

**THE OFFICIAL GAZETTE 30TH NOVEMBER, 1998
LEGAL SUPPLEMENT – C**

PARLIAMENT OFFICE,
Public Buildings,
Georgetown,
Guyana.

30th November, 1998

The following Bill will be introduced in the National Assembly is published for general information.

F.A. Narain,
Clerk of the National Assembly.



GUYANA

BILL No. 23 of 1998

INSURANCE BILL 1998

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A BILL

Intituled

AN ACT to repeal the Insurance Act and to provide for the regulation of insurance in Guyana, the promotion of competition in the insurance industry, the protection of consumers and for purposes related thereto or connected therewith.

A.D. 1998

Enacted by the Parliament of Guyana:-

PART I

PRELIMINARY

1. This Act may be cited as the Insurance Act 1998 and shall come into operation on such date as the Minister may by order appoint.

Short title and commencement.

2. In this Act -

Interpretation

- (a) "actuary" means a person possessing actuarial qualifications as may be approved by the Commissioner for the purposes of this Act;
- (b) "association of underwriters" means an association of individual underwriters organized according to the system known as Lloyd's whereby every underwriting member of a syndicate becomes liable for a separate part of the sum secured by each policy subscribed to by that syndicate, limited or proportionate to the whole sum thereby secured;
- (c) "auditor" means a person who is a member of and in good standing with the Institute of Chartered Accountants of Guyana;
- (d) "class of insurance business" means any of the classes of insurance business listed in Schedules 1 and 2;

- (e) "Commissioner" means the Commissioner of Insurance appointed under section 3;
- (f) "controller" means a person having the power directly or indirectly either to direct the management of an insurer or if that insurer is a body corporate with shares to exercise or control, the exercise of twenty-five per cent or more of any class of voting shares;
- (g) "the Court" means the High Court;
- (h) "external insurer" means an undertaking carrying on insurance business which is formed under the laws of a country other than Guyana;
- (i) "financial year" means each period of twelve months at the end of which the balance of accounts is struck, or, if no such balance is struck, then the calendar year;
- (j) "general insurance business" means insurance business listed in Schedule 2;
- (k) "insurance agent" or "agent" means any person who holds an appointment in writing from an insurer enabling him to place insurance business with that insurer, but does not include an insurance broker;
- (l) "insurance broker" or "broker" means a person who as an individual contractor brings together, with a view to the insurance of risks, persons seeking insurance and insurance undertakings, and carries out work preparing contracts of insurance, but does not include an insurance agent;
- (m) "insurance business" means the assumption of the obligations of an insurer in any class of insurance business, and includes re-insurance business, in Guyana;
- (n) "insurance company" or "company" means a body corporate which carries on or proposes to carry on insurance business in Guyana;
- (o) "insurer" means a company carrying on insurance business and, except where otherwise stated, includes all the members of an association of underwriters which is registered as an insurer;
- (p) "judicial manager" means a judicial manager appointed by the Court pursuant to subsection (1) of section 69;

- (q) "life insurance" means insurance of a class specified in Class 1 of Schedule 1;
- (r) "long-term insurance business" means insurance business described in Schedule 1;
- (s) "main representative" means a person who is appointed by an external insurer to act as its agent and to carry on insurance business in Guyana with express authorization from the Commissioner to enter into contracts on behalf of such external insurer and upon whom all lawful processes in any action or proceeding against such external insurer shall be served;
- (t) "Minister" means the Minister responsible for Finance;
- (u) "mutual insurer" means an insurer owned by the policy-holders and whose shareholders (if any) are entitled to interest but not dividends on their capital;
- (v) "officer" includes a director, manager, secretary, treasurer, actuary or any other person designated as an officer of an undertaking by its rules;
- (w) "pension fund manager" means any person who registers one or more pension fund plans under Part XVI;
- (x) "person" shall include:-
- (i) a natural person and any corporation or other entity which is given, or is recognized as having legal personality by the laws of any country or territory;
 - (ii) any unincorporated association or unincorporated body of persons, whether formed in Guyana or elsewhere, including a partnership, joint venture or consortium;
 - (iii) the government of a country or territory, any public, local or municipal authority in Guyana or elsewhere and any international organization or body, whether or not its members include Guyana and whether or not having legal personality; and
 - (iv) a person who, under the law of any country or territory, together hold a fiduciary, representative or official position shall be treated as a single person;
- (y) "policy" means any written contract of insurance whether contained in one or more documents;

- (z) "policy-holder" means the person who for the time being has legal title to a policy, and includes any person to whom a policy is for the time being assigned;
- 2(a) "registration" means an authorization issued by the Commissioner;
- (b) "regulations" means regulations made by the Minister under section 17;
- (c) "scheme" means a proposal for the transfer, acquisition or amalgamation of an insurance business;
- (d) "undertaking" means a body corporate, partnership or an unincorporated association carrying on a trade or business;
- (e) "underwriter" means any person named in a policy as liable to pay or contribute towards the payment of the sum secured by the policy.

PART II

COMMISSIONER OF INSURANCE

- Commissioner** 3. (1) The Minister shall appoint a Commissioner of Insurance who shall be responsible for carrying out the functions assigned to the Commissioner by this Act.
- (2) The Commissioner shall hold office on such terms and conditions, including remuneration, as the Minister may determine.
- (3) The Minister may with the consent of the President remove the commissioner from office.
- (4) The Commissioner may resign his office by notice in writing to the Minister.
- Function** 4. The Commissioner is charged with the general administration of this Act, and in the exercise of his functions he shall conform with any general or special directions given to him by the Minister.
- Disqualification** 5. (1) Where the Commissioner becomes a member of the National Assembly, he shall immediately cease to be the Commissioner.
- (2) The Commissioner shall be disqualified from holding and shall cease to hold office if he is adjudged bankrupt or is convicted of an indictable offence in relation to a business, or is convicted of an offence involving fraud or dishonesty, whether in connection with a business or not.

6. Where the Commissioner or a person connected to the Commissioner has any financial interest directly or indirectly in any insurer or external insurer, he shall, before exercising any functions as Commissioner, declare the nature of such interest to the Minister and shall comply with such directions as the Minister may give him in regard thereto. Declaration of interest
7. (1) Subject to subsection (3) a person shall not disclose any information obtained by him - Confidentiality
- (a) while performing duties as the Commissioner;
- (b) as a member of the staff of the Commissioner; or
- (c) as a member of any body consulted in pursuance of any provision of this Act, while performing duties relating to any such consultation.
- (2) A person who contravenes subsection (1) shall be guilty of an offence.
- (3) Nothing in subsection (1) shall prevent disclosure of information in a report made to the Commissioner or on behalf of the Commissioner to the Minister in connection with his duties.

PART III

MANAGEMENT AND STAFF

8. (1) The Commissioner may from time to time appoint individuals as members of his staff with the prior approval of the Minister as to the number of staff and the staff positions. Staff
- (2) An individual on the staff of the Commissioner shall be employed on such terms and conditions as the Commissioner may from time to time determine with the consent of the Minister.
9. The Commissioner may, out of money at his disposal, from time to time engage actuaries, consultants, advisers or managers as he considers necessary for the discharge of the functions of his office. Advisers and consultants
10. (1) The Commissioner may, without prejudice to his general responsibilities under this Act, perform any of his functions through or by any member of his staff or through another person or persons duly authorized by the Commissioner in that behalf. Management and delegation
- (2) The Commissioner may with the consent of the Minister, delegate functions to members of his staff or other persons duly authorized.
11. (1) There shall be established within the office of the Commissioner an Insurance Arbitration Board which shall consist of three members: the Commissioner or his representative, a representative of the Insurance Association of Guyana Arbitration Board

or a successor group representing the insurers, and a broker chosen by the brokers of Guyana through fair means.

- (2) Where in relation to a policy, any dispute or difference arises between a policy-holder and an insurer or broker, this dispute shall be arbitrated by the Insurance Arbitration Board.
- (3) Decisions of the Insurance Arbitration Board may be appealed to the High Court.
- (4) The Insurance Arbitration Board shall conduct arbitrations in accordance with the Arbitration Act.

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PART IV

FINANCIAL PROVISIONS

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|----------------------------|-----|---|
| Sources of funds | 12. | <ol style="list-style-type: none"> (1) Thirty days before the end of each financial year, the Commissioner shall in co-operation with the representatives of the insurers formulate and submit to the Minister a budget reflecting monies that the Commissioner will need in order to carry out the provisions of this Act during the following year. (2) The budget referred to in subsection (1) shall be approved by the Minister with amendments, if any, within fourteen days of the submission of the budget to the Minister. |
| Estimate of fees collected | 13. | <ol style="list-style-type: none"> (1) Thirty days before the end of each financial year, the Commissioner shall prepare an estimate of the amount of registration fees and other levies that are anticipated to be collected by the Commissioner in the following year. (2) The estimate referred to in subsection (1) shall be approved by the Minister with amendments, if any, within fourteen days of the submission of the estimate to the Minister. |
| Assessment | 14. | <p>The Commissioner is hereby authorized to make an annual assessment against each insurer, insurance broker, Association of Underwriters, and Manager of a Pension Fund Plan under the control of the Commissioner, which assessment shall be <i>pro rata</i> based upon the revenues of each of the entities and assessments shall be approved by the Minister if he determines that the amount of registration fees and other levies collected by the Commissioner will be insufficient to cover the annual operating cost of the office of the Commissioner. Any amount unexpended in such year shall be credited against the assessment in the following year and the assessment in the following year shall be reduced by such unexpended amount.</p> |
| Accounts | 15. | <ol style="list-style-type: none"> (1) The Commissioner shall keep in such form as may be approved of by the Minister proper accounts of monies received and expended by him. (2) The accounts of the Commissioner shall be submitted annually for audit to a private independent internationally |

accredited auditor and when so audited shall together with a report on the accounts be presented to the Minister by the Commissioner and copies shall be made available to the National Assembly and shall be published not later than six months after the end of each financial year to which it refers.

- (3) The Commissioner shall submit to the Minister such other reports and information as the Minister may require.

16. The Commissioner shall submit to the Minister an Annual Report of his activities and the administration of this Act within thirty days of the end of the calendar year to which it refers. The Minister shall place the Annual Report before the National Assembly within fourteen days of receipt of the Annual Report and shall cause the Annual Report to be published. The Annual Report shall include a list of information on the functions and activities of the Commissioner and shall specifically comment on trends and developments in insurance in Guyana and other matters that are likely to have an impact on insurance in Guyana.

Annual Report

PART V

SUBSIDIARY LEGISLATION

17. The Minister, after consulting with the Commissioner, may make regulations for carrying out the provisions of this Act.
18. (1) An appeal lies to the Insurance Board of Review from any decision, direction, or order of the Commissioner, under this Act.
- (2) The Insurance Board of Review shall consist of three members, one member recommended by the Commissioner, one member chosen by the Insurance Association of Guyana or a successor group representing the insurers, and one member chosen by the brokers of Guyana through fair means.
- (3) Members of the Insurance Board of Review shall serve a three year term.
- (4) The Commissioner, members of the Commissioner's staff, members of the Insurance Association of Guyana or a successor group, and registered brokers shall not be eligible to be members of the Insurance Board of Review.
- (5) Members of the Insurance Board of Review shall not have a financial interest in the insurance business in Guyana.
- (6) Members of the Insurance Board of Review shall be paid for their time and expenses from the budget of the office of the Commissioner.
- (7) An appeal from the Insurance Board of Review shall lie to the High Court.

Regulations

Appeals

PART VI

OFFENCES AND PENALTIES

Offences
and penalties

19. (1) Any person who contravenes -
- (a) any provision of this Act;
 - (b) any regulations; or
 - (c) any direction or requirement made by the Commissioner or a person authorized by the Commissioner,
- shall be guilty of an offence, unless he proves that he did not knowingly commit such contravention or omission and, in the case of a default in complying with any such provision, direction or requirement, the offence shall be deemed to be continued so long as the default continues.
- (2) Where an offence against this Act is committed by a company and the offence is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of, any director, principal officer, or other officer or an actuary or auditor of the company, he, as well as the company, shall be deemed to be guilty of the offence.
 - (3) Where any person signs a document required by or under this Act which he knows to contain false information, that person is guilty of an offence.
 - (4) Proceedings for an offence shall not be commenced after the expiration of three years from the commission of the offence.
 - (5) Any proceedings against a company in respect of an offence against this Act shall be without prejudice to any proceedings for the judicial management, or the winding-up of the company or of any part of the business of the company which may be taken in respect of the matter constituting the offence.

Summary
conviction

20. (1) The Commissioner shall appoint a Special Prosecutor to be responsible for prosecuting any violations of this Act.
- (2) Any offence against this Act for which no other penalty is prescribed is punishable as a summary offence;
 - (a) in the case of a company, by a fine not exceeding one million dollars and where the offence is a continuing offence, by a further fine not exceeding one hundred thousand dollars for every day during which the offence continues; and
 - (b) in the case of an individual, by a fine not exceeding one hundred thousand dollars or imprisonment for a term not exceeding three years, and where the offence is a continuing offence, by a further fine not exceeding ten thousand dollars for every day during which the offence continues after the conviction was first obtained.

PART VII

REGISTRATION OF INSURERS

21. (1) Only companies or Associations of Underwriters registered with and authorized by the Commissioner under this Act may carry on insurance business in Guyana. Restriction on insurance business
- (2) A company or association which attempts to carry on insurance business without registering with the Commissioner shall be guilty of an offence.
22. Every company or association seeking registration under this Act shall pay a filing fee of two hundred and fifty thousand dollars to the Commissioner. Registration
23. (1) Any company or association may make application to the Commissioner for registration under this Act. Application for registration
- (2) The application for registration shall be in writing, signed by a Director of the company or principal representative of the association, and shall specify -
- (a) the address of the head office of the company or the association;
 - (b) the names of the directors and the auditors and the name and address of the principal representative of the company or association;
 - (c) the name of the actuary of the company or association;
 - (d) the countries, if any, outside Guyana in which the company or association carries on insurance business; and
 - (e) the classes of insurance business undertaken or to be undertaken by the company or association.
- (3) The application shall be accompanied by -
- (a) a copy of the instruments constituting the company or association or other duly certified proof of incorporation;
 - (b) a copy of the articles of association or other rules of the company or association;
 - (c) a copy of the latest revenue account and balance sheet of the company or association and a copy of the latest actuarial valuation report upon the financial position of the company or association;
 - (d) in the case of a company or association having shareholders, a statement showing the nominal, subscribed and paid-up capital of the company or association and the amount of the capital which has been paid up in cash;
 - (e) in the case of long-term insurance business a copy of the premium rate book in use, or to be used by the company or association in Guyana;
 - (f) specimens of the various standard forms of proposals and policies to be issued in Guyana, certified by a director or the principal representative of the company or association to be true and correct; and

- (g) a copy of any reinsurance contract in effect at the time of application.
 - (4) The Commissioner may require any company or association making application for registration under this Act to furnish him with such additional information as he may require.
 - (5) Every company or association carrying on insurance business in Guyana immediately before the commencement of this Act shall, within two months of the commencement, make application in accordance with this section to the Commissioner for registration. Upon submission of its application, the company or association shall be deemed registered and should the Commissioner find any portion of the application to be deficient, the company shall be given six months from the initial filing deadline to cure such deficiency without penalty.
 - (6) The Commissioner shall decide whether to grant or refuse an application or seek additional information and so inform the applicant in writing within one month of receiving the application. Where additional information is sought, the Commissioner shall decide and inform the applicant of the decision within one month of receiving the additional information which he sought.
- Qualifications for registration
24. (1) Where the Commissioner, after appropriate inquiry or by the production of documentary evidence, and upon the advice of an actuary, is satisfied in respect of the applicant insurance company or association that -
- (a) the requirements of sections 21 and 22 in so far they are applicable, have been complied with;
 - (b) the company or association is solvent, and not subject to proceedings under section 68;
 - (c) the company or association is likely to be able to comply with such of the provisions of this Act as would be applicable to it;
 - (d) the company or association has made adequate arrangements for reinsurance of that class of insurance business or that there is no justification for making such arrangements;
 - (e) the managing director or controller of the company or person in charge of the association is a fit and proper person;
 - (f) in the case of a company or association that carries on, or proposes to carry on, some other form of business in addition to insurance business, the carrying on of both insurance business and that other business is not contrary to the public interest;
 - (g) the name of the company or association is not identical with or does not so closely resemble the name of an insurance company or association already registered under this Act as to be likely to deceive; and
 - (h) being a foreign company or association, it -

- (i) is lawfully constituted in accordance with the laws of the country in which it is incorporated and has undertaken insurance business in that country for at least three years before the date of the application; and
- (ii) has appointed some person resident in Guyana to be its main representative in Guyana and has informed the Commissioner in writing of the name and address of that person,

the Commissioner shall, either unconditionally or subject to such conditions as he may specify, register the insurance company or association in respect of such class or classes of insurance business and shall authorize the applicant accordingly.

- (2) Where the Commissioner is not satisfied, in relation to all or any of the classes of insurance business in respect of which the application is made, as to one or more of the conditions mentioned in subsection (1), he shall notify the insurance company or association in writing that he proposes to refuse to register it in respect of one or more of the classes of insurance business for which application is made and give his reasons for so doing.

25. The registration shall be in the form of a certificate which shall-

- (a) specify the class of insurance business in respect of which the insurer is registered to carry on insurance business; and
- (b) be *prima facie* evidence that the insurer named on the certificate is registered to carry on insurance business of the class shown on the certificate.

Registration
Certificate

- 26. (1) An insurer which ceases to carry on insurance business of a class for which it is registered under this Act shall notify the Commissioner in writing to this effect and on being so notified, the Commissioner shall subject to subsection (4) revoke the registration of the insurer in respect of that class.
- (2) Where an insurer is registered under this Act to carry on insurance business and the Commissioner has reason to believe that the insurer has not carried on that insurance business within two years of the grant of registration or has not done so for a period of more than two years, he may serve on the insurer a notice requiring it to satisfy him, within one month after the date of service of the notice, that it is carrying on the registered insurance business in Guyana.
- (3) The Commissioner may revoke the registration of an insurer on which notice is served under subsection (2) where the insurer does not within the time specified in that subsection satisfy the Commissioner that it is carrying on insurance business in Guyana.
- (4) The Commissioner shall not revoke the registration of an insurer in respect of a particular class of insurance business so

Revocation of
registration

long as the insurer is under liability to Guyana policy-holders unless he is satisfied that -

- (a) reasonable provision has been or is being made to meet that liability; and
 - (b) adequate arrangements have been or are being made for payment in Guyana of premiums and claims; on those policies.
- (5) The Commissioner may revoke the registration of an insurer if it appears to him that -
- (a) the insurer is or is likely to be unable to meet its obligations, or has unreasonably delayed settlement of claims payable on policies issued by it;
 - (b) the insurer has failed to comply with any of the provisions of this Act;
 - (c) the insurer has not, within a period of one month from the date on which the Commissioner required from it in writing any information which he was entitled to require from it under this Act furnished that information duly and satisfactorily; or
 - (d) the registration was procured as a result of any misleading or false representation or in consequence of any incorrect information (whether the representation was made or information was supplied wilfully or otherwise).
- (6) The Commissioner shall, when the registration of the insurer is cancelled -
- (a) within fourteen days of the cancellation, give written notice of cancellation to the insurer specifying the reasons for the cancellation of the registration of the insurer; and
 - (b) require the insurer to deliver its certificate of registration to him within twenty-eight days of the cancellation or such shorter period as may be specified in the notice.

PART VIII

ACCOUNTS AND DOCUMENTS

- Annual Account 27. (1) An insurer other than an external insurer shall at the expiration of each financial year prepare a revenue account in respect of each class of insurance business carried on.
- (2) An insurer other than an external insurer, which carries on both long-term and general insurance business, shall prepare a separate profit and loss account (or income and expenditure account if the long-term insurance business is not operated for profit) and balance sheet in respect of long-term insurance business.
- (3) An insurer other than an external insurer shall submit any report on the affairs of the insurer submitted to shareholders or policy-holders in respect of the financial year.

28. (1) An insurer other than an external insurer shall comply -
- Compliance
No. 29 of 1991
- (a) with sections 157 to 169 (Financial Disclosure) of the Companies Act 1991 and with the Sixth Schedule of that Act as modified for insurance companies; and
- (b) with, in the case of a mutual insurer, the equivalent requirements as to financial disclosure contained in the law under which it is established.
- (2) In addition to the requirements under subsection (1) and section 27, an insurer carrying on general insurance business shall state in its accounts the basis on which it has provided for outstanding claims on its balance sheet including the extent to which it has provided for claims incurred but not reported.
29. (1) An external insurer shall at the expiration of each financial year prepare, in relation to its activities in Guyana, revenue accounts, a profit and loss account and a balance sheet in the format prescribed by the Commissioner for insurance in the country in which its head office is situated.
- External insurer
annual account
- (2) If not prepared in accordance with subsection (1), an external insurer shall prepare a separate revenue account, separate profit and loss account (or income and expenditure account if the long-term insurance business is not operated for profit) and balance sheet in respect of each class of insurance business carried on.
30. (1) An insurer other than an external insurer shall deposit with the Commissioner four copies of each account prepared in accordance with section 27 and four copies of the documents prepared under section 28 within six months of the end of each financial year. The said four copies shall be typewritten and one copy shall be signed by a director and the secretary of the insurer and shall indicate the date on which the accounts were approved by the board.
- Annual filing
- (2) An external insurer shall deposit with the Commissioner four copies of the materials prepared in accordance with section 29 within six months of the end of each financial year. The said four copies shall be typewritten and one copy shall be signed by a director, the secretary, and the main representative of the insurer and shall indicate the date on which the accounts were approved by the board.
- (3) The documents prepared by the insurer in accordance with subsections (1) and (2) shall be approved by an independent auditor, paid for at the expense of the insurer, and proof of the approval of the independent auditor shall be submitted with the documents prepared in accordance with subsections (1) and (2).
- (4) If in any case it is made to appear to the Commissioner that the circumstances are such that a longer period than six

months should be allowed he may, at the written request of the insurer, extend that period by not more than three months.

- (5) The written request referred to in subsection (4) shall be filed with the Commissioner prior to the date on which the six months expired.

Associated groups

31. Where two or more insurance companies, that operate as separate entities that can be wound up in accordance with the law under which they are incorporated, are associated together in a group, then, in addition to the separate accounts required by section 30, the Commissioner may require the parent company or association of the group to prepare, at the end of each financial year and in the prescribed form and manner -

- (a) a consolidated balance sheet showing at the close of the financial year, the position as a group of the parent company or association and all its subsidiary companies;
- (b) a consolidated profit and loss account showing the profit or loss as a group of the parent company or association and all its subsidiary companies during the financial year; and
- (c) such other documents as may be prescribed, and the balance sheet and profit and loss account shall bear a certificate by an auditor approved by the Commissioner as to whether in his opinion it gives a true and fair view of the financial position as a group at the close of that financial year or, as the case may be, of the profit and loss as a group during that financial year, of the parent company or association and all its subsidiary companies.

Investigation
by actuary

32. (1) Every insurer carrying on long-term insurance business shall once in every three years cause an investigation to be made into its financial condition, including its liabilities, by an actuary and furnish the Commissioner an abstract of the result of the investigation.
- (2) The abstract referred to in subsection (1) above shall indicate the basis of valuation adopted and the resulting surplus or deficit.
- (3) An insurer carrying on long-term insurance business with a view of distribution of surplus shall not pay, allocate or transfer any part of the assets of its statutory fund established under section 46 except with approval of the Commissioner and on the basis of the abstract referred to in subsections (1) and (2).

Explanations
and additional
information

33. (1) Where it appears to the Commissioner that any account, balance sheet, abstract, statement or return filed with him by an insurer in accordance with this Act
- (a) is in any particular unsatisfactory, incomplete, incorrect or misleading; or
 - (b) does not comply with the requirements of this Act,

- he may, by written notice served on the insurer, require such explanations or additional information as he considers necessary and the insurer shall respond within fourteen days of receiving notice from the Commissioner.
- (2) After considering any explanations made by or on behalf of the insurer or where no explanations were made within the time specified in the notice, the Commissioner may reject the account, balance sheet, abstract, statement or return and give such directions as he thinks necessary for varying the account, balance sheet, abstract, statement or return. The insurer shall have thirty days to comply with the Commissioner's directions.
 - (3) If the Commissioner is not satisfied with the accounts and additional information under subsection (1), he may require an audit to be carried out at the expense of the insurer.
 - (4) If the Commissioner sees fit, he may at any time require an audit to be carried out at the expense of the insurer in order for the Commissioner to carry out his duties under this section.
34. A printed copy of the latest account or balance sheet of an insurer filed with the Commissioner in accordance with section 30 shall, on the application of a shareholder of the insurer, be forwarded to him by the insurer. Shareholder copy
35. The Commissioner may under special circumstances require an insurer registered under this Act to carry on insurance business to - Production of documents
- (a) furnish him at such time and in such manner as he may determine with such information in connection with its insurance business as he may specify;
 - (b) produce at such time and place as he may determine such books or papers in connection with its insurance business as he may specify; or
 - (c) produce forthwith to that person authorized in writing by the Commissioner such books or papers as the person may specify.
36. (1) On and after the commencement of this Act any written law which establishes or confirms the establishment of a mutual insurer shall, in so far as it relates to auditors, cease to have effect whereupon the qualifications, powers and duties of auditors of a mutual insurer shall be those mentioned in sections 170 to 172 and 174 to 186 of the Companies Act 1991. Mutual insurers
- (2) References to shareholders in the provisions of the Companies Act 1991 mentioned in subsection (1) shall be deemed references to "members" and "profit and loss accounts" shall include reference to any revenue or other account which the insurer customarily presents to its members as part of its annual report in order to explain the state of affairs of the insurer. No. 29 of 1991

- Acquisition or redemption of shares
No. 29 of 1991
37. Sections 38, 39 and 40 (acquisition or redemption of own shares) of the Companies Act 1991 shall not apply to an insurer registered under this Act unless the Commissioner decides otherwise.
- Directors
No. 29 of 1991
38. Notwithstanding anything to the contrary contained in the Companies Act 1991, an insurer, other than an external insurer, to which this Act applies shall have at least two directors and any balance sheet to be delivered by it to the Commissioner under this Act shall be signed by a director and the insurer's secretary.
- Licensed financial institutions
No. 1 of 1995
39. (1) An insurer to which this Act applies shall be deemed to be a licensed financial institution under the Financial Institutions Act 1995, but only in relation to section 14 ("restriction on certain financial activities") and section 28 ("conflicts of interest").
- (2) In sections 14 and 28 referred to in subsection (1), references to "the Bank" shall, in so far as insurance companies to which this Act applies be references to "the Commissioner".

PART IX

DEPOSIT

- Deposit
40. (1) An insurer may not be registered under this Act and may not carry on any class of insurance business unless it has made the appropriate deposit under this section.
- (2) Where an insurer proposes to carry on -
- (a) long-term insurance business, the deposit shall be five million dollars per class subject to adjustment by the Commissioner after January 01, 2001 to reflect inflation; or
- (b) any class of general insurance business, the deposit shall be an amount equal to twenty percent of the net premium income of the insurer for that class (after deduction of any premium by the insurer for reinsurance) in Guyana during the financial year last preceding the deposit, or five million dollars, whichever amount is greater.
- Assets of the insurer
41. (1) All deposits made by an insurer under this Act shall be deemed to form part of the assets of the insurer.
- (2) All interest and dividend accruing on any securities deposited under this Act shall be paid to the insurer making the deposit.
- (3) Where an insurer ceases to be registered, any deposit or part of it may be retained by the Commissioner until he is satisfied that liabilities to policy-holders have been met.
- Evidence of deposit
42. The Commissioner shall, on demand by an insurer, furnish the insurer with a certificate in writing setting out the nature and extent

of any deposit held by him together with the particulars of the securities, if any, forming the whole or part of the deposit.

43. (1) If an insurer has made a deposit pursuant to section 40, at the end of each financial year, the insurer, shall, where necessary, deposit or be refunded, an amount equal to the difference between the last preceding deposit and twenty percent of the net premium income during each financial year, except that the deposit shall not be less than five million dollars. Accounting of deposit
- (2) A directive to the insurer dictating the amount the insurer needs to deposit shall not be issued until the Commissioner has given an opportunity to the insurer to be heard in connection with the matter.
- (3) An insurer that fails to deposit with the Commissioner money or approved securities or both as required by him under this section is guilty of an offence and the Commissioner may, if he deems it necessary in the interest of the policy-holders, cancel the registration of that insurer.
44. If any monies or securities held by the Commissioner as the deposit, or part of it, are, while so deposited, lost, stolen, destroyed or damaged, the injury occasioned to all persons interested in the monies or securities shall be made good out of monies to be appropriated by the Minister for the purpose. Stolen, destroyed or damaged deposit
45. An insurer may, at any time, substitute for any security or cash held by the Commissioner as the deposit, or part of it, required to be made by the insurer under this Act, any approved security or cash, but so that the total amount then deposited is not less than the amount required by this Act and any security or cash so substituted is subject to the same charge or liability as the security or cash withdrawn. Substitute deposits

PART X

STATUTORY FUNDS

46. (1) Every insurer registered under this Act to carry on insurance business shall establish and maintain a statutory fund in respect of each class of insurance business. Establish statutory fund
- (2) The statutory fund shall be established on the date on which the insurer commences the carrying on of each class of insurance business or not later than four months after the commencement of this Act, whichever is the later date.
- (3) The fund referred to in subsection (1) shall be established and maintained -
- (a) in the manner mentioned in subsections (4), (5) and (6); and
- (b) under an appropriate name in respect of each class of insurance business referred to in subsection (1).

- (4) Every insurer carrying on long-term insurance business in Guyana shall place in trust in Guyana assets equal to its liabilities and contingency reserves less the amount deposited on account of the insurance business pursuant to this Act with respect to its Guyana policy-holders as established by the balance sheet of the company or association at the end of its last financial year.
- (5) Every insurer carrying on non-long-term insurance business in Guyana shall place in trust in Guyana assets equal to its liabilities and reserves less the amount deposited on account of the insurance business pursuant to this Act with respect to its policy-holders in Guyana as established by the revenue account of the company or association at the end of its last financial year.
- (6) Assets required pursuant to subsections (4) and (5) shall be so placed not more than four months after the end of the financial year to which the balance sheet or the revenue account of the company or association relates.
47. (1) Subject to subsections (2) and (3), the assets representing each statutory fund of an insurer shall not be applied directly or indirectly to any class of insurance business other than that in respect of which the fund was established and is being maintained.
- (2) Where the value of the assets mentioned in subsection (1) is shown on an actuarial investigation made under this Act to exceed the amount of the liabilities attributable to any class of insurance business, the restriction imposed by subsection (1) shall not apply to so much of those assets as represents the excess.
- (3) Nothing in subsection (1) shall be construed as precluding an insurer from exchanging, at fair market value, assets representing each statutory fund for other assets of the company or association.
- (4) The provisions of subsection (1) shall apply notwithstanding any arrangements for the subsequent repayment to the fund of any money out of the receipts of any other class of insurance business.
- (5) Any mortgage or charge, including a charge imposed by a court on the application of a judgment creditor, shall be void to the extent to which it contravenes the provisions of subsection (1).
- (6) No insurer and no insurance company or association of which any such insurance company or association is a subsidiary shall declare a dividend at any time when the value of the assets representing each statutory fund established and maintained by the company or association as determined in such manner as may be prescribed, is less than the amount of the liabilities attributable to that insurance business.

- (7) A company or association that carries on more than one class of insurance business in respect of which it is required to establish and maintain a statutory fund shall keep such books of accounts and other records as are necessary for the purpose of identifying -
- (a) the assets respecting each statutory fund; and
 - (b) the liabilities attributable to each class of insurance business.
48. (1) A trust referred to in subsections (4) and (5) of section 46 shall be created by a trust deed the contents and the trustees of which shall be approved by the Commissioner before the trust is created and the deed shall be in such form as may be prescribed. Trust
- (2) Notwithstanding the provisions of subsection (1), the Commissioner may on such terms and conditions as the Minister thinks fit, allow the assets required to be held in trust in Guyana to be placed in trust outside Guyana.
- (3) The Commissioner may for the purposes of this section allow the assets required to be placed in trust to be held by a bank to the order of or on behalf of the Commissioner and such assets shall be deemed to be placed in trust and the bank shall be deemed to be a trustee.
49. (1) A trustee may not deal with any assets held in trust by him without the prior general or specified approval of the Commissioner. Approval of Commissioner
- (2) A trustee shall submit to the Commissioner in such form and at such times as may be prescribed, a list of the assets held in trust by him pursuant to section 46.
- (3) A trustee who contravenes the provisions of subsection (1) shall be under the same liability as if the appropriate policy-holders had been beneficiaries of the trust.
50. The long-term insurance business fund established pursuant to section 46 shall be the security of the policy-holders as though it belonged to an insurer carrying on no other insurance business than long-term insurance business and is not liable for any contracts of the insurer for which it would not have been liable had the insurance business of the insurer been only that of long-term insurance, and is not to be applied, directly or indirectly, for any purpose other than that of long-term insurance business. Long-term insurance fund
51. The insurer, shall within thirty days after the date of establishment of the statutory fund mentioned in section 46 or within such further time as the Commissioner may allow and thereafter within six months of the expiration of each financial year, furnish the Commissioner with a statement in accordance with the prescribed form showing - Statutory fund statement

- (a) particulars of the liabilities of the insurer in respect to which the fund it established, as at the date of establishment of the fund;
- (b) particulars of the assets comprising the fund; and
- (c) such additional information relating to the fund as he may require.
- Unsatisfactory statement**
52. If it appears to the Commissioner that -
- (a) a statement furnished to him under section 51 is in any respect unsatisfactory, incomplete, inaccurate or misleading or otherwise fails to comply with the requirements of that section; or
- (b) the value of the assets, or of the assets included in a particular class of assets as shown by the statement is insufficient or excessive, the Commissioner may, after considering any explanation made by or on behalf of the insurer, give to the insurer, such directions in writing as he thinks necessary for
- (i) the variation of the statement; and
- (ii) for an increase or decrease in the value of the assets respectively, and the insurer shall within thirty days comply with any directions so given.
- Furnish information**
53. An insurer shall, if directed by the Commissioner, furnish him within thirty days or within such further time as the Commissioner may allow, with such information as he requires for the purpose of exercising his powers under sections 51 and 52.
- Assets**
54. The assets shown by a statement furnished to the Commissioner by an insurer under section 51, or by the statement as varied, where directions are given by the Commissioner, or on appeal, for the variation of the statement, as being assets of any statutory fund, shall be deemed to form part of those assets, unless they more properly form part of the assets of some other statutory fund.
- Investment in Guyana**
55. (1) Subject to subsections (2) and (4), every insurer carrying on long-term insurance business in Guyana under this Act shall have assets invested in Guyana and shall maintain such assets in an amount of not less than eighty-five per cent of its statutory fund, provided however that for each percentage point of its assets invested in the common stock or long term debt of a company in Guyana, the eighty-five per cent minimum may be reduced by one percentage point, up to a maximum of a ten percentage point reduction.
- (2) An insurer carrying on long-term insurance business in Guyana may, for the purpose of complying with the requirements of subsection (1), invest each year in assets in Guyana and keep invested therein an amount not less than eighty per cent of its net premium income in that year in respect of long-term insurance policies issued in Guyana until

the amount so invested is equal to the amount of investment required by subsection (10).

- (3) Every insurer carrying on long-term insurance business in Guyana shall invest each year in securities approved by the Commissioner subject to such terms and conditions as may be imposed by him an amount equal to twenty per cent of the increase in that year of its statutory fund as mentioned in subsection (1) of section 46 and the amount so invested is reckoned as part of the investment required by this section to be made by the insurer.
- (4) The assets of a statutory fund shall not be invested except in the securities specified in Schedule 3.
- (5) The Minister may amend by order Schedule 3.

Schedule 3

PART XI

ACQUISITION, TRANSFER AND AMALGAMATION

56. (1) An insurer shall not transfer or amalgamate any class of its insurance business, either in whole or in part, to or with the insurance business of any other insurer, except in pursuance of a scheme prepared in accordance with this Part and confirmed by the Commissioner.
 - (2) An application for the confirmation of a scheme shall be made to the Commissioner by or on behalf of any insurer engaged in the acquisition, transfer or amalgamation, and an application with respect to any matter connected with a scheme or a proposed scheme may be made at any time before it is confirmed, by any person who, in the opinion of the Commissioner is likely to be affected by the scheme or the proposed scheme.
 - (3) Where an application is made under subsection (2), the Commissioner shall set a date not less than two months from the date of the application for the hearing thereof.
 - (4) At the hearing of the application the insurer is entitled to appear and to be heard either through one of its officers or through an attorney-at-law. The Commissioner may hear such other evidence as he considers necessary and any person who, in the opinion of the Commissioner is likely to be affected by the scheme is entitled to be heard.
 - (5) In the case of an external insurer, the provisions of this section shall apply only to the acquisition, transfer or amalgamation of insurance business relating to policies in Guyana.
57. A scheme shall set out the terms of the agreement or deed under which it is proposed to effect the acquisition, transfer or amalgamation and shall contain such further provisions as are necessary to give effect thereto.

Application for confirmation of scheme

Terms of the agreement

Requirements
for confirmation

58. Before a scheme for the acquisition, transfer or amalgamation of any class of insurance business of an insurer is confirmed by the Commissioner -

- (a) certified copies of the assets and liabilities of the companies engaged in the acquisition, transfer or amalgamation shall be submitted to the Commissioner;
- (b) a copy of the scheme together with copies of the actuarial and other reports, if any, upon which the scheme was founded, shall be submitted to the Commissioner;
- (c) copies of the scheme and of every report submitted to the Commissioner or summaries of the scheme and reports approved by the Commissioner shall, unless the Commissioner otherwise directs, be transmitted to every policy-holder of any class of insurance business affected by the scheme by the companies engaged in the acquisition, transfer or amalgamation, at least fifteen days before the application for confirmation of the scheme is to be heard;
- (d) notice of the intention to make the application (the notice to contain such particulars as may be prescribed) shall, not less than one month after the copy of the scheme is submitted to the Commissioner, be published in the Gazette and in such local newspapers as may be approved by the Commissioner;
- (e) the scheme shall be open for inspection by any policy-holder or shareholder affected by it, for a period of fifteen days after the publication of the notice, at the office of each insurer engaged in the acquisition, transfer or amalgamation;
- (f) the Commissioner may cause a report on the scheme to be made by an independent actuary and shall cause copy of the report to be sent to each of the companies engaged in the acquisition, transfer or amalgamation; and
- (g) the Commissioner may give directions concerning -
 - (i) the publication of advertisements of the scheme;
 - (ii) the giving of notices to shareholders, policy-holders or creditors of the companies; or
 - (iii) the holding of meetings of any insurer affected and such directions shall be complied with by the person to whom they are given.

Policy-holder
dissent

59. The Commissioner shall not sanction a scheme unless

- (a) the provisions of this Part are complied with;
- (b) subject to paragraph (c), a number of policy-holders representing no more than ten percent of the total amount assured in any one portfolio involved in the scheme dissent therefrom;

- (c) in the case of a group policy, a number of policy-holders representing not more than twenty-five percent of the total group in any one portfolio to which the scheme relates, dissent therefrom; or
- (d) he is satisfied that the acquisition, amalgamation or transfer is not detrimental to the policy-holders.
60. (1) The Commissioner shall give notice to the insurers regarding whether he confirms or disapproves of the scheme within one month of the hearing on the scheme. Notice of confirmation
- (2) When confirmed by the Commissioner, the scheme shall be binding on all persons and shall have effect notwithstanding anything in the instruments constituting the insurer or in the articles of association or in any rules of the insurer. The directors of any insurer affected by the scheme shall cause a copy of the scheme to be filed with the Registrar of Companies.
- (3) All expenses incurred by the Commissioner in obtaining the report of any actuary on the scheme or any other expenses that the Commissioner has related to approving the acquisition, amalgamation or transfer shall be defrayed by the companies engaged in the acquisition, transfer or amalgamation, and any sum due in respect of those expenses may be recovered summarily as a civil debt by the Commissioner from the companies either jointly or severally.
61. Where any class of insurance business carried on by an insurer is acquired, transferred to or amalgamated with the insurance business of another insurer, the insurer to which the insurance business is acquired, transferred or the insurer carrying on the amalgamated insurance business shall, within one month after the acquisition, transfer or amalgamation, submit to the Commissioner - Acquisition of a class of business
- (a) a certified copy of the agreement or deed under which the acquisition, transfer or the amalgamation is effected; and
- (b) a statutory declaration made by the Chairman of the Board of Directors or by the principal representative of the insurer -
- (i) specifying every payment made or to be made to any person in respect of the acquisition, transfer or amalgamation; and
- (ii) stating that to the best of his knowledge and belief no other payment, other than those specified has been or is to be made in money, policies, bonds, valuable securities property of any description or any other valuable consideration, by or with the knowledge of any parties to the acquisition, transfer or amalgamation.
62. (1) Notwithstanding anything in its memorandum or other instruments of incorporation or in its articles or other rules or Conversion into mutual companies and vice versa

in this Act, a company or association incorporated in Guyana that has a share capital and that is registered under this Act to transact long-term insurance business, whether alone or in combination with any other class of insurance business, may, with the approval of its shareholders constituting not less than three fourths of the number of its shareholders and together holding not less than three-fourths of its share capital and with the permission of the Commissioner, establish and implement a plan for the conversion of the company or association into a mutual company by the purchase of shares of the company or the conversion of the shares into debentures in accordance with such conditions as may be prescribed.

- (2) A company may be demutualised by means of the procedure specified in subsection (1).

PART XII

INTERVENTION, JUDICIAL MANAGEMENT AND WINDING UP

Intervention

63. (1) Subject to subsection (2) and to sections 64 and 65, the Commissioner may at any time intervene in the affairs of an insurer registered under this Act.
- (2) The power of intervention conferred by subsection (1) shall be exercisable where the Commissioner is satisfied that -
- (a) the exercise of the power is essential in order to protect policy-holders or potential policy-holders of the insurer against the risk of the insurer's inability to meet its liabilities or, where an insurer is carrying on long-term insurance business, to fulfill the reasonable expectations of policy-holders or potential policy-holders;
 - (b) the insurer has failed to satisfy any obligation imposed on it by this Act;
 - (c) the insurer has furnished misleading or inaccurate information to the Commissioner under or for the purposes of any provision of this Act;
 - (d) an application for registration would be refused if such an application were made at the time of the proposed intervention;
 - (e) an insurer which is carrying on general insurance business is deemed to be unable to pay its debts;
 - (f) in the case of an insurer which is carrying on long-term insurance business, the value of the assets representing the statutory fund maintained in respect of such class of insurance business does not exceed the liabilities of that insurance business;
 - (g) there has been unreasonable delay in the settlement of claims under policies issued by the insurer; or

- (h) it is in the best interests of the policy-holders for him to intervene.
64. (1) The Commissioner shall, before exercising the power conferred on him by section 63 serve on the insurer a written notice to the effect that - Notice of intervention
- (a) he is considering exercising the power and the ground on which it may be exercised; and
- (b) the insurer may within thirty days of the date on which the notice is served make written representations to the Commissioner.
- (2) Before exercising his power of intervention the Commissioner shall take into consideration any representations made to him pursuant to paragraph (b) of subsection (1).
65. (1) The Commissioner may, where he exercises his power of intervention, require the insurer by instrument in writing - Exercise of intervention power
- (a) to refrain, as of the date specified in the instrument -
- (i) from effecting any contracts of insurance either generally or with respect to a specified class whether or not the effecting of the contract falls within a class of insurance business which the insurer is authorized to carry on; or
- (ii) from varying any existing contracts;
- (b) to limit to a specified amount the aggregate amount of premiums to be written by the insurer whether the aggregate relates to premiums to be received by the insurer or to the aggregate after deducting any premiums payable by the insurer for reinsuring the liabilities in consideration of which premiums are to be received;
- (c) to refrain from naming investments of a specified class or description;
- (d) to realize, before the expiration of the period specified in the instrument, the whole or a specific proportion of investments of a specified class or description held by the insurer;
- (e) to prepare and submit at earlier and with greater frequency the documents required to be prepared under section 27;
- (f) to have an actuary or any other person appointed by the Commissioner investigate the financial position of the insurer in respect of its insurance business or any part thereof and to submit to the Commissioner a report of the investigation on or before a specified date; or
- (g) to take such action as appears to him to be necessary for the purpose of protecting policy-holders or potential policy-holders of the insurer against the risk that the insurer is or is likely to be unable to meet its liabilities or, in the case of an insurer carrying on long-term

insurance business, to fulfill the reasonable expectations of policy-holders or potential policy-holders.

- (2) The Commissioner may, where he considers it desirable so to do rescind or vary any requirement imposed by him on an insurer pursuant to subsection (1).
- (3) Notice of the imposition of a requirement or of the rescission or variation thereof may be published in the Gazette and in such local newspapers as may be approved by the Commissioner.
- (4) Any costs to the Commissioner or to the Commissioner's office incurred with respect to the Commissioner's duties under this section and sections 63 and 64 shall be paid for by the insurer for which the Commissioner had to intervene. Procedures for the reimbursement of the Commissioner and the Commissioner's office shall be determined by the Minister.

Winding-up

No. 29 of 1991

66. (1) The Court may order the winding up of an insurer to which this Act applies in accordance with Part V of the Companies Act 1991, subject to the modification that the insurer may be ordered to be wound up on the petition of ten or more policy-holders. (2) The petition mentioned in subsection (1) shall not be presented except by leave of the Court and leave shall not be granted until a *prima facie* case has been established to the satisfaction of the court and until security for costs for such amount as the court may think reasonable has been given.

Petition

67. (1) Where the Commissioner is satisfied that it is necessary or proper that the insurer ought to be wound up, he may, with the leave of the court, present a petition:
 - (a) for the winding up by the Court, of the insurer on the ground -
 - (i) that the insurer has contravened section 21;
 - (ii) in the case of an insurer, that was carrying on insurance business in Guyana before the commencement of this Act and registration of which insurer under this Act has been refused, that it is in the interest of the policy-holders that the insurer be wound up;
 - (iii) in the case of an insurer the registration of which under this Act has been cancelled, that it is in the interest of the policy-holders that the insurer be wound up;
 - (iv) that any officer of the insurer or its holding company refuses to comply with any requirements under section 46;
 - (v) that the results of an investigation of the insurer are such that it is in the interest of the policy-holders that the insurer be wound up; or

- (vi) that the insurer is insolvent pursuant to section 68;
or
- (b) for an order that the insurer or any part of the insurance business of the insurer be placed under judicial management on the ground -
 - (i) that the insurer is in financial difficulties;
 - (ii) that the insurance business of the insurer is not being conducted in accordance with sound insurance principles and practice; or
 - (iii) that it is otherwise in the interest of the policy-holders that such an order be made,

and the Court may order accordingly.

- (2) An insurer may, in respect of itself, after giving the Commissioner one month's notice in writing of its intention so to do, petition the Court for any order specified in subsection (1).
- (3) Both the insurer and the Commissioner are entitled to be heard on any petition presented to the Court under this section.
- (4) Where a petition is presented under this section for an order in respect of any insurer, all actions and the execution of all writs, summonses and other processes against it shall, by virtue of this section, be stayed and shall not be proceeded with unless, the leave of the Court is first obtained or unless the Court otherwise directs.

68. (1) An insurer shall be deemed insolvent -

Insolvency

- (a) in the case of an insurer carrying on long-term insurance business and no general insurance business, if the value of its assets does not exceed the amount of its liabilities, the value of the assets and liabilities being certified by an independent actuary;
- (b) in the case of an insurer carrying on general insurance business and no long term insurance business, if the value of its assets does not exceed the amount of its liabilities by
 - (i) one million dollars or an equivalent sum in other currency; or
 - (ii) twenty-five percent of its premium income in respect of its general insurance business in its last preceding financial year,

whichever is, the greater amount;

- (c) in the case of an insurer carrying on both long-term insurance business and general insurance business, if the value of its total assets does not exceed its total liabilities by the greater of the amounts specified in subparagraphs (i) and (ii) of paragraph (b); or
- (d) until the contrary is proved, if the insurer fails to furnish to the Commissioner any of the information required by section 30 within the specified time period.

- (2) For the purposes of this section -
- (a) in computing the amount of the liabilities of an insurer, all contingent and prospective liabilities shall be taken into account, but not liabilities in respect of share capital; and
 - (b) the premium income of an insurer in respect of its general insurance business in each financial year shall be taken to be the net amount (after deduction of any premiums paid by the insurer for re-insurance) of the premiums received by that insurer in that year in respect of all insurance business of a class specified in Schedule 1.

Schedule 1

Appointment of
judicial manager

69. (1) Where an order for the judicial management of an insurer or of part of the insurance business of an insurer is made after the hearing of a petition under section 67, the provisions of this section and of sections 70 to 73, inclusive, shall apply.
- (2) The Court shall appoint the Commissioner as judicial manager.
- (3) The Court may direct how and by whom the remuneration, charges and expenses of the judicial manager shall be borne and may, if it thinks fit, charge that remuneration and those charges and expenses on the property of the insurer in such order of priority in relation to any existing charges on that property as it thinks fit.
- (4) The management of the insurer, or of such part of the insurance business of the insurer as the order of the Court directs, shall, on a date specified in the order, vest in the judicial manager appointed by the Court to the exclusion of any person vested with any such management immediately before that date; but, except with the leave of the Court, the judicial manager shall not issue any new policy or renew any existing policy or enter into any new contract.
- (5) The Court shall issue such directions to the judicial manager as to his powers and duties as it deems desirable in the circumstances of the case.
- (6) The judicial manager shall act under the control of the Court and may apply to the Court at any time for directions as to the manner in which he shall conduct the judicial management or in relation to any matter arising in the course of the judicial management.

Cancellation
of order

70. Where at any time, on the application of the judicial manager or of any person appearing to the Court to have an interest in the matter, it appears to the Court that the purpose of the order for the judicial management of the insurer or of part of the insurance business of the insurer has been fulfilled, or that for any reason it is undesirable that the order should remain in force, the Court may cancel the order and thereupon the judicial manager shall be divested of the management

which shall again vest in the board of directors or other governing body of the insurer.

71. (1) The judicial manager shall conduct the management of the insurer with the greatest economy compatible with efficiency and shall, as soon as practicable, file with the Court a report stating which of the following courses is in the circumstances, in his opinion, most advantageous to the general interests of the policy-holders of the insurer - Report to Court by judicial manager
- (a) the transfer of all or any part of the insurance business of the insurer to some other insurer in pursuance of a scheme prepared by the judicial manager and annexed to the report;
 - (b) the carrying on of its insurance business by the insurer either unconditionally or subject to such conditions as the judicial manager may suggest;
 - (c) the winding-up of the insurer; or
 - (d) such other course as he considers advisable.
- (2) The report or a copy of the report shall be open for inspection by any person during official working hours, at the Registry of the Court in which the report is filed or at such place as the Commissioner determines.
72. (1) The Court shall on an application made under section 67(a) after hearing the Commissioner, the judicial manager and any other person who in the opinion of the Court is entitled to be heard; and after considering the report of the judicial manager, make an order giving effect to the course whether similar or not to any of the courses mentioned in subsection (1) of section 71 which it considers in the circumstances to be most advantageous to the interests of the policy-holders of the insurer. Acceptance of judicial manager report
- (2) The order of the Court is binding on all persons and has effect notwithstanding anything in the instruments constituting the insurer or in the articles of association or other rules of the insurer or in any contract.
73. The judicial manager shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the discharge or in connection with the discharge, of the functions conferred on the judicial manager under this Part. Immunity
74. In the case of ail insurer which carries on both long-term and general insurance business - Assets of insurer
- (a) the assets representing long-term insurance business funds shall be available only for meeting the liabilities of the insurer attributable to that insurance business; and

- (b) the other assets of the insurer shall be available only for meeting the liabilities of the insurer attributable to its other insurance business.

Assets exceed
liabilities

75. Where the value of the assets mentioned in paragraph (a) or (b) of section 74 exceeds the amount of liabilities mentioned in that paragraph the restriction imposed shall not apply to so much of those assets as represents the excess.

Subsidiary
insurers

76. (1) Where the insurance business or any part of the insurance business of an insurer has been transferred to another insurer under an arrangement in pursuance of which the first mentioned insurer, in this section called the subsidiary insurer, or the creditors thereof has or have claims against the insurer to which the transfer was made, in this section called principal insurer, then if the principal insurer is being wound up by or under the supervision of the Court, the Court shall, subject as hereinafter mentioned, order the subsidiary insurer to be wound up in conjunction with the principal insurer, and may, by the same or a subsequent order appoint the same person to be liquidator for the two companies, and make provision for such other matters as seem to the Court necessary, with a view to the companies being wound up as if they are one insurer.
- (2) The commencement of winding up of the principal insurer shall, save as otherwise ordered by the Court, be the commencement of the winding up of the subsidiary insurer.
- (3) In adjusting the rights and liabilities of the members of the several companies between themselves, the Court shall have regard to the constitution of the companies, and to the arrangements entered into between the companies in the same manner as the Court has regard to the rights and liabilities of different classes of contributors in the case of winding up of a single insurer, or as near thereto as circumstances admit.
- (4) Where an insurer alleged to be subsidiary is not in process of being wound up at the same time as the principal insurer to which it is subsidiary, the Court shall not direct the subsidiary insurer to be wound up or unless, after hearing all objections, if any, that are urged by or on behalf of the insurer against its being wound up, the Court is of the opinion that the insurer is subsidiary to the principal insurer, and that the winding up of the insurer in conjunction with the principal insurer is just and equitable.
- (5) An application may be made in relation to the winding up of a subsidiary insurer in conjunction with a principal insurer by a creditor of, or person interested in, the principal or subsidiary insurer.
- (6) Where an insurer stands in the relation of a principal insurer to one insurer, and in the relation of a subsidiary insurer to some other insurer, or where there are several companies standing in the relation of subsidiary companies to the one principal insurer, the Court may deal with any number of such principal

companies together or in separate groups as it thinks most expedient upon principles laid down in this section.

77. (1) Where an insurer is being wound up by or subject to the supervision of the Court or voluntarily, the value of a policy of any class or of a liability under a policy required to be valued in the winding up shall be determined by an actuary; and the liquidator, in the case of all persons appearing by the books of the company or association to be entitled to or interested in policies granted by the company or association, shall give notice of that value to such persons and in such a manner as the Court directs. Valuation of policy
- (2) Any person to whom notice is given under subsection (1) is bound by the value ascertained in accordance with that subsection unless, within fourteen days of receipt of the notice, he gives notice of his intention to dispute the value.
78. The Court, in the case of an insurer that has been proved to be unable to pay its debts, may, if it thinks fit, reduce the amount of the contracts of the insurer upon such terms and subject to such conditions as the Court thinks just, in place of making a winding up order. Reduce amount of contracts

PART XIII

CHANGES OF MANAGEMENT

79. (1) No insurer shall appoint a person its chief executive officer, chief actuary or controller or in the case of an external insurer as a main representative unless - Appointment of officers
- (a) the insurer or the external insurer as the case may be has advised the Commissioner in writing that it proposes to appoint such a person; and
- (b) the Commissioner has before the expiration of three months beginning with the date of his receiving such written advice, notified the insurer in writing that there is no objection to that person being appointed or that period has elapsed without the Commissioner having served on the insurer a written notice of objection.
- (2) The Commissioner may serve notice of objection if it appears to him that the chief executive officer, chief actuary, controller or main representative is not a fit and proper person to be appointed to the position in question.
- (3) The Commissioner may take into account any written or oral representations made to him by the insurer and the chief executive officer, chief actuary, controller or main representative concerned in relation to a notice of objection served or to be served by him.

Notice to
Commissioner

80. An insurer shall give written notice to the Commissioner of the fact that any person has ceased to be a chief executive officer, chief actuary, controller, or main representative within one month of the insurer first becoming aware of such cessation.

PART XIV

BROKERS

Registration

81. (1) Only corporations or partnerships registered with and authorized by the Commissioner may carry on insurance business as a broker in Guyana.
(2) An existing broker must register within three months of the commencement of this Act.

Application
for registration

82. (1) An application for registration shall be made to the Commissioner in the prescribed form and shall be accompanied by such documents as may be prescribed.
(2) Each application shall be accompanied by a filing fee of fifty thousand dollars payable to the Commissioner.
(3) On receipt of the application the Commissioner may request such additional information as he may consider necessary.
(4) The Commissioner shall not register an applicant as a broker unless he is satisfied that the applicant or any partner, controller or officer of the applicant, is sufficiently qualified.

Indemnity
insurance

83. (1) The Commissioner shall not register a broker and shall not renew the registration of a broker unless he is satisfied that the broker maintains a policy or policies of insurance which shall indemnify such broker against losses arising from claims in respect of civil liability of any description incurred by the broker or by employees or former employees of the broker, and in respect of any class of insurance with which the broker deals.
(2) The broker shall be required to have a minimum of ten million dollars in indemnity insurance.
(3) The Commissioner shall not require the broker to have more than two hundred and fifty million dollars in indemnity insurance.

Business
name

84. A firm applying for registration under this Part shall include the words "insurance broker" or "risk manager" or other terms approved by the Commissioner, in the insurance business name of the firm and shall include approved words on letterhead and promotional material in relation to the broking business.

Restrictions
on application

85. (1) No controller, officer or employee of an insurer may apply for registration as a broker.

- (2) No firm may apply for registration as broker unless the insurance business contemplated is restricted to that of broking and activities directly ancillary thereto,
- (3) It shall be an offence for any person or firm to use the words "insurance brokers" or "risk manager" in their business name, on letterhead or in promotional material unless the said person or firm is registered under this Part.
86. (1) As from January 01 following the commencement of this Act, the Commissioner shall issue a Certificate of Registration to every person registered under this Part. Certificate of registration
- (2) The certificate shall be in prescribed form, shall be valid for one year and shall be renewable annually on the anniversary date of its issue.
- (3) An application for renewal shall be made to the Commissioner in the prescribed form and shall be accompanied by a renewal fee prescribed by the Commissioner.
- (4) The certificate shall be prominently displayed at the principal place of business of the person to whom it is issued.
- (5) A person who fails to display a valid certificate shall be guilty of an offence, subject to a fine of ten thousand dollars.
87. Any person who is registered as broker and who enters into an agreement relating to the preferential offer of insurance business which is likely to impair his impartiality or operate to the disadvantage or prejudice of his principal shall be guilty of an offence. Such an offence shall not affect the civil rights attaching to a principal disadvantaged or prejudiced as aforesaid. Impartiality
88. The Commissioner shall issue a code of conduct for brokers registered under this Part which is substantially similar in content to that set out in Schedule 4. Code of conduct
Schedule 4
89. Any broker, in negotiating, renewing or continuing a contract of insurance who receives a premium for such a contract from the insured and fails to pay the premium over to the insurer within such time after receipt by him as may be agreed between him and the insurer, less his brokerage and any other deductions to which, by written consent, he is entitled, is guilty of an offence. Premiums
90. A broker shall for the purpose of receiving any premium for a contract of insurance be deemed to be the agent of the insurer and notwithstanding any conditions or stipulations to the contrary, the insurer shall be deemed to have received any premium received by the broker. Broker deemed agent of insurer

PART XV

AGENTS AND OTHER INTERMEDIARIES

- Agent** 91. In this Part, a person who is directly employed by an insurer on a basis which includes commission on business introduced or renewed by him is referred to as an agent.
- Registration** 92. (1) No person may carry on insurance business as an agent unless he is registered to do so under this part.
(2) An existing agent must register within three months of the commencement of this Act.
- Qualifications** 93. (1) An application shall be made annually to the Commissioner in the prescribed form and shall be accompanied by evidence of payment of the prescribed fee and such documents as may be prescribed.
(2) Each application or renewal shall be accompanied by a filing fee of two thousand dollars payable to the Commissioner.
(3) Upon receipt of the application, the Commissioner may request such additional information as he may consider necessary.
(4) The Commissioner shall not register an applicant as an agent unless he is satisfied that the applicant is suitably qualified to be an agent.
- Delegation to Insurance Association of Guyana** 94. In carrying out his duties under subsection (4) of section 93, the Commissioner may, at his discretion, delegate his responsibilities to the Insurance Association of Guyana, or its successors, provided that the Insurance Association of Guyana
(a) files its articles of organization and by-laws with the Commissioner;
(b) is open to membership by all insurers registered in Guyana on a non-discriminatory basis; and
(c) provides a course of continuing education for agents in a manner satisfactory to the Commissioner.
- Insurers** 95. Notwithstanding an agent's status as a registered agent in Guyana, it shall nevertheless be the responsibility of each insurer having a contract with an agent -
(a) to consider whether or not the agent is a fit, proper and competent person to fulfill the post of agent;
(b) in the case of an agent with whom a contract subsisted prior to the commencement of this Act to consider whether or not that agent has been carrying on his insurance business in an efficient manner;
(c) to consider the suitability or continuing suitability of an agent who has failed or omitted to sit for any examination organized by or on behalf of the insurer; and
(d) to have regard to any complaint received from a proposer or policy-holder in relation to an agent.

96. (1) No person shall carry on insurance business as an agent if that person's insurance business falls within the definition of broker in this Act. Restrictions
- (2) Any insurer which transacts insurance business after the commencement of this Act with an agent in relation to whom that insurer is aware or ought to be aware that subsection (1) applies shall be guilty of an offence.
97. An insurer incorporated in Guyana whose insurance business comprises acting as agent for an external insurer shall, for the purposes of this Act, be deemed to be a branch of that insurer and shall comply with the requirements of this Act and shall appoint a main representative for the purpose of this Act. External insurer agent
98. (1) Every insurer to whom this Act applies shall file with the Commissioner, along with the documents referred to in section 30, a list of names and addresses of agents with whom the insurer has a contract. Insurer to file names and addresses with Commissioner
- (2) It shall be the duty of an insurer to advise the Commissioner in writing of any -
- (a) change in the employment status of the agent; and
- (b) of any misconduct or material breach of the agency agreement between the insurer and any agent, including failure to pay over premiums.
- (3) Where the Commissioner receives any advice under subsection (2)(b) he shall have the power to require that the insurer discontinue its association with that agent and that the agent be banned from serving as an agent in Guyana.
99. (1) Where any agent acts in negotiating or renewing or continuing a contract of insurance and receives a premium for such a contract from the insured and fails to pay the premium over to the insurer within such time after receipt by him as may be agreed between him and the insurer, less his commission and any other deductions to which, by written consent, he is entitled, the agent is guilty of an offence. (2) Notwithstanding any conditions or stipulations to the contrary, an insurer shall be deemed to have received any premium received by an agent appointed by that insurer. Premiums
100. No person may carry on or purport to carry on in Guyana the business of an insurance salesman, sub-agent, adjustor, loss assessor, insurance consultant, insurance surveyor, or any other similar function related to the business of insurance unless registered with the Commissioner pursuant to regulations to be promulgated by him at such time as he sees fit. Other insurance intermediaries

PART XVI

PENSION FUND PLANS

Registration

101. (1) No person may establish or operate a pension fund plan (hereinafter referred to as "a plan") in Guyana unless the plan is registered under this Part.
- (2) A plan that exists at the time of the commencement of this Act shall be registered within three months of the enactment of this Act.

Purpose of fund

102. Subject to the provisions of this Part, where a plan establishes a fund under trusts which are subject to the Laws of Guyana, in connection with an undertaking or a combination of undertakings carried on wholly or partly in Guyana and the main purpose of that fund is
- (a) the provision of superannuating allowances on retirement to persons employed in the undertaking or in the combination of undertakings in connection with which the fund is established;
 - (b) the provision of pensions to the spouses of persons who are or have been employed and of periodical allowances to or in respect of the children of such persons; or
 - (c) the assurance of capital sums on the death of persons who were so employed, such a plan shall be qualified for registration under this Part if the rules of the plan comply with the requirements set out in Part I of Schedule 5.

Part I of Schedule 5

Application for registration

103. (1) An application for the registration of a plan under this Part shall be addressed to the Commissioner and shall -
- (a) be in the form prescribed;
 - (b) be signed by the managers of the plan;
 - (c) specify the address at which communications concerning the plan will be received (hereinafter referred to as "the address of the plan"); and
 - (d) be accompanied by
 - (i) two copies of the trust deed and the rules of the plan;
 - (ii) a copy of the actuarial report on which the plan is based;
 - (iii) a list of the names and addresses of the managers of the plan;
 - (iv) in the case of an insured plan, a copy of the policy of insurance related to benefits provided by the plan; and
 - (v) such other documents or further information as may be prescribed.
- (2) Each application shall be accompanied by a filing fee of two hundred and fifty thousand dollars payable to the Commis-

- ioner, provided however, that a manager of more than one plan may consolidate his application and pay a single filing fee.
- (3) Self-administered plans for fewer than twenty-five employees shall be exempt from the filing fee mentioned in subsection (2).
 - (4) Where an application is made in accordance with the provisions of this Part for the registration of a plan, the Commissioner shall register the plan and the rules thereof where he is satisfied that the plan has qualified for registration.
 - (5) The Commissioner shall on registering a plan under this Part enter in the register the address of the plan and the names and addressees of the managers.
 - (6) Where -
 - (a) the trust deed or the rules, or both, of a plan registered under this Part (hereinafter referred to a "registered plan") are amended; or
 - (b) there is any change in the address of the plan or in the names or addresses of the managers thereof the managers shall, within twenty-one days of the amendment or the change, apply for th registration of the amendment or for the correction of the register in respect of the change.
 - (7) An application for an amendment or for the correction of the register in respect of a change shall be addressed to the Commissioner and shall -
 - (a) be in the form prescribed;
 - (b) be signed by one of the managers of the plan; and
 - (c) shall be accompanied by -
 - (i) in the case of an amendment, by two copies thereof signed by one of the managers; or
 - (ii) in the case of a change, by such particulars as may be necessary for the correction of the register.
104. (1) An amendment to a trust deed or rules, or both, of a registered plan shall not be valid unless the amendment is registered. Amendment to registered plan
- (2) Where an application for the registration of an amendment is made in accordance with subsection (7) of section 103, the Commissioner shall register the amendment where he is satisfied that the trust deed or the rules, or both, as amended would not have disqualified the plan from registration under this Part.
105. (1) The Commissioner shall on registering a plan or any amendment to the trust deed or the rules, or both, of a registered plan under this Part, issue to the applicant a Certificate of Registration (hereinafter referred to as "a Certificate"). Certificate of Registration

- (2) Any document purporting to be a Certificate issued under subsection (1) and purporting to be signed or sealed by the Commissioner shall be received in evidence and be deemed to be so issued, signed or sealed without further proof unless the contrary is shown, and shall be conclusive evidence of the fact certified. (3) The managers of a registered plan shall be exempt from paying taxes with regards to that plan.

Winding-up of
a pension plan

106. (1) The registration of a plan shall not be cancelled unless the plan has been wound up.
- (2) The managers of a registered plan shall, within fourteen days of the completion of the winding up of the plan, notify the Commissioner in writing that the winding up has been completed.
- (3) On receiving notice in writing that a registered plan has been wound up, the Commissioner shall cancel the registration of the plan where he is satisfied that -
- (a) the plan has been wound up; and
 - (b) the assets of the plan have been applied in accordance with the rules of the plan.

Rules of plan

107. (1) Where an application is made under this Part for the registration of a plan the rules of which were made before the commencement of this Act, and the Commissioner is satisfied that the rules of the plan contain provisions which were embodied only for the purpose of avoiding the application to the trusts of the plan of the rule of law relating to perpetuities he may, at the request of the managers who made the application -
- (a) amend the rules by deleting those provisions; and
 - (b) make any further amendments which are, in his opinion necessary as a result of the deletion.
- (2) Where the rules of a plan are amended by the Commissioner pursuant to subsection (1), the rules shall, when registered, have effect subject to the amendments.

Information
or explanation

108. (1) The Commissioner may require any person who is employed as an insurer, a manager or an officer of a plan for which an application for registration has been made under this Part, or any registered plan, to furnish either by statutory declaration or otherwise, any information or explanation which may be necessary for the proper performance of the powers and duties of the Commissioner under this Part.
- (2) Where the managers of a registered plan commit a breach of trust by making an unauthorized investment or by violating any rule of the plan, where the rule is necessary for registration under this Part, the Commissioner shall have the same remedies in all respect for the breach of trust as if he were a person beneficially interested in the plan.

- (3) The Commissioner or any person authorized by him in writing may at any reasonable time examine any books, records or other documents relating to a registered plan or any plan in respect of which an application for registration is made under this Part, or any securities or obligations in which pension fund moneys of such plan are invested.
109. (1) The managers and the secretary of a registered plan are guilty of an offence where in respect of that plan, there is default in complying with any of the requirements of this Part relating to -
- (a) accounts and reports;
- (b) the making of applications for the registration of any amendment to the trust deed or to the rules, or both, of the plan or, the correction of the register in respect of a change in the address of the plan or in the names and addresses of the managers thereof; or
- (c) the giving of notice to the Commissioner or the winding up of the plan.
- (2) It is a defense to any proceedings instituted under subsection (1) against the managers and the secretary of a registered plan to prove that the default occurred without their consent or connivance and was not facilitated by any neglect on their part.
- (3) Any person who, within fourteen days of receiving written notice, fails to provide any information or explanation requested by the Commissioner, which could be obtained with reasonable diligence, is guilty of an offence.
110. (1) The managers of each plan registered under this Part shall -
- (a) submit annually to the Commissioner a balance sheet and statement of accounts for each financial year within six months of the expiration of that financial year; and
- (b) file with the Commissioner annually or at such periods and in such form as may be prescribed any information or return relating to such plan.
- (2) The balance sheet and statement of accounts referred to in subsection (1) shall -
- (a) before they are submitted to the Commissioner be audited by an auditor approved by him; and
- (b) be prepared in accordance with Forms A and B, respectively in Part 11 of Schedule 5.
111. (1) The managers of each registered plan shall appoint an actuary to make an investigation into the financial condition of the plan and to report on his findings.
- (2) An investigation under subsection (1) shall be made every three years or at such shorter intervals as the Commissioner may determine.

Default in
complying with
requirements

Annual
statements

Part II of
Schedule 5

Investigation of
financial condition

- (3) A copy of the report signed by the actuary shall be furnished to the Commissioner. (4) The provisions of subsections (1) and (3) shall not apply to a plan insured with an insurer, but the managers of such a plan shall obtain from the insurer a certificate to the effect that the plan has been valued by an actuary. (5) The certificate required by subsection (4) shall be deposited by the managers with the Commissioner.
- Investment of assets**
112. (1) No manager may invest the assets of a pension or provident fund in the equity, debentures or other evidence of indebtedness of the employer or any subsidiary or associate of the employer or of any company of which the employer is a subsidiary or an associate.
- (2) Every plan shall invest in Guyana eighty percent of the plan's total assets, provided that for each percentage point of its assets invested in the common stock or long term debt of a company in Guyana, the eighty percent minimum may be reduced by one percentage point, up to a maximum of a ten percentage point reduction.
- Perpetuities**
113. The rule of law relating to perpetuities shall not apply and shall be deemed never to have applied to the trusts of a registered plan.

PART XVII

ASSOCIATIONS OF UNDERWRITERS

- Registration**
114. (1) No associations of underwriters may carry on insurance business in Guyana (a) unless it is registered under this Part; and (b) except in accordance with the provisions of this Part.
- (2) An association of underwriters shall not carry on long-term insurance.
- (3) An application for registration of an association shall be accompanied by -
- (a) a copy of its deed of association;
 - (b) a certificate stating in the case of an association established outside of Guyana -
 - (i) that the association has been established for at least five years;
 - (ii) that the law of the country in which it was established provides for the regulating of associations of underwriters; and
 - (iii) that the association is operating in accordance with the law;
 - (c) a list of the names and addresses of persons appointed as its agents or brokers in Guyana; and
 - (d) any further information the Commissioner may require.
- (4) Each application shall be accompanied by a filing fee of two hundred and fifty thousand dollars payable to the Commissioner.

- (5) An existing association of underwriters must register within three months of the commencement of this Act.

115. (1) Where the Commissioner, after appropriate inquiry or after the examination of documentary evidence, or both, is satisfied that - Qualifications

- (a) the relevant requirements of this Part have been complied with;
- (b) the association is likely to be able to comply with the provisions of this Act;
- (c) being an association of underwriters constituted outside Guyana
 - (i) it has made or has caused to be made with the Commissioner the deposit required by subsection (1) of section 40; and
 - (ii) there are one or more persons resident in Guyana who are authorized to accept on behalf of the members of the association service of process in any legal proceedings;
- (d) the persons who manage the association are of good character and are otherwise fit and proper persons to manage the association; and
- (e) the applicant's employees are capable of carrying on that insurance business in an efficient manner, the Commissioner shall, either unconditionally or subject to such conditions as he may specify, register the association of underwriters and notify the applicant accordingly.

- (2) Where the Commissioner is not satisfied as to one or more of the conditions set out in subsection (1), he shall notify the association of underwriters in writing that he proposes to refuse to register it, giving his reasons for so doing.

116. (1) Subject to subsection (2) of section 40, an association of underwriters may not be registered under this Part to carry on any class of insurance business unless it has deposited with the Commissioner an amount equal to five million dollars or twenty per cent of the premium income of its members with respect to Guyana insurance business during the financial year last preceding the date of the deposit, whichever amount is greater. Deposit

- (2) Where an association of underwriters has made a deposit as required by subsection (1), it shall at the end of each financial year where necessary, deposit or be refunded an amount equal to the difference between the last preceding deposit and twenty per cent of the relevant premium income during such financial year, except that an association of underwriters shall not have as a deposit with the Commissioner an amount less than five million dollars.

- (3) A deposit made pursuant to this section may be either in the form of cash or in the form of approved securities or both.
- Rejection of application** 117. (1) An applicant who applies for registration as an association of underwriters shall be notified in writing by the Commissioner whether he proposes to register him or to reject his application.
- (2) Where the Commissioner proposes to reject the application he shall state in writing his reasons for so doing.
- Annual filings** 118. An association of underwriters registered under this Part, shall within six months of the end of each financial year furnish to the Commissioner, in the case of an association established in Guyana such documents and information as he may require, and in the case of an association established outside of Guyana -
- (a) a certified copy of such returns relating to the insurance business of its members during the preceding year as are required to be made to the Minister or other public Commissioner in the country in which the association is established;
- (b) a certificate, signed by the Chairman or other presiding officer of the association and by or on behalf of the responsible regulatory authority which states that the association has complied with the requirements of the law governing associations of underwriters in the country in which it is established;
- (c) a current list of the names of its members and the names of the members of its committee or other governing body; and (d) a statement of receipt and expenditure by its members in Guyana during the preceding year.
- Prohibit new policies** 119. (1) The Commissioner may prohibit a registered association from writing new policies in any class of insurance business where he is satisfied that it is in the interest of policy-holders or prospective policy-holders so to do.
- (2) Where the Commissioner exercises the power conferred on him by subsection (1), he shall notify the registered association in writing of his decision and shall state the reasons thereof
- Cancellation of registration** 120. (1) The Commissioner may cancel the registration of an association -
- (a) where he is not satisfied that the insurance business of its members is being conducted in accordance with sound insurance principles;
- (b) where the association fails to comply with any requirements imposed upon it under this Part;
- (c) where he is satisfied that the members of the association have not commence insurance business within one year

- of registration or have ceased to carry on insurance business in Guyana; or
- (d) at the request of the association.
- (2) Where the Commissioner cancels the registration of an association, he shall state in writing his reasons for so doing.
121. An association of underwriters, the application for registration of which has been rejected or the registration of which has been cancelled, shall continue to carry on insurance business relating to policies issued by it before the date on which the business was notified of the rejection or cancellation unless the Commissioner is satisfied that it has made suitable arrangements for its obligations under such policies.

Continuation
of business

PART XVIII

CONDUCT OF INSURANCE BUSINESS

122. Any insurer, broker, agent, other insurance intermediary, member of the association of underwriters, or pension fund plan manager or employee who, by any statement, promise or forecast which is wilfully misleading, false or deceptive or which includes dishonest concealment of material facts or is reckless (dishonest or otherwise), induces or attempts to induce another person to enter into or offer to enter into any contract of insurance with an insurer shall be guilty of an offence.
123. (1) Any insurer, broker, agent, other insurance intermediary, member of the association of underwriters, or pension fund plan manager or employee who wilfully issues or permits to be issued any advertisement, statement, circular, descriptive booklet or other document which contains material misleading or tending to mislead the public is guilty of an offence.
- (2) Any advertisement offering insurance contracts or services shall, if it fails to mention either the name or address of the person placing the advertisement constitute an offence under this Act.
124. Any person who claims to be or intimates that he is a broker or an agent for the purpose of misleading a consumer, if he has not complied with Part XIV or Part XV, shall be guilty of an offence.

Misleading, false
or deceptive
statements

Advertisements

False claims

PART XIX

SUBSIDIARY COMPANIES

125. Where an insurer whose head office is in Guyana acquires an insurer ("the subsidiary insurer") whose head office is in a country other than Guyana then the insurer first referred to shall advise the Commissioner as to -

External
subsidiary

- (a) whether or not the subsidiary insurer is registered as an insurer with the regulatory Commissioner of the country in which its head office is situated;
- (b) the name of the person or persons acting as regulatory Commissioner in the country aforesaid and the address to which communications may be sent;
- (c) whether or not the subsidiary insurer has complied with requirements of the regulatory Commissioner in the country aforesaid in relation to
 - (i) statutory funds;
 - (ii) deposits;
 - (iii) statutory reserves; and
 - (iv) filing of accounts,

as regards the most recent financial year of the subsidiary insurer in respect of which compliance is required.

- (d) whether or not any necessary approval of the regulatory Commissioner in the country aforesaid has been given and, if so on what terms and conditions (if any); and
- (e) any other information that the Commissioner may require.

Compliance

126. The Commissioner shall decide, in the light of the advice received, the extent to which he may require the subsidiary insurer to comply with this Act and may communicate with the regulatory Commissioner referred to in section 125 for this purpose.

PART XX

CONTRACTS FOR LONG-TERM INSURANCE BUSINESS

Contract for long-term insurance

127. (1) Subject to subsection (3) of section 128, an insurer shall not enter into a contract for the purpose of carrying on long-term insurance business unless the insurer -
- (a) at the time the contract is entered into; or
 - (b) not later than seven days after the contract is entered into, serves on the other party to the contract a notice containing the information specified in subsection (2).
- (2) A notice mentioned in subsection (1) -
- (a) shall specify the nature and type of the policy; and
 - (b) shall have annexed thereto a form of notice of cancellation for use by the other party to the contract.
- (3) An insurer who contravenes this section is guilty of an offence but contravention does not invalidate the contract.

Notice of cancellation

128. (1) A person who has entered into a contract for long-term insurance with an insurer may serve notice of cancellation on the insurer -
- (a) not later than ten days from the date on which he receives a notice mentioned in section 127; or

- (b) not later than ten days from the expiration of the day on which he first became aware that the contract was entered into, whichever is the later.
- (2) Subsection (1) does not apply where an insurer ought to have served a notice under subsection (1) of section 127 and failed to do so but does so before cancellation of the contract.
- (3) A notice of cancellation need not be in the form attached to the notice required to be served under subsection (1) of section 127 and it is sufficient if the notice of cancellation indicates a desire to withdraw from the contract.
- (4) Service of a notice of cancellation operates -
- (a) as a rescission of a contract, if it is served after the contract has been entered into; and
- (b) as a withdrawal of the offer in any other case.
- (5) Where a contract has been rescinded or an offer has been withdrawn as a result of the service of a notice of cancellation, any moneys paid by way of premium or otherwise, to the insurer for the purpose of receiving the moneys, are recoverable from the insurer as a debt in civil proceedings.
129. An insurer carrying on long-term insurance business shall not issue any policy under Schedule I to this Act unless the rate of premium chargeable under the policy is a rate which has been approved by its actuary as being suitable for the class of policy to which the policy belongs.
130. Subject to section 131, where a company issues a life policy that provides that proof of age of the person whose life is insured is a condition precedent to the payment of the sum insured, the company shall, unless the age of the person whose life is insured has already been admitted by it, issue on or with the policy a printed notice stating that proof of age of the person whose life is insured may be required before the payment of the sum insured.
131. (1) Where a company declines to accept the proof of age tendered in respect of a policy, whether issued before or after the commencement of this Act, the policy-holder may apply to a Judge in chambers, by summons for an order directing the company to accept the proof tendered.
- (2) The Judge in chambers may upon an application made to him under subsection (1), make such order in relation to the application as he thinks just.
- (3) Every order under this section shall be binding on the company and shall be complied with.
132. (1) The following have effect in instances where the age of a person has been misstated in respect of a policy -
- (a) a policy is not avoided by reason only of a misstatement of the age of the person whose life is insured;

Long-term rates
Schedule I

Notice regarding
proof of age

Procedure where
company declines
to accept proof

Misstatement of
age, and non-
avoidance of policy

- (b) where the true age as shown by the proof is greater than that on which the policy is based, the company may vary the sum insured by, and the bonuses (if any) allotted to, the policy so that, as varied, they bear the same proportion to the sum insured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age;
 - (c) where the true age as shown by the proof is less than that on which the policy was based, the company shall -
 - (i) vary the sum insured by, and the bonuses (if any) allotted to, the policy so that, as varied, they bear the same proportion to the sum insured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age; or
 - (ii) reduce, as from the date of issue of the policy, the premium payable to the amount that would have been payable if the policy had been based on the true age and repay the policy-holder the amount of overpayments of premium less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the policy had been based on the true age.
- (2) A policy issued after the commencement of this Act shall not be avoided by reason only if any incorrect statement (other than a statement as to the age of the person whose life is insured) made in any proposal or other document on the faith of which the policy was issued or reinstated by the company unless the statement -
- (a) was fraudulently untrue; or
 - (b) being a statement material in relation to the risk of the company under the policy, was made within the period of three years immediately preceding the date on which the policy is sought to be avoided or the date of the death of the person whose life is insured, whichever is the earlier.

Minors

133. (1) A minor who has attained the age of ten years but has not attained the age of sixteen years may, with the written consent of his parent or of a person standing in loco parentis to the minor -
- (a) effect a policy upon his own life or upon another's life in which he has an insurable interest; or
 - (b) take an assignment of a policy.

- (2) A minor who has attained the age of sixteen years may
- (a) effect a policy upon his own life or upon another's life in which he has an insurable interest; or
 - (b) take an assignment of a policy;

and, subject to subsection (3), is as competent in all respects to have and exercise the powers and privileges of a policy-holder in relation to a policy of which he is the holder as he would be if he were of full age.

- (3) A minor who has attained the age of sixteen years may assign or mortgage a policy with the prior consent in writing of his parent or of a person standing *in loco parentis* to the minor.

134. (1) The provisions of this section and sections 135 to 143, inclusive, subject to anything to the contrary contained in these sections, apply in respect of policies whether taken out before or after the commencement of this Act. Designation of beneficiaries generally
- (2) A policy-holder may at the time the policy is taken out or at any time thereafter designate his personal representative or a named person to be the beneficiary under his policy and may, subject to section 136, alter or revoke the designation by declaration in writing.
- (3) A designation in "favor of heirs", "next of kin", "estate" or similar designation shall be deemed to be a designation of the personal representative of the policy-holder.
135. (1) Subject to subsections (4), (5) and (6) a policy-holder may, in writing, by declaration filed with the insurer at the time the policy is taken out designate irrevocably a named person to be beneficiary under the policy and, in such a case - Irrevocable designations of beneficiaries
- (a) the policy-holder subject to section 145, may not during the life-time of the named beneficiary alter or revoke the designation without the consent of the beneficiary; and
 - (b) the moneys payable under the policy are not subject to the control of the policy-holder or the creditors of the policy-holder and do not form part of his estate.
- (2) Notwithstanding paragraph (a) of subsection (1), consent of the beneficiary is not required where the beneficiary is a former spouse and the marriage ended in divorce or, as the case may be, the common law union has come to an end.
- (3) Where the insured purports to designate a beneficiary irrevocably in a declaration that has not been filed with the insurer as required by subsection (1) or in a will, the designation has the same effect as if the insured had not purported to make the designation irrevocable.
- (4) An irrevocable designation may only be made by a policy-holder in favor of a spouse, a common law spouse or to a child, including a child born out of wedlock.
- (5) A designation shall not be regarded as irrevocable unless the words creating the irrevocable designation are clear and unequivocal and are prominently displayed on the proposal

form and signed by the policy-holder and there is sufficient evidence that it was explained to the policy-holder that the designation was irrevocable.

Designation of
beneficiaries
in wills

136. A designation by a will does not affect a designation made under a policy.

Trusts for
beneficiaries

137. (1) A policy-holder may, in writing, by contract or by declaration appoint a trustee for a beneficiary and may alter or revoke the appointment by declaration in writing.

(2) A payment by an insurer to a trustee for a named beneficiary discharges the insurer from payments to the beneficiary to the extent of the payment.

Beneficiary
predeceasing
policy-holder

138. (1) Where under section 134, by a contract, or a declaration, filed with the insurer, a person has been named as beneficiary under a policy and the person so named as beneficiary under a policy predeceases the policy-holder and no provision is made in the contract or agreement or declaration for the disposition of moneys payable under the policy in the event of the beneficiary predeceasing the policy-holder then, without limiting or affecting the application of section 135, the moneys payable under the policy shall vest in the following persons in the following order -

(a) in the surviving beneficiary, if any;

(b) in the surviving beneficiaries in equal shares, if there is more than one surviving beneficiary;

(c) in the policy-holder or his personal representatives, if there are no surviving beneficiaries.

(2) Where two or more beneficiaries are designated otherwise than alternatively, and no provision is made as to the quantum of their respective shares of the moneys payable under the policy, then, they are entitled to the moneys in equal shares.

Enforcement by
beneficiary
trustee

139. A beneficiary may for his own benefit and a trustee appointed pursuant to section 137 may, in accordance with the terms of the contract or declaration, as the case may be, enforce payment of moneys payable under a policy even though there is no privity of contract, but the insurer may invoke against the beneficiary or trustee any defense against the policy-holder or his personal representative.

Status of insurance
money where there
is a designated
beneficiary

140. (1) Where a beneficiary has been designated, the insurance money, from the time of the happening of the event upon which the insurance money becomes payable, does not form part of the estate of the insured and is not subject to the claims of the creditors of the insured.

(2) While a designation in favor of a spouse, a common law spouse or child of a policy holder or any of them, is in effect, the rights and interests of the policy-holder in the insurance

money and in the contract are exempt from execution or seizure.

141. (1) Where a beneficiary is not designated irrevocably, the policy-holder may assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as provided therein or in this Part or as may be agreed upon with the insurer. Assignment of policy where there is a designated beneficiary
- (2) Where a beneficiary is designated irrevocably the policy-holder may not assign the policy, use the policy as a security, surrender it or otherwise deal with it without the consent in writing of the designated beneficiary.
142. (1) Notwithstanding the designation of an irrevocable beneficiary, the policy-holder is entitled, while living, to the dividends or bonuses declared on a contract, unless the contract otherwise provides. Entitlement to dividends and bonuses
- (2) Unless the policy-holder otherwise directs, the insurer may apply the dividends or bonuses declared on the contract for the purpose of keeping the contract in force.
143. (1) An assignee of a contract who gives notice in writing of the assignment to the head office of the insurer has priority of interest as against - Effect of assignment of policies on beneficiaries
- (a) any assignee other than one who gave notice earlier in like manner; and
- (b) a beneficiary other than one designated irrevocably as provided in section 135 prior to the time the assignee gave notice to the insurer of the assignment in the manner prescribed in this subsection.
- (2) Where a contract is assigned as security, the rights of a beneficiary under the contract are affected only to the extent necessary to give effect to the rights and interests of the assignee.
- (3) Where a contract is assigned absolutely, the assignee has all the rights and interests given to the policy-holder by the contract and by this Part and shall be deemed to be the policy-holder.
- (4) A provision in a contract to the effect that the rights or interests of the policy-holder, or, in the case of group insurance, the group life insured, are not assignable is valid.
144. (1) Nothing in any term or condition of a life policy issued after the commencement of this Act or in the law relating to insurance shall operate to exempt an insurance company from liability under the policy or to reduce the liability of the company under the policy on the ground of any matter relating to the state of health of the person whose life is insured, other than the ground of the proposer's having, when Provisions relating to state of health of insured

making the proposal or thereafter and before the making of the contract,

- (a) made an untrue statement of his knowledge and belief as regards the matter; or
 - (b) failed to disclose to the company something known or believed by him as regards that matter.
- (2) An insurer may petition the Commissioner for a waiver of subsection (1) in situations where subsection (1) may place too onerous a burden on the insurer.

PART XXI

PROTECTION OF POLICIES

Application
to debts

145. (1) The property and interest of any person in a policy effected (whether before or after the commencement of this Act) upon his own life is not liable to be applied or made available in payment of his debts by any judgment, order or process of any Court.
- (2) In the event of a person who has effected a policy on his own life dying after the commencement of this Act, the monies payable upon his death under or in respect of such policy shall not be applied or made available in payment of his debts by any judgment, order or process of any Court or by retainer by an executor or administrator or in any other manner whatsoever, except by virtue of a contract or charge made by the person whose life is insured or by virtue of an express direction contained in his will or other testamentary instrument executed by him that the moneys arising from the policy shall be so applied.
- (3) A direction to pay debts, or a charge of debts upon the whole or any part of the testator's estate, or a trust for the payment of debts, shall not be deemed to be such an express direction.

Pro rata
condition
of average

146. (1) Where a contract of insurance contains a pro rata condition of average, the condition is of no effect unless, before the contract is entered into or before the policy-holder can cancel the policy without penalty, the insured in writing on a form approved by the Commissioner informs the policy-holder of the nature and effect of the condition.
- (2) With respect to residential properties, the condition of average shall be effective only in cases where the insured value of the property is a certain percentage less than the fair value of the property. The Commissioner shall determine the minimum percentage level, the difference in percentage between the fair value and the insured value, in which the condition of average can apply.
- (3) This section does not apply in respect of a contract of insurance entered into before the commencement of this Act.

PART XXII

PAID-UP POLICIES, SURRENDER VALUES AND
NON-FORFEITURE

147. (1) A policy-holder who desires to discontinue further premium payments on a policy on which not less than three years of premiums have been paid shall, if the policy has a cash surrender value, on application to the company be entitled to receive, instead of that policy, a paid-up policy. Paid-up
policy
- (2) The paid-up policy shall be payable upon the happening of the contingency upon the happening of which the amount insured under the original policy would have been payable.
148. Notwithstanding the terms of a particular policy, the owner of a policy that has been in force for at least three years is, on application to the company, entitled to surrender the policy and to receive not less than the cash surrender value of the policy less the amount of any debt owing to the company under, or secured by, the policy. Surrender
value
149. The Commissioner may, on application by a company, if in his opinion the payment in cash of surrender values as required by section 148 would be prejudicial to the financial stability of the company or to the interests of the policy-holders of that company, suspend or vary, for such period and subject to such conditions as the Commissioner thinks fit, the obligation of the company to pay those surrender values. Non-forfeiture

PART XXIII

MISCELLANEOUS

150. (1) Every document required to be deposited under this Act, or certified copies of it, shall be kept by the Commissioner. Document
inspection
- (2) The documents and copies are open to inspection and copies thereof may be procured by any person on payment of such fee as the Minister may direct.
151. (1) Every document deposited under this Act with the Commissioner, and certified by the Commissioner, to be a document so deposited, shall be deemed to be a document so deposited. Evidence
- (2) Every document purporting to be certified by the Commissioner to be a copy of a document so deposited shall be deemed to be a copy of that document, and shall be received in evidence as if it were the original document unless some variation between it and the original document is proved.

- Forms** 152. The Commissioner may, on the application of an insurer, alter any or all of the prescribed forms, in respect of that insurer, for the purpose of adapting them to the circumstances of that insurer.
- Notice to policy-holder** 153. (1) Any notice or other document that is by this Act required to be sent to a policy-holder may be addressed and sent to the person to whom notices respecting the policy are usually sent, and a notice so addressed and sent shall be deemed and taken to be notice to the holder of the policy.
 (2) Where a person claiming to be interested in a policy has given to the insurer notice in writing of his interest, a notice which is by this Act required to be sent to policy-holders shall also be sent to such person at the address specified by him in his notice.
- Injury to visitor or workmen** 154. (1) Notwithstanding anything contained in this Act, where premises are insured by an owner or occupier, or by an independent contractor, against risk of injury to visitors or to workmen, a visitor or a workman who sustains injury on those premises is entitled to claim directly, under a policy from the insurer without reference to the owner, occupier or independent contractor.
 (2) A person who is entitled to a claim against an insurer under subsection (1), may demand that the owner, occupier or independent contractor produce the policy or a copy thereof for examination by him either before or at any stage of legal proceedings instituted for the enforcement of the claim.
 (3) Where a policy or a copy of a policy is produced to a person claiming by virtue of a claim made under subsection (2), the owner, occupier or insurer is not entitled to rely on any matter expressed in any supplementary document that was not produced to the person so claiming, but the person so claiming may rely on any such supplementary document at any time that it comes to his notice.
- Non effect of certain provisions of Married Women's Property Act Cap. 145:04** 155. Non effect of certain provisions of Married Women's Property.
- Repeal of Insurance Act Cap. 91:02** 156. The Insurance Act is hereby repealed.

SCHEDULE 1 SS. 2, 68(2)129,

CLASSES OF LONG-TERM INSURANCE BUSINESS

CLASS 1:
GENERAL LIFE

SUB-CLASS	NATURE OF INSURANCE BUSINESS
Life and Annuity	Effecting and carrying on contracts on human life or contracts to pay annuities on human life, but excluding (in each case) contracts within the linked long-term sub-class.
Linked Long-Term	Effecting and carrying on insurance on human life or contracts to pay annuities where the benefits are wholly or partly to be determined by reference to the value of, or income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).

CLASS 2:
HEALTH

SUB-CLASS	NATURE OF INSURANCE BUSINESS
Permanent Health	Effecting and carrying on contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of a specified class or sickness or infirmity being contracts that - (a) are express to be in effect for a period of not less than five years, or until the normal retirement age for the persons concerned, or without limit of time; and (b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.

CLASS 3:
ANNUITIES AND PENSIONS

SUB-CLASS	NATURE OF INSURANCE BUSINESS
Pension Fund Management	Effecting and carrying out - (a) contracts to manage the investments of pension funds; or (b) contracts of the kind mentioned in paragraph (a) above that are combined with contracts of insurance covering either conservation of capital or repayment of a minimum interest, other than contracts in relation to Government or local authority funds.
Capital Redemption	Effecting and carrying on capital redemption contracts.

SCHEDULE 2 s. 2

CLASSES OF GENERAL INSURANCE BUSINESS

CLASS 1:
ACCIDENT AND LIABILITY

SUB-CLASS	NATURE OF INSURANCE BUSINESS
Accident	Effecting and carrying on contracts of insurance providing fixed pecuniary benefits in the nature of indemnity (or a combination of both) against risks of the person insured - (a) sustaining injury as the result of an accident or of an accident of a specified class; or (b) dying as the result of an accident or of an accident of a specified class; or (c) becoming incapacitated in consequence of disease or of disease of a specified class, inclusive of contracts relating to industrial injury and occupational disease but exclusive of contracts falling within the sickness sub-class below or within class 2 in Schedule 1 (Health).
Sickness	Effecting and carrying on contracts of insurance providing fixed pecuniary benefit or benefits in the nature of indemnity (or a combination of the two) against risks of loss to the persons insured attributable to sickness or infirmity, but exclusive of contracts falling within class 2 in Schedule 1 (Health).
Goods in transit	Effecting and carrying on contracts of insurance against loss or damage to merchandise, baggage and all other goods in transit, irrespective of the form of transport.
General Liability	Effecting and carrying on contracts of insurance against risks of the persons insured incurring liabilities to third parties, risks in question not being risks to which the Motor Vehicle liability, the Aircraft liability or the Liability for ships sub-classes relate.
Credit	Effecting and carrying on contracts of insurance against risks of loss to the persons insured arising from the insolvency of debtors of theirs or from the failure (otherwise than through insolvency) of debtors of theirs to pay their debts when due.
Suretyship	Effecting and carrying on - (a) contracts of insurance against risks of loss to the persons insured arising from their having to perform contracts of guarantee entered into by them; or (b) contracts for fidelity bonds, performance bonds, or custom bonds or similar contracts of guarantee.

Miscellaneous financial loss	Effecting and carrying on contracts of insurance against any of the following risks, namely - (a) risks of loss to the persons insured attributable to interruptions of the carrying on of insurance business carried on by them or to carried on; or (b) risks of loss to the persons insured attributable to their incurring unforeseen expense.
Legal Expenses	Effecting and carrying on contracts of insurance against risks of loss to the persons insured attributable to their incurring legal expenses (including costs of litigation).

**CLASS 2:
AUTO**

SUB-CLASS	NATURE OF INSURANCE BUSINESS
Land Vehicles	Effecting and carrying on contracts of insurance against loss of or damage to vehicles used on land, including motor vehicles.
Motor Vehicle Liability	Effecting and carrying on contracts of insurance against loss of or damage arising out of or in connection with the use of motor vehicles on land, including third-party risks and carriers liability.

**CLASS 3:
MARINE & AVIATION**

SUB-CLASS	NATURE OF INSURANCE BUSINESS
Aircraft	Effecting and carrying on contracts of insurance upon aircraft or upon the machinery, tackle, furniture or equipment of aircraft.
Ships	Effecting and carrying on contracts of insurance upon vessels used on the sea or inland water, or upon the machinery, tackle, furniture r equipment of such vessels.
Aircraft Liability	Effecting and carrying on contracts of insurance against damage arising out of or in connection with the use of aircraft, including third-party risks and carrier's liability.
Liability for Ships	Effecting and carrying on contracts of insurance against damage arising out of or in connection with the use of vessels on the sea or on inland water, including third-party risks and carrier's liability.

**CLASS 4:
FIRE**

SUB-CLASS	NATURE OF INSURANCE BUSINESS
Fire and natural forces	Effecting and carrying on contracts of insurance against loss of or damage to property (other than property to which the Land Vehicles, Aircraft, Ships or Goods in transit sub-classes relate) due to fire, explosion, storm, natural forces other than storm, nuclear energy or land subsidence.
Damage to Property	Effecting and carrying on contracts of insurance against loss of or damage to property (other than property to which the Land Vehicles, Aircraft, Ships or Goods in transit sub-classes relate) other than those mentioned in the Fire and natural forces sub-class above.

SCHEDULE 3 s. 55(5)

ASSETS IN WHICH THE STATUTORY FUNDS MAY BE
INVESTED

An insurer may invest its statutory funds pursuant to the following guidelines -

1. An insurer may invest in -

- (a) the bonds, debentures, stocks, or other evidence of indebtedness of or guaranteed by the Government of -
 - (i) Guyana;
 - (ii) any Commonwealth country or dependency or the Republic of Ireland;
 - (iii) the country in which the head office of the company is situate province or state thereof; or
 - (iv) any country approved by the Minister.
- (b) the bonds, debentures or other evidence of indebtedness of a corporation incorporated in Guyana which are fully secured by a statutory charge upon immovable property or upon the plan or equipment or other tangible assets of the corporation used in the transaction of its business;
- (c) the bonds, debentures or other evidence of indebtedness issued by an authority or other body without share capital established and empowered pursuant to a statute of Guyana to administer, regulate the administration of, provide or operate port, harbor, airport, bridge, highway, tunnel, transportation, communication, sanitation, water, electricity, or gas services or facilities and for any of these purposes to levy and impose taxes, rates, fees or other charges which may be used only in carrying on the object of the authority or other body and are sufficient to meet its operation, maintenance and debt service charges;
- (d) the bonds, debentures or other securities of, or those guaranteed by any international financial institution approved by the Minister;
- (e) guaranteed investment certificates issued by a trust company incorporated in any country listed in subparagraph (a) which at the date of vesting thereof in trust, complied with the requirements set out in subparagraph (f) in respect of the payment of dividends;
- (f) the fully paid ordinary shares, preferred shares, bonds debentures or other evidence of indebtedness of a company incorporated in any country listed in subparagraph (a) which

during a period of five years ending less than one year before the date of purchase thereof has either paid a dividend in each such year upon its ordinary shares or had earnings in each such year upon its ordinary shares or had earnings in each such year available for the payment of a dividend upon such shares, of at least four per cent of the average value at which the shares were carried in the capital stock account of the company during the year in which the dividend was paid or in which the company had earnings available for the payment of dividends, as the case may be;

- (g) ordinary shares, preferred shares, bonds or debentures of a company incorporated in Guyana and approved by the Minister.

2. An insurer may invest in mortgages and other titles for repayment of loans secured by -

- (a) immovable property or leaseholds for a term of years or other estate or interest in immovable property in Guyana where the amount of the loan together with the amount of indebtedness under any mortgage or other charge on the immovable property or interest therein ranking equally with or superior to the loan does not exceed seventy-five per cent of the value of the immovable property or interest therein, subject to the exception that a company -

- (i) may upon the sale of immovable property in which its funds are invested, accept a mortgage or other title for repayment on such immovable property, as part payment and secured thereon for more than seventy-five per cent of the sale price of such immovable property; or

- (ii) may invest in a mortgage or other title for repayment on immovable property where the amount of indebtedness under any mortgage or other charge on such immovable property or interest therein ranking equally with or superior to the loan does not exceed ninety per cent of the value of the immovable property as long as that portion of the indebtedness in excess of seventy-five per cent of the value of the immovable property is guaranteed by a company registered under this Act to carry on that class of insurance business.

- (b) immovable property or leaseholds in Guyana notwithstanding that the loan exceeded the amount which the company may otherwise invest in, if the excess is guaranteed or insured by the Government or through an agency of the Government of Guyana.

- (c) ground rents, mortgages or hypothecs on immovable property or leaseholds in Guyana or in the country in which the head office of the company is situated, where the amount of the mortgage or hypothec together with the amount of indebtedness under any mortgage or hypothec on the immovable property or leasehold ranking equally with or superior to the mortgage or hypothec which is invested in does not exceed three quarters of the value of the immovable property or leasehold covered thereby.

3. An insurer may invest in -

- (a) immovable property or leaseholds in Guyana for the production of income either alone or jointly with any other company transacting insurance business in Guyana or with any other company incorporated in Guyana where -
 - (i) a lease of the immovable property or leasehold is made to or guaranteed by the Government of Guyana or an agency or the Government or a municipality in Guyana and the lease provides for a net revenue sufficient to yield a reasonable interest return during the period of the lease and to repay at least eighty-five per cent of the amount invested in the immovable property or leasehold within the period of the lease but not exceeding thirty years from the date of investment; or
 - (ii) the immovable property or leasehold has produced in each of the three years immediately preceding the date of investing therein net revenue in an amount which, if received in each year following the date of investment, would be sufficient to yield a reasonable interest return on the amount invested in the immovable property or leasehold and to repay at least eighty-five percent of that amount within the portion of the economic lifetime of the improvements to the immovable property or leasehold which remain at the date of investment but not exceeding forty years from that date.
- (b) immovable property in Guyana required by the company for its actual use or occupation or reasonably required by it for the natural expansion of its business or acquired by it for the natural expansion of its business or acquire by foreclosure of a mortgage on immovable property where the mortgage is an investment under this Act, save that the total amount of investment in immovable property either for the production of income or for the use and natural expansion of the business of the company shall not exceed -

- (i) in the case of a company carrying on long-term insurance business, twenty per cent of the total value of assets required to satisfy the statutory fund requirement; or
 - (ii) in the case of a company carrying on general insurance business, such amount as may be approved by the Supervisor not exceeding the amount referred to in subparagraph (i).
4. An insurer may invest in cash balances deposited with -
 - (a) any bank in Guyana;
 - (b) any financial institution licensed under the Financial Institutions Act, 1995; or
 - (c) any building society which may from time to time be approved by the Minister.
5. The total accepted value of the statutory fund assets of any company invested in ordinary shares shall not at any time exceed forty per cent of the accepted value of the total of such assets in Guyana of the company.
6. The total accepted value of the immovable property or leaseholds invested in accordance with this Schedule shall not exceed -
 - (a) in respect of a company carrying on long-term insurance business twenty per cent of the total value or assets required to satisfy the statutory fund requirement for;
 - (b) in respect of a company carrying on other than long-term insurance business such amount as may be approved by the Supervisor.
7. No single mortgage included as an asset in the statutory fund of a company may exceed ten per cent of the total assets of the company.
8. A company shall not invest in trust bonds, debentures or other evidence of indebtedness on which payment of principal or interest in default.
9. A company shall not purchase more than thirty per cent of the ordinary shares of any corporation.
10. A company registered to carry on life insurance business shall not, in respect of that business, purchase the shares of a company, incorporated in Guyana and carrying on such business.

SCHEDULE 4 s. 88

BROKER'S CODE OF CONDUCT

1. The provisions of this Code shall be construed as only illustrative of the conduct which is considered to be in the best interest of the public and the Insurance Brokers and other persons concerned with their conduct.
2. Brokers shall -
 - (a) at all times conduct their business with utmost good faith and integrity;
 - (b) do everything possible to satisfy the insurance requirements of their clients and shall place the interest of those clients before all other considerations; and
 - (c) refrain from making any misleading representations in their advertising.
3. Without prejudice to the generality of the foregoing the following are specific examples of practices which must be observed, breach of which either singly or jointly may be regarded as constituting unprofessional conduct -
 - (a) brokers shall not directly or indirectly, nor shall they allow any agent of theirs directly or indirectly to pay or allow, as other inducement whatsoever not specified in the policy, nor will they make any misrepresentation or incomplete comparison for the purpose of inducing a client of any company to convert, lapse, forfeit or surrender their insurance therein;
 - (b) in the conduct of their business brokers shall provide advice objectively and independently and shall use all due care and diligence when so doing;
 - (c) brokers shall ensure that all work carried out in connection with their business shall be properly supervised, and they shall ensure that their employees are made aware of these regulations;
 - (d) brokers shall on request from the client explain the differences in, and the relative cost of, the principal types of insurance which in the opinion of the broker might suit a client's needs;
 - (e) although the choice of an insurer can only be a matter of judgment, brokers shall use their skill objectively in the best interest of their client;

- (f) brokers shall not withhold from the client any written evidence of documentation relating to the contract of insurance without adequate and justifiable reasons being disclosed in writing and without delay to the client. If a broker withholds a documents from a client that broker shall provide the reason in the manner required above;
- (g) brokers shall inform a client of the name of all insurers with whom a contract of insurance is placed. This information shall be given at the inception of the contract and any changes thereafter shall be advised at the earliest opportunity to the client;
- (h) before any work, involving a charge, is undertaken or an agreement to carry on business is concluded, brokers shall disclose and identify any amount they propose to charge to the client which will be in addition to the premium payable to the insurer;
- (i) brokers shall have proper regard for the wishes of a client who seeks to terminate any agreement with them. Brokers shall make no attempt to induce any client to rescind an existing letter of appointment;
- (j) any information acquired by brokers from their clients shall be treated as strictly confidential except in the normal course of negotiating or renewing a contract of insurance, or unless the consent of the client has been obtained or the information is required by a Court of competent jurisdiction;
- (k) in the completion of the proposal form, or any other material document, brokers shall make it clear that all the answers or statements are the client's own responsibility. The client should always be asked to check the details and told that the inclusion of incorrect information may result in a claim being repudiated;
- (l) the content of advertisement made by or on behalf of brokers shall be restricted to the policies of one insurer except where the reasons for such restriction are fully explained in the advertisement the insurer named therein, and the price approved of the insurer obtained; and
- (m) when advertising their services directly or indirectly either in person or in writing brokers shall disclose their identity, occupation and purpose.

SCHEDULE 5 s. 102

PART I

REQUIREMENTS AS TO THE TRUST DEED AND RULES OF
PENSION PLANS

1. The trust deed and rules of a plan qualified for registration under this Act shall make provision for the following matter -
 - (a) the whole of the objects for which the plan is established;
 - (b) the appointment and removal of trustees;
 - (c) the vesting in the trustees of all property belonging to the plan;
 - (d) the investment in the names of the trustees of all capital moneys belonging to the plan and for, authorizing the investments, if any, in addition to those authorized by law, in which the trustees may invest such moneys; but the rules of a plan may provide for the deposit of such moneys with a bank;
 - (e) the making of contributions to the plan by the employers of persons employed in the undertaking or combination of undertakings in connection with which the plan is established;
 - (f) the contributions payable to and the rates of benefits payable from the fund or the method of calculating benefits so payable;
 - (g) the conditions on which persons may become and may cease to be contributors to and entitled to benefits from the fund;
 - (h) the protection of the vested rights of contributors to the plan;
 - (i) the preparation of all statements of accounts, balance sheets and reports required by this Act to be prepared;
 - (j) the supply (on demand) to every person having any rights in the plan, being a person who is or has been employed in the undertaking in connection with which the plan is established, of a copy of the rules of the plan and of all statements of accounts, balance sheet and requirements of this Act;
 - (k) the circumstances in which the plan may be wound up and in the event of the winding-up the use of the plan to purchase immediate annuities for contingent pensioners; and
 - (l) the method by which the rules may be amended.

PART 11

FORMS s. 110(2)(b)

Form A

Revenue Account for the Period To

Pension Fund Plan

Revenue	\$	Expenditures	\$
1. Amount of the Fund at the beginning of the period*		1. Superannuation Benefits	
2. Contribution by employees.		(a) pension to retired employees	
3. Contributions by employers.		(b) windows' pensions	
4. Any additional contributions by employer to meet deficiency or back service liabilities		(c) orphans' pensions	
5. Interest dividend and rents		(d) retirement gratuities	
6. Other income (to be specified)		2. Death grants	
		3. Return of contribution on withdrawal	
		4. Other expenditure (to be specified)	
		5. Amount Fund at the end of the period*	

* May be omitted for an insured pension fund plan.

Form B s. 110(2)(b)

(Not to be completed for an insured pension fund plan)

Balance Sheet as at 19 for Pension Fund

Liabilities	\$	Assets	\$
Amount of fund as at		Mortgage	
Pension due but not yet paid		Stock Exchange Securities	
Other benefits (to be specified) due but not yet paid		Other assets (to be specified)	

DETAILS OF MORTGAGE

Name of borrower	Nature of security	Original amount of loan	Date	Method of repayment	Rate of Interest	Amount outstanding on the valuation date	Date or outstanding period of repayment

DETAILS OF STOCK EXCHANGE SECURITIES

Security	Date of redemption	Nominal amount	Rate of interest or dividend	Market value as at the valuation date	Book value	Value used in valuation

PART III
ACTUARIAL VALUATION

1. The first part of the report shall contain statistics as at the valuation date in respect of the following —
- (a) Changes in the membership of the fund during the intervalation period as well as the membership of the fund on the valuation date as follows —

Age Group	Number of members at beginning of period	Number of new entrants	NUMBER OF CESSATIONS OF MEMBERSHIP				
			Transfer on deferred pensions [or benefits]	Withdrawal	Death	Retirement	

Under 35	
35 - 40	
45 - 55	
55 - 65	
75 and over	
Total	

2. The second part of the report shall contain the following information -
 - (a) general observations regarding mortality, withdrawal and retirement from service and progression of salary during intervaluation period and general observations on any other factors entering into the valuation;
 - (b) a description of the mortality and all other rates used (specimen rates to be shown in and appendix to the report);
 - (c) average rates of interest realized by the assets of the fund whether invested or not during each year and the intervaluation period;
 - (d) the rate of interest assumed in the calculations for purpose of the valuation; and
 - (e) a statement indicating -
 - (i) whether and how it has been secured that the estimated net liability in respect of any employer is not negative,
 - (ii) the amount of and the reason for any special reserves which has been set up.
3. The final part of the report shall contain information about the results of the valuation, and analysis of the surplus or deficiency shown and a recommendation as to how much of the surplus can be regarded as disposable, or, if a deficiency, the manner in which the deficiency can be liquidated.
4. The report shall close with any further observations the actuary may wish to offer on the valuation.

Explanatory Memorandum

The 1998 Insurance Bill (hereinafter referred to as the Act) repeals and replaces the Insurance Act, Cap: 91:02, and provides for the regulation of insurance, the promotion of competition in the insurance industry, and the protection of consumers.

The Act allows the Minister of Finance to appoint a Commissioner of Insurance who is charged with general administration of the Act. The Commissioner is given the ability to appoint a staff and engage actuaries, consultants, advisers and managers. Additionally, the Commissioner is given authority to prepare a budget for his office. Funding for the office is to be provided by levies, fees, fines and appropriations from Parliament, and may be supplemented, if necessary, with an assessment on the insurance industry. The Act provides that the Commissioner shall submit an annual report to the National Assembly. Furthermore, the Commissioner is given authority to make regulations for carrying out the provisions of the Act.

The Act creates two new entities to provide dispute resolution. Disputes between policyholders and an insurer or broker are resolved by an Insurance Arbitration Board, which consists of members representing different groups within the insurance industry. Decisions of the Arbitration Board may be appealed to the High Court. Furthermore, the Act creates an Insurance Board of Review, which handles appeals of decisions of the Commissioner. The Commissioner may appoint a Special Prosecutor to prosecute violations of the Act and the Act provides penalties for such violations.

Part VII of the Act provides that insurers must pay a filing fee of two hundred fifty thousand dollars to the Commissioner and must follow a detailed application procedure to become registered. Existing insurers must register within two months of the commencement of the Act, but are given a six month grace period to cure any deficiencies in their application. Insurers are required to provide the Commissioner with financial information within six months of the end of the financial year and long-term insurers are required to be investigated by an actuary every three years.

Both long-term and general insurers are required to make a deposit based on the scope of their business. Also, all insurers are required to establish a statutory fund equal to their liabilities. Long-term insurers are further required to invest eighty-five percent of that statutory fund in Guyana. This percentage can be reduced if the insurer invests in the common stock or long term debt of companies in Guyana.

Before any acquisition, transfer or amalgamation of an insurer is carried out, the Commissioner shall approve the scheme. The Act creates formal procedures, including a role for policy-holders, which must be followed in order for the Commissioner to approve the acquisition, transfer or amalgamation of an insurance company.

The Act provides that in situations where an insurer suffers severe financial difficulties, or where the Commissioner believes it is in the interest of the policy-holders, the Commissioner may intervene in the affairs of the insurer. Under the intervention power, the Commissioner may require the insurer to limit its insurance contracts, provide certain information or perform other duties. In addition, the Commissioner, or ten or more policy-holders, may petition the court to wind-up an insurer for a number of reasons, including insolvency. The court may appoint the Commissioner to be the judicial manager to help the court gather appropriate information during the winding-up

process. The judicial manager then prepares a report on the insurer which may be accepted by the court.

Part XII provides that insurers must inform the Commissioner when they appoint a chief executive officer, chief actuary or controller, or when a person ceases to serve in that position. The Commissioner may object to this appointment within one month of the notification.

The Act provides registration procedures for brokers, agents and other intermediaries. Existing brokers are given three months to register. To be registered, brokers shall have a minimum of ten million dollars of indemnity insurance. The Act also allows the Commissioner to delegate the registration procedure for agents to the Insurance Association of Guyana (IAG).

Part XVI of the Act provides that pension fund plans must be registered with the Commissioner. The Commissioner may require plan managers to provide detailed information about their plan in order for the Commissioner to carry out his duties under the Act. Furthermore, managers of pension plans must submit financial information on an annual basis, and an investigation by an actuary must be made into a plan every three years. Every plan must invest eighty percent of its assets in Guyana. However, that percentage can be reduced if the plan invests in the common stock or long-term debt of a company in Guyana.

Part XVIII of the Act provides that members of the insurance industry cannot make misleading, false or deceptive statements when attempting to enter contracts of insurance. When insurers based in Guyana acquire insurers outside of Guyana, the Commissioner must determine what provisions of the Act apply to the subsidiary insurer.

The Act renders ineffective provisions of the Married Women's Property Act, or any similar legislation that creates a statutory trust of a life policy in a married woman and, instead, allows a named beneficiary to enforce payment of a policy effected for his benefit. If the policyholder does not designate his child, spouse or common law spouse as the beneficiary, he may deal with the policy as his own. However, if the policyholder designates one of those named dependents as beneficiary, the designation is irrevocable and can be changed only if the beneficiary dies or, in the case of a spouse, if the marriage comes to an end. Furthermore, a beneficiary in a will does not affect a designation made under the policy.

Insurers are prohibited from inserting into a policy an exception clause which would allow the insurer to void a life policy if the policyholder is diagnosed with a disease he did not have or was not aware he had when he entered into the policy. However, the Commissioner may waive this provision if it causes a hardship to an insurer.

An insurance contract cannot contain a pro rata condition of average unless the insurer adequately explains the condition. Certain pro rata conditions on residential properties are prohibited.

B. Jagdeo,
Minister of Finance.