

INSURANCE ACT 1986

(Chapter 24)

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GENERAL NOTE: The maximum fines in this Act are as increased by the Criminal Justice (Penalties, Etc.) Act 1993 s 1.

AN ACT

to make fresh provision for the regulation of persons carrying on insurance business; and for connected purposes.

PART I **ADMINISTRATION, AUTHORISATION, ETC.**

Administration

Insurance and Pensions Authority

- 1** (1) The Insurance and Pensions Authority (in this Act referred to as 'the Authority') shall exercise the functions conferred on it by this Act.
(2) The Authority shall supervise the administration of this Act.
(3) Schedule 1 of the Retirement Benefits Schemes Act 2000 shall have effect in relation to the Authority and its functions under this Act.
 [S 1 substituted by Retirement Benefits Schemes Act 2000 Sch 2.]

Insurance Supervisor

- 2** (1) [Subs (1) repealed by Retirement Benefits Schemes Act 2000 Sch 3.]
(2) The Supervisor shall act under the authority of the Authority for the purposes of this Act.
 [Subs (2) amended by SD610/96.]
(3) Subject to any directions issued by the Authority, the Supervisor-
(a) is charged with the general administration of this Act; and
(b) shall exercise such other functions as are conferred on the Supervisor by this Act.

Restriction on Insurance Businesses

Restriction on carrying on an insurance business

- 3** (1) Subject to subsection (3), no person shall carry on, nor hold himself out as carrying on, an insurance business in or from the Island unless authorised to do so under section 6.
(2) Without prejudice to subsection (1), but subject to subsection (3), no company shall carry on, nor hold itself out as carrying on, an insurance business outside the Island unless authorised to do so under section 6.
(3) Subsections (1) and (2) shall not apply to-
(a) anything done by or on behalf of the Government;
(b) a person who is the holder of a permit issued under section 25;
(c) insurance business carried on by any underwriter or association of underwriters in or through an insurance exchange approved under section 26;

- (d) any person who is, or any class of insurance business which is exempted by regulations.
- (4) A person who contravenes subsection (1) or (2) is guilty of an offence.

Authorisation

- Application for authorisation** **4**
- (1) Applications for authorisation to carry on an insurance business shall be made in writing to the Supervisor.
 - (2) An applicant shall provide the Supervisor with such documents and information as may be-
 - (a) prescribed; or
 - (b) required by the Supervisor.

- Circumstances in which authorisation will not be granted** **5**
- The Supervisor shall not authorise an applicant under section 6 if the applicant-
- (a) is not a company; or
 - (b) does not satisfy the Supervisor that the controller, directors and chief executive (if any) of the applicant are fit and proper persons; or
 - (c) does not satisfy the Supervisor that it has-
 - (i) management in the Island; or
 - (ii) appointed a registered insurance manager in the Island, with adequate experience of the insurance business carried on; or
 - (d) does not comply with the criteria contained in directions issued by the Authority.

- Authorisation** **6**
- (1) In relation to every application for authorisation, the Supervisor shall, on behalf of the Authority-
 - (a) authorise the applicant in writing to carry on, subject to such conditions as he may impose, an insurance business; or
 - (b) refuse the application.
 - (2) Where an authorisation has been granted under subsection (1) the Supervisor may, with the concurrence of the Authority, at any time-
 - (a) make such authorisation subject to conditions;
 - (b) vary or revoke any condition.
 - (3) The Supervisor shall give written notice to the authorised insurer of any decision to exercise the powers conferred by subsection (2) together with a statement of reasons for the decision and, except where the Authority is of the opinion that urgent action is necessary, such notice shall be served on the insurer not less than 8 weeks before such powers are exercised.
 - (4) Subsection (3) shall not apply if the powers are exercised with the consent of the insurer concerned.
 - (5) Any authorised insurer which contravenes any condition imposed under this section is guilty of an offence.

- Fees** **7**
- (1) The prescribed fees shall be payable-
 - (a) by the applicant in respect of any grant of authorisation; and
 - (b) by each authorised insurer annually on such date in each year as may be prescribed,as the case may require.
 - (2) Any unpaid fee under subsection (1) (b) may be sued for by the Supervisor as a civil debt due to him.

- Register of authorised insurers**
- 8** (1) The Supervisor shall keep a register of authorised insurers in such form and containing such particulars as may be prescribed.
- (2) The register shall be kept at the office of the Supervisor or such other place as may be prescribed.
- (3) Any person shall be entitled to inspect the register during ordinary office hours and to take copies of any entry therein.
- Withdrawal of authorisation in respect of new business**
- 9** (1) The Supervisor may at any time, with the concurrence of the Authority, withdraw any authorisation, but only to the extent that the authorised insurer concerned shall cease to be authorised to effect new contracts of insurance.
- (2) Withdrawal of authorisation under this section shall not prevent an insurer from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.
- (3) The Supervisor shall give written notice to the authorised insurer concerned of any decision to withdraw an authorisation together with a statement of reasons for the decision and, except where the Authority is of the opinion that urgent action is necessary, the notice shall be served on the insurer not less than 8 weeks before the withdrawal of authorisation.
- (4) Subsection (3) shall not apply where the authorised insurer consents to the withdrawal of authorisation.
- (5) Where any authorisation has been withdrawn under this section, the authorised insurer concerned shall, if required by the Supervisor, give notice of the withdrawal in such manner and to such persons as the Supervisor may require.
- Review of decisions**
- 10** (1) The insurer on whom a notice is served under section 6(3) or 9(3) may, within 6 weeks from the date of service of the notice, make written or oral representations to the Treasury.
- (2) In such case the Treasury shall consider any representations made in accordance with subsection (1).
- (3) The Treasury shall, before the expiry of 8 weeks from the date of service of the notice, either confirm, vary or reverse the decision specified in the notice and shall-
- (a) issue a direction to the Authority accordingly; and
- (b) notify the insurer of its decision.
- (4) The Authority shall comply with a direction given by the Treasury under subsection (3)(a).
- (5) The decision of the Treasury under this section shall be final and conclusive.

PART II

RECORDS, ACCOUNTS, SOLVENCY, ETC.

- Records to be kept in Island**
- 11** (1) Notwithstanding section 1(6) to (8) of the Companies Act 1982, every authorised insurer shall cause its business records to be kept and maintained in the Island at such place as may be approved by the Supervisor.
- (2) Any authorised insurer which fails to comply with subsection (1) shall be guilty of an offence.
- (3) In this section, 'business records' includes the accounting, policy and claims records of the insurer.
- Annual accounts**
- 12** (1) In their application to authorised insurers, the provisions of the Companies Acts 1931 to 1982 relating to accounts shall have effect subject to this Act and to regulations made under this Act.

- (2) A copy of the audited annual accounts shall be produced to the Supervisor within 21 days after the date of the meeting at which the accounts were approved by the board of directors and in any event within 6 months after the close of the year to which they relate.
- (3) In this section, 'annual accounts' means-
 - (a) the revenue or fund account for the year; and
 - (b) the profit and loss account for the year or, in the case of an insurer not trading for profit, an income and expenditure account for the year; and
 - (c) the balance sheet as at the end of the year, in such forms as may be prescribed.
- (4) Such statements, reports, certificates and information as may be required by regulations made under this Act, or required by any other enactment to be annexed or attached to the annual accounts for any purpose shall be produced to the Supervisor at the same time as the annual accounts are submitted.
- (5) The Supervisor may, with the concurrence of the Authority, exempt in writing an insurer specified in the exemption from any provision contained in regulations made under this Act relating to accounts.
- (6) Subject to any exemption granted under subsection (5), any authorised insurer which fails to comply with subsection (2) or (4) shall be guilty of an offence.

Appointment of actuary

- 13**
- (1) Any authorised insurer carrying on long term business shall appoint as actuary to the insurer a person who is qualified in accordance with subsection (2).
 - (2) A person shall be qualified for appointment under subsection (1) if-
 - (a) he-
 - (i) is a Fellow of the Institute of Actuaries;
 - (ii) is a Fellow of the Faculty of Actuaries; or
 - (iii) satisfies the Authority that he has some other actuarial qualification of similar standing; and
 - (b) the Authority is satisfied that he has experience that fits him to undertake the functions of an actuary under this Act.

[Subs (2) substituted by Insurance (Amendment) Act 1993 s 1.]
 - (3) Within 2 weeks of the making of any appointment under subsection (1), the insurer shall notify the Supervisor in writing of the appointment.
 - (4) Whenever an appointment under subsection (1) comes to an end the insurer shall-
 - (a) within 2 weeks, notify the Supervisor in writing of the termination of the appointment and the reason for the termination; and
 - (b) within 4 weeks, make a new appointment.
 - (5) If, on the expiry of the period referred to in subsection (4)(b), the insurer has failed to make a new appointment, it shall not effect any new long term insurance contracts until a new appointment is made.
 - (6) In subsection (5), 'long term insurance contracts' means contracts, the effecting or carrying out of which constitutes long term business.
 - (7) Any authorised insurer that contravenes subsection (5) shall be guilty of an offence.

Resignation and removal of auditors

- 14**
- (1) An authorised insurer shall give notice in writing to the Supervisor immediately it receives notice of any resolution intended to be moved at the insurer's annual general meeting to appoint as auditor a person other than the retiring auditor or providing expressly that a retiring auditor shall not be appointed.
 - (2) Where, for any reason, the appointment of an auditor comes to an end the insurer and the auditor shall, not more than 14 days after the termination, each give notice in writing to the Supervisor of the reasons for the termination.

**Assets
attributable to
long term
business**

- 15** (1) Every authorised insurer carrying on long term business shall keep its accounts in respect of such business separate from any accounts kept in respect of any other business.
- (2) All receipts of such an insurer's long term business shall be carried to, and form part of, a special fund with an appropriate name (in this Act referred to as a 'long term business fund').
- (3) Such an insurer shall maintain books of account and other records such that-
- (a) the assets in its long term business fund; and
- (b) the liabilities of its long term business, can be readily identified at any time.
- (4) Subject to subsection (5), the assets in such an insurer's long term business fund shall be applicable only for the purposes of that business notwithstanding any arrangement for its subsequent repayment out of receipts of business other than long term business.
- (5) The restriction imposed by subsection (4) shall not apply to so much of those assets as are certified by the actuary to the insurer to exceed the extent (as so certified) of the liabilities of the insurer's long term business.
- (6) No transfer of assets from the long term business fund, other than a transfer in accordance with subsection (4), shall be effected without-
- (a) the authority of a resolution of the directors of the insurer; and
- (b) the written consent of the actuary to the insurer.
- (7) Any mortgage, charge or lien shall be void to the extent to which it contravenes subsection (4).
- (8) No such insurer shall declare or pay a dividend to any person other than a policy-holder unless-
- (a) at a date within the year immediately preceding the declaration of the dividend, the value of the assets in its long term business fund as certified by the actuary to the insurer, exceeds the extent (as so certified) of the liabilities of the insurer's long term business; and
- (b) the amount of such dividend shall not be such as to cause the margin of solvency of the insurer to fall below the amount required under section 17.
- (9) Any insurer which contravenes any of subsections (1) to (4), (6) or (8) is guilty of an offence.

**Transfer of
long term
business**

- 16** Schedule 2 shall have effect for the purposes of the transfer of the long term business carried on by an insurer to another insurer.

**Solvency
margins**

- 17** (1) Every authorised insurer shall maintain a margin of solvency of such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section.
- (2) If the margin of solvency of an authorised insurer falls below such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section, the insurer shall at the request of the Supervisor submit to him a short-term financial scheme within 30 days of the request, or such longer period as the Supervisor may permit, and shall, if the Supervisor considers the scheme (or the scheme as previously modified) inadequate, propose modifications to it.
- (3) Where an insurer is required to maintain separate margins in respect of long term and general business, subsection (2) shall have effect as if any reference to the margin of solvency of the insurer is a reference to the aggregate of those margins.
- (4) A scheme submitted under subsection (2) may include proposals for-
- (a) the appointment of a special manager acceptable to the Supervisor, and
- (b) the discontinuance, either in whole or in part, of the insurer's business.

- (5) An insurer shall give effect to any scheme accepted by the Supervisor.
- (6) If an authorised insurer is unable or fails to submit a scheme which is acceptable to the Supervisor, the insurer shall be deemed for the purposes of section 162 of the Companies Act 1931, to be unable to pay its debts.

PART III

REGULATION OF AUTHORISED INSURERS

Restriction of business to insurance

- 18** An authorised insurer shall not carry on any activities, in the Island or elsewhere, otherwise than in connection with or for the purpose of its insurance business.

Management

- 19** Every authorised insurer shall have-
- (a) management in the Island; or
 - (b) appointed a registered insurance manager in the Island, with adequate experience of the insurance business carried on.

Approval of directors, controllers, etc

- 20** (1) No authorised insurer shall appoint a person as director or chief executive of that insurer, nor shall a person become controller of, or insurance manager for, an authorised insurer, unless-
- (a) a written notice containing such particulars as may be prescribed is served on the Supervisor by-
 - (i) in the case of a director or chief executive, the insurer; or
 - (ii) in the case of a controller or insurance manager, the proposed controller or manager; and
 - (b) either-
 - (i) the Supervisor has, before the expiration of the period of 8 weeks beginning with the date of service of the notice, notified it or, as the case requires, him in writing that the Supervisor has no objection, or
 - (ii) that period has elapsed without the Supervisor having served a written notice of objection.
- (2) A notice of objection under subsection (1) may be served on the ground that it appears to the Supervisor that the person concerned is not a fit and proper person to be a director, chief executive, controller of, or insurance manager for, the insurer, and the Supervisor shall not be obliged to disclose to any person any particulars of the ground on which he served the notice of objection.

Notice of cessation as controller

- 20A** (1) Where a person ceases to be the controller of an authorised insurer, a written notice containing such particulars as may be prescribed shall be served on the Supervisor within 14 days of such cessation by-
- (a) the insurer; and
 - (b) the person ceasing to be the controller.
- (2) A person who fails to comply with subsection (1) shall be guilty of an offence.
- (3) In any proceedings for an offence under subsection (1) the insurer shall have a defence if it satisfies the court that it did not know that the person concerned had ceased to be the controller.

[S 20A inserted by Insurance (Amendment) Act 1993 s 2.]

Power to obtain information

- 21** (1) The Supervisor may require an authorised insurer to provide him, at specified times or intervals, with information about specified matters relating to the insurer being, if he so requires, information verified in a specified manner or

- provided in a specified form.
- (2) Where by virtue of subsection (1) the Supervisor has required an authorised insurer to provide information about specified matters and the insurer has failed to provide that information, the Supervisor may require the insurer's actuary, auditor, insurance manager or banker to provide such information about those matters as is within their knowledge.
 - (3) The Supervisor may require an authorised insurer to produce, at such time and place as he may specify, such documents as he may specify.
 - (4) Where by virtue of subsection (3) the Supervisor has power to require the production of any document from any authorised insurer, the Supervisor shall have the like power to require the production of that document from any person who appears to him to be in possession of it; but where any person from whom such production is required claims a lien on any document produced by him, the production shall be without prejudice to the lien.
 - (5) Any power conferred by virtue of subsection (3) or (4) to require an authorised insurer or other person to produce any document shall include a power to take copies of it or extracts from it.
 - (6) In this section and in section 22, references to the Supervisor shall include any person appointed by the Authority in writing.
 - (7) Any person who fails to furnish information or to produce any document when required to do so by the Supervisor in accordance with this section, is guilty of an offence.
 - (8) The powers conferred by this section and section 22 may be exercised in relation to an insurer whose authorisation has been withdrawn or surrendered, but shall not be exercised after that insurer has ceased to have any liability in respect of any contract of insurance which was entered into at a time when it was so authorised.

Inspection and investigation

- 22** (1) The Supervisor may investigate the transactions and inspect the books, accounts and other documents of any authorised insurer.
- (2) The Supervisor shall have every such power of entry and access as may be necessary for the purposes of subsection (1), and he may take possession of all such books, accounts and documents as, and for so long as, may be necessary for those purposes.
- (3) The Supervisor shall exercise his right of entry and access under subsection (2) only during reasonable hours.
- (4) The Supervisor may take copies of all books, accounts and documents in his possession for the purposes of an inspection and investigation under this section.
- (5) Any person who wilfully obstructs the Supervisor acting in the execution of his powers under subsection (1), (2) or (3) is guilty of an offence.
- (6) The powers provided by this section may be exercised in relation-
- (a) to any person who is, on reasonable grounds, suspected by the Supervisor of carrying on or, of having carried on, insurance business contrary to this Act; or
 - (b) to a person whose authorisation or permit has expired or has been revoked or surrendered, but only in respect of insurance business carried on by that person before such expiry, revocation or surrender.

[Subs (6) added by Insurance (Amendment) Act 1993 s 3.]

Winding up of insurers

- 23** Schedule 3 shall have effect in relation to the insolvency and winding up of insurers.

[S 23 amended by Insurance (Amendment) Act 1993 s 4.]

Confidential information

- 24** (1) Any person who communicates, or attempts to communicate, any information relating to the affairs of a particular policyholder of an insurer obtained by him by virtue of the powers conferred by section 21 or 22 except-
- (a) in so far as it is necessary for the discharge of his functions under this Act; or
 - (b) with the consent of such policyholder,
- shall be guilty of an offence.
- (2) Without prejudice to subsection (1), any person who communicates, or attempts to communicate, any information relating to the affairs of any insurer obtained by him by virtue of the powers conferred by section 21 or 22 except-
- (a) insofar as it is necessary for the discharge of his functions under this Act; or
 - (b) with the consent of such insurer; or
 - (bb) to the Financial Supervision Commission; or
[Para (bb) inserted by Investment Business Act 1991 Sch 2.]
 - (c) to authorities which appear to the Supervisor to exercise in a country or territory outside the Island functions corresponding to those of the Authority and the Supervisor; or
 - (d) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or otherwise,
- shall be guilty of an offence.

Publication of information and advice

- 24A** (1) The Supervisor may publish information or give advice, or arrange for the publication of information or the giving of advice, in such form and manner as he considers appropriate with respect to-
- (a) the operation of this Act and any public document made under it, including in particular the rights of any policyholders, the duties of insurers, insurance managers and any other person involved in the management or administration of an insurer, and the steps to be taken for enforcing those rights or complying with those duties;
 - (b) any other matters about which it appears to him to be desirable to publish information or give advice for the protection of policyholders or any class of policyholders.
- (2) The Supervisor may offer for sale copies of information published under this section and may, if he thinks fit, make a reasonable charge for advice given under this section at any person's request.
- (3) This section shall not be construed as authorising the disclosure of information the publication of which is prohibited under section 24 in any case in which it could not be disclosed apart from the provisions of this section.
- [S 24A inserted by Retirement Benefits Schemes Act 2000 Sch 2.]

**PART IV
GENERAL**

Insurers authorised outside the Island

- 25** (1) Where the Supervisor, upon application by any person, is satisfied that-
- (a) the person is carrying on any class of insurance business in the United Kingdom and in respect of that business has complied with the Insurance Companies Act 1982 (an Act of Parliament) as amended from time to time or any enactment of Parliament replacing that Act; or
 - (b) the person is carrying on or has carried on any class of insurance business in a country other than the Island and the United Kingdom, in accordance with the laws of the country,
- he may issue a permit to that person.

- (2) Sections 4 (with the exception of subsection (1)), 7 to 10, 18 and 21 to 24 shall have effect, with the necessary modifications, in relation to applicants for permits, permits, and persons who are the holders of permits issued under this section as they apply to applicants for authorisation, authorisations, and authorised insurers.
- (3) Without prejudice to subsection (2), regulations may direct that any provision of this Act or any regulations made under this Act shall apply to persons who are the holders of permits issued under this section, subject to such exceptions, adaptations and modifications as may be specified.

Continuation and discontinuation of certain insurers

25A Schedule 3A shall have effect for the purposes set out in that Schedule.
 [S 25A inserted by Insurance (Amendment) Act 1995 s 1.]

Approved insurance exchange

- 26**
- (1) The Supervisor may, with the consent of the Authority, approve an insurance exchange which is established in accordance with regulations.
 - (2) Regulations may direct that the provisions of this Act shall apply to any underwriter or association of underwriters which carries on an insurance business in or through an insurance exchange approved under subsection (1), subject to such exceptions, adaptations and modifications as may be specified.

Insurance managers

- 27**
- (1) No person shall act as an insurance manager for, or in relation to, an insurer, unless that person-
 - (a) is registered in a register to be kept by the Supervisor in accordance with regulations and has paid to the Supervisor the prescribed fees; or
 [Para (a) amended by Retirement Benefits Schemes Act 2000 Sch 2.]
 - (b) is exempted from registration by such regulations.
 - (1A) A registered insurance manager shall not carry on any activities, in the Island or elsewhere, otherwise than in connection with or for the purpose of his business as an insurance manager.
 [Subs (1A) inserted by Financial Supervision Act 1988 Sch 2.]
 - (2) An applicant for registration shall provide such documents and information as may be required by the Supervisor.
 - (3) Sections 9(3) to (5), 10, 19 to 22 and 24 shall apply, with the necessary modifications, in relation to any person acting as an insurance manager as they apply to an authorised insurer.
 - (4) The Supervisor may if he thinks it proper to do so, and with the consent of the Authority-
 - (a) refuse to register any applicant for registration;
 - (b) cancel any registration at any time.
 - (5) Where a person carries on a business which in any respect is or in the opinion of the Authority appears to be of a similar character to the business carried on by an insurance manager, that person upon a declaration made by the Authority in writing shall be subject to the provisions of this section and shall be deemed to be acting as an insurance manager.
 - (6) Any person who-
 - (a) contravenes subsection (1); or
 - (b) wilfully-
 - (i) takes or uses any style, title or description which consists of or includes the expression 'insurance manager' when he is not registered; or
 - (ii) takes or uses any style, title or description falsely implying, or otherwise pretends, that he is registered,
 shall be guilty of an offence.

- Registration of insurance managers: fees** **27A** (1) The prescribed fees shall be payable-
- (a) by the applicant in respect of registration; and
 - (b) by each registered insurance manager annually on such date in each year as may be prescribed, as the case may require.
- (2) Any unpaid fee under subsection (1)(b) may be sued for by the Supervisor as a civil debt due to him.
- [S 27A inserted by Retirement Benefits Schemes Act 2000 Sch 2.]

PART V SUPPLEMENTARY

- Location of assets** **28** (1) The Supervisor may direct an authorised insurer in writing, to maintain in the Island, or transfer to and keep in the custody of a bank specified in the direction, assets of the insurer of such value and description as may be directed.
- (2) No assets kept in the custody of a bank pursuant to a direction given under subsection (1) shall, so long as the direction is in force-
- (a) be removed from the bank; or
 - (b) be made the subject of any mortgage, charge or lien, except with the prior written consent of the Supervisor.
- (3) Any person who fails to comply with a direction given under this section or who contravenes subsection (1), shall be guilty of an offence.
- (4) Any mortgage, charge or lien created by an authorised insurer in contravention of subsection (2) shall be void against the liquidator and any creditor of the insurer.

- Injunctions** **28A** (1) If on the application of the Authority, the High Court is satisfied-
- (a) that there is a reasonable likelihood that any person will contravene any provision of-
 - (i) section 3, 6(5) or 27; or
 - (ii) any regulations under this Act;
 - (b) that any person has contravened any such provision and that there is a reasonable likelihood that the contravention will continue or be repeated; or
 - (c) that any person has contravened any such provision and that there are steps that could be taken for remedying the contravention,
- the Court may grant an injunction restraining the contravention or, as the case may be, make an order requiring that person and any other person who appears to the Court to have been knowingly concerned in the contravention to take such steps as the Court may direct to remedy it.
- (2) Nothing in this section affects the right of any person other than the Authority to bring proceedings in respect of the matters to which this section applies.
- [S 28A inserted by Financial Supervision Act 1988 Sch 2.]

- Restitution orders** **28B** (1) Subject to section 28D, the High Court may, on the application of the Authority, make an order under subsection (2) if satisfied-
- (a) that profits have accrued to any person as a result of his contravention of any provision mentioned in section 28A(1)(a); or
 - (b) that one or more policyholders have suffered loss or been otherwise adversely affected as a result of that contravention.
- (2) The Court may under this subsection order the person concerned to pay into Court, or appoint a receiver to recover from him, such sum as appears to the

Court to be just having regard-

- (a) in a case within subsection (1)(a), to the profits appearing to the Court to have accrued;
 - (b) in a case within subsection (1)(b), to the extent of the loss or other adverse effect; or
 - (c) in a case within subsection (1)(a) and (b), to the profits and to the extent of the loss or other adverse effect.
- (3) Any amount paid into Court by or recovered from a person in pursuance of an order under subsection (2) shall be paid out to such person or distributed among such persons as the Court may direct, being a person or persons appearing to the Court to have entered into transactions with that person as a result of which the profits mentioned in subsection (2)(a) have accrued to him or the loss or adverse effect mentioned in subsection (2)(b) has been suffered.
- (4) On an application under subsection (1) the Court may require the person concerned to furnish it with such accounts or other information as it may require for establishing whether any and, if so, what profits have accrued to him as mentioned in subsection (1)(a) and for determining how any amounts are to be paid or distributed under subsection (3); and the Court may require any such accounts or other information to be verified in such manner as it may direct.
- (5) Nothing in this section affects the right of any person other than the Authority to bring proceedings in respect of the matters to which this section applies.

[S28B inserted by Financial Supervision Act 1988 Sch 2.]

Actions for damages

- 28C** (1) Without prejudice to sections 28A and 28B, a contravention of-
- (a) any conditions imposed under section 6;
 - (b) any regulations under this Act, shall, subject to section 28D, be actionable at the suit of a person who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty.
- (2) Subsection (1) does not apply to a contravention of any condition or regulation relating to the financial resources of an insurer.
- (3) No contravention to which subsection (1) applies shall invalidate any transaction.

[S 28C inserted by Financial Supervision Act 1988 Sch 2.]

Applications of sections 28B and 28C

- 28D** Sections 28B and 28C shall apply only to contraventions in respect of activities which constitute investment business as defined in the Banking Act 1975.

[S 28D inserted by Financial Supervision Act 1988 Sch 2.]

Indemnity

- 29** The Treasury, the Authority and the Supervisor shall not, nor shall any member, officer or person acting pursuant to any authority conferred by the Treasury, the Authority or the Supervisor, as the case may be, be liable in damages for, or in respect of, any act or matter done or omitted to be done in good faith in the exercise, or purported exercise, of the functions conferred by or under this Act or any regulations made under this Act.

[S 29 amended by Retirement Benefits Schemes Act 2000 Sch 2.]

False statements

- 30** Any person who-
- (a) causes or permits to be included in any book or document provided or produced to the Supervisor, a statement which he knows to be false in a material particular or recklessly causes or permits to be so included any statement which is false in a material particular; or
 - (b) in purported compliance with any provision of this Act or a requirement imposed under any such provision, provides information which he knows to

be false in a material particular or recklessly provides information which is false in a material particular,
is guilty of an offence.

Offences

- 31** (1) Any person guilty of an offence under any provision of this Act or regulations made under this Act shall be liable-
- (a) on summary conviction, to a fine not exceeding £5,000 or to a term of imprisonment not exceeding 6 months, or to both;
 - (b) on conviction on information, to a fine or to a term of imprisonment not exceeding 2 years, or to both.
- (2) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, chief executive, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in such capacity, he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.
- (3) No person shall be prosecuted for an offence under this Act without the consent of the Attorney General.

Regulations

- 32** (1) The Treasury may make such regulations as it considers are necessary or desirable to carry this Act into effect and, without prejudice to the generality of that power, such regulations may provide for any of the matters mentioned in Schedule 4.
- (2) Before making any regulations under this section the Treasury shall consult with the Authority and such other organisations and persons as appear to it to be likely to be affected by the proposed regulations.
- (3) Regulations under this Act shall be laid before Tynwald as soon as practicable after the making thereof, and if Tynwald at the sitting before which such regulations are so laid resolves that the regulations shall be annulled, the regulations shall thereupon cease to have effect.

Financial provisions

- 33** (1) The expenses incurred for the purposes of this Act by the Treasury, the Authority and the Supervisor shall be defrayed out of moneys provided by Tynwald.
- (2) Any fees payable to the Supervisor under this Act shall form part of the General Revenue of the Island.

Interpretation

- 34** In this Act-
- 'actuary to the insurer'** means the person appointed as such in accordance with section 13;
- 'associate'** means, in relation to any person-
- (a) the wife or husband or minor son, step-son, daughter or step-daughter of that person;
 - (b) any company of which that person is a director;
 - (c) any person who is an employee or partner of that person;
 - (d) if that person is a body corporate-
 - (i) any director of that body;
 - (ii) any subsidiary of that body;
 - (iii) any holding company of that body;**[Subpara (iii) substituted by Insurance (Amendment) Act 1993 s 5.]**
 - (iv) any subsidiary of that holding company;**[Subpara (iv) added by Insurance (Amendment) Act 1993 s 5.]**
 - (v) any director or employee of any such holding company or subsidiary;

[Subpara (v) added by Insurance (Amendment) Act 1993 s 5.]

'authorised' in relation to an insurer means authorised under section 6 to carry on an insurance business, and **'authorisation'** shall be construed accordingly;

'the Authority' has the meaning given by section 1(2);

[Definition of 'the Authority' amended by SD610/96.]

'chief executive' means, in relation to an authorised insurer, an employee of such insurer, who, either alone or jointly with others, is responsible under the immediate authority of the directors for the conduct of the whole of the insurance business of that insurer;

'company' means a company formed and registered under the Companies Act 1931 or an existing company within the meaning of that Act;

'conditions' includes restrictions;

'contract of insurance' includes any contract the effecting of which constitutes the carrying on of insurance business;

'controller' means a person-

- (a) in accordance with whose directions or instructions the directors of an authorised insurer are accustomed to act; or
- (b) who either alone or with any associate or associates is entitled to exercise, or control the exercise of, one-third or more of the voting power at any general meeting of an authorised insurer;

'director' means any person appointed as a director of any body corporate and includes-

- (a) any person occupying the position of director by whatever name called;
- (b) any person in accordance with whose directions or instructions one or more of the appointed directors are accustomed to act unless the appointed director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity;

'insurance' includes assurance and reinsurance;

'insurance business' means the business of effecting or carrying out of contracts of insurance and includes-

- (a) the effecting or carrying out by a person of contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, being contracts effected by way of business (and not merely incidentally to some other business carried out by the person effecting them) in return for the payment of one or more premiums;
- (b) the effecting or carrying out of tontines;
- (c) the effecting or carrying out, by a body that carries on business which is insurance business apart from this paragraph, of capital redemption contracts;
- (d) the effecting or carrying out of contracts to pay annuities on human life;
- (e) the effecting or carrying out of contracts that include provisions of insurance or that include options to enter into contracts of insurance;

'insurance manager' means a person, not being an employee of an insurer, who-

- (a) provides management services for one or more insurers; or
- (b) holds himself out as a manager in relation to one or more insurers, but does not include the keeping of insurance business accounts for an

authorised insurer or an insurance manager;

'insurer' means a person carrying on an insurance business;

'long term business' means any kind of insurance business declared by regulations to be long term business;

'long term business fund' has the meaning given by section 15(2);

'policy-holder' means a person who for the time being is the legal holder of a policy for securing a contract with an insurer, and-

- (a) in relation to such long term business as consists in the granting of annuities upon human life, includes an annuitant; and
- (b) in relation to insurance business of any other kind, includes a person to whom, under a policy, a benefit is due or a periodic payment is payable;

'regulations' means regulations made under section 32;

'subsidiary' has the meaning given by section 1 of the Companies Act 1974;

'Supervisor' means the person for the time being holding the office of Chief Executive Officer of the Authority.

[Definition of 'Supervisor' substituted by Retirement Benefits Schemes Act 2000 Sch 2.]

Amendments

- 35** The enactments specified in Schedule 5 are amended in accordance with that Schedule.

36

[S 36 repealed by Statute Law Revision Act 1992 Sch 2.]

Savings and transitional provisions

- 37** The saving and transitional provisions in Schedule 7 shall have effect.

Short title and commencement

- 38** (1) This Act may be cited as the Insurance Act 1986.
(2) This Act shall come into operation on such day as may be appointed by order made by the Treasury and different days may be so appointed for different provisions and for different purposes.

[ADO (ss 1, 2, 32, 35 (to the extent that it relates to Sch 5, entries 3 and 5), 38, Sch 1, Sch 4, Sch 5 (entries 3 and 5)) 15/7/1986; (the remaining provisions) 1/10/1986 (GC229/86).]

SCHEDULE 1

[Sch 1 repealed by Retirement Benefits Schemes Act 2000 Sch 3.]

SCHEDULE 2

TRANSFER OF LONG TERM BUSINESS

- 1** Where it is proposed to carry out a scheme under which the whole or part of the long term business carried on by an insurer ('the transferor') is to be transferred to another insurer ('the transferee') the transferor or transferee may apply to the Chancery Division, by petition, for an order sanctioning the scheme.
- 2** The Court shall not determine an application under this Schedule unless the petition is accompanied by a report on the terms of the scheme by an independent actuary (not being an employee of, nor the actuary to either insurer) and the Court is satisfied that the requirements of paragraph 3 have been complied with or that in the circumstances compliance is unnecessary.
- 3** The requirements referred to in paragraph 2 are-
 - (a) that a notice has been published in two newspapers published and circulating in the Island stating that the application has been made and giving the address of the offices at which, and the period for which, copies of the documents mentioned in sub-paragraph (d) will be available as required by that paragraph;
 - (b) except where the Court has otherwise directed, that a statement-
 - (i) setting out the terms of the scheme; and
 - (ii) containing a summary of the report mentioned in paragraph 2 sufficient to indicate the opinion of the actuary on the likely effects of the scheme on the long term policy holders of the insurers concerned,has been sent to each of those policy holders and to every member of those insurers;
 - (c) that a copy of the petition, of the report mentioned in paragraph 2 and of any statement sent out under sub-paragraph (b) has been served on the Supervisor and that a period of not less than 3 weeks has elapsed since the date of such service;
 - (d) that copies of the petition and of the report mentioned in paragraph 2 have been open to inspection at offices in the Island of the insurers concerned or their representatives for a period of not less than 3 weeks beginning with the date of the first publication of a notice in accordance with sub-paragraph (a).
- 4** Each of the insurers concerned shall furnish a copy of the petition and of the report mentioned in paragraph 2 to any person who asks for one at any time before an order sanctioning the scheme is made on the petition.
- 5** On any petition under this Schedule-
 - (a) the Supervisor; and
 - (b) any person (including any employee of the transferor or the transferee) who alleges that he would be adversely affected by the carrying out of the scheme,shall be entitled to be heard.

- 6** The Court shall not make an order sanctioning the scheme unless it is satisfied that the transferee is, or immediately after the making of the order will be, authorised to carry on any long term business to be transferred under the scheme.
- 7** No such transfer as is mentioned in paragraph I shall be carried out unless the scheme relating to the transfer has been sanctioned by the Court in accordance with this Schedule; and no order shall be made under section 152 or 153 of the Companies Act 1931 in respect of so much of any compromise or arrangement as involves any such transfer.
- 8** Where the Court makes an order under this Schedule sanctioning a scheme the Court may, either by that order or by any subsequent order, make provision for all or any of the following matters-

 - (a) the transfer to the transferee of the whole or any part of the undertaking and of the property or liabilities of the transferor;
 - (b) the allotting or appropriation by the transferee of any shares, debentures, policies or other like interests in the transferee which under the scheme are to be allotted or appropriated by the transferee to or for any person;
 - (c) the continuation by or against the transferee of any legal proceedings pending by or against the transferor;
 - (d) the dissolution, without winding up, of the transferor;
 - (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.
- 9** Where any such order provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee, and in the case of any property, if the order so directs, freed from any mortgage or charge which is by virtue of the scheme to cease to have effect.
- 10** For the purposes of any provision requiring the delivery of an instrument of transfer as a condition for the registration of a transfer of any property (including in particular section 64 of the Companies Act 1931) an order which by virtue of this Schedule operates to transfer any property shall be treated as an instrument of transfer.
- 11** Where a scheme is sanctioned by an order of the Court under this Schedule the transferee shall, within 10 days from the date on which the order is made, or such longer period as the Supervisor may allow, deposit 2 certified copies of the order with the Supervisor.
- 12** Any person who fails to comply with paragraph 4 or 11 shall be guilty of an offence.
- 13** In this section 'property' includes property, rights and powers of every description; 'liabilities' includes duties, and 'share' and 'debenture' have the same meaning as in the Companies Act 1931.

SCHEDULE 3 INSOLVENCY AND WINDING UP

Winding up of Insurers

[Heading amended by Insurance (Amendment) Act 1993 s 4.]

- 1 (1) The provisions of the Companies Acts 1931 to 1982 relating to the winding up of companies shall, in relation to any insurance company, have effect subject to the provisions of this Schedule.
(2) In this Schedule, '**insurance company**' means a company which is an insurer.
- 2 Subject to paragraph 3, a petition for the winding up of an insurance company shall not be presented except by leave of the court.
- 3 Paragraph 2 shall not apply to a petition presented by the Supervisor.

Winding up on Petition of Supervisor

- 4 The Supervisor may, with the consent in writing of the Authority, present a petition for the winding up, in accordance with the Companies Acts 1931 to 1982, of any insurance company, on the ground-
 - (a) that the company is unable to pay its debts within the meaning of section 162 of the Companies Act 1931 or section 17(6) of this Act; or
 - (b) that the company has failed to satisfy an obligation to which it is or was subject by virtue of this Act or any enactment repealed by this Act; or
 - (ba) that the company has carried on in business in contravention of section 3; or
[Subpara (ba) inserted by Insurance (Amendment) Act 1993 s 4.]
 - (c) that the company, being under an obligation imposed by section 1 of the Companies Act 1982 with respect to the keeping of accounting records, has failed to satisfy that obligation or to produce records kept in satisfaction of that obligation and that the Supervisor is unable to ascertain its financial position.
- 5 In any proceedings on a petition to wind up a company presented by the Supervisor under paragraph 4, evidence that such company was insolvent at the close of the period to which the annual accounts of the company last submitted under section 12(2) relate shall be evidence that the company continues to be unable to pay its debts, unless the contrary is proved.

Winding up of Insurer with Long Term Business

- 6 No insurance company which carries on long term business shall be wound up voluntarily.
- 7 Subject to paragraph 8, in any winding up-
 - (a) the assets in the company's long term business fund shall be available only for meeting the liabilities of the company attributable to its long term business;
 - (b) the other assets of the company shall be available only for meeting the liabilities of the company attributable to its other business.

- 8 Where the value of the assets mentioned in either sub-paragraph of paragraph 7 exceeds the amount of the liabilities mentioned in that paragraph the restriction imposed by that subsection shall not apply to so much of those assets as represents the excess.
- 9 In relation to the assets falling within either sub-paragraph of paragraph 7 the creditors mentioned in subsections (1) and (2) of section 185 of the Companies Act 1931 shall be only those who are creditors in respect of liabilities falling within that paragraph; and any general meetings of creditors summoned for the purposes of that section shall accordingly be separate general meetings of the creditors in respect of the liabilities falling within each paragraph.
- 10 Where under section 260(1) of that Act a court orders any money or property to be repaid or restored to an insurance company or any sum to be contributed to its assets then, if and so far as the wrongful act which is the reason for the making of the order related to assets representing a fund or funds maintained by the company in respect of its long term business, the court shall include in the order a direction that the money, property or contribution shall be treated for the purposes of this Act as assets of that fund or funds and this Act shall have effect accordingly.

Continuation of Long Term Business of Insurers in Liquidation

- 11 This paragraph and paragraphs 12 to 16 have effect in relation to the winding up of an insurance company carrying on long term business.
- 12 The liquidator shall, unless the court otherwise orders, carry on the long term business of the company with a view to its being transferred as a going concern to another body corporate, whether an existing body corporate or a body corporate formed for that purpose; and, in carrying on that business as aforesaid, the liquidator may agree to the variation of any contracts of insurance in existence when the winding up order is made but shall not effect any new contracts of insurance.
- 13 If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the company attributable to its long term business require the appointment of a special manager of the company's long term business, he may apply to the court, and the court may on such application appoint a special manager of that business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.
- 14 A special manager appointed under paragraph 13 shall-
 - (a) give such security and account in such manner as the court may direct; and
 - (b) receive such remuneration as may be fixed by the court.
- 15 The court may, if it thinks fit and subject to such conditions (if any) as it may determine, reduce the amount of the contracts made by such company in the course of carrying on its long term business.
- 16 The court may, on the application of the liquidator, a special manager appointed under paragraph 13 or the Supervisor, appoint an independent actuary to investigate the long term business of such company and to report to the liquidator, the special manager or the Supervisor, as the case may be, on the desirability or otherwise of that business being continued and on any reduction in the contracts made in the course of carrying on that business that may be necessary for its

successful continuation.

Reduction of Contracts as Alternative to Winding Up

- 17 In the case of an insurance company which has been proved to be unable to pay its debts, the court may, if it thinks fit, reduce the amount of the contracts of the company on such terms and subject to such conditions as the court thinks just, in place of making a winding up order.

SCHEDULE 3A CONTINUATION AND DISCONTINUATION OF INSURANCE COMPANIES

[Sch 3A inserted by Insurance (Amendment) Act 1995 s 1.]

PART I CONTINUATION OF OFFSHORE INSURERS

Application of Part I

- 1 (1) This Part shall apply in respect of a body corporate which is incorporated outside the Island and is permitted to carry on insurance business of a class equivalent to any of those specified in sub-paragraph (3) by the competent authorities in the country or territory in which the body corporate is incorporated.
- (2) In this Part, a body corporate to which this Part applies is referred to as an 'offshore insurer'.
- (3) The classes of insurance business referred to in sub-paragraph (1) are-
- (a) class 11 (reinsurance) but only in respect of contracts with associated companies or members of a common industry or association;
 - (b) class 12 (restricted category),
- and in this paragraph, references to a numbered class of insurance business shall be construed by reference to the table in regulation 2(2) of the Insurance Regulations 1986 as those Regulations have effect on the date on which this Schedule comes into operation.

Application for consent to be continued in the Island

- 2 (1) An offshore insurer shall apply in the first instance to the Authority for consent to be continued in the Island as a company to which the provisions of the Companies Acts 1931 to 1993 and any other relevant laws of the Island shall apply.
- (2) An application for consent shall be in such form as the Authority may require and shall be accompanied by-
- (a) a memorandum of continuance in such form and containing such particulars as may be prescribed;
 - (b) proof to the satisfaction of the Authority that the offshore insurer has obtained all necessary authorisations required under the laws of the country in which it was incorporated to enable it to make the application;
 - (c) financial statements of the offshore insurer prepared for a period ending

- within 12 months of the date of the application and audited to the satisfaction of the Authority;
- (d) a business plan for the continuation of the insurance business to the satisfaction of the Authority;
 - (e) a copy of a notice delivered to all persons having an interest in any charge created by the offshore insurer to which section 79 of the Companies Act 1931 would apply if the insurer had been incorporated in the Island; and
 - (f) such other information and documents as the Authority may require.
- (3) Not more than 3 months prior to an application for a consent under paragraph 3(1), the offshore insurer shall cause to be published in-
- (a) 2 newspapers published and circulating in the Island; and
 - (b) one newspaper circulating throughout the country or territory in which the offshore insurer is incorporated,
- an advertisement announcing its intention to continue the company in the Island in accordance with this Part and specifying its name, principal place of business and the classes of insurance business that it carries on.
- (4) The Authority may waive the requirements of sub-paragraph (3) if it considers that the circumstances are such that it is reasonable to do so.

Grant and renewal of consent and registration.

3. (1) In relation to every application under paragraph 2(1)-
- (a) the Authority shall submit to the Treasury the documents and information received by it under paragraph 2 together with its written reasoned opinion as to whether consent should be given; and
 - (b) the Treasury shall, after considering such documents, information and opinion, either grant its written consent or refuse the application.
- (2) A consent under sub-paragraph (1) shall, subject to there being no material change in the information contained in the documents submitted with the application, be valid for a period of 3 months from the date of the consent being granted.
- (3) During the period mentioned in sub-paragraph (2) and subject to the provisions of that paragraph, an offshore insurer may deliver to the Financial Supervision Commission-
- (a) the consent under sub-paragraph (1); and
 - (b) the memorandum of continuance; and
 - (c) articles of association which conform to the requirements of the Companies Acts 1931 to 1993 and any other applicable laws of the Island;
 - (d) particulars, in the form prescribed for the purposes of section 79 of the Companies Act 1931, of any existing charge of a description specified in subsection (2) of that section;
 - (e) a statutory declaration (dated not more than 7 days before such delivery) by a director of the offshore insurer that there has been no material change in the information contained in the documents submitted with the application;
 - (f) a certificate (dated not more than 7 days before such delivery) in writing from the Authority that it has no objection to the registration of the memorandum.
- [Subpara (3) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]
- (4) On delivery of the consent, memorandum, articles of association (if any), particulars (if any), statutory declaration and certificate under sub-paragraph (3), the Financial Supervision Commission shall register the memorandum of

continuance and-

(a) it shall-

- (i) issue a certificate of registration of the memorandum of continuance in such form as may be prescribed in regulations made under section 340A of the Companies Act 1931; and

[Subitem (i) amended by Companies (Transfer of Functions) Act 2000 Sch 2.]

- (ii) enter in the register of charges under section 82 of the Companies Act 1931, in such order as the offshore insurer may instruct, the particulars of charges delivered under sub-paragraph (3), and issue a certificate under subsection (2) of that section in respect of each such charge; and

[Item (a) amended by Interpretation Act 1976 s 16A.]

- (b) the memorandum of continuance shall be deemed to be the memorandum of association of the offshore insurer in lieu of its memorandum of association or other constituting document.

[Subpara (4) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

- (5) Without prejudice to paragraph 4(1), where no articles of association have been delivered to the Financial Supervision Commission under sub-paragraph (3), the articles of the continued company shall be in the appropriate form prescribed under section 7 of the Companies Act 1986 until it adopts articles of association which conform to the requirements of the Companies Acts 1931 to 1993 and any other applicable laws of the Island.

[Subpara (5) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]

- (6) The offshore insurer shall, within 14 days of the date of the certificate of registration under sub-paragraph (4)(a) forward a copy of it to the competent authority in the country or territory from which the corporation has been continued.

Effect of continuance

- 4 (1) On the date of the certificate of registration the offshore insurer will become a company to which the Companies Acts 1931 to 1993 and all other laws of the Island apply as if it was incorporated under those Acts as a company to which Part I of the Companies Act 1986 applies.
- (2) The provisions of the Companies Acts 1931 to 1993 relating to a memorandum of association of companies shall, with the necessary modifications, apply to a memorandum of continuance.
- (3) The provisions of the Companies Acts 1931 to 1993 relating to a certificate of incorporation shall, with the necessary modifications, apply to a certificate of continuance.
- (4) Without prejudice to the generality of sub-paragraph (1), where particulars of an existing charge have been delivered to the Financial Supervision Commission under paragraph 3(3)(d), that charge shall not be treated as void against a liquidator or any creditor of the company under section 79(1) of the Companies Act 1931.
- [Subpara (4) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]**
- (5) If a continued company ceases to carry on insurance business and it appears to the Supervisor that it is expedient in the public interest that the company should be wound up, he may, unless the company is already being wound up by the court, present a petition for the winding up of the company if the court thinks it proper for it to be so wound up.

Consequences of continuance of offshore insurer

- 5
- (1) Upon continuance of an offshore insurer as a company under the Companies Acts 1931 to 1993-
 - (a) the property of the offshore insurer continues to be the property of the company;
 - (b) the company continues to be liable for the obligations of the offshore insurer;
 - (c) any existing cause of action, claim or liability to prosecution in respect of the offshore insurer is unaffected;
 - (d) any civil, criminal or administrative action or proceeding pending by or against the offshore insurer may be continued by or against the company; and
 - (e) any conviction against, or any ruling, order or judgment in favour of or against the offshore insurer may be enforced by or against the company.
 - (2) The registration of the continuance of an offshore insurer under this Part shall not be deemed to-
 - (a) create a new legal entity, or
 - (b) prejudice or affect the continuity of the body corporate which was formerly an offshore insurer, now a company continued in the Island under this Part.
 - (3) The courts shall apply the laws of evidence and the rules of procedure with the intent that no claimant against the continued company shall be prejudiced in pursuing in or under the laws of the Island a claim that existed prior to the date of continuance and which could have been pursued under the laws then governing such offshore insurer.

Effect on insurance business.

- 6
- (1) Any current permit issued to the continued company under section 25 shall cease to have effect on the date of the certificate of registration.
 - (2) A continued company which was the holder of a permit under section 25 shall, until the expiry of 3 months commencing on the date of the certificate of registration, be treated as if it is authorised under section 6(1)(a) but only in respect of such description of insurance business as it was entitled to carry on under the permit.
 - (3) The provisions of this Act shall, during that period, apply to the continued company as if it is authorised under section 6(1)(a).

PART II DISCONTINUATION OF ISLE OF MAN INSURANCE COMPANIES

Application of Part II

- 7
- (1) This Part shall apply in respect of a company which is authorised under section 6(1)(a) to carry on insurance business of a class specified in subparagraph (3) and no other.
 - (2) In this Part, a company to which this Part applies is referred to as an 'Isle of Man insurance company'.
 - (3) The classes of insurance business referred to in subparagraph (1) are-
 - (a) class 11 (reinsurance) but only in respect of contracts with associated

companies or members of a common industry or association;
(b) class 12 (restricted category),
and in this paragraph, references to a numbered class of insurance business shall be construed by reference to the table in regulation 2(2) of the Insurance Regulations 1986 as those Regulations have effect on the date on which this Schedule comes into operation.

Application for consent for discontinuance.

- 8 (1) An Isle of Man insurance company shall apply in the first instance to the Authority for consent to be continued in a country or territory outside the Island as if it had been incorporated under the laws of that other country or territory and to be discontinued under the Companies Acts 1931 to 1993.
- (2) An application for consent shall be in such form as the Authority may require, and shall be accompanied by -
- (a) a certified copy of a resolution of the members passed by a majority vote of 75% of each class of members and authorising the continuance of the company in a named country or territory outside the Island;
 - (b) statutory declarations by all the directors of the company that the company is solvent and can meet all of its liabilities and obligations and that the discontinuance will not adversely affect the interests or rights of, creditors and shareholders; and
 - (c) a copy of a notice published at least 14 days prior to the application in-
 - (i) 2 newspapers published and circulating in the Island; and
 - (ii) one newspaper circulating throughout the country or territory in which the Isle of Man insurance company is to be continued, to the effect that the company intends to continue in the named country or territory outside the Island; and
 - (d) an irrevocable and legally binding undertaking executed by the company and its directors under which-
 - (i) the company and each of its directors agree to accept service of legal process in the Island in any proceeding arising out of actions or omissions occurring prior to the discontinuance and provision is made for the appointment of a person within the Island as agent for the company for the service of process for a period of not less than 3 years from the date of discontinuance and for a signed acceptance of the appointment;
 - (ii) the company and each of its directors may be served with legal process at a specified address in any country or territory acceptable to the Authority; and
 - (iii) the company and such directors submit to the non-exclusive jurisdiction of the courts of that country;
 - (e) a copy of a notice delivered to all shareholders of the company at least 14 days prior to the application, to the effect that the Authority will take into consideration any comments in writing which it receives from shareholders prior to the application;
 - (f) a copy of a notice delivered to all persons having an interest in any charge registered under section 79 of the Companies Act 1931.
- (3) The directors of a company may, if authorised by the members in general meeting, abandon an application for consent under this paragraph and the provisions of sub-paragraph (2)(a) as to majority shall apply to such authorisation.

Grant of consent

- 9 (1) In relation to every application under paragraph 8(1)-
- (a) the Authority shall submit to the Treasury-
 - (i) the documents and information received by it under paragraph 8;
 - (ii) a statement by the Authority that the Isle of Man insurance company has satisfied it that appropriate arrangements have been made to deal with the company's insurance business obligations arising out of contracts entered into prior to discontinuation; and
 - (iii) the Authority's written reasoned opinion as to whether consent should be given; and
 - (b) the Treasury shall, after considering such documents, information, statement and opinion, either grant its written consent or refuse the application.
- (2) The consent of the Treasury shall be in such form as the Treasury may determine.
- (3) The consent of the Treasury shall expire 3 months after the date of the grant unless within that period the Isle of Man insurance company is continued under the laws of the named country or territory outside the Island.

Documents to be filed

- 10 (1) The company shall deliver to the Financial Supervision Commission-
- (a) the consent of the Treasury;
 - (b) a copy of the instrument of continuance issued to it by the competent authorities in the country or territory under the laws of which the Isle of Man insurance company is to be continued; and
 - (c) a declaration of discontinuance containing or attaching the following information-
 - (i) a copy of the irrevocable undertaking required by paragraph 8(2)(d);
 - (ii) the name of the country or territory under the laws of which the Isle of Man insurance company has been continued; and
 - (iii) the address of the registered office or the principal business address of the company in that country or territory,not later than 14 days after the date of issue of the instrument of continuance.
[Subpara (1) amended by Companies (Transfer of Functions) Act 2000 Sch 1.]
- (2) The Financial Supervision Commission shall file the instrument of continuance and issue a certificate of discontinuance which shall be in such form as may be prescribed in regulations made under section 340A of the Companies Act 1931.
[Subpara (2) amended by Companies (Transfer of Functions) Act 2000 Schs 1 and 2.]

Effect of discontinuance

- 11 (1) On the date of the certificate of discontinuance the company shall cease to be registered as a company under the Companies Acts 1931 to 1993.
- (2) The Companies Acts 1931 to 1993 shall cease to apply to the Isle of Man insurance company on the date upon which it is continued under the laws of the other country or territory as stated in the instrument of continuance and in the declaration of discontinuance.

Restrictions on continuation of Isle of Man insurance company

- 12** An Isle of Man insurance company shall not be continued as a body corporate under the laws of any other country or territory unless-
- (a) that country or territory is designated in regulations made by the Treasury; and
 - (b) the laws of that country or territory provide in effect that when a company is continued as a body corporate in that country or territory-
 - (i) the property of the company continues to be the property of the body corporate;
 - (ii) the body corporate continues to be liable for the obligations of the company;
 - (iii) any existing cause of action, claim or liability to prosecution in respect of the company is unaffected;
 - (iv) any civil, criminal or administrative action or proceeding pending by or against the company may be continued by or against such body corporate; and
 - (v) any conviction against, or any ruling, order or judgment in favour of or against the company may be enforced by or against such body corporate.

Consequence of discontinuance of Isle of Man insurance company

- 13** The discontinuance of a company under this Part and its continuation in a country or territory outside the Island shall not be deemed to operate to-
- (a) create a new legal entity; or
 - (b) prejudice or affect the continuity of the body corporate which was formerly an Isle of Man insurance company subject to the Companies Acts 1931 to 1993.

Effect on insurance business

- 14** Any current authorisation issued to an Isle of Man insurance company shall cease to have effect on the date of the certificate of discontinuance.

SCHEDULE 4
MATTERS IN RESPECT OF WHICH REGULATIONS MAY BE MADE
UNDER SECTION 32

- 1** Anything which, under this Act, is required to be, or may be prescribed or which may be provided for by regulations.
- 2** The application of this Act to any insurer with such exceptions, adaptations and modifications as may be specified.
- 3** The exemption from any provision of this Act of any specific person.
- 4** Provisions prohibiting or restricting the issue or transfer of any share in an insurer or any interest in such a share, to any specified person or class of persons.

- 5 Provisions restricting an authorised insurer and any subsidiary of, or company associated with that insurer from entering into transactions of any specified description with any person of any specified class or description.
- 6 The restriction of specified business practices.
- 7 The form and contents of advertisements, by insurers and insurance managers (including matters which must be, as well as matters which may not be included in advertisements).

[Para 7 amended by Financial Supervision Act 1988 Sch 2.]

- 8
 - (1) The preparation, form and content of the annual accounts of an authorised insurer.
 - (2) The preparation, form and content of statements, reports and information to be annexed to annual accounts.
 - (3) The modification of Part I of, and Schedule 1 to, the Companies Act 1982 in their application to authorised insurers.
 - (4) The exemption of authorised insurers from any of the provisions of that Part or that Schedule.
 - (5) Provisions restricting the appointment of auditors to persons who have effected indemnity insurance of such type and amount as may be specified.
 - (6) In this paragraph 'annual accounts' has the meaning given by section 12(3).
- 9 The determination of the value of assets and the amount of liabilities for the purposes of the calculation of margins of solvency under this Act and regulations made in exercise of this power may provide that, for any specified purpose, assets or liabilities of any specified class or description shall be left out of account or shall be taken into account only to a specified extent.
- 10 Provisions requiring authorised insurers-
 - (a) to set aside reserves of such amount, and in such manner and circumstances as may be specified;
 - (b) to deal with and apply such reserves in such manner as may be specified;
 - (c) not to distribute assets to members except to such extent, and in such manner and circumstances as may be specified.
- 11 Prescribe classes or categories of insurance business for any purpose of this Act or regulations.
- 12 Such provisions as are considered necessary or desirable in relation to the establishment, functions, business and supervision of an insurance exchange, and in particular but without prejudice to the generality of that power, regulations may-
 - (a) establish the insurance exchange as a body corporate with such status and constitution as may be specified;
 - (b) provide for the proceedings of the body, its financial duties and accounts;
 - (c) provide for the limitation of liability of the body arising out of any insurance business carried on, in or through the exchange;
 - (d) provide for the establishment and administration of a policy-holders security to be raised from levies on the underwriters and underwriting associations carrying on business in or through the exchange;
 - (e) enable the body to make bye-laws with the concurrence of the Treasury to-
 - (i) regulate and direct the business of insurance in the exchange;
 - (ii) specify who may carry on business in the exchange;
 - (iii) provide a code of discipline for such persons and penalties for any breach of such code;

- (iv) provide for the charging of fees for underwriters and underwriting associations carrying on business in or through the exchange;
 - (f) apply sections 21, 22 and 24 to any exchange established in accordance with this Act, with such modifications, adaptations and exceptions as may be thought fit.
- 13** The creation of offences for contravention of any provision of regulations made under this Act.
- 14** Purposes connected with any of the matters specified in paragraphs 1 to 13.

SCHEDULE 5

AMENDMENT OF ENACTMENTS

[Sch 5 amended by Statutory Boards Act 1987 Sch 4 and by Banking Act 1998 Sch 2, and amends the following Acts-

Companies Act 1931 q.v.
Employers' Liability (Compulsory Insurance) Act 1976 q.v.
Income Tax (Retirement Benefit Schemes) Act 1978 q.v.
Income Tax (Exempt Insurance Companies) Act 1981 q.v.
Companies Act 1982 q.v.]

SCHEDULE 6

[Sch 6 repealed by Statute Law Revision Act 1992 Sch 2.]

SCHEDULE 7

SAVINGS AND TRANSITIONAL PROVISIONS

Persons Authorised Under Companies Act 1974

- 1** (1) Subject to sub-paragraph (2), any company that was, immediately before the commencement of this Act, authorised to carry on an insurance business under section 3(1)(b) of the Companies Act 1974, shall be deemed to be authorised under section 6(1)(a) of this Act, but only in respect of such description of insurance business as it was authorised to carry on under the said section 3(1)(b).
- (2) Where, immediately before the commencement of this Act, an authorisation granted under the said section 3(1)(b) to a company referred to in sub-paragraph (1) was the subject of any conditions, those conditions shall be deemed to have been imposed under section 6(1)(a) of this Act.
- 2** Part 2 of this Act and any regulations made under this Act which relate to annual accounts and solvency margins shall not have effect in relation to a company to which paragraph 1 applies for a period of 3 months beginning on the commencement of this Act.

- 3** (1) Subject to sub-paragraphs (2) and (3), any person who was, immediately before the commencement of this Act, authorised to carry on an insurance business under section 3(1)(a) of the Companies Act 1974, shall be exempted from the requirements of this Act for a period of 3 months beginning on such commencement.
- (2) If, at any time during the period referred to in sub-paragraph (1), the person concerned ceases to be authorised to carry on an insurance business in the United Kingdom, that sub-paragraph shall cease to have effect in relation to such person.
- (3) The exemption provided by sub-paragraph (1) shall not apply in respect of any description of insurance business which the person concerned is not authorised to carry on in the United Kingdom.

Companies carrying on insurance business outside the Island

- 4** Any company which, immediately before the commencement of this Act, was carrying on an insurance business and that business was such that section 3 of the Companies Act 1974 did not require the business to be authorised, shall be exempt from the provisions of this Act for a period of 12 months beginning on such commencement.

Insurance Managers

- 5** Any person who, immediately before the commencement of this Act, was acting as an insurance manager for, or in relation to any insurer, shall be exempt from section 25(1) for a period of 12 months beginning on such commencement.