

No. 1 of 2008

VIRGIN ISLANDS
INSURANCE ACT, 2008
ARRANGEMENT OF SECTIONS

Section

PRELIMINARY PROVISIONS

1. Short title and commencement.
2. Interpretation.
3. Meaning and classification of insurance business.

PART I

REGULATION AND SUPERVISION OF INSURANCE BUSINESS

Division 1 – Unauthorised Insurance Business

4. Prohibition on unauthorised insurance business.
5. Prohibition on dealings with unlicensed insurers.
6. Exemption order on grounds of lack of insurance availability.

Division 2 – Licensing of Insurers

7. Categories of, and restrictions on, licences.
8. Application for, and insurance of, licence.

Division 3 – Obligations of, and Restrictions on, Licensed Insurers

Financial Resource Requirements

9. Maintenance of financially sound condition.
10. Maintenance of contributed capital.
11. Shares.
12. Solvency margin.
13. Distributions.
14. Prohibition on advances and loans, etc.
15. Maintenance of assets in Virgin Islands.
16. Reinsurance.

17. Derivatives.

Other Obligations of, and Restrictions on, Licensed Insurers

18. Limitations on business carried on by licensed insurer.
19. Appointment and termination of directors and senior officers.
20. Authorisation required to open branch or representative office or incorporate or acquire subsidiary.
21. Disposing of, or acquiring significant interest in, BVI insurer.
22. Disposing of, or acquiring significant interest in, foreign insurer.

Corporate Governance

23. Appointment of insurance manager.
24. Foreign insurer to appoint representative.
25. Directors of BVI insurer.
26. Management systems and controls.

Actuaries and Actuarial Investigations and Reports

27. Appointment of actuary.
28. Obligations of actuary.
29. Actuarial investigation and report at direction of Commission.
30. Actuarial investigation and report at direction of Commission.
31. Powers of Commission concerning appointment of actuary.
32. Regulatory Code to provide for segregation and control of funds of long-term insurer.

Transfers and mergers

33. Transfers and mergers.
34. Further provisions may be specified in Regulatory Code.
35. Application of Part IX of the BVI Business Companies Act to BVI insurers.
36. Enforcement of contracts.

**PART II
REGULATION AND SUPERVISION OF
INSURANCE MANAGERS, INSURANCE INTERMEDIARIES
AND LOSS ADJUSTERS**

Unlicensed Business

37. Prohibition on unlicensed business.
38. Prohibition on payment of commission to unlicensed insurance intermediary.
39. Categories of, and restrictions on, insurance intermediary's licences.

40. Application for, and issuance of, licence.

Obligations of, and restrictions on, licensed insurance managers and licensed insurance intermediaries

- . Maintenance of financially sound condition.
42. Maintenance of contributed capital.
43. Application of sections 44 and 45.
44. Appointment and termination of directors and senior officers.
45. Disposing of, or acquiring significant interest.
46. Change in insurer for which insurance agent acts.
47. Designated representative.
48. Prohibited interests.
49. Receipt of, and dealing with, premiums and intermediaries.
50. Professional indemnity and other insurance.
51. Obligations of insurance manager.

PART III
PROVISIONS APPLICABLE TO LICENSEES UNDER THIS ACT

52. Maintenance of records.

Financial statements and audit

53. Application of section 54 to 66.
 54. Meaning of “financial year”.
 55. Meaning of “financial statements”.
 56. Preparation of financial statements.
 57. Relevant licensees to appoint auditor.
 58. Submission of short period financial statements and report.
 59. Extension of time.
 60. Amendment of financial statements.
 61. Relevant licensees to appoint auditor.
 62. Audit and audit report.
 63. Obligations of auditors.
 64. Powers of Commission re appointment of auditor.
 65. Group accounts.
 66. Auditor may rely on actuarial valuations.
 67. Commission may require other licensee to have financial statements audited.
-
68. Regulations may provide for approval of individuals for appointment by licensee.
 69. Submission of returns and reporting of information to Commission.
 70. Advertisements.

- 71. Market conduct.
- 72. Change of name.
- 73. Commission may require licensee to change name.
- 74. Bearer shares.

**PART IV
MISCELLANEOUS PROVISIONS**

- 75. Restriction on use of certain names and terms.
- 76. Incorporation and change of name of companies.

Administration

- 77. Applications.
- 78. Registers
- 79. Inspection of registers and information held by Commission.
- 80. Electronic filing of documents.
- 81. Fees, penalties and charges payable to Commission.
- 82. Regulations.
- 83. Regulatory Code.

Offence Provisions

- 84. False or misleading representations, statements, reports or returns.
- 85. Punishment of offences.
- 86. Order to comply.

Final Provisions

- 87. Transitional provisions.
- 88. Repeals and amendments.

SCHEDULE 1
SCHEDULE 2
SCHEDULE 3

I Assent

(Sgd.) DAVID PEAREY,
Governor.
7th February, 2008

VIRGIN ISLANDS

No. 1 of 2008

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.

[Gazetted 8th February, 2008]

ENACTED by the Legislature of the Virgin Islands as follows:

PRELIMINARY PROVISIONS

- 1. (1) This Act may be cited as the Insurance Act, 2008.
- (2) The provisions of this Act come into force on such date or dates as may be appointed by the Governor by proclamation published in the *Gazette* and different dates may be appointed for different provisions and different purposes.

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

Interpretation.

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

“approved form” means a form approved by the Commission under the Financial Services Commission Act, 2001;

No. 12 of 2001

Short title and commencement.

“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 qualified under the Regulatory Code to act as an auditor under this Act;

“BVI business company” means a company that is on the Register of Companies maintained under the BVI Business Companies Act, 2004;

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

- (a) category A;
- (b) category C; or
- (c) category D;

“Cabinet” means the Cabinet established under the Virgin Islands Constitution Order 2007;

2007 No. 1678

“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, 2001;

“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,

No. 16 of 2004

No. 12 of 2001

for shares issued by a company;

“Court” means the High Court;

“director” has the meaning specified in the BVI Business Companies Act, 2004; No. 16 of 2004

“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; or
- (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;

“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” means insurance business of a class specified in the regulations as general business;

“general insurer” means a licensed insurer that is not a long-term insurer;

“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, 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;
- (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 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 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;

“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” means insurance business of a class specified in the regulations as long-term business;

“long-term insurer” means a licensed insurer authorised by its licence to carry on any class or classes of long-term business;

“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 acts as agent;

“prescribed” means prescribed in the Regulatory Code;

“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, 2004;

No. 16 of 2004

“regulations” means the regulations made under section 82;

“Regulatory Code” means the Regulatory Code issued by the Commission under the Financial Services Commission Act, 2001;

“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 ten per cent or more of the voting rights of that company at a meeting of the company or of its members;
- (b) to a share of ten per cent or more in any distribution made by the company;
- (c) to a share of ten per cent 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.

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.

Meaning and classification of insurance business.

(2) For the purposes of this Act, insurance business is divided into two types:

(a) long-term business; and

(b) general business.

(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

4. (1) Subject to subsection (4),

(a) no person shall carry on, or hold himself out as carrying on, insurance business of any kind in or from within the Virgin Islands unless he holds a licence issued under section 8 authorising him 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 holds a category A or a category B licence.

Prohibition on unauthorised insurance business.

(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 occupies premises in the Virgin Islands;

(ii) he 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 as insurer; or

- (iii) he 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.

No. 12 of 2001

(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.

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.

Prohibition on dealings with unlicensed insurers.

(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.

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

Exemption order on grounds of lack of insurance availability.

(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

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

Categories of, and restrictions on, licences.

and which entitles the holder to carry on reinsurance business, including open market reinsurance business.

(2) For the purposes of this section, “open-market reinsurance business” is reinsurance business where the insurer is not connected with the reinsurer.

(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.

No. 12 of
2001

(5) The Commission shall not issue an insurer’s licence that authorises the holder to carry on both long-term and general business.

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 or D, by a BVI business company limited by shares; or
- (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 subsections (3) and (4), the Commission may issue a licence to an applicant if it is satisfied that

- (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 in the applicant satisfy the Commission's fit and proper criteria;
- (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.

(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;
- (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.

Division 3 – Obligations of, and Restrictions on, Licensed Insurers

Financial Resource Requirements

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 forms the opinion that it does not comply with subsection (1), it shall forthwith notify the Commission in writing.

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

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

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.

(2) If the Commission considers it appropriate, having regard to the nature and extent

Maintenance of financially sound condition.

Maintenance of contributed capital.

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

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

(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.

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.

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 (3) shall specify a reasonable period for compliance with the direction.

(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.

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

13. (1) For the purposes of this section, “distribution” has the meaning specified in section 56(b) of the BVI Business Companies Act, 2004.

Distributions.

No. 16 of
2004

(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 five 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.

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).

Prohibition on
advances and
loans, etc.

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

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.

(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).

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

Maintenance of
assets in Virgin
Islands.

Reinsurance.

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.

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 Derivatives.

(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) A licensed insurer may, at any time, submit an amended business plan to the Commission.

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

Appointment and termination of directors and senior officers.

19. (1) A BVI insurer 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 Commission's fit and proper criteria.

(3) A BVI Insurer shall provide written notice to the Commission within fourteen 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 shall, within fourteen 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.

(6) The requirements of subsection (5) are disapplied 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.

(7) A BVI insurer that contravenes subsection (1) or (3), or a foreign insurer that contravenes subsection (5), commits an offence.

No. 12 of 2001

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 in a BVI insurer shall not sell, transfer, charge or otherwise dispose of his interest in the insurer, or any part of his interest, unless the prior written approval of the Commission has been obtained.

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

(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 in the insurer; or
 - (ii) a person who already owns or holds a significant interest in the insurer, increasing or decreasing the size of his interest.

(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 Commission's fit and proper criteria.

(6) A person who knowingly contravenes subsection (1) or (2) or a BVI insurer that contravenes subsection (3), commits an offence.

22. (1) Subject to subsection (2), a foreign insurer shall provide written notice to the Commission within fourteen days after any change in the persons who own or hold a significant interest in the insurer.

Disposing of, or acquiring significant interest in, foreign insurer.

(2) The requirements of subsection (1) are disapplied 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 or D shall appoint and at all times have an insurance manager.

(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 thirty 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 fourteen 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 fourteen 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 fourteen 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.

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

Directors of
BVI
insurer.

(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 two directors undercontrary to subsection (1), it shall

(a) immediately notify the Commission of that fact in writing; and

(b) within a period not exceeding fourteentwenty-one 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).

(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.

Actuaries and Actuarial Investigations and Reports

27. (1) A BVI insurer that is a long-term insurer shall appoint and at all times have an actuary.

(2) A long-term insurer to which subsection (1) applies shall not appoint a person as its actuary under subsection (1) unless

- (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 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

Appointment of
actuary.

- (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 disapplied or modified with respect to a long-term 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.

(6) Where, for whatever reason, a person ceases to be the actuary of a long-term 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 two months of the date that the person who was previously appointed actuary ceases to hold that appointment.

(7) Subject to subsection (6), a BVI insurer that is a long-term insurer commits an offence if, at any time, it does not have an actuary or it appoints an actuary contrary to subsection (2).

Obligations
of actuary.

28. (1) Notwithstanding anything to the contrary in any other enactment, the actuary of a long-term insurer shall report immediately to the Commission if he 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.

(2) The actuary of a BVI insurer shall report to the insurer any matter relating to the business of the insurer that he has obtained in the course of acting as its actuary that, in his 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 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 appointment, or his 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 appointment or his resignation, he would have reported any matter to the Commission under subsection (1) or (3), he shall report the information concerned to the Commission, as if his appointment had not been terminated or he 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 is deemed not to be in contravention of any enactment, rule of law, agreement or professional code of conduct to which he is subject and no civil, criminal or disciplinary proceedings shall lie against him 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 would not have had.

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

29. The actuary of a licensed insurer, whether or not appointed pursuant to a requirement of this Act, shall, in the performance of his duties and the exercise of his 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

Actuary to comply with prescribed standards.

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 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.

(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 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 segregation and control of funds of long-term 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 long-term insurer.

(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

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,

Transfers and mergers.

except under a scheme of transfer or merger complying with the Regulatory Code that, in the case of a general insurer, has the prior written approval of the Commission and, in the case of a long term insurer, has been approved by the Court.

(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 general insurer, the Commission may, at the cost of the insurer, undertake an investigation into the desirability or otherwise of the scheme.

(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.

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 general insurers.

Further provisions may be specified in Regulatory Code.

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, 2004 unless the Commission has given its prior written approval to the merger, consolidation, arrangement or scheme of arrangement.

Application of Part IX of the BVI Business Companies Act to BVI insurers.

(2) In the case of an arrangement under section 177 and a scheme of arrangement under section 179A of the BVI Business Companies Act, 2004, 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.

No. 16 of 2004

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

36. Where the long-term business of a BVI insurer, or any part of it, is transferred 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, 2004 the transferee shall be liable under the contract and any person having rights under the contract may enforce those rights against the transferee.

Enforcement of contracts.

No. 16 of 2004

PART II
REGULATION AND SUPERVISION OF
INSURANCE MANAGERS, INSURANCE INTERMEDIARIES
AND LOSS ADJUSTERS

Unlicensed Business

37. (1) Subject to subsection (3), no person may carry on, or hold himself 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 holds a licence issued under section 40 that authorises him to carry on the business concerned.

Prohibition on unlicensed business.

(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 occupies premises in the Virgin Islands, or

- (ii) he 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; 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 out as carrying on business as an insurance manager, an insurance intermediary or a loss adjuster contrary to subsection (1) commits an offence.

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.

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.

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.

Prohibition on payment of commission to unlicensed insurance intermediary.

Categories of, and restrictions on, insurance intermediary's licences.

Application for, and issuance of, 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 in the applicant, and
 - (ii) in the case of a partnership, the partners,satisfy the Commission's fit and proper criteria;
- (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 Commission's fit and proper criteria.

(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, 2001; and

- (c) remains, at all times, the property of the Commission

Obligations of, and restrictions on, licensed insurance managers and licensed insurance intermediaries

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

Maintenance of financially sound condition.

- (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.

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

Maintenance of contributed capital.

- (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.

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

Appointment
and
termination of
directors and
senior
officers.

(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 Commission's fit and proper criteria.

(3) A licensee to which this section applies shall provide written notice to the Commission within fourteen 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.

No. 12 of 2001

45. (1) A person owning or holding a significant interest in a licensee to which this section applies shall not sell, transfer, charge or otherwise dispose of his interest in the licensee, or any part of his interest, unless the prior written approval of the Commission has been obtained.

Disposing of, or
acquiring
significant
interest.

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

(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 in the licensee; or

- (ii) a person who already owns or holds a significant interest in the licensee, increasing or decreasing the size of his interest.

(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 Commission's fit and proper criteria.

(6) A person who knowingly contravenes subsection (1), or (2) or a licensee to which this section applies that contravenes subsection (3), commits an offence.

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 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 fourteen 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.

47. (1) An insurance manager shall appoint and at all times have a designated representative in the Virgin Islands who shall be an individual approved by the Commission.

(2) An insurance manager shall provide written notice to the Commission within fourteen days after

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

Change in insurer for which insurance agent acts.

Designated representative.

(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 shall have such duties and obligations as may be specified in this Act or the Regulatory Code.

(5) An insurance manager who fails to comply with subsection (1) or (2) commits an offence.

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.

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 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 receives, holds or deals with the premium or other client monies in accordance with the provisions of the Regulatory Code.

Section Prohibited
interests.

Receipt of,
and dealing
with,
premiums by
intermediaries

(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 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.

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.

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 has obtained in the course of acting as its insurance manager that, in his 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

Professional indemnity and other insurance.

Obligations of insurance manager.

- (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 appointment, and disclose to the Commission the circumstances that gave rise to such termination; and
- (b) if, but for the termination of his appointment, he would have reported information to the Commission under subsection (1), he shall report the information concerned to the Commission, as if his 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 is deemed not to be in contravention of any enactment, rule of law, agreement or professional code of conduct to which he is subject and no civil, criminal or disciplinary proceedings shall lie against him 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 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

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

Maintenance
of records.

- (a) to show and explain its transactions;

- (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 in respect of the business it carries on in the Virgin Islands; and
 - (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 or places, whether in or outside the Virgin Islands, where its financial records, other than those specified in paragraph (a) are maintained.
- (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 revoked, a former licensee, shall retain the records required to be maintained under this section for a period of at least six years after the completion of the transaction to which they relate.
- (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).

54. (1) A relevant licensee shall, no later than eleven 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.

Meaning of “financial year”.

(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 three months and not exceeding fifteen months, that is different to that determined in accordance with subsection (1).

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

Meaning of “financial statements”.

- (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).

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 signs the financial statements.

57. (1) The financial statements of a relevant licensee signed by a director in accordance with section **56** shall be submitted to the Commission within six months of the end of the financial year to which they relate 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.

(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.

Preparation of
financial
statements.

Submission of
financial
statements to the
Commission.

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

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

Submission of short period financial statements and report.

- (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 56 with the substitution of “the period for which the statements are prepared” for “financial year”.

(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 three months or, where it grants more than one extension, for an aggregate period not exceeding, three months.

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

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.

Amendment of financial statements.

(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.

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

Relevant licensees to appoint auditor.

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

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

appointment.

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

(4) The approval of the Commission is not required where the auditor appointed in respect of a financial year acted as the auditor of the licensee in the previous financial year and the approval of his appointment by the Commission has not been revoked under section 64 (1).

(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 auditor to audit his 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 two 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).

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

(2) Upon completion of his 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

Audit and audit report.

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.

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 has obtained in the course of acting as its auditor that, in his opinion, suggests

Obligations of auditors.

- (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 licensee or in connection with its business;
- (c) that, in the case of a licensed insurer, the licensee is in breach of any of sections **9** to **15**;
- (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 appointment, or his 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 appointment, or his resignation, he would have reported information to the Commission under subsection (1), he shall report the information concerned to the Commission, as if his appointment had not been terminated or he had not resigned.

(3) The Commission may require an auditor of a relevant licensee to discuss any audit

he 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 is deemed not to be in contravention of any enactment, rule of law, agreement or professional code of conduct to which he is subject and no civil, criminal or disciplinary proceedings shall lie against him 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 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).

64. (1) Where the Commission is satisfied that the auditor of a relevant licensee has failed to fulfil his 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 costs and fees.

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.

Powers of
Commission re
appointment of
auditor.

Group accounts.

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

Auditor may rely on actuarial valuations.

- (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.

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

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.

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.

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.

Advertisements.

(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

Regulations may provide for approval of individuals for appointment by licensee.

Submission of returns and reporting of information to Commission.

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.

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.

73. (1) The Commission may, by written notice, direct a licensee,

(a) in the case of a foreign insurer, to change the name under which it carries on business, or

(b) in the case of any other licensee, to change the name under which it is incorporated or it carries on business if the Commission is of the opinion that the name is

(i) identical to that of any other person, whether within or outside the Virgin Islands, or which so nearly resembles that name as to be likely to deceive; or

(ii) otherwise misleading or undesirable.

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

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, 2004.

Bearer shares.
No. 16 of 2004

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

PART IV MISCELLANEOUS PROVISIONS

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,

Restriction on
use of certain
names and
terms.

(a) use, whether in the name under which he is registered or in the description or title under which he 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 as a word or phrase that suggests insurance business or the business of insurance management or of an insurance intermediary; or

Commission
may require
licensee to
change name.

- (b) make any representation, whether in a document or in any other manner, that is likely to suggest that he is carrying on, or that he 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.

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) the words “insurance”, “assurance” or “underwrite” or any combination or derivative thereof, or
- (b) any other word or phrase prescribed pursuant to section 75(1)(a)(ii),

unless he is satisfied that the company is a licensee, that the Commission has approved the use of the name by the company or that the company is authorised by some other enactment to use the name.

Administration

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, 2001, 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

Incorporation and change of name of companies.

Applications.

No. 12 of 2001

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.

78. (1) The Commission shall maintain

Registers.

- (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 in the regulations,

containing such information as may be specified in the regulations.

(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.

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 with a copy or certified copy of, or extract from, any document that he 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 is a document in a computer processable message format that is capable of being transmitted electronically.

(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.

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.

No. 12 of 2001

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 class 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.

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

- (a) in the case of a fine, the sum of fifteen thousand dollars; and
- (b) in the case of a period of imprisonment, the term of two years.

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

- (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

84. (1) A person commits an offence if he 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 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.

False or misleading representations, statements, reports or returns.

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.

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 has been convicted.

Order to comply.

Final Provisions

87. The transitional provisions specified in Schedule 2 shall have effect.

88. (1) The Insurance Act, 1994 is repealed.

Repeals and amendments.

(2) The enactments set out in Column 2 of Schedule 3 to this Act are repealed or amended to the extent specified in Column 3.

No. 15 of 1994
Schedule 3

(3) The subsidiary legislation enacted under the Insurance Act, 1994 shall, until revoked, continue to have force as if they were enacted under this Act and shall be construed with such modification as may be necessary to make them consistent with the provisions of this Act.

SCHEDULE 1

[Section 85]

OFFENCES AND PENALTIES

| COLUMN 1 | COLUMN 2 | COLUMN 3 | COLUMN 4 | COLUMN 5 |
|---------------------------------|--|-----------------|--------------------------|----------------------|
| Section of Act creating offence | General nature of offence | Method of trial | Penalty (corporate body) | Penalty (individual) |
| 4(6) | Person carrying on, or holding himself out as carrying on, insurance business without a licence | Summary | \$30,000 | \$20,000 |
| | | Indictment | \$75,000 | \$50,000 |
| 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 |
| 5(4) | Licensed insurance agent acting for unlicensed insurer | Summary | \$25,000 | \$15,000 |
| | | Indictment | \$50,000 | \$30,000 |
| 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 |
| 5(4) | Licensed insurance broker introducing a client resident in Virgin Islands to, or bringing client together | Summary | \$25,000 | \$15,000 |
| | | Indictment | \$50,000 | \$30,000 |

| | | | | |
|-------|---|------------|----------|----------|
| | with, an unlicensed insurer | | | |
| 5(4) | Person knowingly entering into insurance contract with an unlicensed insurer to insure specified risk | Summary | \$25,000 | \$15,000 |
| | | Indictment | \$50,000 | \$30,000 |
| 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 |
| 12(6) | BVI insurer failing to notify Commission of non-compliance with minimum solvency margin requirement | Summary | \$50,000 | \$30,000 |
| | | Indictment | \$30,000 | \$20,000 |
| 13(5) | BVI insurer making distribution in contravention of section 13(3) | Summary | \$30,000 | \$20,000 |
| | | Indictment | \$50,000 | \$30,000 |
| 13(5) | BVI insurer making distribution within five years of grant of licence | Summary | \$30,000 | \$20,000 |
| | | Indictment | \$50,000 | \$30,000 |
| 14(3) | BVI insurer acquiring or | Summary | \$30,000 | \$20,000 |

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| | dealing in its own shares, etc. contrary to section 14(1)(a) | Indictment | \$50,000 | \$30,000 |
| 14(3) | BVI insurer entering into a guarantee or providing security contrary to section 14(1)(b) | Summary | \$30,000 | \$20,000 |
| | | Indictment | \$50,000 | \$30,000 |
| 15(4)(a) | Licensed insurer failing to comply with section 15 or regulations with respect to the maintenance of assets in the Virgin Islands | Summary | \$30,000 | \$15,000 |
| 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 | Summary | \$30,000 | \$20,000 |

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| | provide notice to Commission that director or senior officer has ceased to hold office | | | |
| 19(7) | Foreign insurer failing to provide notice to Commission of appointment of director or senior officer | Summary | \$30,000 | \$20,000 |
| 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 | Summary | \$20,000 | \$10,000 |

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| | failing to provide notice to Commission of change in person owning or holding significant interest | | | |
| 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 |
| 23(7) | Licensed insurance manager terminating its | Summary | \$40,000 | \$30,000 |

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| | agreement to act as insurance manager for licensed insurer without giving Commission require notice | | | |
| 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 long- term insurer failing to have actuary | Summary | \$20,000 | \$10,000 |
| 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 | \$30,000 | \$20,000 |
| | | Indictment | \$50,000 | \$30,000 |
| 32(2) | BVI insurer that | Summary | \$25,000 | \$10,000 |

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| | is a long-term insurer breaching an applicable provision of the Regulatory Code relating to the segregation, control, allocation and application of an insurer's funds | | | |
| 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 out as carrying on, business as an insurance manager, an insurance intermediary or a loss adjuster without a licence | Summary | \$30,000 | \$20,000 |
| | | Indictment | \$75,000 | \$50,000 |
| 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 | Summary | \$40,000 | \$30,000 |

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| | non-compliance with section 41(1) | | | |
| 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 |
| 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 | Summary | \$30,000 | \$20,000 |

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| | for insurer not stated on licence | | | |
| 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 | \$30,000 | \$20,000 |
| | | Indictment | \$75,000 | \$50,000 |
| 49(3) | Licensed insurance intermediary receiving, holding or dealing with premium without authority of insurer | Summary | \$30,000 | \$20,000 |
| | | Indictment | \$75,000 | \$50,000 |
| 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) | Summary | \$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 |

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| 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 |
| 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 | Summary | \$20,000 | \$10,000 |

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| | notice issued under section 69(2) | | | |
| 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 |
| 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 |

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| 75(3) | Person making representation contrary to section 75(1)(b) | Summary | \$30,000 | \$20,000 |
| | | Indictment | \$50,000 | \$30,000 |
| 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) | 1. In section 135(2)(a), delete "Insurance Act, 1994" and substitute "Insurance Act, 2008". |
| 2. | Financial Services Commission Act 2001 (no. 12 of 2001) | 1. In Schedule 2, Part 1, delete "Insurance Act, 1994" and substitute "Insurance Act, 2008". |
| 3. | Insolvency Act 2003 (no. 5 of 2003) | <ol style="list-style-type: none"> 1. In section 2, <ol style="list-style-type: none"> (a) in the definition of "Insurance Act", delete "Insurance Act, 1994" and substitute "Insurance Act, 2008"; (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". 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 ." |

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| | | <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>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> |
| 4. | Insolvency Rules 2005 (SI 2005 No. 45) | 1. In rule 3(b), delete “Insurance Act, 1994” and substitute “Insurance Act, 2008”. |

Passed by the House of Assembly this 31st day of January, 2008.

(Sgd.) ROY HARRIGAN,
Speaker.

(Sgd.) ALVA Mc CALL,
Clerk of the House of Assembly.