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GUYANA.

BILL NO. 20 OF 1970.

INSURANCE BILL 1970.

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FIRST SCHEDULE

SECOND SCHEDULE

A BILL

Intituled

AN ACT to provide for the regulation of insurance business in Guyana and for purposes related thereto or connected herewith.

A.D. 1970

Enacted by the Parliament of Guyana:—

Short title.

1. This Act may be cited as the Insurance Act, 1970.

PRELIMINARY

Interpretation.

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

“actuary” means a person possessing such actuarial qualifications as may be approved by the Minister for the purposes of this Act and includes a body comprising persons possessing actuarial qualifications as aforementioned and providing actuarial services;

“agent” means any person, appointed by an insurer and not being an employee of such insurer, to solicit applications for insurance or negotiate insurance on its behalf and if authorised to do so by the insurer, to effectuate and countersign insurance contracts;

“association of underwriters” means an association of individual underwriters organised 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 hereby secured;

“carrying on insurance business” includes the receipt of proposals for or issuing of policies of insurance in Guyana or the collection or receipt in Guyana or renewal premiums on policies issued in Guyana by an insurer or through an agent or as agent but does not include the collection or receipt in Guyana of renewal premiums under a policy issued outside Guyana to a person resident outside Guyana at the date of issue of the policy and who is temporarily resident in Guyana or the making of payments due under any such policy;

“chairman” means the person for the time being presiding over the Board of Directors or other governing body of an insurance company;

“Commissioner” means the Commissioner of Insurance under this Act;

“Court” means the High Court;

“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;

“insurance business” means the business of, or in relation to, the issue of, or the undertaking of, liability under, policies to make good or indemnify the insured against any loss or damage, including liability to pay damages or compensation contingent upon the happening of a specified event, but does not include:—

- (i) business in relation to the benefits provided by a friendly society or trade union for its members or their dependants; or
- (ii) business in relation to a scheme under which superannuation benefits, pension or payments to employees or their dependants (and not to any other persons) on retirement, disability or death are provided by an employer or his employees, or by both, wholly through an organisation established solely for those purposes by the employer or his employees or by both;

“insurance company” or “company” means a company which carries on insurance business in Guyana or proposes to carry on such business therein pursuant to registration under this Act;

“insurer” means a company registered to carry on insurance business in Guyana and includes an underwriter and an association of underwriters; but shall not include an insurance agent as such nor in the case of a person who is both insurer and insurance agent, have references to business done as insurance agent;

"long-term insurance business" includes insurance business of all or any of the following classes namely, life insurance business, non-cancellable sickness and accident insurance business, bond investment business, and in relation to any company, insurance business carried on by the company as incidental only to any such class of business;

"officer" includes the manager, secretary, treasurer, actuary or any other person designated as an officer of a company by the articles of association, bye-laws or other rules regulating its operation;

"policy" means any written contract of insurance whether contained in one or more documents;

"policy-holder" means the person who for the time being has the legal title to the policy and includes any person to whom a policy is for the time being assigned;

"prescribed" means prescribed by rules made under this Act;

"underwriter" includes any person named in a policy as liable to pay or contribute towards the payment of the sum secured by the policy.

PART I

ADMINISTRATION

Commissioner
of Insurance.

3. (1) There shall be a Commissioner of Insurance whose office shall be a public office.

(2) If the Commissioner is not an actuary, the Minister, whenever it may be necessary, shall cause arrangements to be made for the services of an actuary to be available for the purpose of advising the Commissioner on matters arising under this Act.

Commissioner
to administer
this Act.

4. The Commissioner shall be charged with the general administration of this Act, and in the exercise of his powers and the performance of his duties he shall conform with any general or special directions given to him by the Minister.

Delegation
by the
Commissioner.

5. (1) The Commissioner may delegate to any officer or officers in the Ministry responsible for finance any of his powers or functions under this Act, except the power of delegation conferred by this subsection.

(2) A delegation under this section shall not prevent the review and alteration by the Commissioner of any decision made by an officer pursuant to such delegation.

Annual
Report and
returns.

6. (1) The Commissioner shall, within three months after the 31st December in each year, furnish to the Minister—

(a) a report on the working of this Act during that year; and

(b) printed copies of summaries of the documents, lodged with him under this Act,

copies of which shall be laid before the National Assembly by the Minister as soon as practicable after the receipt thereof.

(2) The Commissioner may attach to any such copy or summary any note which he thinks proper to make with reference to the document, together with a copy of any correspondence relating to the document.

7. (1) Where in relation to a policy, any dispute or difference arises between a company and a policy-holder, the Commissioner may act as arbitrator of the dispute or difference. Commissioner may act as arbitrator.

(2) An arbitration under this section shall be conducted in accordance with the Arbitration Ordinance. Cap. 38.

8. The Commissioner shall maintain—

(a) registers of companies registered to carry on in Guyana the various classes of insurance business specified in the first schedule;

(b) such other registers as may appear to him or the Minister requisite for the proper administration of this Act.

Registers to be maintained by the Commissioner.

PART II

REGISTRATION

9. (1) Subject to this Act, no person shall carry on insurance business in Guyana unless that person is a company incorporated under the Companies Ordinance or by virtue of any other law in force in Guyana or is a company incorporated outside Guyana which has established a place of business within Guyana. Companies not to carry out insurance business unless registered.

(2) A company mentioned in subsection (1) shall not carry on insurance business of any of the classes listed in the first schedule as insurer unless it is registered by the Commissioner under this Act in respect of that class of business and has made the deposit, if any, required by virtue of section 18.

(3) Subsection (2) shall not apply to a company carrying on insurance business in Guyana immediately before the commencement of this Act so as to require that company to make a deposit before the expiration of one month after the commencement of this Act or so as to require registration, subject to section 10, before the end of three months from that commencement.

(4) A company carrying on insurance business in Guyana immediately before the commencement of this Act shall not, at any time after the expiration of three months after the commencement of this Act carry on any such class of insurance business in Guyana unless it has been registered by the Commissioner to carry on such insurance business.

(5) Any person who contravenes this section shall be liable on summary conviction to a fine of ten thousand dollars or to imprisonment for two years or to both such fine and imprisonment and, in the case of a continuing offence, to a further fine of one thousand dollars for each day on which the offence is continued after conviction thereof.

(6) Where a person convicted of an offence against this section is a body corporate, every person who at the time of the commission of the offence, was a director or officer of the body corporate, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge, or that he exercised all due diligence to prevent the commission of the offence.

(7) The Minister may, by order, amend, alter or vary the provisions of the first schedule.

Application
for Registration.

10. (1) Any company may make application to the Commissioner for registration under this Act.

(2) The application which shall be in writing, and signed by a Director or by the principal representative of the company, shall specify—

- (a) the situation of the head office of the company;
- (b) the names of the directors and the auditors and the name and address of the principal representative (if any) of the company;
- (c) the name of the actuary (if any) of the company;
- (d) the countries (if any) outside Guyana in which the company carries on insurance business; and
- (e) the classes of insurance business undertaken or to be undertaken by the company.

(3) The application shall be accompanied by—

- (a) a copy of the instruments constituting the company or other duly certified proof of incorporation;
- (b) a copy of the memorandum of the company;
- (c) a copy of the articles of association or other rules of the company;
- (d) a copy of the latest revenue account and balance sheet of the company prepared in accordance with the forms prescribed and a copy of the latest actuarial valuation report upon the financial position of the company;

- (e) in the case of a company having shareholders, a statement showing the nominal, subscribed and paid-up capital of the company and the amount of the capital which has been paid up in cash;
- (f) in the case of long-term insurance business a copy of the premium rate book in use, or to be used by the company in Guyana;
- (g) 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 to be true and correct.

(4) The Commissioner may require any company making application for registration under this Act to furnish him with such additional information as he may require.

(5) Every company carrying on insurance business in Guyana immediately prior to the commencement of this Act shall, within two months of such commencement, make application in accordance with this section to the Commissioner for registration and, subject to this Act, the Commissioner shall, within two months after the receipt of the application, if satisfied that the application is in accordance with the provisions of this Act, register the company.

11. In considering the application of a company for registration under this Act, the Commissioner shall, without prejudice to any other relevant matter which he may take into consideration, have due regard to—

Matters to be taken into account in considering application for registration.

- (a) whether the application is in accordance with the provisions of this Act;
- (b) whether the company is likely to be able to comply with such of the provisions of this Act as would be applicable to it;
- (c) the financial resources of the company;
- (d) whether the carrying on of some other form of business which a company carries on, or proposes to carry on, in addition to insurance business, is not contrary to the public interest;
- (e) whether the company in carrying on insurance business in Guyana is, in the opinion of the Commissioner, likely to contribute substantially to the economic development of Guyana.

12. A company shall not be registered in respect of any class of insurance business listed in the first schedule unless it has paid the deposit, if any, required by virtue of section 18.

Company to make a deposit before registration.

Registration of Company incorporated outside Guyana.

13. A company incorporated outside Guyana which establishes a place of business within Guyana shall not be registered under this Act unless it has furnished the Commissioner in writing with the name and address of the person resident in Guyana who is authorised to accept on its behalf service of process and any notice required to be served upon it.

Certificate of registration

14. The Commissioner shall furnish every company registered under this Act with a certificate that the company has been so registered, and the certificate shall state the class of insurance for which it is registered and shall be *prima facie* evidence that the company specified in the certificate has been so registered.

Notification of change in particulars specified in application.

15. (1) Subject to subsection (2), if, subsequent to the registration of any company under this Act, any change occurs in the particulars specified in the application of the company for registration or in the particulars of the information or documents required to accompany the application, the company shall, within one month of such change, notify the Commissioner or furnish to the Commissioner in writing of the change.

(2) No change in the particulars contained in the premium rate book of the company mentioned in section 10(2) (f) the effect of which would result in an increase in the rate of premium payable under any class of policy issued in Guyana by the company shall become operative and no policy of that class shall be issued by the company, unless the approval of the Commissioner has been obtained.

Cancellation of registration.

16. (1) When a company ceases to carry on insurance business of any class listed in the first schedule, the company shall forthwith notify the Commissioner in writing and, subject to subsection (4), the Commissioner shall thereupon cancel the registration of the company in respect of that class of insurance business.

(2) Where a company has been registered under this Act and the Commissioner has reason to believe that the company —

- (a) has not carried on insurance business within one year of its registration; or
- (b) has not carried on insurance business for a period of more than one year; or
- (c) is not, in the opinion of the Commissioner, contributing substantially to the economic development of Guyana,

he may serve notice on the company requesting it to satisfy him within one month after the date of service of the notice, that it is carrying on insurance business in Guyana or is contributing substantially to the general development of Guyana.

(3) If a company on which a notice is served under subsection (2) does not, within the time specified in that subsection, satisfy the Commissioner that it is carrying on insurance business in Guyana or is contributing substantially to the general development of Guyana, the Commissioner may cancel the registration of the company.

(4) So long as a company remains under any liability to policy-holders in Guyana in respect of policies of any class of insurance business, the Commissioner shall not cancel the company's registration in respect of that class unless he is satisfied that reasonable provision has been or will be made for that liability and that adequate arrangements will exist for payment in Guyana of premiums and claims on those policies; but notwithstanding that the registration of the company has not been cancelled the Commissioner may prohibit the company from writing new policies in any class of insurance business.

(5) When the registration of a company is cancelled, the Commissioner shall —

- (a) give notice of the cancellation to the company; and
- (b) require the company to deliver to him within one month, or such shorter period as he may specify, the certificate furnished to the company under section 14.

(6) If the Commissioner refuses registration of a company either generally or in respect of a particular class of insurance under section 10 or cancels the registration of a company under subsection (3), the Commissioner shall within fourteen days state in writing his reasons therefor.

17. (1) Any company aggrieved by the decision of the Commissioner given under section 10 or 16 may appeal therefrom in the manner prescribed by section 56. Appeals.

(2) On any such appeal the Minister may confirm or disallow the decision.

PART III

DEPOSITS

18. (1) There shall be paid to the Commissioner by an insurance company carrying on any of the classes of insurance business specified in paragraphs 1 to 5 of the first schedule a deposit of \$250,000 which may be either in the form of cash or in the form of securities approved by the Minister or partly in one and partly in the other. Deposit.

(2) The Minister may, by order which shall be subject to affirmative resolution of the National Assembly —

- (a) prescribe other classes of insurance business in respect of which a deposit shall be paid to the Commissioner;

- (b) prescribe different amounts as deposits in respect of the classes of insurance business prescribed under paragraph (a);
- (c) vary the amount of the deposit required by subsection (1) or of any deposit prescribed under this subsection.

(3) For the purposes of this section, the insurance company carrying on more than one class of long-term insurance business shall be regarded as carrying on only one class of long-term insurance business.

(4) All interest and dividends accruing due on any securities deposited pursuant to this Act shall be paid to the company.

(5) All deposits made by a company pursuant to this Act shall be deemed to form part of the assets of the company; and the deposit made in respect of long-term insurance business shall be deemed to form part of the statutory fund of the insurance company and shall constitute part of the minimum investment required to be made in Guyana under this Act.

Cap. 239. (6) Where, at the commencement of this Act, any amount or security is, in pursuance of the Life Assurance Companies Ordinance, held by the Minister by way of deposit on account of a company carrying on insurance business, the Minister shall forthwith pay the amount, or transfer the security, to the Commissioner.

(7) Any amount or security on account of a company which is paid or transferred to the Commissioner in compliance with subsection (6) shall, to the extent of the deposit required to be lodged by the company under this section, be held by the Commissioner as part of the deposit so required.

(8) A deposit made under this section in respect of any class of insurance business shall be retained by the Commissioner until either the company ceases to be registered in respect of that class of insurance business or the deposit is required in the winding up of the company; and if the company ceases to be registered as aforesaid, the deposit or part of it may be further retained for the purpose of and in accordance with any such provision for liabilities in respect of policies as is required by subsection (4) of section 16.

(9) Upon making application for its deposit the company shall file with the Commissioner a list of all policy-holders in Guyana whose risks have not been so provided for or who have not surrendered their policies, and it shall at the same time publish and continue the publication at least once in every week for twelve consecutive weeks, in the *Gazette* and in at least one newspaper circulating in Guyana and approved by the Commissioner, a notice that it will apply to the Commissioner for the release of its deposits on a certain day not less than four months after the date of the publication of the first notice and calling upon the policy-holders opposing such release to file their opposition with the Commissioner on or before the day so named.

(10) After the day so named in the said notice, if the Commissioner is satisfied on reasonable grounds that the deposit of the company with him is substantially in excess of the requirements of this Act in respect of the continuing policy-holders, he may, with the concurrence of the Minister, from time to time release to the company such portion of the excess as he deems proper in the circumstances, and shall continue to hold the remainder of the deposit for the protection of the continuing policy-holders as is by this Act provided.

(11) Thereafter from time to time as such policies lapse or proof is adduced that they have been satisfied further amounts may be released on the authority aforesaid.

(12) Notwithstanding this section, if the company is in liquidation the deposits made by the company may, on the order of any court having jurisdiction under this Act or the Companies Ordinance, be released by the Commissioner to the liquidator.

(13) Where the registration of a company that has not commenced to carry on insurance business in Guyana is cancelled in pursuance of section 16, the Commissioner shall refund to the company any moneys, and deliver to the company any securities, deposited, by the company in pursuance of this section.

19. The Commissioner shall, on demand, by a company, furnish the company with a certificate in writing, setting out the nature and extent of any deposit held by the Commissioner under this Act in respect of that company together with the particulars of the securities (if any) forming the whole or part of the deposit. Certificate of deposit.

20. (1) If the Commissioner is satisfied that by reason of depreciation in the value of securities or other cause the value of money and approved securities deposited by a company with him falls short of the value required by this Act, he shall, by notice in writing, require the company to deposit with him money or approved securities or both to a value deemed by him to be sufficient to bring the amount of the deposit to the value required by this Act. Increase of deposit where securities have depreciated

(2) A notice under this section shall not be issued until the Commissioner has given an opportunity to the company to be heard in connection with the matter.

(3) Any company which fails to deposit with the Commissioner money or approved securities or both as required by him under this section shall be guilty of an offence and the Commissioner may, if he deems it necessary in the interest of the policy-holders, cancel the registration of such company.

21. If any moneys or securities held by the Commissioner as, or part of, the deposit required to be made by a company under this Act, are, while so deposited, lost, stolen, destroyed or damaged, the injury occasioned to all persons interested in the moneys or securities shall be made good out of moneys to be appropriated by Parliament for the purpose. Responsibility for lost securities.

Substitution
of deposits.

22. A company may at any time substitute for any security or cash held by the Commissioner as, or as part of, the deposit required to be made by the company 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 shall be subject to the same charge or liability as the security or cash withdrawn.

PART IV

STATUTORY FUNDS

Establishment
of statutory
funds.

23. (1) Every insurance company shall establish, as at the date on which it commences to carry on long-term insurance business or, in the case of a company carrying on long-term insurance business immediately before the commencement of this Act as at the date of the commencement of its financial year next after the commencement of this Act, and shall maintain, a statutory fund (to be called the long-term insurance fund) in respect of its liability and contingency reserves with respect to policies issued in Guyana in relation to its long-term insurance business as established by the revenue account of the company for the last preceding year.

(2) For the purposes of subsection (1), an insurance company carrying on more than one class of long-term insurance business shall be regarded as carrying on only one class of long-term insurance business.

(3) In the case of an insurance company transacting other business besides that of long-term insurance, a separate account shall be kept of the long-term insurance business, and the said receipts shall be carried to and form the long-term insurance fund as a separate fund.

(4) The long-term insurance fund shall be invested in separate investments from any other fund and a separate balance sheet shall be kept in respect of the long-term insurance fund.

Application
of long-term
insurance
fund.

24. The long-term insurance fund established pursuant to section 23(1) shall be as absolutely the security of the policy-holders of long-term insurance as though it belonged to a company carrying on no other business than long-term insurance business and shall not be liable for any contracts of the insurance company for which it would not have been liable had the business of the company been only that of long term insurance, and shall not be applied, directly or indirectly, for any purpose other than that of long-term insurance business.

Particular of
liabilities and
assets with
respect to
fund.

25. The insurance company shall, within thirty days after the date of establishment of the statutory fund mentioned in section 23(1) 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 —

- (a) particulars of the liabilities of the insurance company in respect of which the fund is established, as at the date of the establishment of the fund;
- (b) particulars of the assets comprising the fund;
- (c) such additional information relating to the fund as he may require.

26. If it appears to the Commissioner that —

Inaccurate or misleading particulars.

- (a) a statement furnished to him under section 25 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 company, give to the company, such directions in writing as he thinks necessary—

- (i) for the variation of the statement;
- (ii) for an increase or decrease in the value of the assets respectively,

and the company shall within thirty days comply with any directions so given.

27. An insurance company 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 25 and 26.

Insurance company to furnish Commissioner with information.

28. (1) An insurance company aggrieved by any direction of the Commissioner under section 26 may appeal therefrom in the manner provided by section 56.

Appeal against direction of Commissioner.

(2) On any such appeal the Minister may confirm, disallow or vary the direction.

29. The assets shown —

- (a) by a statement furnished to the Commissioner by an insurance company under section 25; or
- (b) where directions are given by the Commissioner, on appeal by the Minister, for the variation of the statement, by the statement as varied,

Assets in statement deemed to be assets of statutory fund.

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
requirements.

30. (1) Subject to subsection (2), every insurance company carrying on long-term insurance business in Guyana shall at 1st January, 1971, have invested in assets in Guyana and keep invested therein an amount not less than ninety-five per cent of its statutory fund as mentioned in section 23(1).

(2) An insurance company 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 ninety per cent of its premium income in that year in respect of policies issued in Guyana in respect of long-term insurance before making deduction of fees and other expenses until the amount so invested is equal to the amount of investment required by subsection (1).

(3) Every insurance company carrying on long-term insurance business in Guyana shall invest each year in securities approved by the Minister 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 section 23(1), and the amount so invested shall be reckoned as part of the investment required by this section to be made by the company.

(4) The Minister may, if he thinks fit, from time to time, by order which shall be subject to affirmative resolution of the National Assembly, prescribe the assets in Guyana for the purposes of this section.

PART V

ACCOUNTS AND DOCUMENTS.

Accounts and
Balance
sheets.

31. Every insurance company shall, at the expiration of each financial year prepare —

- (a) a revenue account for the year in the prescribed form;
- (b) a profit and loss account in the prescribed form, except where the insurance company carries on only long-term insurance business;
- (c) a balance sheet or balance sheets in the prescribed form;
- (d) a statement containing the name of every person who during the year was a member of the board of directors or other governing body or was manager or secretary or held any similar office by whatever name called.

Actuarial
report and
abstract.

32. (1) Every insurance company shall, once in every five years or at such shorter intervals as are prescribed by the instrument constituting the company or by its regulations or bye-laws, cause an

investigation to be made into its financial condition, including a valuation of its liabilities, by an actuary, and shall cause an abstract of the report of such actuary to be made in the prescribed form.

(2) The provisions of subsection (1) regarding the making of an abstract shall apply also, whenever at any other time an investigation into the financial condition of an insurance company is made with a view to distribution of profits, or whenever the results of any such investigations are made public.

33. (1) Every insurance company shall prepare a statement of its insurance business at the date to which the accounts of the company are made up for the purposes of any such investigation as aforesaid in the prescribed form.

Statement of
insurance
business.

(2) If the investigation is made annually by any insurance company, the company may prepare such statement at any time, so that it is made at least once in every five years.

34. (1) Every account, balance sheet, abstract or statement here-inbefore required to be made shall be printed or typewritten and four copies thereof one of which shall be signed by the chairman and two directors of the company, and by the principal officer of the company, and if the company has a managing director, by the managing director, shall be deposited with the Commissioner within six months in the case of accounts and balance sheets required by section 31 and within one year in other cases after the close of the period to which the account, balance sheet, abstract or statement relates.

Deposit of
accounts
with the
Commis-
sioner.

(2) If in any case it is made to appear to the Commissioner that the circumstances are such that a longer period should be allowed, he may extend that period by such period not exceeding six months as he thinks fit.

(3) The Commissioner shall make an examination into each account, balance sheet, abstract or statement, deposited as aforesaid, either alone or with an actuary from time to time appointed by the Minister for the purpose; and the Commissioner, or if an actuary is appointed, then the Commissioner and such actuary shall make such report to the Minister on such accounts, balance sheets, abstracts or statements as he or they may think fit, and every such report shall be published in the *Gazette*.

(4) Any report on the affairs of the company, submitted to the shareholders or policy-holders of the company in respect of the financial year to which the account and balance sheet relate, shall be deposited with every revenue account and balance sheet of a company.

35. A printed copy of the last-deposited accounts, balance sheet, abstract or statement shall, on the application of any shareholder or policy-holder to the company, be forwarded to him by the company by post or otherwise.

Right of
shareholders
etc., to
copies of ac-
counts.

Audit of
accounts.

36. The accounts of every insurance company shall be audited annually.

Publication
of authorised,
subscribed
and paid-up
capital.

37. Where any notice, advertisement or other official publication of an insurance company contains a statement of the amount of the authorised capital of the company, the publication shall also contain a statement of the amount of the capital which has been subscribed and the amount paid up.

Commissioner
may demand
information

38. The Commissioner may require any insurance company to furnish him with information relating to any matter in connection with its insurance business carried on by it in Guyana.

Power to
make investi-
gations.

39. (1) If it appears to the Commissioner that —

- (a) an insurance company is, or is likely to become unable to meet its obligations;
- (b) an insurance company has failed to comply with any provisions of this Act;
- (c) an insurance company 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;
- (d) any information in his possession requires an investigation into the whole or any part of the business of the insurance company,

he may serve on the company a notice in writing calling upon it to show cause, within such period, being not less than thirty days from the date of the notice, as is specified in the notice, why he should not, on the grounds so specified investigate the whole or any part of the business of the company or appoint a person as an Inspector to make such an investigation and report to the Commissioner the results of his investigation.

(2) If the company fails, within the period specified in the notice, to show cause to the satisfaction of the Commissioner, he may make the investigation or may cause it to be made by the Inspector.

Power to
obtain infor-
mation.

40. (1) In making an investigation under section 39 the Commissioner or the Inspector—

- (a) may require the company to produce any securities, books, accounts, documents or statistics of the company for his inspection and to allow him to make such extracts from them as he deems fit;
- (b) may examine on oath or affirmation in relation to the company's business, any person who is, or has at any time been, a director, auditor, officer, agent,

servant or shareholder of the company or the holder of a policy issued by the company or the personal representative of the holder; and

- (c) for the purpose of paragraph (b) may administer oaths or make affirmations.

(2) A person specified in paragraph (b) of subsection (1) shall produce to the Commissioner or the Inspector at his request any securities, books, accounts, documents or statistics of the company which are available to him and shall give to the Commissioner or the Inspector, at his request any information in his possession relating to the business of the company.

(3) A person so specified who refuses to be sworn or to make an affirmation or to give information on his examination on oath or affirmation or who gives any false information in reply to a request made under subsection (2), shall be liable on summary conviction to a fine of one thousand dollars or to imprisonment for two years or to both such fine and imprisonment.

41. (1) A person shall not either directly or indirectly except in the performance of any duty under this Act, make a record of, or divulge or communicate to any person, any information acquired as a result of an investigation.

Divulging of information.

(2) A person performing any duty for the purpose of an investigation shall take an oath or make a declaration, in the manner and form prescribed, to maintain secrecy in conformity with the provisions of this section.

(3) Any person who contravenes any of the provisions of this section shall be liable on summary conviction to a fine of one thousand dollars or imprisonment for twelve months or to both such fine and imprisonment.

42. (1) After an investigation in respect of any insurance company has been completed, the Commissioner---

Action on completion of investigation.

- (a) shall transmit to the company a summary of the conclusions arrived at by him as a result of the investigation; and
- (b) may issue such directions in writing to the company as he considers appropriate having regard to his conclusions from the investigations.

(2) No direction issued to a company under this section shall remain in force for more than twelve months, but nothing in this subsection shall prevent the Commissioner from issuing any further direction to the company.

(3) A company aggrieved by any direction issued under this section may appeal therefrom in the manner prescribed in section 56.

- (4) On any such appeal, the Minister may—
- (a) confirm or disallow the direction; or
 - (b) vary the direction.

PART VI

AMALGAMATION OR TRANSFER

Amalgama-
tion or
transfer.

43. (1) Where it is intended to amalgamate two or more insurance companies, or to transfer the insurance business of one company to another, the directors of any one or more of such companies may apply to the Court, by petition, to sanction the proposed arrangement.

- (2) Before any such application is made to the Court—
- (a) a notice of the intention to make the application shall be served on the Commissioner and shall be published in the *Gazette*, at least two months before the application is made;
 - (b) a statement of the nature of the amalgamation or transfer, as the case may be, together with an abstract containing the material facts embodied in the agreement or deed under which the amalgamation or transfer is proposed to be effected and copies of the actuarial or other reports upon which the agreement or deed is founded, including a report by an independent actuary, shall, unless the Court otherwise directs, be transmitted to each policy-holder of each company; and
 - (c) the agreement or deed under which the amalgamation or transfer is effected shall be open for the inspection of the policy-holder and shareholders at the offices of the companies for a period of fifteen days after the last publication of the notice.

(3) The Court, after hearing the directors, the Commissioner and other persons whom it considers entitled to be heard upon the petition, may sanction the arrangement if it is satisfied that no sufficient objection to the arrangement has been established.

(4) The Court shall not sanction the amalgamation or transfer in any case in which it appears to the Court that the life policy-holders representing one-tenth or more of the total amount assured in any company which it is proposed to amalgamate or in any company the business of which it is proposed to transfer dissent from the amalgamation or transfer.

(5) No insurance company shall amalgamate with another, or transfer its business to another, unless the amalgamation or transfer is sanctioned by the Court in accordance with this section.

44. Where an amalgamation takes place between any insurance companies, or where any insurance business of one such company is transferred to another company, the combined company or the purchasing company, as the case may be, shall, within one month from the date of the completion of the amalgamation or transfer, deposit with the Commissioner—

Statement in case of amalgamation or transfer.

- (a) certified copies of statements of the assets and liabilities of the companies concerned in such amalgamation or transfer, together with a statement of the nature and terms of the amalgamation or transfer;
- (b) a certified copy of the agreement or deed under which the amalgamation or transfer is effected;
- (c) certified copies of the actuarial or other reports upon which that agreement or deed is founded; and
- (d) a declaration under the hand of the chairman of each company, and the principal officer of each company, that to the best of their belief every payment made to be made to any person whatsoever on account of the amalgamation or transfer is therein fully set forth, and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities or other property by or with the knowledge of any parties to the amalgamation or transfer.

PART VII

WINDING UP

45. The Court may order the winding up of an insurance company, in accordance with the Companies Ordinance, and the provisions of that Ordinance shall apply accordingly, subject, however, to the modification that the company may be ordered to be wound up—

Special provisions as to winding up of insurance companies

- (a) on the petition of ten or more policy-holders; provided that such a petition shall not be presented except by the 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 thinks reasonable has been given; or
- (b) on application made by the Commissioner showing that from a consideration of the documents deposited with him under this Act, it appears to him that the company is insolvent.

Winding up
of subsidiary
companies.

46. (1) Where the insurance business or any part of the insurance business of an insurance company has been transferred to another company under an arrangement in pursuance of which the first-mentioned company, in this section called the subsidiary company, or the creditors thereof has or have claims against the company to which such transfer was made, in this section called the principal company, then if the principal company is being wound up by or under the supervision of the Court, the Court shall, subject as hereinafter mentioned, order the subsidiary company to be wound up in conjunction with the principal company, and may, by the same or any 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 were one company.

(2) The commencement of winding up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding up of the subsidiary company.

(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 contributories in the case of the winding up of a single company, or as near thereto as circumstances admit.

(4) Where any company alleged to be subsidiary is not in process of being wound up at the same time as the principal company to which it is subsidiary, the Court shall not direct the subsidiary company to be wound up unless, after hearing all objections, if any, that are urged by or on behalf of the company against its being wound up, the Court is of opinion that the company is subsidiary to the principal company, and that the winding up of the company in conjunction with the principal company is just and equitable.

(5) An application may be made in relation to the winding up of any subsidiary company in conjunction with a principal company by any creditor of, or person interested in, the principal or subsidiary company.

(6) Where a company stands in the relation of a principal company to one company, and in the relation of a subsidiary company to some other company, or where there are several companies standing in the relation of subsidiary companies to the one principal company, the Court may deal with any number of such companies together or in separate groups as it thinks most expedient upon principles laid down in this section.

Valuation of
annuities
and policies.

47. Where an insurance company is being wound up by the Court, or subject to the supervision of the Court, or voluntarily, the value of a policy or of a liability under a policy requiring to be valued in such winding up shall be estimated in manner applicable to policies and liabilities provided by the second schedule.

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

Power of Court to reduce contracts.

PART VIII

ASSOCIATION OF UNDERWRITERS

49. (1) No association of underwriters may carry on insurance business in Guyana unless it is registered in accordance with this Part.

Registration of underwriters.

(2) A member of an association of underwriters shall not carry on in Guyana after the date to be declared by order of the Minister, insurance business of any class the carrying on of which by a company requires the company to be registered under this Act, unless the association has been registered in accordance with subsection (3):

Provided that —

- (i) a member of an association of underwriters shall not carry on long-term insurance business in Guyana;
- (ii) no date shall be so declared which is earlier than one month after the commencement of this Act.

(3) The Commissioner may register as an insurer an association of underwriters, provided the provisions of this Part are complied with.

(4) An application by an association of underwriters for registration shall be made to the Commissioner and shall be accompanied by the following documents—

- (a) a copy of its statute or deed of association;
- (b) in the case of an association constituted outside Guyana a certificate stating that it has been established for at least 5 years, that the law of the country in which it is constituted provides for the regulation of an association of underwriters and that it is operating in accordance with that law;
- (c) a list of the names and addresses of persons appointed as its agents or brokers in Guyana; and
- (d) a list of the names of the members of the association,

and by such further information as the Commissioner may require.

50. An association of underwriters registered in accordance with this Part (in this Part referred to as a "registered association") shall within six months of the end of each financial year furnish to the Commissioner:—

Documents and information relating to insurance business to be furnished to the Commissioner.

- (i) in the case of an association constituted outside Guyana —

- (a) a certified copy of such returns relating to the insurance business of the members during the preceding year as are required to be made to the responsible Minister or public authority in the country in which the association is constituted;
 - (b) a certificate, signed by the Chairman or other presiding officer of the association and by or on behalf of the responsible Minister or other public authority, stating whether the association has complied with the requirements of the law for the regulation of association of underwriters in the country in which it is constituted;
 - (c) the latest annual list of members and the names of its Committee or other governing body; and
 - (d) a statement of receipt and expenditure by its members in Guyana during the preceding year.
- (ii) in the case of an association constituted in Guyana such documents and information as the Commissioner may require.

Cancellation
of registration.

51. (1) The Commissioner may cancel the registration of an association of underwriters—

- (a) if he is not satisfied that the insurance business of its members is being conducted in accordance with sound insurance principles; or
- (b) if the association has failed to comply with any requirements imposed upon it in accordance with this Part; or
- (c) if he is satisfied that the members of the association have not commenced business within one year of registration or have ceased to carry on business within Guyana; or
- (d) at the request of the association.

(2) If the Commissioner cancels the registration under this section, he shall state, in writing his reasons for doing so.

(3) An association aggrieved by the decision of the Commissioner may appeal therefrom in the manner prescribed in section 56.

(4) On any such appeal the Minister may confirm or disallow the decision.

Notification
of Commissioner's
decision on
application.

52. (1) The Commissioner shall notify the applicant for registration as an insurer in writing whether he proposes to register the applicant or to reject the application.

(2) If the Commissioner proposes to reject the application, he shall state his reasons for doing so.

(3) An association aggrieved by the decision of the Commissioner may appeal therefrom in the manner prescribed in section 56.

53. (1) The Commissioner may prohibit a registered association from writing new policies in any class of insurance business if he is satisfied that it is in the interest of the policy-holders or prospective policy-holders to do so.

Registered association may be prohibited from writing new business.

(2) The Commissioner shall notify the registered association in writing of a decision taken under the terms of subsection (1) and shall state the reasons for his decision.

(3) A registered association aggrieved by the decision of the Commissioner may appeal therefrom in the manner prescribed in section 56.

54. An association whose application for registration has been rejected or whose registration has been cancelled in accordance with this Part shall continue to carry on business relating to policies issued by it prior to the date on which it was notified of such rejection or cancellation unless the Commissioner is satisfied that it has made suitable arrangements for its obligations under these policies to be met.

Policies issued before rejection of application or cancellation of registration.

55. (1) An association of underwriters in existence at the commencement of this Act may not be registered under section 49 to carry on, or carry on, insurance business in Guyana unless it has deposited with the Commissioner an amount equal to \$250,000.

Deposit by association of underwriters.

(2) At the end of each financial year an association of underwriters having made a deposit as required by subsection (1) shall, where necessary, deposit or be refunded, as the case may be, an amount equal to the difference between the last preceding deposit held by the Commissioner and forty per cent of the relevant premium income during such financial year, provided that at no time shall an association of underwriters have a deposit with the Commissioner less than \$250,000.

(3) An association of underwriters which is constituted after the commencement of this Act, may not be registered under section 49 to carry on, or carry on, insurance business in Guyana unless it has deposited with the Commissioner an amount equal to \$250,000 or to forty per cent of the gross premium income of the members of the association (derived from insurance policies issued by the association and underwritten by the members thereof), whichever is the greater, with respect to the insurance business carried on in Guyana during the financial year last preceding the date of deposit.

(4) Such deposits may be either in the form of cash or in the form of securities approved by the Minister or partly in one and partly in the other.

(5) All deposits made by a registered association pursuant to this Act shall be deemed to form part of the assets of the association.

(6) Sections 18(4), 18(8) to (13), and 19 to 22 (inclusive) shall apply to a deposit made pursuant to this section except that for the word "company" the words "association of underwriters" shall be substituted.

PART IX

MISCELLANEOUS

56. (1) An appeal shall lie to the Minister from any decision, direction, or order of the Commissioner, under this Act.

(2) Notwithstanding that an appeal lies under this Act from any decision, direction or order, such decision, direction or order shall be binding upon the insurance company in respect of which the decision, direction or order has been made unless that company within fifteen days of the receipt of the notification of the decision, direction or order serves on the Commissioner notice of the company's intention to appeal therefrom setting forth the grounds of appeal and within fifteen days thereafter files the appeal with the Minister and with due diligence prosecutes the same in which case action on such decision, direction or order shall be suspended until the Minister has determined the matter.

(3) On any such appeal, the insurance company and the Commissioner may appear and shall be entitled to be heard by the Minister.

Custody and inspection of documents.

57. (1) Every document required to be deposited under this Act, or certified copies thereof, shall be kept by the Commissioner.

(2) Such documents and copies shall be open to inspection, and copies thereof may be procured by any person on payment of such fees as the Minister directs.

Evidence of documents.

58.(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.

(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.

Alteration of forms.

59. The Commissioner may, on the application of an insurance company, alter all or any of the prescribed forms, in respect of that company, for the purpose of adapting them to the circumstances of that company.

Penalties.

60. (1) Any insurance company or person who contravenes or fails to comply with —

- (a) any provision of this Act;
- (b) any direction or requirement given or made by the Commissioner or a person appointed as an Inspector under section 39,

shall be guilty of an offence and every director, manager, secretary or other officer or agent of the company who is knowingly a party to the default, shall also be guilty to an offence, and shall, where no other penalty is provided, be liable to a fine of one thousand dollars or in the case of a continuing default to a fine of five hundred dollars for every day during which the default continues.

(2) If default continues for a period of three months after notice of default by the Commissioner which notice shall be published in one or more newspapers as the Minister, upon the application of one or more policy-holders, or shareholders directs, the defaults shall be a ground on which the Court may order the winding up of the company. in accordance with the Companies Ordinance. Cap.

(3) If any account, balance sheet, abstract, statement or other document required by this Act is false in any particular to the knowledge of any person who signs it, such person shall be liable on summary conviction to a fine of one thousand dollars or to imprisonment for a term of two years, or to both such fine and imprisonment.

61. (1) Any notice or other document which is by this Act required to be sent to any policy-holder may be addressed and sent to the person to whom notices respecting such policy are usually sent, and any notice so addressed and sent shall be deemed and taken to be notice to the holder of such policy. Service of notices.

(2) Where any person claiming to be interested in a policy has given to the company notice in writing of his interest, any 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.

62. (1) The Minister may make rules for the purpose of carrying out the purposes of this Act. Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power such rules may —

- (a) prescribe the qualifications to be possessed by auditors, and the manner in which the accounts of an insurance company shall be audited;
- (b) prescribe the manner in which the provisions of this Act as to winding up of insurance companies are to be given effect to, and revoke, alter or amend any of the rules contained in the second schedule.

63. (1) The Life Assurance Companies Ordinance is hereby repealed.

(2) In the case of a company carrying on life assurance business at the commencement of this Act, sections 8, 9, 10, 11 and 29 of the Life Assurance Companies Ordinance shall continue to apply as if this Act had not been enacted in relation to accounts, balance sheets, abstracts and statements for any period; or relating to any date before the first financial year under this Act.

(3) Notwithstanding subsection (1), the right of any person under section 12 of that Ordinance to any document deposited under that Ordinance shall cease on the accounts for the first financial year being deposited with the Commissioner under this Act.

(4) The repeal by this Act of the Life Assurance Companies Ordinance shall not affect the operation of sections 20, 21 and 22 of that Ordinance in relation to the winding up of a company carrying on life assurance business before the commencement of this Act, which having made a deposit under that Ordinance, is not registered under this Act, and where the winding up commenced before the commencement of this Act.

(5) So long as under this section any other provision of the Life Assurance Companies Ordinance is continued in force for any purpose, section 31 of that Ordinance (which relates to the making of rules) shall continue to have effect in connection with that provision.

FIRST SCHEDULE

Sections 9, 12, 16, 18.

Classes of Insurance Business

1. (a) Ordinary Life Insurance Business and General Annuity Life Insurance Business.
- (b) Industrial Life Insurance Business.

In this paragraph and where the context so requires

“Life Insurance Business” means insurance of human lives and insurance appertaining thereto or connected therewith and includes the granting of annuities, endowment benefits in the event of death or dismemberment by accident or accidental means and the granting of benefits in the event of total and permanent disability, provided that such insurance against disability caused by accident or sickness is included as an additional benefit in a life policy and that the additional benefit does not exceed the following:—

- (i) the waiver of premiums falling due during the continuance of such disability; or
- (ii) a disability benefit payable for a period or periods not exceeding one hundred weeks at a weekly rate not exceeding one-half of one per cent of the sum assured on the date of the occurrence of such disability payable in the event of death; or
- (iii) a lump sum disability benefit in respect of total and permanent disability not exceeding the sum assured;

and provided also that insurance against accidental death, accidental dismemberment or accidental loss of sight in one or both eyes included as an additional benefit in life policy does not exceed twice the sum assured in the event of accidental death or the sum assured in the event of accidental dismemberment or accidental loss of sight; and provided also that it shall not include cancellable group life insurance business.

"Ordinary Life Insurance Business" means insurance business whereby an insurer assumes in return for the payment of a sum or sums of money a contingent obligation dependent on human life but does not include industrial life insurance, personal accident, sinking fund, or cancellable group life insurance.

"General Annuity Life Insurance Business" does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependants of such persons provided such scheme, fund or annuity has been approved under the Income Tax Ordinance.

"Industrial Life Insurance Business" means the business of effecting insurance upon human life, premiums in respect of which are contracted to be paid at intervals of less than two months and which are received by means of collectors.

2. Bond Investment Business, that is to say, the business of issuing bonds or endowment certificates by which the company, in return for subscriptions payable at periodic intervals of less than six months, contracts to pay the bond holder a sum at some future date, not being life assurance business but includes sinking fund and capital redemption insurance business.
3. Non-cancellable Sickness and Accident Insurance Business, that is to say, the issue of or the undertaking of liability under policies of insurance upon the happening of personal accidents, whether fatal or not, disease or sickness, or any class of personal accidents, disease or sickness and where the policy could only be cancelled at the option of the insured.
4. Property Insurance Business, that is to say, the business of effecting contracts of insurance against loss of or damage to real or personal property of every kind and interest therein, from all or all hazard of cause and against loss consequential upon such loss or damage, but does not include risks the insurance of which is Motor Vehicles Insurance Business or Marine, Aviation and Transit Insurance Business.
5. Cancellable Group Life Insurance Business, that is to say, the business of insuring the lives of a group of persons where it is written on a yearly renewable term basis and where the contract can be terminated by either the insured or the insurer at any policy anniversary.
6. All other classes of Insurance but does not include Motor Vehicle, Marine, Aviation and Transit Insurance Business.

SECOND SCHEDULE

Section 47

Rules for Valuing Annuities, Life Policies and Liabilities.

Rule for valuing an Annuity.

An annuity shall be valued according to the tables used by the company which granted such annuity at the time of granting the same, and, where such tables cannot be ascertained or adopted to the satisfaction of the Court, then according to such rate of interest and table or mortality as the Court may direct.

Rule for valuing a Policy.

The value of the policy is to be the difference between the present value of the reversion in the sum assured according to the contingency upon which it is payable, including any bonus or addition thereto made before the commencement of the winding up, and the present value of the future annual premiums.

In calculating such present values interest is to be assumed at such rate, and the rate of mortality according to such tables, as the Court may direct.

The premium to be calculated is to be such premium as according to the said rate of interest and rate of mortality is sufficient to provide for the risk incurred by the office in issuing the policy, exclusive of any addition thereto for office expenses and other charges.

Rule for valuing a Liability.

The liquidator, in the case of all persons appearing by the books of the company to be entitled to or interested in policies granted by such company is to ascertain the value of the liability of the company to each such person, and give notice of such value to such person in such manner as the Court may direct, and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in manner and within a time to be prescribed by a rule or order of the Court.

EXPLANATORY MEMORANDUM

This Bill seeks to implement the proposals in the 1970 Budget in so far as they relate to insurance companies. Provision is made in the Bill for the registration of insurance companies by a Commissioner of Insurance who is vested with statutory powers to supervise the operations of insurance companies. The amount of the deposit of an insurance company carrying on life insurance business has been increased from \$50,000 to \$250,000 to be paid either in cash or by way of such securities as may be approved by the Minister. Companies carrying on other classes of insurance business as specified in paragraphs 2, 3 and 4 of the first schedule to the Bill will also be required to pay the deposit.

Clause 30 seeks to prescribe the amount of investment in Guyana which insurance companies carrying on long-term insurance business in Guyana will be required to maintain in Guyana.

Clause 39 seeks to empower the Commissioner of Insurance in the exercise of his powers of supervision over the operations of insurance companies in Guyana, to carry out investigations into the affairs of any registered insurance company in certain circumstances.

Part VIII of the Bill seeks to prescribe the conditions under which underwriters will be permitted to carry on insurance business in Guyana.

P. A. REID,
Minister of Finance.

(Bill No. 20/1970)
(1/2)