result of the enactment or amendment of any legislation in the United Kingdom, the making or changing by Lloyd's of its constitution or bye-laws or otherwise.

(2) Where the Commission revokes an approval under this regulation, it may issue such directions as it considers appropriate with respect to the insurance business being carried on by Lloyd's syndicates in the Virgin Islands.

### **Provision of information by Lloyd's to commission**

12. (1) Lloyd's shall on or before the 28th day following the last day of each calendar quarter, submit to the Commission a return, in such form as the Commission may specify—

- (a) listing each Lloyd's syndicate that, at any time in the previous calendar quarter, has insured a risk located in the Virgin Islands or has otherwise carried on insurance business in the Virgin Islands; and
- (b) including such other information as the Commission may require.

(2) The Commission may, at any time, by written notice require Lloyd's to provide it with such information concerning Lloyd's syndicates carrying on insurance business in the Virgin Islands or with respect to the insurance business carried on by Lloyd's syndicates in the Virgin Islands as may be specified in the notice.

*Domestic business trusts***Maintenance of assets in the Virgin Islands**

13. (1) A specified foreign insurer shall, by a written trust instrument in the approved form and complying with these Regulations, establish a trust under the terms of which the trust property is held by the trustee for the purpose of satisfying the insurer's domestic liabilities in accordance with these Regulations.

(2) A domestic business trust shall, at all times, have a single trustee approved by the Commission who shall be the holder of a Class I, Class II or Restricted Class II trust licence issued under the Banks and Trust Companies Act that, in the opinion of the Commission, is fit and proper to act as the trustee of a domestic business trust.

(3) A specified foreign insurer shall—

- (a) transfer approved assets to the trustee for the purposes of the domestic business trust; and
- (b) ensure that at all times the value of approved assets that constitute the trust property is at least equal—
  - (i) to the total of its domestic liabilities; or
  - (ii) where its domestic liabilities are less than \$250,000, an amount of \$250,000 unless, on the application of the insurer or of its own volition, the Commission directs in writing a lesser amount.

(4) For the purposes of these Regulations, the value of the assets constituting the trust property of a domestic business trust and the domestic liabilities of a specified foreign insurer shall be calculated in accordance with such methodology as may be prescribed in the Regulatory Code.

(5) A domestic business trust shall be governed by the laws of the Virgin Islands and, in particular, the provisions of the Trustee Act shall apply with respect to a domestic business trust.

(6) A domestic business trust, once established, continues to have effect until it is terminated by the Commission under regulation 20, notwithstanding that the insurer that established it ceases to qualify as a specified foreign insurer.

(7) For the purposes of section 15 of the Act, an asset that forms part of the trust property of a domestic business trust is deemed to be an asset maintained in the Virgin Islands.

(8) A copy of the trust instrument shall be submitted to the Commission within 5 days of its execution.

(9) A specified foreign insurer that contravenes subregulation (1), (3)(b) or (8) commits an offence and is liable on summary conviction to a fine not exceeding \$40,000. (*Amended by S.I. 53/2015*)

*Approved assets***Approved assets**

14. (1) Subject to subregulations (2) and (3), the following are approved assets, up to the indicated percentage of a specified foreign insurer's domestic liabilities—

- (a) cash (100%);
  - (b) bonds, debentures and other evidence of indebtedness issued by—
    - (i) the Government of the Virgin Islands or the Government of a Zone A country (100%); or
    - (ii) a qualifying BVI bank or a Zone A bank (100%);
  - (c) a standby letter of credit that complies with subregulation (4) (100% up to \$1,000,000 and thereafter such percentage as may be approved by the Commission);
  - (d) an asset that, on the application of a specified foreign insurer, is approved by the Commission as an approved asset for the domestic business trust established, or to be established, by that insurer (in such percentage as is determined by the Commission).
- (2) An asset is not an approved asset if it is subject to any charge, lien or other encumbrance unless the Commission otherwise consents in writing.
- (3) A standby letter of credit is an approved asset if—
- (a) it is issued—
    - (i) by a qualifying BVI bank or by a Zone A bank;
    - (ii) in favour of the trustee; and
    - (iii) in respect of the domestic liabilities of the specified foreign insurer;
  - (b) it has a term, on issue, of not less than one year;
  - (c) it is irrevocable and is not subject to any condition or qualification not provided for in this regulation or approved by the Commission;
  - (d) it contains a condition that provides for its automatic extension, without amendment, for one year from its expiry date, unless no less than 90 days prior to its expiry date, written notice of the issuer's intention not to extend is provided to the trustee and the Commission; and
  - (e) it is approved by the Commission in writing.
- (4) If a specified foreign insurer transfers an asset to the trustee that is not an approved asset, the asset is nevertheless deemed to have been properly transferred to the trustee and falls within the trust property, although the value of that asset shall be disregarded in determining compliance with regulation 13(3)(b).

### Trust instrument

15. (1) The trust instrument governing a domestic business trust—
- (a) shall not be amended without the written agreement of the Commission;
  - (b) shall make provision for—
    - (i) the powers and duties of the trustee;
    - (ii) the remuneration, costs and expenses payable to the trustee;
    - (iii) the manner in which interest and other income accruing to the trust is to be dealt with;
    - (iv) the rights and entitlements of the specified foreign insurer; and

- (v) the service of notices on the parties and for such other matters as may be directed by the Commission; and
  - (c) may contain such other terms and conditions, not inconsistent with the approved form and these Regulations, as the specified foreign insurer and the trustee may agree.
- (2) Any amendment purported to be made to the trust instrument without the Commission's approval is void and has no effect.

### *Duties and responsibilities of trustee*

#### **Duties and responsibilities of trustee**

16. (1) A trustee shall—
- (a) register in its name or, with the approval of the Commission, in the name of its nominee, any trust property that is issued in registered form;
  - (b) ensure that no payments of money, or transfers of assets, are made from the trust property otherwise than in accordance with these Regulations;
  - (c) on or before the 14th day of each month, or where that is not a business day, the first business day following the 14th day, provide to the Commission and the specified foreign insurer a statement detailing, as at the last business day of the previous month—
    - (i) the assets comprised in the trust property; and
    - (ii) the value of those assets and the basis for the valuation of the assets.
- (2) A trustee has no responsibility for—
- (a) ensuring that assets transferred to it for the purposes of the trust are free of charge, lien or other encumbrance; or
  - (b) determining the domestic liabilities of the specified foreign insurer or whether the trust property is sufficient to satisfy those liabilities.

#### **Payment and transfer of assets to insurer**

17. (1) The Commission may authorise the payment of a sum of money, or the transfer of an asset, from the trust property to the specified foreign insurer concerned if it is satisfied that the value of the trust property, after the payment or transfer, will equal or exceed the insurer's domestic liabilities.

(2) Subject to subregulation (3), a trustee that pays a sum of money, or transfers an asset, from the trust property to the foreign licensed insurer without the prior written approval of the Commission commits a breach of trust and is liable to reimburse the value of the money, or asset, to the trust.

(3) Notwithstanding subregulations (1) and (2), the following payments of money and transfers of trust assets from the trust property do not require the prior written consent of the Commission—

- (a) a payment or transfer to the foreign specified insurer if prior to, or simultaneously with, the payment or transfer, the insurer makes a

payment, or transfers another asset, of at least equivalent value to the trustee for the purposes of the trust;

- (b) the payment of interest and other income accruing to the trust to the foreign specified insurer, if permitted by the trust instrument; and
- (c) a payment or transfer made for the purposes of satisfying a domestic liability of the specified foreign insurer.

(4) In making a payment under subregulation (3)(c), a trustee does not commit a breach of these Regulations, or a breach of trust, if it takes reasonable care to ensure that the monies paid, or the assets transferred, are used to satisfy a domestic liability of the specified foreign insurer.

(5) In determining, for the purposes of subregulation (4), whether the specified foreign insurer has a domestic liability and, if so, the value of such liability, the trustee—

- (a) may rely on credible evidence provided to it by the insurer; and is, unless it has reason to suspect the credibility of that evidence, under no obligation to make further enquiry of the insured or other third parties.

#### **Resignation and change of trustee**

**18.** (1) A trustee may resign on giving not less than 42 days written notice to the Commission and the specified foreign insurer.

(2) Where the Commission is satisfied that a trustee has failed to fulfil his or her obligations as trustee, whether under these Regulations, the trust instrument or otherwise, or is not a fit and proper person to be a trustee, it may, by written notice revoke the appointment of the trustee with effect from the date specified in the notice.

(3) A revocation notice issued under subregulation (2) shall be provided to the specified foreign insurer and the trustee.

(4) A specified foreign insurer shall appoint a new trustee in accordance with regulation 13(2) as soon as reasonably practicable after—

- (a) the trustee gives notice of its intention to resign; or
- (b) it receives the Commission's notice of revocation of the trustee's appointment, and such appointment shall take effect on the date that the appointment of the previous trustee terminates.

(5) If a specified foreign insurer fails to appoint a new trustee in accordance with this regulation, the Commission may appoint a new trustee.

(6) A trustee appointed under subregulation (5) is deemed, for the purposes of these Regulations, to have been appointed by the specified foreign insurer and the specified foreign insurer shall be responsible for his or her remuneration, charges and expenses.

(7) Subject to subregulation (8), the trustee that is retiring or to be replaced ("the retiring trustee") shall execute all documents required to ensure that the trust property is transferred to the new trustee.

(8) The retiring trustee is entitled to withhold monies equal to the aggregate of any unpaid compensation and any outstanding charges and expenses at the date of it ceasing to be trustee.

*Powers of Commission***Powers of Commission**

19. (1) Without limiting the Commission's powers under the Financial Services Commission Act and the Act—

- (a) a specified foreign insurer and the trustee shall provide the Commission with such information as it may require concerning a domestic business trust and the trustee shall provide the Commission with access to the trust records; and
- (b) the Commission may, at any time, investigate, or require an investigation to be carried out by a suitably qualified person, into a domestic business trust.

(2) Without limiting subregulation (1)(b), the purposes for which an investigation may be undertaken include determining—

- (a) whether the trust property is, and in the future will be, sufficient to satisfy the domestic liabilities of the specified foreign insurer; and
- (b) the payments and transfers into, and the payments and transfers out of, the trust and whether such payments and transfers have been made in compliance with these Regulations.

**Termination of domestic business trust**

20. (1) The Commission may, on the application of a specified foreign insurer or of its own volition, issue a notice terminating a domestic business trust if the Commission is satisfied that—

- (a) the specified foreign insurer has ceased to carry on insurance business in the Virgin Islands and has satisfied, or made arrangements satisfactory to the Commission to satisfy, all its domestic liabilities; or
- (b) the specified foreign insurer has been assigned a financial strength rating of A++, A+, A or A- assigned by the A. M. Best Company or other rating agency. (*Amended by S.I. 53/2015*)

(2) Where the Commission issues a notice under subregulation (1)(a) or (b)—

- (a) the domestic business trust is terminated with effect from the date specified in the notice; and
- (b) in the case of subregulation (1)(a), any surplus trust property, and in the case of subregulation (1)(b), the trust property, shall be returned to the specified foreign insurer.

**Notifications to Commission**

21. (1) A specified foreign insurer shall forthwith, on becoming aware that the value of the trust property in the domestic business trust is less than the value of its domestic liabilities, notify the Commission in writing.

(2) A specified foreign insurer that contravenes subregulation (1) commits an offence and is liable on summary conviction to a fine not exceeding \$30,000. (*Amended by S.I. 53/2015*)



*Appointment of trustee by Court*

**Appointment of trustee by Court**

22. (1) The Commission may apply to the Court for the appointment of the Official Receiver or a licensed insolvency practitioner as a trustee under the control of the Court, in place of the trustee appointed under the trust instrument.

(2) On an application under subregulation (1), the Court may appoint a trustee if it is satisfied that—

- (a) the specified foreign insurer is insolvent;
- (b) the specified foreign insurer—
  - (i) has entered into liquidation or any other form of insolvency proceeding; or
  - (ii) is dissolved;
- (c) a receiver has been appointed in respect of the business carried on by the specified foreign insurer or possession has been taken of any of its property by or on behalf of the holder of a debenture secured by a registered charge; or
- (d) it would otherwise be in the best interests of the domestic policyholders of the specified foreign insurer for the Court to appoint a trustee.

(3) Where the Court appoints a trustee under this regulation, the Court shall, by order—

- (a) remove the existing trustee and vest the trust property in the trustee appointed by the Court with effect from the date of the order; and
- (b) specify the terms and conditions of the appointment of the trustee, including with respect to the trustee's costs and remuneration.

(4) On the making of an order under subregulation (3)(a), the assets covered by the order vest in the trustee without any conveyance, transfer or assignment.

(5) The Court may, on the application of the trustee or the Commission, or of its own volition, remove the trustee and appoint a new trustee in his or her place.

(6) Notice of any hearing with respect to the winding-up of a domestic business trust by the Court shall be given to the Commission which shall be entitled to be heard at the hearing.

**Functions and powers of trustee**

23. (1) A trustee appointed by the Court has responsibility for winding-up the domestic business trust and, in particular, for—

- (a) realising the trust property;
- (b) satisfying any domestic liabilities of the specified foreign insurer from the trust property; and
- (c) paying or transferring any surplus to the specified foreign insurer or its liquidator, receiver or such other person as is entitled to it.

(2) Subject to any order of the Court to the contrary, the trustee has the powers of a trustee in bankruptcy under the Insolvency Act with such modifications as are appropriate.

(3) A trustee appointed by the Court under regulation 22 is subject to the control of the Court which may, on the application of the trustee or its own volition, give directions to the trustee concerning the winding-up of the trust.

(4) The trustee shall prepare and file with the Court such reports as the Court requires and a copy of any such report shall, as soon as practicable, be submitted to the Commission.

### *Indemnity and exemption*

#### **Indemnity and exemption**

24. A trustee appointed by the Court under regulation 22—

- (a) is not liable to any person in respect of anything done, or omitted to be done, by him or her in good faith in the exercise of his or her powers and functions as trustee; and
- (b) is deemed not to carry on insurance business, by acting as trustee.

#### **Trust property insufficient to satisfy domestic liabilities**

25. If the assets in a domestic business trust, in respect of which a trustee has been appointed by the Court, are insufficient to satisfy the domestic liabilities of the specified insurer in full, the liabilities shall be paid rateably.

#### **Termination of trusteeship**

26. (1) The trusteeship shall continue until terminated by order of the Court which may be made on the ground that—

- (a) the domestic business trust has been fully wound-up; or
- (b) for any reason it is undesirable for the trusteeship to continue.

(2) Where the Court makes an order terminating the trusteeship, it may make such supplementary and consequential orders as it considers appropriate.

### *Regulatory Deposit*

#### **Regulatory deposit: application**

27. (1) This regulation and regulations 28, 29 and 30 apply to—

- (a) a specified foreign insurer that opts under subregulation (2) not to establish a trust as provided under regulation 13; and
- (b) a BVI insurer that carries on domestic business.

(2) A specified foreign insurer may, instead of establishing a trust under regulation 13, opt to pay to the Commission the deposit prescribed in regulation 28.

(3) Where a specified foreign insurer makes the option referred to in subregulation (2), regulations 13 to 26 shall not apply in its case.

*(Inserted by S.I. 53/2015)*

**Payment of deposit**

28. (1) A BVI insurer, and a specified foreign insurer that makes an option under regulation 27(2), shall pay to the Commission a deposit—

- (a) in the amount of \$250,000; or
- (b) in an amount that is equal to the total of its domestic liabilities,

whichever is higher.

(2) A BVI insurer and specified foreign insurer shall ensure that, at all times, it has paid monies to the Commission equal to the deposit specified in subregulation (1) and, where its liabilities exceed the amount of the regulatory deposit paid to the Commission, it shall pay the difference to a level at least equal to the total of its liabilities.

(3) Where the liabilities of a BVI insurer or specified foreign insurer are less than \$250,000, the Commission may, either on the application of the BVI insurer or specified foreign insurer, direct that a lesser deposit, as the Commission may determine, be paid.

(4) A BVI insurer or specified foreign insurer that contravenes subregulation (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding \$40,000.

*(Inserted by S.I. 53/2015)*

**Use of regulatory deposit**

29. (1) A deposit paid by a BVI insurer or specified foreign insurer may be used by the Commission to satisfy—

- (a) any outstanding fees or penalties payable to the Commission;
- (b) the costs of, or associated with, any enforcement action taken by the Commission against the BVI insurer or specified foreign insurer;
- (c) costs of, or associated with, the winding up of the BVI insurer or specified foreign insurer; and
- (d) any liabilities in respect of insurance policies as at the date of winding up of the BVI insurer or specified foreign insurer.

(2) If a BVI insurer or specified foreign insurer ceases to hold a licence under the Act, the Commission shall pay to the BVI insurer or specified foreign insurer the whole or such part of the deposit that the Commission is satisfied is not required for the purposes specified in subregulation (1).

(3) All income accruing in respect of a deposit, whether in the form of interest payment or otherwise, shall, subject to subregulations (1) and (4), be payable to the BVI insurer or specified foreign insurer making the deposit at such rate and in such manner as the Commission considers appropriate.

(4) The Commission may, subject to subregulation (1), retain up to 25 percent of any income accruing in respect of a deposit, as provided in subregulation (3), to cover its administrative and other expenses.

*(Inserted by S.I. 53/2015)*

**Termination of regulatory deposit**

30. A deposit paid under regulation 28 shall be retained by the Commission until—
- (a) the BVI insurer or specified foreign insurer ceases to hold its licence; or
  - (b) the deposit is required for the purposes outlined in regulation 29.
- (Inserted by S.I. 53/2015)*

**SCHEDULE***(Regulation 3)***CLASSES OF INSURANCE BUSINESS****PART A****PROPERTY AND CASUALTY INSURANCE BUSINESS***(Substituted by S.I. 53/2015)*

<b>Class No.</b>	<b>Class Name</b>	<b>Description</b>
1.	Motor Insurance	Contracts of insurance against—  (a) loss of or damage to motor vehicles;  (b) loss or damage arising out of or in connection with the use of, motor vehicles, including third party risks, carrier's liability and medical expenses for the injury of occupants of a motor vehicle.
2.	Property Insurance	Contracts of insurance against—  (a) the loss of, damage to or the destruction of property (excluding motor vehicles, marine craft and aircraft) by a covered peril, which may include theft, fire, other natural forces or any other peril.  (b) losses caused by an interruption to a business carried on by the insured, or a reduction of scope of such a business, arising out of an insured event specified in paragraph (a).
3.	Liability Insurance	Contracts of insurance against risks of the persons insured incurring liability to third parties (excluding any risk to which Class 1 or 5 relates).
4.	Financial Loss Insurance	Contracts of insurance against the risk of financial and other losses to the person insured—  (a) arising from the failure of debtors to pay their

- debts when due, whether by reason of their insolvency or otherwise (credit insurance);
- (b) arising from the person insured having to perform contracts of guarantee entered by them, including performance bonds, fidelity bonds, administration bonds and other similar contracts of guarantee (suretyship);
- (c) attributable to the person insured incurring legal expenses, including the cost of litigation (legal expenses insurance);
- (d) attributable to the person insured incurring other unforeseen expenses (not falling within any other class of general insurance), including fidelity and kidnap and ransom insurance (miscellaneous financial loss insurance).
5. Marine and Aviation Insurance Contracts of insurance against—
- (a) loss of or damage to—
- (i) marine craft or the equipment or fittings of marine craft;
- (ii) aircraft or aircraft equipment or fittings;
- (b) loss or damage arising out of or in connection with the use of, marine craft or aircraft motor vehicles, including third party risks, carrier's liability and medical expenses for the injury of occupants of a marine craft or aircraft.
6. Goods in Transit Contracts of insurance against loss of or damage to merchandise, baggage and all other goods in transit, irrespective of the form of transport.
7. Accident and Health Insurance Contracts of insurance—
- (a) that provide fixed pecuniary benefits or benefits in the nature of an indemnity (or a combination of both) against risks of the person insured—
- (i) sustaining accidental injury;
- (ii) dying as a result of an accident;
- (iii) becoming incapacitated as a result of disease;
- (iv) attributable to sickness or infirmity; excluding contracts of insurance that fall within the class of permanent health Insurance in Part B of this Schedule; and

- (b) on human life (life benefit) where—
- (i) the life benefit forms part of or relates to the contracts of health insurance;
- (ii) the insured sum does not exceed thirty thousand dollars;
- (iii) the life benefit is taken at the commencement or renewal of the contracts of health insurance and, subject to subparagraph (iv), ceases at the termination of the contracts of health insurance;
- (iv) the term of the life benefit, and the period of cover, does not exceed three years; and
- (v) the premiums payable in respect of the life benefit do not include a savings or investment element.”
8. Other Property and Casualty Business      Contracts of insurance, not included in classes 1 to 7 that the Commission determines constitute property and casualty business. *(Amended by S.I. 53/2015)*

## PART B

### LIFE AND HEALTH INSURANCE BUSINESS

*(Substituted by S.I. 53/2015)*

Class No.	Class Name	Description
9.	Annuity business	Contracts to pay annuities on human life that guarantee a fixed or variable payment to the annuitant at some future time (but excluding any contract falling within Class 11).
10.	Life Insurance	Contracts of insurance on human life, including contracts that pay a benefit to a beneficiary at the end of the policy term or if the insured dies (but excluding any contract falling within Class 7(b) or Class 11). <i>(Amended by S.I. 51/2011)</i>
11.	Life Insurance (Investment related)	Contracts to pay annuities or contracts of insurance on human life under which the benefits are wholly or partly to be determined by references to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified). <i>(Amended by S.I. 53/2015)</i>
12.	Permanent Health	Contracts of insurance providing specified benefits

- Insurance
- against risks of persons becoming incapacitated as a result of sustaining injury through an accident or of sickness or infirmity, being contracts of insurance that—
- (a) are expressed to be in effect for a period of not less than 5 years, or until the normal retirement age for the persons concerned, or without limit of time; and
  - (b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances specified in the contract,
- including critical illness and long-term care insurance.
13. Other Life and Health Insurance
- Contracts of insurance, not included in classes 9 to 12 that the Commission determines constitute life and health business. (*Amended by S.I. 53/2015*)
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