



# **INSURANCE ACT**

**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 ACT**

Act 1 of 2008 .. in force 1 February 2010 (S.I. 63/2009)

Amended by Act: 16 of 2015 .. in force 1 November 2016

**SEE STATUTORY INSTRUMENT BOOKLET**

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## INSURANCE ACT

*(Acts 1 of 2008 and 16 of 2015)*

AN ACT TO REFORM THE REGIME FOR THE LICENSING, REGULATION AND SUPERVISION OF INSURANCE BUSINESS AND OF INSURANCE MANAGERS, INSURANCE INTERMEDIARIES AND LOSS ADJUSTERS AND FOR CONNECTED MATTERS.

### Commencement

*[1 February 2010]*

### PRELIMINARY PROVISIONS

#### Short title

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

#### Interpretation

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

“actuary” means a person qualified under the Regulatory Code to act as an actuary;

“approved form” means a form approved by the Commission in accordance with section 41B of the Financial Services Commission Act; *(Substituted by Act 16 of 2015)*

“approved reinsurer” means an insurer that—

- (a) satisfies the prescribed criteria for an approved reinsurer; or
- (b) is approved by the Commission as an approved reinsurer in accordance with section 16(2)(b);

“auditor” means a person who is qualified to act as an auditor of a licensee in accordance with section 56 of the Regulatory Code; and is in good standing with respect to that qualification; *(Substituted by Act 16 of 2015)*

“BVI business company” means a company that is on the Register of Companies maintained under the BVI Business Companies Act;

“BVI insurer” means an insurer holding a licence in one of the following categories—

- (a) category A;
- (b) category C; *(Amended by Act 16 of 2015)*
- (c) category D;
- (d) category E; or *(Inserted by Act 16 of 2015)*
- (e) category F; *(Inserted by Act 16 of 2015)*

“business plan” means a business plan developed in accordance with sections 11, 12 and 13 of the Regulatory Code, 2009; *(Inserted by Act 16 of 2015)*

- “Cabinet” means the Cabinet established under the Virgin Islands Constitution Order;
- “capital resources”, with respect to a licensee, means its capital resources calculated in accordance with the Regulatory Code;
- “class of business” or “class” means a class of insurance business specified in the regulations;
- “Commission” means the Financial Services Commission established under section 3 of the Financial Services Commission Act;
- “company” means a body corporate, wherever incorporated, registered or formed, and includes a BVI business company and a foreign company;
- “connected person” has the meaning specified in the Regulatory Code;
- “contributed capital” means the total of—
- (a) monies paid; and
  - (b) the value of other consideration provided, for shares issued by a company;
- “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;  
*(Inserted by Act 16 of 2015)*
- “Court” means the High Court;
- “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; *(Inserted by Act 16 of 2015)*
- “director” has the meaning specified in the BVI Business Companies Act;
- “document” means a document in any form and includes—
- (a) any writing or printing on any material;
  - (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium, including discs and tapes;
  - (c) books and drawings; and
  - (d) a photograph, film, tape, negative or other medium in which one or more visual images are embodied so as to be capable, with or without the aid of equipment, of being reproduced, and without limiting the generality of paragraphs (a) to (d), includes any application to, or order of, a court or tribunal, any other legal process and any notice;

“domestic business” means insurance business, excluding reinsurance business, the principal objective of which is to insure—

- (a) a person who is resident in the Virgin Islands at the time the insurance contract is effected against any kind of risks, except risks in relation to property; (*Amended by Act 16 of 2015*)
- (b) a person against risks of any kind in relation to—
  - (i) immovable property situated in the Virgin Islands; or
  - (ii) personal property which at the time the insurance contract is affected is held or based in the Virgin Islands; or (*Amended by Act 16 of 2015*)
- (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; (*Inserted by Act 16 of 2015*)

“financial statements” has the meaning specified in section 55;

“financial year”, in relation to financial statements, has the meaning specified in section 54;

“foreign company” means a company incorporated, registered or formed outside the Virgin Islands, but excludes a BVI business company;

“foreign insurer” means a licensed insurer that holds a category B licence;

“former Act” means the Insurance Act, 1994;

“general business” (*Repealed by Act 16 of 2015*)

“general insurer” (*Repealed by Act 16 of 2015*)

“insurance agent” means a person appointed and authorised by an insurer to solicit applications for insurance, negotiate for insurance business or provide advice to clients of the insurer who appointed him or her, but excludes an individual who is an employee of the insurer;

“insurance broker” means a person who acts as an independent contractor or consultant and who, for commission or other compensation, carries out any of the following activities—

- (a) the soliciting or negotiating of insurance business, including the renewal and continuance of such business, on behalf of an insured or a prospective insured other than himself or herself;
- (b) the bringing together, either directly or through the agency of a third party, with a view to the insurance of risks, of persons seeking insurance and insurers, and carrying out work preparatory to the conclusion of contracts of insurance; or
- (c) the provision of advice to clients concerning their insurance requirements;

“insurance business” has the meaning specified in section 3(1);

“insurance intermediary” means an insurance agent or an insurance broker;

- “insurance intermediary’s licence” means a licence to carry on business as an insurance intermediary issued under section 40;
- “insurance manager” means a person who provides insurance expertise to any insurer of which he or she is not an employee or who exercises such other functions with respect to insurers as may be specified in the regulations;
- “insurance manager’s licence” means a licence to carry on business as an insurance manager issued under section 40;
- “insurer” means a person, including an association of underwriters, who carries on, or holds himself or herself out as carrying on, insurance business;
- “insurer’s licence” means a licence issued under section 8;
- “licensed insurance intermediary” means a person holding an insurance intermediary’s licence;
- “licensed insurance manager” means a person holding an insurance manager’s licence;
- “licensed insurer” means a person holding an insurer’s licence;
- “life and health business” means insurance business of the type referred to in section 3; (*Inserted by Act 16 of 2015*)
- “life and health insurer” means a licensed insurer that is authorised by its licence to carry on life and health business; (*Inserted by Act 16 of 2015*)
- “Lloyd’s” means the society incorporated by the name of “Lloyd’s” in the United Kingdom by the Lloyd’s Act 1871;
- “long-term business” (*Repealed by Act 16 of 2015*)
- “long-term insurer” (*Repealed by Act 16 of 2015*)
- “loss adjuster” means a person who, for commission or other compensation, investigates and negotiates the settlement of claims under insurance contracts solely on behalf of either the insurer or the insured but does not include—
- (a) an individual who is an employee of an insurer or an insurance agent while acting on behalf of the insurer or insurance agent; or
  - (b) an insurance agent who is authorised to settle claims on behalf of the insurer for whom he or she acts as agent;
- “prescribed” means prescribed in the Regulatory Code;
- “property and casualty business” means insurance business of the type referred to in section 3; (*Inserted by Act 16 of 2015*)
- “property and casualty insurer” means a licensed insurer that is authorised by its licence to carry on property and casualty business; (*Inserted by Act 16 of 2015*)
- “public interest” shall be construed in accordance with subsection (2);
- “registers” means the registers required to be maintained by the Commission under section 78;
- “Registrar of Corporate Affairs” means the Registrar of Corporate Affairs appointed under section 229(1) of the BVI Business Companies Act;

- “regulations” means the regulations made under section 82;
- “Regulatory Code” means the Regulatory Code issued by the Commission under the Financial Services Commission Act;
- “resident in the Virgin Islands”, for the purposes of this Act, is to be construed in accordance with the regulations;
- “senior officer” means an individual appointed to perform such supervisory or managerial functions with respect to a licensee as may be prescribed;
- “significant interest”, in respect of a company, means a holding or interest in the company or in any holding company of the company held or owned by a person, either alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly—
- (a) to control 10% or more of the voting rights of that company at a meeting of the company or of its members;
  - (b) to a share of 10% or more in any distribution made by the company;
  - (c) to a share of 10% or more in any distribution of the surplus assets of the company; or
  - (d) to appoint or remove one or more directors of the company; and
- “solvency margin” has the meaning specified in the Regulatory Code.
- (2) Where the Commission is permitted or required by this Act to consider the “public interest”, the “public” includes—
- (a) the public inside and outside the Virgin Islands; and
  - (b) any persons who have a legitimate interest in the decision to be made by the Commission.
- (3) Unless the context otherwise requires, any reference to this Act includes a reference to regulations made under this Act.
- (4) The regulations may make provision for determining whether a person is resident in the Virgin Islands for the purposes of this Act.

### **Meaning and classification of insurance business**

3. (1) “Insurance business” means the business of undertaking liability under a contract of insurance to indemnify or compensate a person in respect of loss or damage, including the liability to pay damages or compensation contingent upon the happening of a specified event, and includes life insurance business and reinsurance business.

(2) For the purposes of this Act, insurance business may comprise life and health insurance business or property and casualty insurance business. *(Amended by Act 16 of 2015)*

(3) If the Commission is satisfied that any part of a licensed insurer’s business ought to be treated as belonging to a different type or a different class of insurance business than is provided for in the regulations, it may direct that, in

that insurer's case, that part of the insurer's business will be so treated for the purposes of this Act.

PART I

REGULATION AND SUPERVISION OF INSURANCE BUSINESS

**Division 1**

*Unauthorised Insurance Business*

**Prohibition of unauthorized insurance business**

4. (1) Subject to subsection (4)—
- (a) no person shall carry on, or hold himself or herself out as carrying on, insurance business of any kind in or from within the Virgin Islands unless he or she holds a licence issued under section 8 authorising him or her to carry on that kind of insurance business; and
  - (b) no person shall carry on domestic business in or from within the Virgin Islands unless he or she holds a category A or a category B licence.
- (2) For the purposes of subsection (1), but without limiting that subsection—
- (a) a person carries on insurance business in the Virgin Islands if—
    - (i) by way of business as an insurer, he or she occupies premises in the Virgin Islands;
    - (ii) he or she invites a person resident in the Virgin Islands, or causes a person resident in the Virgin Islands to be invited, through the publication of advertisements or otherwise, to enter into, renew or vary or to offer to enter into, renew or vary a contract of insurance with him or her as insurer; or
    - (iii) he or she insures a risk of a type or description specified in the regulations for the purposes of this subparagraph; and
  - (b) a BVI business company that carries on, or holds itself out as carrying on, insurance business outside the Virgin Islands is deemed to carry on, or hold itself out as carrying on, insurance business from within the Virgin Islands.
- (3) The Regulations may—
- (a) provide for the approval by the Commission of members or syndicates of Lloyd's to carry on insurance business in the Virgin Islands without a licence; and
  - (b) exempt categories or descriptions of persons or activities from subsection (1).
- (4) Subsection (1) does not apply—

- (a) to a member or syndicate of Lloyd's, where the member or syndicate is carrying on insurance business in the Virgin Islands in accordance with an approval granted by the Commission pursuant to regulations made under subsection (3)(a);
- (b) to an approved reinsurer that enters into a reinsurance contract with a licensed insurer;
- (c) to any person exempted from subsection (1) by virtue of regulations made under subsection (3) or under section 40C of the Financial Services Commission Act; or
- (d) where an exemption order has been granted by the Commission with respect to the insurer under section 6 and the insurer is carrying on insurance business in accordance with the terms of that exemption order.

(5) Where subsection (4)(a), (c) or (d) applies, the insurer concerned is deemed not to be an unlicensed insurer for the purposes of section 5(2).

(6) A person who carries on insurance business contrary to subsection (1) commits an offence.

### **Prohibition on dealings with unlicensed insurers**

5. (1) A licensed insurance agent shall not solicit applications for insurance, or negotiate for insurance business, on behalf of an unlicensed insurer or provide advice to clients of an unlicensed insurer.

(2) Subject to section 6—

(a) a licensed insurance broker shall not—

- (i) on behalf of a client resident in the Virgin Islands, solicit or negotiate insurance business, including the renewal and continuance of such business, with an unlicensed insurer; or
- (ii) introduce a client resident in the Virgin Islands to, or bring such a client together with, an unlicensed insurer with a view to the insurance of risks; and

(b) a person shall not knowingly enter into an insurance contract with an unlicensed insurer to insure a risk of a type or description specified in the regulations for the purposes of this paragraph.

(3) For the purposes of this section and section 6, a licensed insurer is deemed to be an unlicensed insurer with respect to any insurance business that it is not permitted by its licence to carry on.

(4) A licensed insurance agent who contravenes subsection (1), a licensed insurance broker who contravenes subsection (2)(a) or a person who contravenes subsection (2)(b), commits an offence.

### **Exemption order on grounds of lack of insurance availability**

6. (1) Application may be made to the Commission for an exemption order in accordance with this section by—

- (a) an unlicensed insurer that wishes to carry on insurance business that it would otherwise be prohibited from carrying on under section 4;
  - (b) a licensed insurance broker who wishes to—
    - (i) solicit or negotiate insurance business, including the renewal and continuance of such business, with an unlicensed insurer; or
    - (ii) introduce a client resident in the Virgin Islands to, or bring such a client together with, an unlicensed insurer with a view to the insurance of risks; or
  - (c) a person who wishes to enter into an insurance contract with an unlicensed insurer to insure a risk of a type or description specified in the regulations for the purposes of section 5(2)(b).
- (2) The Commission may grant an exemption order to the applicant, subject to such conditions as it considers appropriate, where it is of the opinion that the principal objective of the insurance business to which the application relates is to insure a risk or risks—
- (a) that no licensed insurer is willing or able to insure;
  - (b) that licensed insurers have insufficient capacity to insure; or
  - (c) where the terms proposed by local insurers willing and able to insure the risk are significantly less advantageous than the terms available from the unlicensed insurer with respect to which the application relates.
- (3) Where the Commission grants an exemption order under this section, section 5(2) is disapplied with respect to the unlicensed insurer and the insurance business specified in the order.
- (4) An exemption order under this section shall be in such form as the Commission may determine pursuant to the Financial Services Commission Act.

## Division 2

### *Licensing of Insurers*

#### **Categories of, and restrictions on, licences**

7. (1) An insurer's licence shall be issued in one of the following categories—
- (a) category A, which may be issued only to a BVI business company and which entitles the holder to carry on insurance business, including domestic business;
  - (b) category B, which may be issued only to a company incorporated, registered or formed in a jurisdiction outside the Virgin Islands and which entitles the holder to carry on insurance business in the Virgin Islands, including domestic business;
  - (c) category C, which may be issued only to a BVI business company and which entitles the holder to carry on insurance business that is



- not domestic business, including, if the licence permits, reinsurance business that is not open market reinsurance business;
- (d) category D, which may be issued only to a BVI business company and which entitles the holder to carry on reinsurance business, including open market reinsurance business;
  - (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 (*Inserted by Act 16 of 2015*)
  - (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. (*Inserted by Act 16 of 2015*)
- (2) (*Repealed by Act 16 of 2015*)
- (3) An insurer's licence shall state—
- (a) the category of licence issued to the holder and the class or classes of business that the holder is authorised to carry on; and
  - (b) in the case of a category C licence, either that the holder is, or is not, authorised to carry on reinsurance business that is not open-market reinsurance business.
- (4) An insurer's licence—
- (a) does not authorise the holder to carry on any class of insurance business that is not specified on the licence; and
  - (b) is subject to such conditions as may be imposed by the Commission under section 40B of the Financial Services Commission Act.
- (5) For the purposes of this section—
- “open-market reinsurance business” is reinsurance business where the insurer is not connected with the reinsurer; and
- “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.  
(*Substituted by Act 16 of 2015*)

### **Application for, and issuance of, licence**

- 8.** (1) An application for an insurer's licence may be made to the Commission—
- (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 (*Substituted by Act 16 of 2015*)
  - (b) in the case of an application for a licence in category B, by a foreign company of such type or description as may be prescribed.

(2) Subject to subsection (4), the Commission may issue a licence to an applicant if it is satisfied that—  
(Amended by Act 16 of 2015)

- (a) the applicant intends, if issued with a licence, to carry on the relevant insurance business;
- (b) the applicant satisfies the requirements of this Act and the Regulatory Code with respect to the application;
- (c) the applicant will, on the issuance of the licence—
  - (i) have contributed capital at least equal to the amount that it is required to maintain under section 10(1); and
  - (ii) otherwise be in compliance with this Act, the Regulatory Code and any practice directions applicable to it;
- (d) the applicant, its directors and senior officers and any persons having a significant interest or a controlling interest in the applicant satisfy the Commission's fit and proper criteria;  
(Amended by Act 16 of 2015)
- (e) the organisation, management, financial resources and reinsurance arrangements of the applicant are, or on the issuance of the licence will be, adequate for the carrying on of the relevant insurance business;
- (f) the relevant insurance business will be conducted and managed in accordance with sound and prudent insurance principles; and
- (g) issuing the licence is not against the public interest.

(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. (Inserted by Act 16 of 2015)

(3) Without limiting the discretion given to the Commission under subsection (2), the Commission may refuse to issue a licence to an applicant if it is of the opinion that any person having a share or other interest in the applicant, whether legal or equitable, does not satisfy the Commission's fit and proper criteria.

(4) The Commission shall not issue a category B licence to a company unless it is satisfied that—

- (a) the applicant is authorised by or under the law of a jurisdiction outside the Virgin Islands ("its home jurisdiction") to carry on insurance business of the relevant classes of business;
- (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; (Inserted by Act 16 of 2015)
- (b) the relevant insurance business would be lawfully carried on if it were carried on in its home jurisdiction; and

(c) the relevant insurance business will be subject to the supervision of the authority responsible for the supervision of insurance business in its home jurisdiction.

(5) For the purposes of subsections (2) and (4), “relevant insurance business” means the insurance business that the applicant will be authorised to carry on if a licence is issued to it.

(6) A licence issued under subsection (2) shall be in writing and in the approved form and shall comply with section 7.

### **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 as the Commission considers fit.

*(Inserted by Act 16 of 2015)*

## **Division 3**

### ***Obligations of, and Restrictions on, Licensed Insurers***

#### *Financial Resource Requirements*

### **Maintenance of financially sound condition**

**9.** (1) A licensed insurer shall, at all times, maintain its business in a financially sound condition by—

(a) having admissible assets;

(b) providing for its liabilities; and

(c) generally conducting its business, so as to be in a position to meet its liabilities as they fall due.

(2) If a licensed insurer becomes aware that it does not comply with subsection (1), it shall forthwith notify the Commission in writing. *(Amended by Act 16 of 2015)*

(3) A licensed insurer that contravenes subsection (2) commits an offence.

(4) Sections 10 to 15 do not limit the generality of this section.

### **Maintenance of contributed capital**

**10.** (1) A BVI insurer shall ensure that at all times—

(a) its contributed capital is maintained in an amount not less than the greater of—

(i) the minimum applicable to it as specified in the Regulatory Code; or

(ii) such amount as the Commission may direct under subsection (2); and

(b) its capital resources are maintained in such amount as may be prescribed or, where the Commission has issued a direction under subsection (2), in such amount as the Commission may direct.

(1A) For the purposes of subsection (1), the Regulatory Code 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. *(Inserted by Act 16 of 2015)*

(2) If the Commission considers it appropriate, having regard to the nature and extent of the insurance business carried on, or proposed to be carried on, by a BVI insurer, the Commission may direct the insurer—

(a) to increase its contributed capital to an amount higher than the prescribed minimum contributed capital applicable to the insurer; or

(b) to maintain a higher amount of capital resources than that prescribed.

(3) A direction issued under subsection (2) shall specify a reasonable period, not being less than 14 days, for compliance with the direction. *(Substituted by Act 16 of 2015)*

(4) If the contributed capital or the capital resources of a BVI insurer falls below the amount that it is required to maintain under subsection (1), it shall forthwith notify the Commission in writing.

(5) A BVI insurer that contravenes subsection (4) commits an offence.

### **Shares**

**11.** (1) Subject to subsection (2), every share in a BVI insurer issued after the coming into force of this Act shall be fully paid for in cash on issue.

(2) A share in a BVI insurer may be issued otherwise than fully paid or for a consideration other than cash where—

(a) permitted by the Regulatory Code; or

(b) authorised by the Commission in writing, on the application of the licensed insurer.

(3) A BVI insurer that contravenes subsection (1) commits an offence.

### **Solvency margin**

12. (1) A BVI insurer shall ensure that at all times it maintains a solvency margin in accordance with this section.

(2) The solvency margin to be maintained by a BVI insurer shall be—

- (a) the solvency margin calculated in accordance with the Regulatory Code; or
- (b) such increased solvency margin as the Commission may direct under subsection (3).

(3) If, having regard to the nature and extent of the insurance business carried on, or proposed to be carried on, by a BVI insurer, it considers it appropriate, the Commission may direct the insurer to maintain a solvency margin that is greater than that calculated in accordance with the Regulatory Code.

(4) A direction issued under subsection (2) shall specify a reasonable period, not being less than 14 days, for compliance with the direction. *(Substituted by Act 16 of 2015)*

(5) If, at any time, a BVI insurer fails to maintain the solvency margin that it is required to maintain under subsection (2), it shall forthwith notify the Commission in writing indicating the date as of which the failure to maintain the solvency margin occurred. *(Amended by Act 16 of 2015)*

(6) A BVI insurer that contravenes subsection (5) commits an offence.

### **Distributions**

13. (1) For the purposes of this section, “distribution” has the meaning specified in section 56(b) of the BVI Business Companies Act.

(2) For the purposes of Division 4 of Part III of the BVI Business Companies Act and this section, a BVI insurer satisfies the solvency test only if all of the following conditions are satisfied—

- (a) the value of its assets exceeds its liabilities;
- (b) it is able to pay its debts as they fall due;
- (c) its contributed capital equals or exceeds the capital that it is required to maintain under section 10; and
- (d) its solvency margin equals or exceeds the solvency margin that it is required to maintain under section 12.

(3) A BVI insurer shall not make a distribution unless, immediately after the distribution, the insurer satisfies the solvency test.

(4) A BVI insurer shall not, without the written approval of the Commission, make a distribution at any time in the period of 5 years after the date upon which it is granted its insurer’s licence.

(5) A BVI insurer that contravenes subsection (3) or (4) commits an offence.

**Prohibition on advances and loans, etc.**

14. (1) A BVI insurer shall not, without the prior written approval of the Commission—

- (a) acquire or deal in its own shares or lend money or make advances on the security of its own shares; or
- (b) enter into any guarantee or provide any security in connection with a loan by any other person to a connected person.

(2) The Regulatory Code shall specify persons who are connected persons for the purposes of subsection (1).

(3) A BVI insurer that contravenes subsection (1) commits an offence.

**Maintenance of assets in Virgin Islands**

15. (1) The regulations may—

- (a) require licensed insurers, or specified categories or descriptions of licensed insurers, to maintain in the Virgin Islands assets of such value and of such description as may be prescribed; and
- (b) specify the manner in which the required assets are to be maintained in the Virgin Islands.

(2) Notwithstanding any other enactment, a licensed insurer shall not create, or permit to be created, any mortgage, charge or lien over any asset maintained in the Virgin Islands without the prior written approval of the Commission.

(3) If a licensed insurer fails to maintain assets in the Virgin Islands in accordance with the requirements of the regulations, it shall forthwith notify the Commission in writing indicating the date as of which the failure to maintain assets in the Virgin Islands occurred. *(Amended by Act 16 of 2015)*

(4) A licensed insurer commits an offence if it—

- (a) fails to comply with a requirement of this section or the regulations with respect to the maintenance of assets in the Virgin Islands; or
- (b) contravenes subsection (2) or (3).

**Reinsurance**

16. (1) Subject to subsections (2) and (3), a BVI insurer shall have such arrangements as it considers appropriate for the reinsurance of risks under contracts of insurance entered into by the insurer in the course of its business as an insurer.

(2) A BVI insurer shall not enter into an agreement to reinsure any of its risks with a person, unless—

- (a) that person satisfies the prescribed criteria for an approved reinsurer; or

- (b) the Commission, on the application of the BVI insurer, approves that person as a reinsurer for the liabilities specified in the application.
- (3) The Regulatory Code may prescribe—
  - (a) requirements with respect to the reinsurance arrangements of licensed insurers; and
  - (b) the filing of returns and other documents with respect to the reinsurance arrangements of licensed insurers.
- (4) A BVI insurer that contravenes subsection (2) commits an offence.

### **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.

*(Inserted by Act 16 of 2015)*

### **Derivatives**

**17.** (1) A BVI insurer shall not invest or trade in a derivative without the prior written approval of the Commission, unless the derivative concerned—

- (a) is prescribed as an admissible asset; or
  - (b) is a derivative that the Regulatory Code otherwise permits insurers, or specified categories or descriptions of insurers, to invest or trade in.
- (2) A BVI insurer that contravenes subsection (1) commits an offence.

### *Other Obligations of, and Restrictions on, Licensed Insurers*

### **Limitations on business carried on by licensed insurer**

**18.** (1) Subject to subsection (2), a BVI insurer shall not carry on any business or activities, whether in the Virgin Islands or elsewhere, otherwise than in connection with or for the purposes of the insurance business that it is authorised by its licence to carry on.

(2) Subsection (1) does not apply to any business or activities prescribed as a business or as activities deemed to be carried on in connection with or for the purposes of the insurance business of a BVI insurer.

(3) Subject to subsection (5), a BVI insurer shall carry on its business, and a foreign insurer shall carry on its business in the Virgin Islands,

substantially in accordance with the most recent business plan submitted to the Commission.

(4) Where a licensed insurer amends its business plan, it shall immediately submit a copy of the amended business plan to the Commission. *(Substituted by Act 16 of 2015)*

(5) The Commission may exempt a foreign insurer from the requirement to submit a business plan.

(6) A BVI insurer that contravenes subsection (1) commits an offence. *(Inserted by Act 16 of 2015)*

### **Appointment and termination of directors and senior officers**

**19.** (1) Subject to subsection (6), a BVI insurer shall not appoint a director or senior officer without the prior written approval of the Commission. *(Amended by Act 16 of 2015)*

(2) The Commission shall not grant an approval under subsection (1) unless it is satisfied that the person concerned is an individual who satisfies the fit and proper criteria prescribed. *(Amended by Act 16 of 2015)*

(3) A BVI Insurer shall provide written notice to the Commission within 14 days after a director or senior officer of the insurer ceases to hold office with, or to be employed by, the insurer.

(4) The written notice provided under subsection (3) shall include a statement of the reasons for the director or senior officer ceasing to hold office with, or to be employed by, the insurer and a written notice shall be deemed not to be provided under that subsection if it does not include such a statement.

(5) Subject to subsection (6), a foreign insurer or category E licensee shall, within 14 days after—

- (a) the appointment of a director or senior officer; or
- (b) a director or senior officer ceasing to hold office with, or to be employed by the insurer, provide written notice of that fact to the Commission.

*(Amended by Act 16 of 2015)*

(6) The requirements of subsection (5) are disapplied or modified with respect to a foreign insurer or category E licensee—

- (a) in such circumstances as may be specified in the Regulatory Code; or
- (b) where, in the case of a particular foreign insurer, or category E licensee the Commission so determines on the application of that insurer. *(Amended by Act 16 of 2015)*

(7) A BVI insurer that contravenes subsection (1) or (3), or a foreign insurer or category E licensee that contravenes subsection (5), commits an offence. *(Amended by Act 16 of 2015)*



**Authorisation required to open branch or representative office or incorporate or acquire subsidiary**

20. (1) A BVI insurer shall not, without the prior written approval of the Commission—

- (a) open, maintain or carry on business through a branch or a representative or contact office outside the Virgin Islands; or
- (b) incorporate, form or acquire a subsidiary.

(2) A BVI insurer that contravenes subsection (1) commits an offence.

**Disposing of, or acquiring significant interest in, BVI insurer**

21. (1) A person owning or holding a significant interest or controlling interest in a BVI insurer shall not sell, transfer, charge or otherwise dispose of his or her interest in the insurer, or any part of his or her interest, unless the prior written approval of the Commission has been obtained. *(Amended by Act 16 of 2015)*

(2) A person shall not, whether directly or indirectly, acquire a significant interest or controlling interest in a BVI insurer, unless the prior written approval of the Commission has been obtained. *(Amended by Act 16 of 2015)*

(3) A BVI insurer shall not, unless the prior written approval of the Commission has been obtained—

- (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (1); or
- (b) issue or allot any shares, or cause, permit or acquiesce in any other reorganisation, including of its share structure, that results in—
  - (i) a person acquiring a significant interest or controlling interest in the insurer; or *(Amended by Act 16 of 2015)*
  - (ii) a person who already owns or holds a significant interest or controlling interest in the insurer, increasing or decreasing the size of his or her interest. *(Amended by Act 16 of 2015)*

(4) An application to the Commission for approval under subsection (1), (2) or (3) shall be made by the insurer.

(5) The Commission shall not grant approval under subsection (1), (2) or (3) unless it is satisfied that, following the acquisition or disposal, any person who will acquire a significant interest satisfies the fit and proper criteria prescribed. *(Amended by Act 16 of 2015)*

(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. *(Inserted by Act 16 of 2015)*

(6) A person who knowingly contravenes subsection (1) or (2) or a BVI insurer that contravenes subsection (3) or (5A), commits an offence. *(Amended by Act 16 of 2015)*

(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.

*(Inserted by Act 16 of 2015)*

### **Disposing of, or acquiring significant interest in, foreign insurer**

**22.** (1) Subject to subsection (2), a foreign insurer shall provide written notice to the Commission within 14 days after any change in the persons who own or hold a significant interest or controlling interest in the insurer. *(Amended by Act 16 of 2015)*

(2) The requirements of subsection (1) are disappplied or modified with respect to a foreign insurer—

- (a) in such circumstances as may be specified in the Regulatory Code; or
  - (b) where, in the case of a particular foreign insurer, the Commission so determines on the application of that insurer.
- (3) A foreign insurer that contravenes subsection (1) commits an offence.

### *Corporate Governance*

### **Appointment of insurance manager**

**23.** (1) A licensed insurer holding a licence in category C, D, E, or F shall appoint and at all times have an insurance manager. *(Amended by Act 16 of 2015)*

(2) A licensed insurer shall not appoint a person under subsection (1) unless—

- (a) that person is a company that holds an insurance manager's licence; and
- (b) the Commission has given its prior written approval to that person's appointment.

(3) A licensed insurer to which subsection (1) applies shall not terminate the appointment of its insurance manager, and a licensed insurance manager shall not terminate its agreement to act as insurance manager for a licensed insurer, unless the insurer or the insurance manager, as the case may be, has given not less than 30 days' notice of its intention to do so to the Commission.

(4) The Commission may, on the application of the insurer or insurance manager, agree to accept a shorter period of notice than that specified in subsection (3).

(5) A licensed insurer to which subsection (1) applies shall, within 14 days after—

- (a) it appoints an insurance manager; or
- (b) the appointment of its insurance manager is, for whatever reason, terminated, provide written notice of that fact to the Commission.

(6) Where, for whatever reason, a person ceases to be the insurance manager of a licensed insurer to which subsection (1) applies, the insurer does not commit an offence under subsection (7) if it appoints another insurance manager in accordance with subsection (2) within 14 days of the date that the previously appointed insurance manager ceases to hold that appointment.

(7) Subject to subsection (6), a licensed insurer that contravenes subsection (1), (2), (3) or (5) or an insurance manager that contravenes subsection (3), commits an offence.

### **Foreign insurer to appoint representative**

24. (1) A foreign insurer that does not have a staffed office in the Virgin Islands, shall appoint and at all times have a representative in the Virgin Islands who shall be—

- (a) a person holding an insurance intermediary's licence and is appointed to act as its insurance agent; or
- (b) a person holding an insurance manager's licence.

(2) A foreign insurer to which subsection (1) applies shall, within 14 days after—

- (a) it appoints a representative; or
- (b) the appointment of its representative is, for whatever reason, terminated, provide written notice of that fact to the Commission.

(3) The written notice provided under subsection (2)(b) shall include a statement setting out the reasons for the termination of its representative's appointment and a written notice shall be deemed not to be provided under that subsection if it does not include such a statement.

(4) The representative of a foreign insurer shall have such duties and obligations as may be specified in this Act or the Regulatory Code.

(5) A foreign insurer that contravenes subsection (1) or (2) commits an offence.

### **Directors of BVI insurer**

**25.** (1) A BVI insurer shall at all times have at least 2 directors.

(2) A person shall not be appointed, or accept appointment, as the director of a BVI insurer unless that person is an individual.

(3) Where a BVI insurer, after being granted a licence, has less than 2 directors contrary to subsection (1), it shall—

- (a) immediately notify the Commission of that fact in writing indicating the date from which it had less than two directors; and  
*(Amended by Act 16 of 2015)*
- (b) within a period not exceeding 21 days from the date the BVI insurer failed to comply with subsection (1), submit an application pursuant to section 19 in order to ensure compliance with subsection (1).

(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. *(Inserted by Act 16 of 2015)*

(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.

*(Inserted by Act 16 of 2015)*

(4) The Regulatory Code may provide for the duties and responsibilities of the directors of a BVI insurer.

(5) A BVI insurer that fails to comply with subsection (3), commits an offence.

**Management systems and controls**

26. (1) A BVI insurer shall take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors, senior officers and key functionaries so that—

- (a) it is clear who has which of those responsibilities; and
- (b) the business and affairs of the insurer can be adequately monitored and controlled by the directors and its relevant senior officers.

(2) A BVI insurer shall establish and maintain such systems and controls as are appropriate to its business.

(3) The systems and controls established and maintained under subsection (2) shall take into account—

- (a) the nature, scale, complexity and diversity of the insurer's business; and
- (b) the degree of risk associated with each area of its business.

(4) Subsections (1) and (2) apply to a foreign insurer with respect to its business in the Virgin Islands.

(5) A BVI insurer that fails to comply with subsection (1) or (2) commits an offence. *(Inserted by Act 16 of 2015)*

*Actuaries and Actuarial Investigations and Reports***Appointment of actuary**

27. (1) A BVI insurer that is a life and health insurer shall appoint and at all times have an actuary. *(Amended by Act 16 of 2015)*

(2) A life and health insurer to which subsection (1) applies shall not appoint a person as its actuary under subsection (1) unless—  
*(Amended by Act 16 of 2015)*

- (a) the person is an individual qualified to act as an actuary for the purposes of this Act; and
- (b) the Commission has given its prior written approval to his or her appointment as the actuary of the insurer.

(3) The Regulatory Code may prescribe—

- (a) persons qualified to act as actuaries for the purposes of this Act;
- (b) the procedures to be followed by licensed insurers with respect to—
  - (i) the appointment of an actuary; and
  - (ii) the provision of notices and actuarial reports to the Commission;
- (c) the investigations to be undertaken by an actuary;
- (d) the powers of an actuary; and

(e) actuarial standards to be followed by actuaries appointed by licensed insurers.

(4) The Commission shall not approve the appointment of an actuary under subsection (2) unless it is satisfied that the individual concerned has sufficient experience and is competent to act as an actuary of the licensee.

(5) The requirements of subsections (1) and (2) are disappplied or modified with respect to a life and health insurer—

(a) in such circumstances as may be specified in the Regulatory Code; or

(b) where, in the case of a particular long-term insurer, the Commission so determines on the application of that insurer.

*(Amended by Act 16 of 2015)*

(6) Where, for whatever reason, a person ceases to be the actuary of a life and health insurer to which subsection (1) applies, the insurer does not commit an offence under subsection (7) if it appoints another actuary in accordance with subsection (2) and the Regulatory Code within 2 months of the date that the person who was previously appointed actuary ceases to hold that appointment.  
*(Amended by Act 16 of 2015)*

(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. *(Inserted by Act 16 of 2015)*

(7) Subject to subsection (6), a BVI insurer that is a life and health insurer commits an offence if, at any time, it does not have an actuary or it appoints an actuary contrary to subsection (2). *(Amended by Act 16 of 2015)*

### **Obligations of actuary**

**28.** (1) Notwithstanding anything to the contrary in any other enactment, the actuary of a life and health insurer shall report immediately to the Commission if he or she is of the opinion that—

(a) there are reasonable grounds for believing that the insurer or a director or senior officer of the insurer may have contravened this Act or the Regulatory Code or any other enactment; and

(b) that the contravention is of such a nature that it may significantly affect the interests of policyholders of the insurer.

*(Amended by Act 16 of 2015)*

(2) The actuary of a BVI insurer shall report to the insurer any matter relating to the business of the insurer that he or she has obtained in the course of acting as its actuary that, in his or her opinion, requires action to be taken by the company, or its directors—

(a) to avoid a contravention of this Act or the Regulatory Code; or

(b) to avoid prejudice to the interests of policyholders of the insurer.

(3) Where the actuary of a BVI insurer reports to the insurer under subsection (2) and the insurer does not, within such time as the actuary considers reasonable, take the action required, he or she shall report the matter to the Commission.

(4) Where the appointment of an actuary of a BVI insurer to which section 27(1) applies is terminated, or the actuary resigns, that actuary (“former actuary”) shall—

- (a) forthwith inform the Commission of the termination of his or her appointment, or his or her resignation, and disclose to the Commission the circumstances that gave rise to such termination or resignation; and
- (b) if, but for the termination of his or her appointment or his or her resignation, he or she would have reported any matter to the Commission under subsection (1) or (3), he or she shall report the information concerned to the Commission, as if his or her appointment had not been terminated or he or she had not resigned.

(5) Where, in good faith, an actuary or former actuary provides a report or information to the Commission under subsection (1), (3) or (4), he or she is deemed not to be in contravention of any enactment, rule of law, agreement or professional code of conduct to which he or she is subject and no civil, criminal or disciplinary proceedings shall lie against him or her in respect thereof.

(6) The failure, in good faith, of an actuary or former actuary to provide a report or information to the Commission under subsections (1), (3) or (4) does not confer upon any other person a right of action against the actuary which, but for that failure, he or she would not have had.

(7) An actuary or former actuary who fails to comply with subsection (1), (2), (3) or (4) commits an offence.

### **Actuary to comply with prescribed standards**

**29.** The actuary of a licensed insurer, whether or not appointed pursuant to a requirement of this Act, shall, in the performance of his or her duties and the exercise of his or her powers, comply with the actuarial standards prescribed.

### **Actuarial investigation and report at direction of Commission**

**30.** (1) The Commission may at any time, by notice in writing, direct a licensed insurer to cause an actuary to investigate such aspects of its financial condition as the Commission may specify in the notice and to provide the Commission with a report prepared by the actuary.

(2) A report prepared under subsection (1) shall be at the cost of the insurer.

(3) The Commission may direct that the actuarial investigation is carried out by the actuary appointed by the insurer, if any, or by such other actuary as the Commission shall specify.

**Powers of Commission concerning appointment of actuary**

**31.** (1) Where the Commission is satisfied that the actuary of an insurer to which section 27(1) applies has failed to fulfil his or her obligations under this Act or the Regulatory Code, it may, by written notice to the insurer, revoke the approval of the appointment of the actuary and the insurer shall appoint a new actuary in accordance with this Act and the Regulatory Code.

(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.

*(Inserted by Act 16 of 2015)*

(2) A notice revoking the appointment of an actuary under subsection (1) shall be sent to the actuary and be published in the *Gazette*.

(3) If a BVI insurer required under section 27(1) to appoint an actuary fails to do so, the Commission may appoint a qualified person to act as the actuary of the insurer.

(4) An actuary appointed under subsection (3) is deemed for the purposes of this Act to have been appointed by the insurer and the insurer shall be responsible for his or her costs and fees.

(5) The revocation of the appointment of an actuary under subsection (1) is without prejudice to the application of section 28(7).

**Regulatory Code to provide for the segregation and control of funds of life and health insurer**

**32.** (1) The Regulatory Code shall provide for the segregation, control, allocation and application of the funds of a BVI insurer that is a life and health insurer. *(Amended by Act 16 of 2015)*

(2) A BVI insurer to which subsection (1) applies that breaches a provision of the Regulatory Code referred to in subsection (1) that is stated in the Regulatory Code as a provision to which this subsection applies, commits an offence.

*Transfers and Mergers***Transfer and mergers**

**33.** (1) Subject to section 35, no part of the business of a BVI insurer may be—

- (a) transferred to another person; or
- (b) merged with the business of another person, except under a scheme of transfer or merger complying with the Regulatory Code that, in the case of a property and casualty insurer, has the prior written approval of the Commission and, in the case of a life



and health insurer, has been approved by the Court. (*Amended by Act 16 of 2015*)

(2) Application to the Commission, or the Court, for the approval of a scheme shall be made jointly by or on behalf of the BVI insurer and each other person who is a party to the scheme and shall—

- (a) be in the approved form; and
- (b) contain such information and be accompanied by such documentation as may be prescribed.

(3) Before determining an application under this section with respect to a property and casualty insurer, the Commission may, at the cost of the insurer, undertake an investigation into the desirability or otherwise of the scheme. (*Amended by Act 16 of 2015*)

(4) An investigation under subsection (3) may be carried out by the Commission or by one or more persons appointed by the Commission to act on its behalf.

(5) Any transaction to which a BVI insurer is a party which has the effect of transferring any part of the business of the insurer to another person or merging any part of the business of the insurer with the business of another person is void and of no legal effect unless effected under a scheme of transfer or merger approved by the Commission, or the Court, as the case may be.

(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. (*Inserted by Act 16 of 2015*)

### **Further provisions may be specified in Regulatory Code**

**34.** The Regulatory Code may provide for—

- (a) notices to be given with respect to, and the advertisement of, schemes of transfer and merger; and
- (b) the procedures for the determination by the Commission of applications for schemes of transfer and merger with respect to property and casualty insurers. (*Amended by Act 16 of 2015*)

### **Application of Part IX of the BVI Business Companies Act to BVI insurers**

**35.** (1) A BVI insurer shall not propose a merger, consolidation, arrangement or scheme of arrangement under Part IX of the BVI Business Companies Act, unless the Commission has given its prior written approval to the merger, consolidation, arrangement or scheme of arrangement.

(2) In the case of an arrangement under section 177 and a scheme of arrangement under section 179A of the BVI Business Companies Act, the Commission is entitled to appear and be heard at every hearing of the Court in respect of the arrangement or scheme of arrangement and the Court shall not

make an order under the relevant section unless the Commission has been given notice of the hearing at which the order is made.

(3) A BVI insurer that contravenes subsection (1) commits an offence.

### **Enforcement of contracts**

**36.** Where the life and health business or, the life and health business and property and casualty business under a single licence, of a BVI insurer, or any part of it, is transferred to another person or merged with another person (the transferee), whether under a scheme of merger or transfer under this Act or under a merger, consolidation, arrangement or scheme of arrangement under Part IX of the BVI Business Companies Act, the transferee shall be liable under the contract and any person having rights under the contract may enforce those rights against the transferee. *(Amended by Act 16 of 2015)*

### **Segregated portfolio company**

**36A.** (1) A BVI insurer, complying with Part VII of the BVI Business Companies Act, 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.

*(Inserted by Act 16 of 2015)*

## **PART II**

### **REGULATION AND SUPERVISION OF INSURANCE MANAGERS, INSURANCE INTERMEDIARIES AND LOSS ADJUSTERS**

#### *Unlicensed Business*

### **Prohibition on unlicensed business**

**37.** (1) Subject to subsection (3), no person may carry on, or hold himself or herself out as carrying on, business as an insurance manager, an insurance intermediary or a loss adjuster in or from within the Virgin Islands unless he or she holds a licence issued under section 40 that authorises him or her to carry on the business concerned.

(2) For the purposes of subsection (1), but without limiting that subsection—

- (a) a person carries on business as an insurance manager or an insurance intermediary in the Virgin Islands if—
  - (i) by way of business as an insurance manager or intermediary, he or she occupies premises in the Virgin Islands; or
  - (ii) he or she invites a person in the Virgin Islands, or causes such a person to be invited, whether through the publication of

advertisements or otherwise, to become a client of his or hers and

(b) a BVI business company that carries on, or holds itself out as carrying on, business as an insurance manager or intermediary outside the Virgin Islands is deemed to carry on, or hold itself out as carrying on, business as an insurance manager or an insurance intermediary from within the Virgin Islands.

(3) The regulations may exempt categories or descriptions of persons or activities from subsection (1).

(4) A person who carries on or holds himself or herself out as carrying on business as an insurance manager, an insurance intermediary or a loss adjuster contrary to subsection (1) commits an offence.

### **Prohibition on payment of commission to unlicensed insurance intermediary**

**38.** (1) A licensed insurer shall not pay any commission with respect to domestic business to an insurance intermediary that does not hold an insurance intermediary's licence.

(2) A licensed insurer that contravenes subsection (1) commits an offence.

### **Categories of, and restrictions on, insurance intermediary's licences**

**39.** (1) An insurance intermediary's licence shall be issued in one of the following categories—

(a) insurance broker; or

(b) insurance agent.

(2) An insurance intermediary's licence shall state the category of insurance intermediary in respect of which it is issued and, where the category of the licence is insurance agent, the insurer or insurers by which the licensee is or will be appointed.

### **Application for, and issuance of, licence**

**40.** (1) Application may be made to the Commission for an insurance manager's licence, an insurance intermediary's licence or a loss adjuster's licence as follows—

(a) by a BVI business company for an insurance manager's licence or an insurance intermediary's licence; or

(b) by any person for a loss adjuster's licence.

(2) Subject to subsection (3), the Commission may issue an insurance manager's licence, an insurance intermediary's licence or a loss adjuster's licence to an applicant if it is satisfied that—

(a) the applicant intends, if issued with a licence, to carry on business as an insurance manager, an insurance intermediary or a loss adjuster, as the case may be;

- (b) the applicant satisfies the requirements of this Act and the Regulatory Code with respect to the application;
- (c) the applicant will, on the issuance of the licence, be in compliance with this Act and the Regulatory Code;
- (d) the applicant and, if appropriate, its senior officers and—
  - (i) in the case of a company, its directors and any persons having a significant interest or controlling interest in the applicant; and (*Amended by Act 16 of 2015*)
  - (ii) in the case of a partnership, the partners, satisfy the fit and proper criteria prescribed; (*Amended by Act 16 of 2015*)
- (e) the organisation, management and financial resources of the applicant are, or on the issuance of the licence will be, adequate for the carrying on of the relevant business; and
- (f) issuing the licence is not against the public interest.

(3) Without limiting the discretion given to the Commission under subsection (1), in the case of a company, the Commission may refuse to issue a licence to an applicant if it is of the opinion that any person having a share or other interest in the applicant, whether legal or equitable, does not satisfy the fit and proper criteria prescribed. (*Amended by Act 16 of 2015*)

- (4) A licence issued under subsection (1)—
  - (a) shall be in writing and in the approved form and shall comply with section 39;
  - (b) is subject to such conditions as may be imposed by the Commission under section 40B of the Financial Services Commission Act; and
  - (c) remains, at all times, the property of the Commission.

*Obligations of, and Restrictions on, Licensed  
Insurance Managers and Licensed Insurance Intermediaries*

**Maintenance of financially sound condition**

**41.** (1) A licensed insurance manager and a licensed insurance intermediary shall, at all times, maintain its business in a financially sound condition by—

- (a) having assets;
- (b) providing for its liabilities; and
- (c) generally conducting its business, so as to be in a position to meet its liabilities as they fall due.

(2) If a licensed insurance manager or a licensed insurance intermediary forms the opinion that it does not comply with subsection (1), it shall forthwith notify the Commission in writing.

(3) A licensed insurance manager or a licensed insurance intermediary that contravenes subsection (2) commits an offence.

(4) Section 42 does not limit the generality of this section.

### **Maintenance of contributed capital**

42. (1) A licensed insurance manager and a licensed insurance intermediary shall ensure that at all times its contributed capital is maintained in an amount not less than the greater of—

- (a) the minimum applicable to it as specified in the Regulatory Code; or
- (b) such amount as the Commission may direct under subsection (2).

(2) If the Commission considers it appropriate, having regard to the nature and extent of the business carried on, or proposed to be carried on, by a licensee to which subsection (1) applies, the Commission may direct the licensee to increase its contributed capital to an amount higher than the prescribed minimum capital applicable to it.

(3) A direction issued under subsection (2) shall specify a reasonable period for compliance with the direction.

(4) If the capital of a licensee to which subsection (1) applies falls below the amount that it is required to maintain under that subsection, it shall forthwith notify the Commission in writing.

(5) A licensee that contravenes subsection (4) commits an offence.

### **Application of sections 44 and 45**

43. Sections 44 and 45 apply to a licensed insurance manager and a licensed insurance intermediary.

### **Appointment and termination of directors and senior officers**

44. (1) A licensee to which this section applies shall not appoint a director or senior officer without the prior written approval of the Commission.

(2) The Commission shall not grant an approval under subsection (1) unless it is satisfied that the person concerned is an individual who satisfies the fit and proper criteria prescribed. (*Amended by Act 16 of 2015*)

(3) A licensee to which this section applies shall provide written notice to the Commission within 14 days after a director or senior officer ceases to hold office with, or to be employed by, the licensee.

(4) The written notice provided under subsection (3) shall include a statement of the reasons for the director or senior officer ceasing to hold office with, or to be employed by, the licensee and a written notice shall be deemed not to be provided under that subsection if it does not include such a statement.

(5) A licensee to which this section applies that contravenes subsection (1) or (3) commits an offence.

### **Disposing of, or acquiring significant interest**

45. (1) A person owning or holding a significant interest or controlling interest in a licensee to which this section applies shall not sell, transfer, charge

or otherwise dispose of his or her interest in the licensee, or any part of his or her interest, unless the prior written approval of the Commission has been obtained. *(Amended by Act 16 of 2015)*

(2) A person shall not, whether directly or indirectly, acquire a significant interest or controlling interest in a licensee to which this section applies, unless the prior written approval of the Commission has been obtained. *(Amended by Act 16 of 2015)*

(3) A licensee to which this section applies shall not, unless the prior written approval of the Commission has been obtained—

- (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (1); or
- (b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation, including of its share structure, that results in—
  - (i) a person acquiring a significant interest or controlling interest in the licensee; or *(Amended by Act 16 of 2015)*
  - (ii) a person who already owns or holds a significant interest or controlling interest in the licensee, increasing or decreasing the size of his or her interest. *(Amended by Act 16 of 2015)*

(4) An application to the Commission for approval under subsection (1), (2) or (3) shall be made by the licensee.

(5) The Commission shall not grant approval under subsection (1), (2) or (3) unless it is satisfied that, following the acquisition or disposal, any person who will acquire a significant interest satisfies the fit and proper criteria prescribed. *(Amended by Act 16 of 2015)*

(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. *(Inserted by Act 16 of 2015)*

(6) A person who knowingly contravenes subsection (1) or (2), or a licensee to which this section applies that contravenes subsection (3) or (5A), commits an offence. *(Amended by Act 16 of 2015)*

(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.

*(Inserted by Act 16 of 2015)*

### **Change in insurer for which insurance agent acts**

**46.** (1) A licensed insurance agent shall not act as the insurance agent for an insurer unless the name of the insurer is stated on its licence.

(2) A licensed insurance agent may, at any time, apply to the Commission to add a licensed insurer to, or remove a licensed insurer from, his or her licence and, where the application is to add a licensed insurer to the licence, the application must be accompanied by written confirmation from the licensed insurer concerned that, on the amendment of the licence, it will appoint the applicant as its insurance agent.

(3) A licensed insurance agent that ceases to act as the insurance agent for an insurer shall, with 14 days of ceasing to so act, notify the Commission in writing.

(4) A licensed insurance agent that contravenes subsection (1) or (3) commits an offence.

### **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.

*(Inserted by Act 16 of 2015)*

### **Designated representatives**

**47.** (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.

*(Substituted by Act 16 of 2015)*

(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 120 days.

*(Substituted by Act 16 of 2015)*

(2) An insurance manager or insurance intermediary shall provide written notice to the Commission within 14 days after—

- (a) it appoints a designated representative; or
- (b) the appointment of its designated representative is, for whatever reason, terminated.

*(Inserted by Act 16 of 2015)*

(3) A written notice provided under subsection (2)(b) shall include a statement setting out the reasons for the termination of its representative's appointment and a written notice shall be deemed not to be provided under that subsection if it does not include such a statement.

(4) The designated representative of an insurance manager or insurance intermediary shall have such duties and obligations as may be specified in this Act or the Regulatory Code. *(Amended by Act 16 of 2015)*

(5) An insurance manager or insurance intermediary who fails to comply with subsection (1) or (2) commits an offence. *(Amended by Act 16 of 2015)*

### **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.

*(Inserted by Act 16 of 2015)*

### **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.

*(Inserted by Act 16 of 2015)*

### **Prohibited interests**

**48.** (1) A licensed insurance manager, and any employee or associate of a licensed insurance manager, shall not, without the prior written approval of the Commission—

(a) be a shareholder in, or have any direct or indirect interest in; or

(b) be a director or employee of, an insurer for which it acts or, in the case of an employee or associate, an insurer for which the insurance manager of which the person is an employee or associate, acts.

(2) The Regulatory Code shall specify persons who are associates for the purposes of subsection (1).

(3) A licensed insurance manager, or any employee or associate of a licensed insurance manager who contravenes subsection (1), commits an offence.

### **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.

*(Inserted by Act 16 of 2015)*

### **Receipt of, and dealing with, premiums by intermediaries**

**49.** (1) The Regulatory Code may specify requirements and otherwise provide for the receipt, holding and dealing with insurance premiums and other client monies by licensed insurance intermediaries.

(2) A licensed insurance intermediary shall not receive, hold or in any way deal with a premium payable under an insurance policy entered into or to be entered into with an insurer, or other client monies unless—

- (a) in the case of an insurance agent, he or she is authorised by the insurer concerned to receive, hold or deal with the premium or other client monies; and
- (b) in the case of any insurance intermediary, he or she receives, holds or deals with the premium or other client monies in accordance with the provisions of the Regulatory Code.

(3) Where a licensed insurance agent receives the premium, or any part of the premium, payable under an insurance policy issued or to be issued by an insurer by which he or she is appointed—

- (a) the insurance agent is deemed to receive the premium as agent of the insurer and to hold the premium on trust for the insurer; and
- (b) payment to the insurance agent is, notwithstanding any agreement to the contrary, deemed to be payment to the insurer.

(4) A licensed insurance intermediary that contravenes subsection (2) commits an offence.

### **Professional indemnity and other insurance**

**50.** (1) A licensed insurance intermediary and a licensed insurance manager shall at all times maintain such professional indemnity and other insurance as may be prescribed.

(2) A licensed insurance intermediary or a licensed insurance manager that fails to comply with subsection (1) commits an offence.

### **Obligations of insurance manager**

**51.** (1) The insurance manager of a licensed insurer to which section 23 applies shall report immediately to the Commission any information relating to the affairs of the licensed insurer that he or she has obtained in the course of acting as its insurance manager that, in his or her opinion, suggests—

- (a) that the licensee is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations;
- (b) that a criminal offence has been or is being committed by the insurer in connection with its business;
- (c) that a serious breach of this Act or the Regulatory Code or such other enactments, Guidelines or Codes relating to money

- laundering or the financing of terrorism as may be prescribed has occurred in respect of the licensee or its business;
- (d) that the insurer has defaulted in the payment of any of its liabilities;
  - (e) that the insurer is not conducting its business in accordance with sound insurance principles; or
  - (f) that the insurer has ceased to carry on business in or from within the Virgin Islands.
- (2) For the purposes of subsection (1)(c), where an insurer—
- (a) breaches section 9, 10, 12 or 13; or
  - (b) persistently or regularly breaches the Act or the Regulatory Code or such other enactments, Guidelines or Codes relating to money laundering or the financing of terrorism as may be prescribed, it is deemed to have committed a serious breach.
- (3) Where the appointment of an insurance manager is terminated, the insurance manager shall—
- (a) forthwith inform the Commission of the termination of his or her appointment, and disclose to the Commission the circumstances that gave rise to such termination; and
  - (b) if, but for the termination of his or her appointment, he or she would have reported information to the Commission under subsection (1), he or she shall report the information concerned to the Commission, as if his or her appointment had not been terminated.
- (4) Where, in good faith, an insurance manager provides any information to the Commission under subsection (1) or (3), he or she is deemed not to be in contravention of any enactment, rule of law, agreement or professional code of conduct to which he or she is subject and no civil, criminal or disciplinary proceedings shall lie against him or her in respect thereof.
- (5) The failure, in good faith, of an insurance manager to provide a report or any information to the Commission under subsection (1) or (3) does not confer upon any other person a right of action against the insurance manager which, but for that failure, he or she would not have had.
- (6) For the purposes of subsection (1)(a), a licensed insurer is deemed to be insolvent if it is not in compliance with section 12(2).
- (7) An insurance manager who contravenes subsection (1) or (3) commits an offence.

## PART III

## PROVISIONS APPLICABLE TO LICENSEES UNDER THIS ACT

**Maintenance of records**

**52.** (1) A BVI insurer, a licensed insurance manager and a licensed insurance intermediary shall keep at its Virgin Islands office, or in the case of an insurer required to appoint an insurance manager, at the office of its insurance manager, records that are sufficient—

- (a) to show and explain its transactions, including its financial transactions; (*Amended by Act 16 of 2015*)
- (b) at any time, to enable its financial position to be determined with reasonable accuracy;
- (c) to enable it to prepare such financial statements and make such returns as it is required to prepare and make under this Act; and
- (d) if applicable, to enable its financial statements to be audited in accordance with this Act.

(2) A foreign insurer shall—

- (a) keep at its Virgin Islands office, or where it is required to appoint a representative, at the office of its representative in the Virgin Islands, records that are sufficient—
  - (i) to show and explain all transactions, including financial transactions, in respect of the business it carries on in the Virgin Islands; and (*Amended by Act 16 of 2015*)
  - (ii) to enable it to prepare such returns as it is required to prepare and make under this Act and the Regulatory Code; and
- (b) notify the Commission in writing of the place where its financial records, other than those specified in paragraph (a), are maintained. (*Substituted by Act 16 of 2015*)

(3) The Regulatory Code may prescribe—

- (a) the form and manner in which the records specified in subsections (1) and (2) are to be maintained; and
- (b) other records required to be maintained by a licensee under this Act and the form, manner and place in which such records are to be maintained.

(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. (*Substituted by Act 16 of 2015*)

(5) A licensee or former licensee or a foreign insurer that fails to comply with this section commits an offence.

*Financial Statements and Audit*

**Application of sections 54 to 66**

**53.** (1) Sections 54 to 66 apply to—

- (a) a BVI insurer, except to the extent that they may be modified by the Regulatory Code with respect to particular categories, types or descriptions of licensed insurer; and
- (b) a licensee that is specified in the regulations as a relevant licensee for the purposes of this section.

(2) In sections 54 to 66, “relevant licensee” means a licensee specified pursuant to subsection (1).

**Meaning of “financial year”**

**54.** (1) A relevant licensee shall, no later than 11 months after the date that its licence is issued to it, provide the Commission with a notice of its financial year end in accordance with the requirements of the Regulatory Code.

(2) Subject to subsection (3), for the purposes of this Act, the financial year of a relevant licensee is—

- (a) in the case of its first financial year, the period from the date of its incorporation to the last day of the month specified in the notice provided to the Commission under subsection (1); and
- (b) in the case of subsequent financial years, the period of one year commencing on the day immediately after the end of its previous financial year.

(3) Subsection (1) applies whether or not financial statements have actually been prepared for the financial year in question.

(4) The Commission may, on the application of a relevant licensee, in respect of any financial year, direct that the financial year shall be a period, not less than 3 months and not exceeding 15 months, that is different to that determined in accordance with subsection (1).

**Meaning of “financial statements”**

**55.** (1) In this Act and in the Regulatory Code, “financial statements”, in relation to a relevant licensee and to a financial year, means—

- (a) a statement of the financial position of the licensee as at the last date of the financial year;
- (b) a statement of the financial performance of the licensee in relation to the financial year;
- (c) a statement of cash flows for the licensee in relation to the financial year;
- (d) such statement relating to the prospects for the licensee’s business as may be prescribed or as may be required by the accounting standards in accordance with which the accounts are prepared; and

- (e) such other statements as may be prescribed, together with any notes or other documents giving information relating to the matters specified in paragraphs (a), (b), (c), (d) or (e).

### **Preparation of financial statements**

56. (1) A relevant licensee shall prepare financial statements for each financial year that comply with the Regulatory Code and with such accounting standards as may be prescribed.

(2) If, in complying with the accounting standards in accordance with which they are prepared, the financial statements do not give a true and fair view of the matters to which they relate, the notes to the financial statements shall contain such information and explanations as will give a true and fair view of those matters.

(3) The financial statements prepared under subsection (1) shall—

- (a) be approved by the directors of the relevant licensee; and
- (b) following approval under paragraph (a), be signed by at least one director on behalf of all the directors.

(4) The director signing the financial statements shall state the date when the financial statements were approved by the directors and the date when he or she signs the financial statements.

### **Submission of financial statements to the Commission**

57. (1) 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—

- (a) a directors' certificate in the approved form;
- (b) an auditor's report;
- (c) any report on the affairs of the licensee made to the members of the licensee in respect of the relevant financial year; and
- (d) such other documents as may be prescribed.

*(Substituted by Act 16 of 2015)*

(1A) The requirement for a director's certificate in subsection (1)(a) applies only in respect of unaudited financial statements. *(Inserted by Act 16 of 2015)*

(2) Unless accompanied by the certificates, reports and documents specified in subsection (1), the financial statements referred to in subsection (1) are deemed not to have been submitted to the Commission.

(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. *(Inserted by Act 16 of 2015)*

(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. *(Inserted by Act 16 of 2015)*

(2C) Regulations made under section 82 of this Act and section 40C of the Financial Services Commission Act 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 sub-paragraph (a) with respect to an insurance manager or insurance intermediary and make such provision as may be considered necessary. *(Inserted by Act 16 of 2015)*

(3) A relevant licensee that fails to submit its financial statements within the period specified in subsection (1) commits an offence.

(4) A relevant licensee does not commit an offence under subsection (3) if it has been exempted from providing financial statements. *(Inserted by Act 16 of 2015)*

### **Submission of short period financial statements and report**

**58.** (1) A relevant licensee shall, in respect of, and within, such periods as may be prescribed, submit to the Commission—

- (a) short period financial statements, that may be unaudited;
- (b) a return in the approved form; and
- (c) such other information and documentation as may be prescribed.

(2) In this section, “financial statements” has the meaning specified in section 55 with the substitution of “the period for which the statements are prepared” for “financial year”. *(Amended by Act 16 of 2015)*

(3) A relevant licensee that fails to comply with this section commits an offence.

### **Extension of time**

**59.** (1) The Commission may, on the application of a relevant licensee, extend the time for compliance with section 57 or section 58 for a period of up to 3 months or, where it grants more than one extension, for an aggregate period not exceeding 3 months.

(2) An extension under subsection (1) may be granted subject to such conditions as the Commission considers appropriate.

### **Amendment of financial statements**

**60.** (1) If the Commission considers that any document submitted by a relevant licensee under section 57 or section 58 is inaccurate or incomplete or is not prepared in accordance with this Act or the Regulatory Code, it may by written notice require the licensee to amend the document or to submit a replacement document within such period, being not less than fourteen days, as the Commission may specify. *(Amended by Act 16 of 2015)*

(2) If a relevant licensee fails to comply with a notice under subsection (1), the Commission may reject the document and the document shall be deemed not to have been submitted under section 57 or section 58, as the case may be.

### **Relevant licensee to appoint auditor**

**61.** (1) A relevant licensee shall appoint and at all times have an auditor for the purposes of auditing its financial statements.

(2) An auditor shall not be appointed under subsection (1) unless—

- (a) he or she is qualified under the Regulatory Code to act as the auditor of a relevant licensee;
- (b) he or she has consented to act as auditor; and
- (c) the Commission has given its prior written approval to his or her appointment.

(3) The Commission shall not approve the appointment of an auditor under subsection (2) unless it is satisfied that he or she has sufficient experience and is competent to audit the financial statements of the licensee.

(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).

*(Substituted by Act 16 of 2015)*

(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. *(Inserted by Act 16 of 2015)*

(5) A relevant licensee shall, within 14 days of the appointment of its auditor, submit a notice of appointment in the approved form to the Commission.

(6) A relevant licensee shall make such arrangements as are necessary to enable his or her auditor to audit his or her financial statements in accordance with this Act and the Regulatory Code, including—

- (a) giving the auditor a right of access at all reasonable times to its financial records and to all other documents and records; and
- (b) providing the auditor with such information and explanations, as, in either case, the auditor reasonably requires for the purposes of the audit.

(7) Where, for whatever reason, a person ceases to be the auditor of a relevant licensee, the licensee does not commit an offence under subsection (8) if it appoints another auditor in accordance with this section within 2 months of the date that the person who was previously appointed auditor ceases to hold that appointment.



- (8) A relevant licensee commits an offence if—
- (a) subject to subsection (7), it does not have an auditor;
  - (b) it appoints an auditor contrary to subsection (2); or
  - (c) it contravenes subsection (5) or (6).

### **Audit and audit report**

**62.** (1) An auditor shall carry out sufficient investigation to enable him or her to form an opinion on the financial statements, and prepare an audit report, in compliance with the Regulatory Code.

(2) Upon completion of his or her audit of the financial statements of a relevant licensee, the auditor shall provide an audit report to the licensee complying with the Regulatory Code.

(3) The Commission may at any time, by notice in writing, direct a licensee to supply the Commission with a report, prepared by its auditor or such other person as may be nominated by the Commission, on such matters as the Commission may determine which may include an opinion on the adequacy of the accounting systems and controls of the licensee and, in the case of a licensed insurer, on asset quality and the adequacy of technical provisions.

(4) A report prepared under subsection (3) shall be at the cost of the licensee.

### **Obligations of auditors**

**63.** (1) Notwithstanding anything to the contrary in any other enactment, the auditor of a relevant licensee shall report immediately to the Commission any information relating to the affairs of the licensee that he or she has obtained in the course of acting as its auditor that, in his or her opinion, suggests—

- (a) that the licensee is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations as they fall due;  
*(Amended by Act 16 of 2015)*
- (b) that a criminal offence has been or is being committed by the licensee or in connection with its business;
- (c) that, in the case of a licensed insurer, the licensee may be in breach of any of sections 9 to 15; *(Amended by Act 16 of 2015)*
- (d) that the licensee has significant weaknesses in its internal controls which render it vulnerable to significant risks or exposures that have the potential to jeopardise the licensee's financial viability;  
or
- (e) that a serious breach of this Act or the Regulatory Code or such other enactments, Guidelines or Codes relating to money laundering or the financing of terrorism as may be prescribed has occurred in respect of the licensee or its business.

(2) Where the appointment of an auditor of a relevant licensee is terminated, or the auditor resigns, the auditor whose appointment has been terminated, or who has resigned, shall—

- (a) forthwith inform the Commission of the termination of his or her appointment, or his or her resignation, and disclose to the Commission the circumstances that gave rise to such termination or resignation; and
- (b) if, but for the termination of his or her appointment, or his or her resignation, he or she would have reported information to the Commission under subsection (1), he or she shall report the information concerned to the Commission, as if his or her appointment had not been terminated or he or she had not resigned.

(3) The Commission may require an auditor of a relevant licensee to discuss any audit he or she has conducted or commenced with, or provide additional information regarding the audit to, the Commission.

(4) Where, in good faith, an auditor or former auditor provides any information to the Commission under subsection (1), (2) or (3), he or she is deemed not to be in contravention of any enactment, rule of law, agreement or professional code of conduct to which he or she is subject and no civil, criminal or disciplinary proceedings shall lie against him or her in respect thereof.

(5) The failure, in good faith, of an auditor or former auditor to provide a report or information to the Commission under subsection (1), (2) or (3) does not confer upon any other person a right of action against the auditor or former auditor which, but for that failure, he or she would not have had.

(6) An auditor or former auditor who fails to comply with subsection (1) or (2) commits an offence.

(7) For the purposes of subsection (1)(a), a licensed insurer is deemed to be insolvent if it is not in compliance with section 12(2).

### **Powers of Commission re appointment of auditor**

**64.** (1) Where the Commission is satisfied that the auditor of a relevant licensee has failed to fulfil his or her obligations under this Act or is otherwise not a fit and proper person to act as the auditor of an insurer, it may, by written notice to the insurer, revoke the approval of the appointment of the auditor and the licensee shall appoint a new auditor in accordance with section 61.

(2) A notice revoking the appointment of an auditor under subsection (1) shall be given to the auditor.

(3) If a licensed insurer fails to appoint an auditor, the Commission may appoint a qualified person to act as the auditor of the insurer.

(4) An auditor appointed under subsection (3) is deemed, for the purposes of this Act, to have been appointed by the licensed insurer and the insurer shall be responsible for his or her costs and fees.

### **Group accounts**

**65.** (1) Where a relevant licensee is a member of a group of companies, the Commission may require the licensee to submit group accounts.

(2) The Commission may require that the group accounts are audited by the auditor of the licensee or by another auditor approved by the Commission.

(3) The Regulatory Code may provide for the form and content of group accounts to be submitted under this section.

### **Auditor may rely on actuarial valuations**

66. The auditor of a 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) may accept, for the purposes of an audit under this Act, a valuation by the actuary appointed by the insurer of—

- (a) the policy liabilities of the insurer as at the end of a financial year of the insurer; or
- (b) a change, during a financial year, in the policy liabilities of the insurer in relation to a particular fund.

*(Amended by Act 16 of 2015)*

### **Commission may require other licensee to have financial statements audited**

67. (1) The Commission may, by written notice, require a licensee that is a company but that is not a relevant licensee, to appoint an auditor and to submit audited financial statements to the Commission.

(2) The Commission shall in a written notice issued under subsection (1) specify the extent to which sections 54 to 66 apply to the licensee and its auditor.

### *General Supervisory Provisions*

### **Regulations may provide for approval of individuals for appointment by licensee**

68. The regulations may provide for circumstances in which an individual is required to be approved by the Commission for appointment by a licensee, whether as an employee, as an agent or in such other capacity as may be specified in the regulations.

### **Submission of returns and reporting of information to Commission**

69. (1) A licensee shall report to the Commission such information, or submit to the Commission such returns or documents, as may be prescribed within such time and verified in such form and manner as may be prescribed.

(2) If the Commission considers that any document submitted by a licensee under subsection (1) is inaccurate or incomplete or is not prepared in accordance with this Act, or the Regulatory Code, it may by written notice require the licensee to amend the document or to submit a replacement document.

(3) A licensee who contravenes subsection (1) or who fails to comply with a notice issued under subsection (2) commits an offence.

### **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.

(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.

*(Inserted by Act 16 of 2015)*

### **Advertisements**

**70.** (1) A licensee shall not issue, or cause or permit to be issued, any advertisement, statement, brochure or other similar document which is misleading or which contains an incorrect statement of fact.

(2) If the Commission is of the opinion that any advertisement, statement, brochure or other similar document issued, or to be issued, by or on behalf of a licensee is misleading, contains an incorrect statement of fact or is contrary to the public interest, it may—

- (a) direct the licensee in writing not to issue the document or to withdraw it; or
- (b) authorise the licensee in writing to issue the document with such changes as the Commission may specify.

(3) A licensee that issues or causes or permits to be issued an advertisement, statement, brochure or other similar document intending it to mislead or knowing that it contains an incorrect statement of fact, commits an offence.

(4) A licensee commits an offence if it issues or causes or permits to be issued an advertisement, statement, brochure or other similar document—

- (a) contrary to a direction or authorisation of the Commission under subsection (2); or
- (b) contrary to any provision of the Regulatory Code that is stated in the Regulatory Code as a provision to which this subsection applies.

### **Market conduct**

**71.** (1) A licensee shall take all reasonable steps to protect its customers and to ensure that its customers are treated fairly at all times.

(2) Without limiting subsection (1), the Regulatory Code may specify market conduct rules to be followed by licensees or particular categories or

descriptions of licensees, including rules providing for the disclosure of information to customers and prospective customers. (*Amended by Act 16 of 2015*)

### **Change of name**

**72.** (1) A licensee, other than a foreign insurer, shall not, without the prior written approval of the Commission—

- (a) change the name under which it carries on business; or
- (b) in the case of a corporate body, change its name.

(2) A foreign insurer shall forthwith notify the Commission in writing if it changes its name or the name under which it carries on business.

(3) A licensee that fails to comply with subsection (1) commits an offence.

### **Commission may require licensee to change name**

**73.** (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.

*(Substituted by Act 16 of 2015)*

(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.

*(Inserted by Act 16 of 2015)*

(2) A licensee who fails to comply with a direction of the Commission made under subsection (1) commits an offence.

### **Bearer shares**

**74.** (1) A licensee that is a BVI business company shall not issue any bearer shares, and for this purpose, “bearer share” has the meaning specified in the BVI Business Companies Act.

(2) A licensee that contravenes this section commits an offence.

## PART IV

## MISCELLANEOUS PROVISIONS

**Restriction on use of certain names and terms**

75. (1) Subject to subsections (2) and (3), no person shall, except with the prior written approval of the Commission or unless authorised by another enactment—

- (a) use, whether in the name under which he or she is registered or in the description or title under which he or she carries on business in or from the Virgin Islands—
  - (i) the words “insurance”, “assurance” or “underwrite” or any combination or derivative thereof; or
  - (ii) any other word or phrase prescribed under the BVI Business Companies (Restricted Company Names) Notice, 2013 as a word or phrase that suggests insurance business or the business of insurance management or of an insurance intermediary; or (*Amended by Act 16 of 2015*)
- (b) make any representation, whether in a document or in any other manner, that is likely to suggest that he or she is carrying on, or that he or she is licensed or otherwise entitled to carry on—
  - (i) insurance business; or
  - (ii) business as an insurance manager, an insurance intermediary or a loss adjuster.

(2) Subsection (1) does not apply to a licensed insurer, a licensed insurance manager, a licensed insurance intermediary or a licensed loss adjuster, provided that the name under which it is registered or the name which it uses does not suggest that it carries on any business required to be licensed under this Act other than the business that it is authorised by its licence to carry on.

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

**Restriction on Registrar to register company with restricted**

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.

*(Substituted by Act 16 of 2015)*

*Administration***Applications**

77. (1) Every application made under this Act shall—

- (a) be in writing and, where a form has been approved under the Financial Services Commission Act, shall be in the approved form; and
  - (b) have included with it such documents or information as may be specified by this Act or the Regulatory Code.
- (2) The Commission may require an applicant to—
  - (a) provide it with such documents and information, in addition to those specified in subsection (1)(b), as it reasonably requires to determine the application and any such information shall be in such form as the Commission may require; and
  - (b) verify any document and information provided in support of an application in such manner as the Commission may specify.
- (3) If, before the determination by the Commission of an application—
  - (a) there is a material change in any information or documentation provided by or on behalf of the applicant to the Commission in connection with the application; or
  - (b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading, the applicant shall forthwith give the Commission written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.
- (4) An applicant that fails to comply with subsection (3) commits an offence.

## Registers

78. (1) The Commission shall maintain—

- (a) a Register of Licensed Insurers;
- (b) a Register of Licensed Insurance Managers;
- (c) a Register of Licensed Insurance Intermediaries;
- (d) a Register of Licensed Loss Adjusters; and
- (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. (*Substituted by Act 16 of 2015*)

(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. (*Inserted by Act 16 of 2015*)

(2) The registers and the information contained in any document filed with the Commission may be kept in any form the Commission considers fit including, either wholly or partly, by means of a device or facility—

- (a) that records or stores information in magnetic or electronic form; and
- (b) that permits the information to be inspected and reproduced in legible and useable form.

(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. *(Inserted by Act 16 of 2015)*

### **Inspection of registers and information held by Commission**

79. (1) Subject to subsection (2), a person may, on payment of the prescribed fee and during normal business hours—

- (a) inspect the registers and any records kept by the Commission that are specified as public records in the regulations; and
- (b) require the Commission to provide him or her with a copy or certified copy of, or extract from, any document that he or she would be entitled to inspect under paragraph (a).

(2) In respect of documents filed or kept in electronic form, the rights granted under subsection (1) extend only to reproductions of those documents in useable written form produced in such manner as the Commission considers appropriate.

(3) Notwithstanding any other enactment to the contrary, a copy or reproduction of, or extract from, any document or record that is kept by the Commission and certified as such by it is admissible in evidence in all legal proceedings to the same extent as the original document.

### **Electronic filing of documents**

80. (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. *(Substituted by Act 16 of 2015)*

(2) The regulations may provide for a system enabling documents required or permitted to be filed with the Commission under this Act to be filed in electronic form.

(3) A system for the filing of documents in electronic form shall provide for—

- (a) the criteria for authorising persons to file documents in electronic form; and
- (b) the security and authentication of the documents filed.

### **Payment of fees**

80A. Regulations made under section 62 of the Financial Services Commission Act may provide for the fees chargeable and payable under this Act.

*(Inserted by Act 16 of 2015)*

### **Fees, penalties and charges payable to Commission**

81. (1) The Commission may refuse to take any action required of it with respect to a licensee under this Act for which a fee is payable until the fee and any other fees, penalties and charges payable by, or in respect of, the licensee have been paid.



(2) Any fee, charge or contribution which is owed to the Commission under this Act may be recovered as a debt due to the Commission.

### Regulations

82. (1) The Cabinet may, on the advice of the Commission, make regulations—

- (a) generally for giving effect to this Act and for its administration by the Commission; and
- (b) specifically in respect of anything required or permitted by this Act to be contained in the regulations.

(2) Without limiting subsection (1), the regulations may provide that engaging in an activity that would otherwise not be regarded as carrying on insurance business or the business of an insurance manager, an insurance intermediary or a loss adjuster, is deemed for the purposes of this Act, or specified sections of this Act, to be carrying on such a business.

(3) The regulations may—

- (a) be made for the purposes of this Act or for specified provisions of this Act;
- (b) make different provision in relation to different persons or classes of persons, circumstances or cases; and
- (c) provide, subject to subsection (4), for offences and penalties for any contravention of or failure to comply with specified requirements of the regulations.

(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).

*(Inserted by Act 16 of 2015)*

(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).

*(Inserted by Act 16 of 2015)*

(4) A penalty provided for an offence under the regulations shall not exceed—

- (a) in the case of a fine, the sum of \$50,000; and *(Amended by Act 16 of 2015)*
- (b) in the case of a period of imprisonment, the term of 2 years.

### **Regulatory Code**

83. (1) Without limiting the powers of the Commission, the Regulatory Code may specify or provide for—

- (a) systems and controls, including internal controls, to be maintained by licensees;
- (b) policies and procedures to be maintained by licensees with respect to the assessment and management of risk;
- (c) principles and rules of corporate governance to be adhered to by licensees;
- (d) the running off by an insurer of its business and the exit of insurers from the insurance market;
- (e) prudential requirements, not inconsistent with this Act or the regulations, applicable to licensees, including (with respect to licensed insurers)—
  - (i) the valuation of assets and liabilities;
  - (ii) the evaluation of risks;
  - (iii) the calculation of technical provisions; and
  - (iv) permitted investments;
- (f) principles and rules with respect to the underwriting and rating policies and methodologies to be established by licensed insurers;
- (g) the preparation by licensees of a business plan and the information to be included in, and the form of, a business plan;
- (h) measures to be taken by licensees to prevent, detect and remedy fraud.

- (2) The Regulatory Code may—
- (a) make provision in relation to different persons or class of persons, circumstances or cases;
  - (b) contain such incidental, supplemental and transitional provisions as the Commission considers necessary or expedient.

### *Offence Provisions*

#### **False or misleading representations, statements, reports or returns**

84. (1) A person commits an offence if he or she makes or assists in making a representation, statement, report or return, whether oral or written, that is required or permitted by this Act to be made to or, in the case of a document, filed with the Commission that—

- (a) contains a false statement of a material fact; or
- (b) omits to state a material fact required to be provided to the Commission or necessary to avoid the statement or document being materially misleading.

(2) A person does not commit an offence under subsection (1) if he or she did not know and, with the exercise of reasonable diligence, could not have known that the representation or statement contained a false statement or omitted a material fact.

#### **Punishment of offences**

85. (1) A person who commits an offence under the section set out in Column 1 of Schedule 1 is liable on conviction by the method stated in Column 3 of Schedule 1—

- (a) if an individual, to the relevant penalty set out in column 5 of that Schedule; or
- (b) if not an individual, to the relevant penalty set out in column 4 of that Schedule.

(2) Where an offence under a section set out in Column 1 of Schedule 1 is committed by a body corporate, a director or senior officer of that body corporate who knowingly authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on conviction to the relevant penalty set out (in respect of the offence) in Column 5 of Schedule 1.

#### **Order to comply**

86. Where a person is convicted of an offence under this Act or the regulations, the court having jurisdiction to try the offence may, in addition to any punishment it may impose, order that person to comply with the provision of this Act or the regulations for the contravention of which he or she has been convicted.

*Final Provisions***Transitional provisions**

87. *(Omitted)*

**Repeals and amendments**

88. (1) *(Omitted)*

(2) *(Omitted)*

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**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.

*(Inserted by Act 16 of 2015)*

**SCHEDULE 1A***(Amended by Act 16 of 2015)**(Section 85)***OFFENCES AND PENALTIES**

<b>COLUMN 1</b>	<b>COLUMN 2</b>	<b>COLUMN 3</b>	<b>COLUMN 4</b>	<b>COLUMN 5</b>
<i>Section of Act creating offence</i>	<i>General nature of offence</i>	<i>Method of trial</i>	<i>Penalty (corporate body)</i>	<i>Penalty (individual)</i>
4(6)	Person carrying on, or holding himself or herself out as carrying on, insurance business without a licence	Summary	\$30,000	\$20,000
		Indictment	\$75,000	\$50,000, or imprisonment for 3 years or both
4(6)	Person carrying on domestic business without holding category A or category B licence	Summary	\$30,000	\$20,000
		Indictment	\$75,000	\$50,000, or imprisonment for 3 years or both
5(4)	Licensed insurance agent acting for unlicensed insurer	Summary	\$25,000	\$15,000
		Indictment	\$50,000	\$30,000, or imprisonment for 1 year or both
5(4)	Licensed insurance broker soliciting or negotiating insurance business with unlicensed insurer for client resident in Virgin Islands	Summary	\$25,000	\$15,000
		Indictment	\$50,000	\$30,000, or imprisonment for 1 year

COLUMN 1 <i>Section of Act creating offence</i>	COLUMN 2 <i>General nature of offence</i>	COLUMN 3 <i>Method of trial</i>	COLUMN 4 <i>Penalty (corporate body)</i>	COLUMN 5 <i>Penalty (individual)</i>
5(4)	Licensed insurance broker introducing a client resident in Virgin Islands to, or bringing client together with, an unlicensed insurer	Summary  Indictment	\$25,000  \$50,000	\$15,000  \$30,000, or imprisonment for 1 year
5(4)	Person knowingly entering into insurance contract with an unlicensed insurer to insure specified risk	Summary  Indictment	\$25,000  \$50,000	\$15,000  \$30,000, or imprisonment for 1 year or both
9(3)	Licensed insurer failing to notify Commission of non-compliance with section 9(1)	Summary	\$25,000	\$15,000
10(5)	BVI insurer failing to notify Commission of non-compliance with minimum capital requirement	Summary	\$25,000	\$15,000
11(3)	BVI insurer issuing share that is not fully paid in cash	Summary	\$20,000	\$10,000

COLUMN 1 <i>Section of Act creating offence</i>	COLUMN 2 <i>General nature of offence</i>	COLUMN 3 <i>Method of trial</i>	COLUMN 4 <i>Penalty (corporate body)</i>	COLUMN 5 <i>Penalty (individual)</i>
12(6)	BVI insurer failing to notify Commission of non-compliance with minimum solvency margin requirement	Summary  Indictment	\$30,000  \$50,000	\$20,000  \$30,000, or imprisonment for 1 year or both
13(5)	BVI insurer making distribution in contravention of section 13(3)	Summary  Indictment	\$30,000  \$50,000	\$20,000  \$30,000, or imprisonment for 1 year or both
13(5)	BVI insurer making distribution within 5 years of grant of licence	Summary  Indictment	\$30,000  \$50,000	\$20,000  \$30,000, or imprisonment for 1 year or both
14(3)	BVI insurer: acquiring or dealing in its own shares, etc. contrary to section 14(1)(a)	Summary  Indictment	\$30,000  \$50,000	\$20,000  \$30,000, or imprisonment for 1 year or both
14(3)	BVI insurer entering into a guarantee or providing security contrary to section 14(1)(b)	Summary  Indictment	\$30,000  \$50,000	\$20,000  \$30,000, or imprisonment for 1 year or both
15(4)(a)	Licensed insurer failing to comply with section 15 or Regulations with respect to the maintenance of assets in the Virgin Island	Summary	\$30,000	\$15,000



<b>COLUMN 1</b>  <i>Section of Act creating offence</i>	<b>COLUMN 2</b>  <i>General nature of offence</i>	<b>COLUMN 3</b>  <i>Method of trial</i>	<b>COLUMN 4</b>  <i>Penalty (corporate body)</i>	<b>COLUMN 5</b>  <i>Penalty (individual)</i>
15(4)(b)	Licensed insurer creating, or permitting to be created, any mortgage, charge or lien over assets maintained in the Virgin Islands	Summary	\$30,000	\$15,000
16(4)	BVI insurer reinsuring risks contrary to section 16(2)	Summary	\$25,000	\$15,000
17(2)	BVI insurer investing or trading in a derivative contrary to section 17(1)	Summary	\$25,000	\$15,000
19(7)	BVI insurer appointing director or senior officer without approval of Commission	Summary	\$30,000	\$20,000
19(7)	BVI insurer failing to provide notice to Commission that director or senior officer has ceased to hold office	Summary	\$30,000	\$20,000
19(7)	Foreign insurer failing to provide notice to Commission of appointment of director or senior officer	Summary	\$30,000	\$20,000

COLUMN 1 <i>Section of Act creating offence</i>	COLUMN 2 <i>General nature of offence</i>	COLUMN 3 <i>Method of trial</i>	COLUMN 4 <i>Penalty (corporate body)</i>	COLUMN 5 <i>Penalty (individual)</i>
19(7)	Foreign insurer failing to provide notice to Commission that director or senior officer ceased to hold office	Summary	\$30,000	\$20,000
20(2)	BVI insurer opening, maintaining or carrying on business through branch or representative or contact office without approval of Commission	Summary	\$25,000	\$10,000
20(2)	BVI insurer incorporating, forming or acquiring subsidiary without approval of Commission	Summary	\$25,000	\$10,000
21(6)	Person knowingly contravening section 21(1) or (2)	Summary	\$30,000	\$20,000
21(6)	BVI insurer contravening section 21(3)	Summary	\$30,000	\$20,000
22(3)	Foreign insurer failing to provide notice to Commission of change in person owning or holding significant interest	Summary	\$20,000	\$10,000

<b>COLUMN 1</b>  <i>Section of Act creating offence</i>	<b>COLUMN 2</b>  <i>General nature of offence</i>	<b>COLUMN 3</b>  <i>Method of trial</i>	<b>COLUMN 4</b>  <i>Penalty (corporate body)</i>	<b>COLUMN 5</b>  <i>Penalty (individual)</i>
23(7)	Licensed insurer holding category C or D licence failing to appoint insurance manager	Summary	\$40,000	\$30,000
23(7)	Licensed insurer holding category C or D licence appointing insurance manager that does not have licence or that is not approved by the Commission	Summary	\$40,000	\$30,000
23(7)	Licensed insurer holding category C or D licence terminating appointment of insurance manager without giving required notice to Commission	Summary	\$40,000	\$30,000
23(7)	Licensed insurer holding category C or D licence failing to give Commission notice of appointment of insurance manager	Summary	\$40,000	\$30,000

COLUMN 1 <i>Section of Act creating offence</i>	COLUMN 2 <i>General nature of offence</i>	COLUMN 3 <i>Method of trial</i>	COLUMN 4 <i>Penalty (corporate body)</i>	COLUMN 5 <i>Penalty (individual)</i>
23(7)	Licensed insurance manager terminating its agreement to act as insurance manager for licensed insurer without giving Commission required notice	Summary	\$40,000	\$30,000
24(5)	Foreign insurer failing to have a representative in the Virgin Islands	Summary	\$40,000	\$30,000
24(5)	Foreign insurer failing to give notice to Commission of appointment or termination of appointment of representative	Summary	\$40,000	\$30,000
25(5)	BVI insurer failing to notify Commission of reduction in the minimum number of directors	Summary	\$25,000	\$15,000
25(5)	BVI insurer failing to submit application to comply with subsection (1)	Summary	\$25,000	\$15,000
27(7)	BVI insurer that is a life and health insurer failing to have actuary <i>(Amended by Act 16 of 2015)</i>	Summary	\$20,000	\$10,000

COLUMN 1 <i>Section of Act creating offence</i>	COLUMN 2 <i>General nature of offence</i>	COLUMN 3 <i>Method of trial</i>	COLUMN 4 <i>Penalty (corporate body)</i>	COLUMN 5 <i>Penalty (individual)</i>
27(7)	BVI insurer that is a long- term insurer appointing actuary contrary to section 27(2)	Summary	\$20,000	\$10,000
28(7)	Actuary or former actuary contravening section 28(1), (2), (3) or (4)	Summary Indictment	\$30,000 \$50,000	\$20,000 \$30,000, or imprisonment for 1 year
32(2)	BVI insurer that is a life and health insurer breaching an applicable provision of the Regulatory Code relating to the segregation, control, allocation and application of an insurer's funds <i>(Amended by Act 16 of 2015)</i>	Summary	\$25,000	\$10,000
35(3)	BVI insurer proposing merger, consolidation, arrangement or scheme of arrangement without approval of Commission	Summary	\$40,000	\$30,000
37(4)	Person carrying on, or holding himself or herself out as carrying on, business as an insurance manager, an insurance intermediary or a loss adjuster without a licence	Summary Indictment	\$30,000 \$75,000	\$20,000 \$50,000, or imprisonment for 3 years or both

<b>COLUMN 1</b>  <i>Section of Act creating offence</i>	<b>COLUMN 2</b>  <i>General nature of offence</i>	<b>COLUMN 3</b>  <i>Method of trial</i>	<b>COLUMN 4</b>  <i>Penalty (corporate body)</i>	<b>COLUMN 5</b>  <i>Penalty (individual)</i>
38(2)	Licensed insurer paying commission with respect to domestic business to insurance intermediary that does not have licence	Summary	\$20,000	\$10,000
41(3)	Licensed insurance manager or insurance intermediary failing to notify Commission of non-compliance with section 41(1)	Summary	\$40,000	\$30,000
42(5)	Licensed insurance manager or insurance intermediary failing to notify Commission of non-compliance with minimum capital requirement	Summary	\$40,000	\$30,000
44(5)	Licensee appointing a director or senior officer without approval of Commission	Summary	\$30,000	\$15,000

COLUMN 1 <i>Section of Act creating offence</i>	COLUMN 2 <i>General nature of offence</i>	COLUMN 3 <i>Method of trial</i>	COLUMN 4 <i>Penalty (corporate body)</i>	COLUMN 5 <i>Penalty (individual)</i>
44(5)	Licensed insurance manager or licensed insurance intermediary failing to provide notice to Commission that director or senior officer has ceased to hold office	Summary	\$30,000	\$15,000
45(6)	Person knowingly contravening section 45(1) or (2)	Summary	\$30,000	\$20,000
45(6)	Licensed insurance manager or licensed insurance intermediary contravening section 45(3)	Summary	\$30,000	\$20,000
46(4)	Licensed insurance agent agreeing to act for insurer not stated on licence	Summary	\$30,000	\$20,000
46(4)	Licensed insurance agent failing to notify Commission that it ceased to act as insurance agent for insurer	Summary	\$30,000	\$20,000
49(3)	Licensed insurance intermediary receiving, holding or dealing with premium contrary to Regulatory Code	Summary Indictment	\$30,000 \$75,000	\$20,000 \$50,000, or imprisonment for 3 years or both

COLUMN 1 <i>Section of Act creating offence</i>	COLUMN 2 <i>General nature of offence</i>	COLUMN 3 <i>Method of trial</i>	COLUMN 4 <i>Penalty (corporate body)</i>	COLUMN 5 <i>Penalty (individual)</i>
49(3)	Licensed insurance intermediary receiving, holding or dealing with premium without authority of insurer	Summary Indictment	\$30,000 \$75,000	\$20,000 \$50,000, or imprisonment for 3 years or both
50(2)	Licensed insurance intermediary or licensed insurance manager failing to maintain prescribed insurance	Summary	\$30,000	\$20,000
51(7)	Insurance manager contravening section 51(1) or (3)	Indictment	\$40,000	\$30,000
52(5)	Licensee, former licensee or foreign insurer failing to maintain records in accordance with section 52	Summary	\$40,000	\$30,000
57(3)	Relevant licensee failing to submit financial statements to Commission	Summary	\$20,000	\$10,000
58(3)	Relevant licensee failing to submit short financial statements and report to Commission	Summary	\$30,000	\$20,000
61(8)	Relevant licensee failing to have auditor	Summary	\$30,000	\$20,000



<b>COLUMN 1</b>	<b>COLUMN 2</b>	<b>COLUMN 3</b>	<b>COLUMN 4</b>	<b>COLUMN 5</b>
<i>Section of Act creating offence</i>	<i>General nature of offence</i>	<i>Method of trial</i>	<i>Penalty (corporate body)</i>	<i>Penalty (individual)</i>
61(8)	Relevant licensee appointing auditor contrary to Section 61(2)	Summary	\$30,000	\$20,000
61(8)	Relevant licensee failing to give Commission notice of appointment of auditor	Summary	\$20,000	\$10,000
61(8)	Relevant licensee failing to make necessary arrangements for auditor	Summary	\$20,000	\$10,000
63(6)	Auditor or former auditor contravening section 63(1) or (2)	Summary	\$40,000	\$30,000
69(3)	Licensee failing to report information or submit documents to Commission	Summary	\$20,000	\$10,000
69(3)	Licensee failing to comply with notice issued under section 69(2)	Summary	\$20,000	\$10,000
70(3)	Licensee issuing or causing or permitting to be issued misleading or incorrect advertisement, statement, brochure etc.	Summary	\$40,000	\$30,000
		Indictment	\$75,000	\$50,000, or imprisonment for 3 years or both

<b>COLUMN 1</b>	<b>COLUMN 2</b>	<b>COLUMN 3</b>	<b>COLUMN 4</b>	<b>COLUMN 5</b>
<i>Section of Act creating offence</i>	<i>General nature of offence</i>	<i>Method of trial</i>	<i>Penalty (corporate body)</i>	<i>Penalty (individual)</i>
70(3)	Licensee issuing advertisement, statement, brochure etc. contrary to direction or authorisation of Commission	Summary	\$40,000	\$30,000
70(3)	Licensee issuing advertisement, statement, brochure etc. contrary to provision of Regulatory Code	Summary	\$40,000	\$30,000
72(3)	Licensee changing business name or corporate name without approval of Commission	Summary	\$25,000	\$10,000
73(2)	Licensee failing to comply with direction of Commission under section 73(1)	Summary	\$25,000	\$10,000
74(2)	Licensee issuing bearer shares	Summary	\$40,000	\$30,000
75(3)	Person using prohibited word or phrase without approval of Commission	Summary	\$30,000	\$20,000
		Indictment	\$50,000	\$30,000, or imprisonment for 1 year or both
75(3)	Person making representation contrary to section 75(1)(b)	Summary	\$30,000	\$20,000
		Indictment	\$50,000	\$30,000, or imprisonment for 1 year or both

<b>COLUMN 1</b>	<b>COLUMN 2</b>	<b>COLUMN 3</b>	<b>COLUMN 4</b>	<b>COLUMN 5</b>
<i>Section of Act creating offence</i>	<i>General nature of offence</i>	<i>Method of trial</i>	<i>Penalty (corporate body)</i>	<i>Penalty (individual)</i>
77(4)	Applicant failing to give Commission particulars of change of or incomplete, inaccurate or misleading information	Summary	\$30,000	\$20,000
84(1)	Person making false representation or omitting to state material fact	Summary	\$30,000	\$20,000
		Indictment	\$75,000	\$50,000

**SCHEDULE 2***(Section 87)***TRANSITIONAL PROVISIONS**

1. A person who, immediately prior to the coming into force of this Act, was holding a licence under the former Act is deemed to have been granted a licence under this Act on the coming into force of this Act, as follows:
  - (a) where the person concerned is a BVI business company that holds a licence under the former Act as an insurer authorised to carry on insurance business in the Virgin Islands, that person is deemed to have been granted a category A insurer's licence under this Act and is authorised to carry on the classes of business stated on the licence issued to it under the former Act;
  - (b) where the person concerned is a foreign company that holds a licence under the former Act as an insurer authorised to carry on insurance business in the Virgin Islands, that person is deemed to have been granted a category B insurer's licence under this Act and is authorised to carry on the classes of business stated on the licence issued to it under the former Act;
  - (c) where the person concerned is a BVI business company that holds a licence under the former Act as an insurer authorised to carry on insurance business from within the Virgin Islands, that person is deemed to have been granted a category C insurer's licence under this Act and is authorised to carry on the classes of business stated on the licence issued to it under the former Act;
  - (d) where the person concerned holds a certificate of authority under the former Act to act as an insurance manager, that person is deemed to have been granted a licence as an insurance manager under this Act;
  - (e) where the person concerned holds a certificate of authority under the former Act to act as an insurance broker, that person is deemed to have been granted an insurance intermediary's licence in the category of insurance broker under this Act;
  - (f) where the person concerned is a BVI business company that holds a certificate of authority under the former Act to act as an insurance agent, that person is deemed to have been granted an insurance intermediary's licence in the category of insurance agent under this Act;
  - (g) where the person concerned holds a certificate of authority under the former Act to act as an adjuster, that person is deemed to have been granted a loss adjuster's licence under this Act.
2. The Commission shall, within three months of the coming into force of this Act, issue each person that is deemed under paragraph 2 to have been granted a licence under this Act with a replacement licence issued under this Act.
3. An insurer that, by reason of this Act, is authorised to carry on general business and long-term business shall, on or before 31 December 2009, apply to the Commission for an insurance licence to carry on either

one or more classes of general business or one or more classes of long-term business.

**SCHEDULE 3**

(Section 88)

**REPEALS AND CONSEQUENTIAL AMENDMENTS**

NO.	ENACTMENT	EXTENT OF REPEAL OR AMENDMENT
1.	BVI Business Companies Act, 2004 (No. 16 of 2004)	<ol style="list-style-type: none"> <li>1. In section 135(2)(a), delete “Insurance Act, 1994” and substitute “Insurance Act, 2008”.</li> <li>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; <i>(Inserted by Act 16 of 2015)</i></li> </ol>
2.	Financial Services Commission Act 2001 (no. 12 of 2001)	<ol style="list-style-type: none"> <li>1. In Schedule 2, Part 1, delete “Insurance Act, 1994” and substitute “Insurance Act, 2008”.</li> </ol>
3.	Insolvency Act 2003 (no. 5 of 2003)	<ol style="list-style-type: none"> <li>1. In section 2— <ol style="list-style-type: none"> <li>(a) in the definition of “Insurance Act”, delete “Insurance Act, 1994” and substitute “Insurance Act, 2008”;</li> <li>(b) in the definition of “insurance company”, delete the words from “holds” to the end of the definition and substitute “holds a licence under the Insurance Act or that at any time has held a licence under the Insurance Act or under the repealed Insurance Act, 1994”.</li> </ol> </li> <li>2. In section 78(1), delete “prescribed in respect of the company in the Insurance Regulations, 1995” and substitute “required under the Insurance Act, 2008 .”</li> <li>2A. In section 237(1)— <ol style="list-style-type: none"> <li>(a) delete “general business” and “long term business” and replace them with the words “property and casualty business” and “life and health business” respectively;</li> <li>(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;</li> <li>(c) delete “long term insurance company”, “long term business” and “general</li> </ol> </li> </ol>

		<p>business” and replace them with the words “life and health insurance company”, “life and health business” and “property and casualty business” respectively;” (<i>Inserted by Act 16 of 2015</i>)</p> <p>3. In section 237(2)—</p> <p>(a) insert after “Insurance Act” the words “or the repealed Insurance Act, 1994”; and</p> <p>(b) delete “that Act” and substitute “the Insurance Act or the repealed Insurance Act, 1994”.</p> <p>3A. In section 239—</p> <p>(a) delete in subsection (1) “long term insurance company” and replace it with the words “life and health insurance company”;</p> <p>(b) delete in subsection (2) “general insurance company” and replace it with the words “property and casualty insurance company”;</p> <p>(c) delete—</p> <p>(i) in subsection (3)(a) “long term insurance company” and replace it with the words “life and health insurance company”; and</p> <p>(ii) in subsection (3)(b) “general insurance company” and replace it with the words “property and casualty insurance company”; and</p> <p>(d) delete in subsection (4) “general insurance company” and replace it with the words “property and casualty insurance company”</p> <p>(<i>Inserted by Act 16 of 2015</i>)</p> <p>4. In section 240, delete subsection (2) and substitute the following:</p> <p>“(2) For the purposes of this Act, an insurance company is deemed to be insolvent if it is not in compliance with section 12(2) of the Insurance Act.”</p> <p>5. In section 242—</p> <p>(a) delete from the marginal note “long term business” and substitute “life and health business”;</p> <p>(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</p>
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		<p>“life and health business” respectively;</p> <p>(c) delete in subsection (2) “long term business” and replace it with the words “life and health business”;</p> <p>(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;</p> <p>and</p> <p>(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.”;</p> <p><i>(Inserted by Act 16 of 2015)</i></p> <p>6. In section 243—</p> <p>(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;</p> <p>(b) delete in subsection (2) “long term liabilities” and replace it with the words “life and health insurance liabilities”;</p> <p>(c) delete in subsection (3) “long term insurance company” and substitute “life and health insurance company”</p> <p><i>(Inserted by Act 16 of 2015)</i></p>
4.	Insolvency Rules 2005 (SI 2005 No. 45)	1. In rule 3(b), delete “Insurance Act, 1994” and substitute “Insurance Act, 2008”.
5.	Securities and Investment Business Act, 2010 (No. 2 of 2010)	In paragraph 8 of Schedule 1, delete the heading “Long-term insurance contracts” and substitute “Life and health insurance contracts”; and delete in sub- paragraph (1) “long- term business” and substitute “life and health business”. <i>(Inserted by Act 16 of 2015)</i>