

No. 6 of 2002

VIRGIN ISLANDS
INSURANCE (AMENDMENT) ACT, 2002
ARRANGEMENT OF SECTIONS

Section

1. Short title and commencement.
2. Interpretation.
3. Part IIIA inserted

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Insurance (Amendment) Act, 2002

Virgin Islands

I Assent

Francis J. Savage,
CMG, LVO, OBE
Governor
16th September, 2002

VIRGIN ISLANDS

No. 6 of 2002

An Act to amend the Insurance Act, No. 15 of 1994.

[Gazetted 3rd October, 2002]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and
commencement.

1. This Act may be cited as the Insurance (Amendment) Act, 2002 and shall come into force on such date as the Governor may, by Proclamation published in the Gazette, appoint.

Interpretation.
No. 15 of 1994

2. In this Act, “the principal Act” means the Insurance Act, 1994.

Part IIIA inserted.

3. The principal Act is amended by inserting after section 30, the following Part:

“PART IIIA SEGREGATED PORTFOLIO COMPANIES

Definitions. **30A.** In this Part

Cap. 285
Cap. 291

“insurance company” means an insurer that is incorporated under the Companies Act or the International Business Companies Ordinance;

“segregated portfolio company” means a company which is registered under section 30B(1);

“segregated portfolio shares” means shares issued under section 30E(1);

“segregated portfolio share capital” means the proceeds of the issue of segregated portfolio shares;

“segregated portfolio dividend” means a dividend paid under section 30E(3);

“receivership order” means an order made under section 30M(1);

“receiver” means the person specified in a receivership order for the purposes specified in section 30M(3).

Licensing of insurers as segregated portfolio companies.

30B. (1) Subject to subsection (3), the Commission may, upon an application made

(a) at any time by an insurance company, license the insurance company as a segregated portfolio company;

(b) at the same time as an application is made to incorporate a company for the object and purpose of carrying on insurance business, license the company, upon its incorporation, as a segregated portfolio company.

(2) An application under subsection (1) shall be accompanied by

(a) an adequate business plan for the proposed segregated portfolio company and for each proposed segregated portfolio of that company; and

(b) such fee as may be prescribed together with any other fee that may then be payable.

(3) No company shall be licensed as a segregated portfolio company unless

- (a) the Commission is satisfied that it has or has available to it the knowledge and expertise necessary for the proper management of segregated portfolios; and
- (b) prior approval for such licensing has been granted in writing by the Commission.

(4) A segregated portfolio company shall, at the same time and in the same manner that it pays the renewal fee referred to in section 17(d), pay such fee in respect of each segregated portfolio as may be prescribed.

Designation.
Cap. 285 **30C.** Without prejudice to the provisions of the Companies Act, a segregated portfolio company shall include in its name the letters “SPC” or the words “Segregated Portfolio Company”.

Segregated
portfolios. **30D.** (1) Subject to subsections (2) and (3), a segregated portfolio company may create one or more segregated portfolios in order to segregate the assets and liabilities of the company held within or on behalf of a segregated portfolio from the assets and liabilities of the company held within or on behalf of any other segregated portfolio of the company or the assets and liabilities of the company which are not held within or on behalf of any segregated portfolio of the company.

(2) A segregated portfolio company that is desirous of creating a segregated portfolio shall apply to the Commission to do so and shall submit together with its application

- (a) an adequate business plan for the proposed segregated portfolio; and
- (b) the prescribed fee.

(3) No segregated portfolio shall be created unless prior approval to do so has been granted in writing by the Commission, and such approval may

be granted at the same time that the approval under section 30B(3)(b) is granted.

(4) A segregated portfolio company shall be a single legal entity and any segregated portfolio of or within a segregated portfolio company shall not constitute a legal entity separate from the company.

(5) Each segregated portfolio shall be separately identified or designated and shall include in such identification or designation the words “Segregated Portfolio”.

Shares and dividends.

30E. (1) A segregated portfolio company may create and issue shares in one or more classes (including different classes or series relating to the same segregated portfolio), the proceeds of the issue of which shall be included in the segregated portfolio assets of the segregated portfolio in respect of which the segregated portfolio shares are issued.

(2) The proceeds of the issue of shares, other than segregated portfolio shares, shall be included in the segregated portfolio company’s general assets.

(3) A segregated portfolio company may pay a dividend in respect of segregated portfolio shares of any class or series and whether or not a dividend is declared on any other class or series of segregated portfolio shares or any other shares, except that where a loss is declared in respect of any of its segregated portfolios, the power to pay dividends shall be subject to such restrictions as may be prescribed.

(4) Segregated portfolio dividends shall be paid on segregated portfolio shares by reference only to the accounts of and to and out of the segregated portfolio assets and liabilities of the segregated portfolio in respect of which the segregated portfolio shares were issued and otherwise in accordance with the rights of such shares.

Company to act on behalf of portfolios.

30F. (1) Any act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement which is to be binding on or to enure to the benefit of a segregated portfolio or portfolios shall be executed by the segregated portfolio company for and on behalf of such segregated portfolio or portfolios which shall be identified or specified, and where in writing it shall be indicated that such execution is in the name of, or by, or for the account of, such segregated portfolio or portfolios.

(2) If a segregated portfolio company is in breach of subsection (1)

(a) the directors shall, notwithstanding any provisions to the contrary in the company's articles or in any contract with such company or otherwise, incur personal liability for the liabilities of the company and the segregated portfolio under the act, matter, deed, agreement, contract, instrument or arrangement that was executed; and

(b) unless they were fraudulent, reckless, negligent or acted in bad faith, the directors shall have a right of indemnity in the case of a matter on behalf of or attributable to a segregated portfolio or portfolios against the assets of that portfolio or portfolios and, in the case of a matter not on behalf of or attributable to any segregated portfolio, against the general assets of such company.

(3) Notwithstanding the provisions of subsection (2)(a), the court may relieve a director of all or part of his personal liability thereunder if he satisfies the court that he ought fairly to be so relieved because

(a) he was not aware of the circumstances giving rise to his

liability and, in being not so aware, he was not fraudulent, reckless or negligent, and did not act in bad faith; or

- (b) he expressly objected, and exercised such rights as he had as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his liability.

(4) Where, pursuant to the provisions of subsection (3), the court relieves a director of all or part of his personal liability under subsection (2)(a), the court may order that the liability in question shall instead be met from such of the segregated portfolio or general assets of the segregated portfolio company as may be specified in the order.

(5) Any provision in the articles of a segregated portfolio company, and any other contractual provision under which the segregated portfolio company may be liable, which purports to indemnify directors in respect of conduct which would otherwise disentitle them to an indemnity by virtue of subsection (2)(b), shall be void.

Assets. **30G.** (1) The assets of a segregated portfolio company shall be either segregated portfolio assets or general assets.

(2) The segregated portfolio assets comprise the assets of the segregated portfolio company held within or on behalf of the segregated portfolios of the company.

(3) The general assets of a segregated portfolio company comprise the assets of the company which are not segregated portfolio assets.

(4) The assets of a segregated portfolio comprise

(a) assets representing the share capital and reserves attributable to the segregated portfolio; and

(b) all other assets attributable to or held within the segregated portfolio.

(5) For the purposes of subsection (4), “reserves” includes retained earnings, capital reserves and share premiums.

(6) It shall be the duty of the directors of a segregated portfolio company to establish and maintain (or cause to be established and maintained) procedures

(a) to segregate, and keep segregated, portfolio assets separate and separately identifiable from general assets;

(b) to segregate, and keep segregated, portfolio assets of each segregated portfolio separate and separately identifiable from segregated portfolio assets of any other segregated portfolio; and

(c) where relevant, to apportion or transfer assets and liabilities between segregated portfolios, or between segregated portfolios and general assets of the company.

Segregation of assets. **30H.** Segregated portfolio assets

(a) shall only be available and used to meet liabilities to the creditors of the segregated portfolio company who are creditors in respect of that segregated portfolio and who shall thereby be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio for such purposes; and

- (b) shall not be available or used to meet liabilities to, and shall be absolutely protected from, the creditors of the segregated portfolio company who are not creditors in respect of that segregated portfolio, and who accordingly shall not be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio.

Segregation of liabilities. **30I.** (1) Where a liability of a segregated portfolio company to a person arises from a matter, or is otherwise imposed, in respect of or attributable to a particular segregated portfolio

- (a) such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to
 - (i) firstly the segregated portfolio assets attributable to such segregated portfolio;
 - (ii) secondly the segregated portfolio company's general assets, to the extent that the segregated portfolio assets attributable to such segregated portfolio are insufficient to satisfy the liability and to the extent that the assets attributable to such segregated portfolio company's general assets exceed any minimum capital amounts lawfully required by the Commission; and
- (b) such liability shall not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to the segregated portfolio assets attributable to any other segregated portfolio.

(2) Where a liability of a segregated portfolio company to a person

(a) arises otherwise than from a matter in respect of a particular segregated portfolio or particular segregated portfolios, or

(b) is imposed otherwise than in respect of a particular segregated portfolio or particular segregated portfolios,

such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the company's general assets.

General liabilities and assets.

30J. (1) Liabilities of a segregated portfolio company not attributable to any of its segregated portfolios shall be discharged from the company's general assets.

(2) Income, receipts and other property or rights of, or acquired by, a segregated portfolio company not otherwise attributable to any segregated portfolio shall be applied to and comprised in the company's general assets.

Solvency of segregated portfolios.

30K. (1) Without prejudice to section 15, a licence shall not be granted or renewed in respect of a segregated portfolio company unless the Commission is satisfied that the total value of the assets of each segregated portfolio exceeds the total amount of its liabilities by at least the prescribed amount.

(2) For the purposes of this section, the total value of the assets, and the total amount of the liabilities, of a segregated portfolio shall be determined on the prescribed basis.

Accounting

30L. (1) One set of accounts shall be prepared and audited in respect of a segregated portfolio company pursuant to section 22(1)(a).

(2) The audited accounts of a segregated portfolio company prepared pursuant to section 22(1)(a) shall take into account the segregated nature of the company and shall include an explanation of

- (a) the nature of the company;
- (b) how the segregation of the assets and liabilities of the company impacts upon members of the company and persons with whom the company transacts; and
- (c) the effect that any existing deficit in the assets of a segregated portfolio of the company has on the general assets of the company.

(3) Notwithstanding paragraph (b) of section 22(1), the statement required by that paragraph to be delivered to the Commission shall, in relation to a segregated portfolio company, be delivered within six months of the end of each financial year and include, in addition to the requirements of section 22(1)(b)(i) to (iv),

- (a) a margin of solvency calculation to show whether the company is in compliance with the provisions of section 15; and
- (b) a margin of solvency calculation to show
 - (i) whether the company is in compliance with the provisions of section 30K; and
 - (ii) where applicable, the extent to which the net worth of the general assets of the company is applied to the requirements of each segregated portfolio.

Receivership orders. **30M.** (1) Subject to the provisions of this section, if in relation to a segregated portfolio company the court is satisfied

- (a) that the segregated portfolio assets attributable to a particular segregated portfolio of the company (when account is taken of the company's general assets, unless there are no creditors in respect of that segregated portfolio entitled to have recourse to the company's general assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that segregated portfolio, and
- (b) that the making of an order under this section would achieve the purposes set out in subsection (3),

the court may make a receivership order under this section in respect of that segregated portfolio.

(2) A receivership order may be made in respect of one or more segregated portfolios.

(3) A receivership order shall direct that the business and segregated portfolio assets of or attributable to a segregated portfolio shall be managed by a receiver specified in the order for the purposes of

- (a) the orderly closing down of the business of or attributable to the segregated portfolio; and
- (b) the distribution of the segregated portfolio assets attributable to the segregated portfolio to those entitled to have recourse thereto.

(4) A receivership order

- (a) may not be made if the segregated portfolio company is in winding up; and
- (b) shall cease to be of effect upon commencement of the winding up of the segregated portfolio company, but without prejudice to prior acts of the receiver or his agents.

(5) No resolution for the voluntary winding up of a segregated portfolio company of which any segregated portfolio is subject to a receivership order shall be effective without leave of the court.

Application for receivership orders.

30N. (1) An application for a receivership order in respect of a segregated portfolio of a segregated portfolio company may be made by

- (a) the company;
- (b) the directors of the company;
- (c) any creditor of the company in respect of that segregated portfolio;
- (d) any holder of segregated portfolio shares in respect of that segregated portfolio; or
- (e) the Commission.

(2) The court, on hearing an application

- (a) for a receivership order; or
- (b) for leave, pursuant to section 30M(5), for a resolution for voluntary winding up,

may make an interim order or adjourn the hearing, conditionally or unconditionally.

(3) Notice of an application to the court for a receivership order in respect of a segregated

portfolio of a segregated portfolio company shall be served upon

- (a) the company,
- (b) the Commission, and
- (c) such other persons, if any, as the court may direct,

each of whom shall be given an opportunity of making representations to the court before the order is made.

Administra-
tion of
receivership
orders.

300. (1) The receiver of a segregated portfolio

- (a) may do all such things as may be necessary for the purposes set out in section 30M(3); and
- (b) shall have all the functions and powers of the directors in respect of the business and segregated portfolio assets of, or attributable to, the segregated portfolio.

(2) The receiver may at any time apply to the court

- (a) for directions as to the extent or exercise of any function or power;
- (b) for the receivership order to be discharged or varied; or
- (c) for an order as to any matter acting in the course of his receivership.

(3) In exercising his functions and powers the receiver shall be deemed to act as agent of the segregated portfolio company, and shall not incur personal liability except to the extent that he is fraudulent, reckless, negligent, or acts in bad faith.

(4) Any person dealing with the receiver in good faith is not concerned to inquire whether the receiver is acting within his powers.

(5) When an application has been made for, and during the period of operation of, a receivership order

- (a) no proceedings may be instituted or continued by or against the segregated portfolio company in relation to the segregated portfolio in respect of which the receivership order was made, and
- (b) no steps may be taken to enforce any security or in the execution of legal process in respect of the business or segregated portfolio assets of, or attributable to, the segregated portfolio in respect of which the receivership order was made,

except by leave of the court, which may be conditional or unconditional.

(6) During the period of operation of a receivership order,

- (a) the functions and powers of the directors shall cease in respect of the business of, or attributable to, and the segregated portfolio assets of or attributable to, the segregated portfolio in respect of which the order was made; and
- (b) the receiver of the segregated portfolio shall be entitled to be present at all meetings of the segregated portfolio and to vote at such meetings, as if he were a director of the segregated portfolio company, in respect of the general assets of the company, unless there are no creditors in respect of that

segregated portfolio entitled to have recourse to the company's general assets.

Discharge of receivership orders. **30P.** (1) The court shall not discharge a receivership order unless it appears to the court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

(2) The court, on hearing an application for the discharge or variation of a receivership order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

(3) Upon the court discharging a receivership order in respect of a segregated portfolio or a segregated portfolio company on the ground that the purpose for which the order was made has been achieved or substantially achieved, the court may direct that any payment made by the receiver to any creditor of the company in respect of that segregated portfolio shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that segregated portfolio, and the creditor's claims against the company in respect of that segregated portfolio shall be thereby deemed extinguished.

Remuneration of receiver. **30Q.** The remuneration of a receiver and any expenses properly incurred by him shall be payable, in priority to all other claims, from the segregated portfolio assets attributable to the segregated portfolio in respect of which the receiver was appointed but not from any other assets of the segregated portfolio company.”

Passed by the Legislative Council this 20th day of August, 2002.

REUBEN VANTERPOOL
Speaker.

OLEANVINE MAYNARD
Ag. Clerk of the Legislative Council.