

THE OFFICIAL GAZETTE 15TH APRIL, 2016

LEGAL SUPPLEMENT — C

BILL No. 11 of 2016

Friday 15th April, 2016

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

15th April, 2016.

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

S.E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 11 of 2016

INSURANCE BILL 2016

ARRANGEMENT OF SECTIONS

SECTION

PART I PRELIMINARY

1. Short title and commencement.
2. Interpretation.

3. Continuation under this Act for insurers.
4. Continuation under this Act for intermediaries.
5. The Bank of Guyana.
6. Objective of the Bank.
7. Functions of the Bank.
8. Powers of the Bank.
9. Control of entities.
10. Relationship to Companies Act.
11. Fit and proper criteria.

PART II
FINANCIAL PROVISIONS

12. Licensed insurers to be assessed to cover related expenses of Bank.
13. Definition of “direct written premium”.
14. Payment date.
15. Budget requirements.
16. Assessment obligation.
17. User fees.
18. Recovery of debt.
19. Annual report on insurance supervisory activities.
20. Other reports.

PART III
APPEAL BOARD

21. Appeals.
22. Filing of appeal.
23. Appeals Board.
24. Composition of Appeals Board.
25. Remuneration.
26. Grounds of appeal.
27. Decision of Board.
28. Copy of decision.
29. Further appeals.
30. Rules.

PART IV
OFFENCES AND PENALTIES

31. Offences and penalties.
32. Sanctioning Policy.
33. Non-compliance.
34. Separate administrative penalties.
35. False information.
36. Incomplete, incorrect or false information.
37. Period of limitation for proceedings.
38. Penalties.
39. Judicial management or wind-up proceedings.

PART V
LICENSING OF INSURERS

40. Licence to conduct insurance business.
41. Reinsurer register.
42. Ratings.
43. Obtaining an insurer licence.
44. Qualifications for the grant of an insurer licence.
45. Documents in support of application.
46. Issue of licence.
47. Conditions or limitations of licence.
48. Notice of decision.
49. Classes of insurance business.
50. Changes in licence.
51. Amendment, suspension or revocation of licence.
52. Right of appeal.
53. Publication in *Gazette*.
54. Restriction on insurance business.
55. External insurers.
56. Main representative.
57. Removal or change in business address of main representative.
58. Interpretation.

PART VI
CORPORATE GOVERNANCE OF COMPANIES

59. General requirement for companies.
60. Composition of Boards of Directors.
61. Chairperson of the Board of Directors.

62. Duty to appoint actuary.
63. Responsibilities of Boards of Directors.
64. Audit committees and their responsibilities.
65. Appointment of other committees.
66. Duty of skill and care of directors and officers.
67. Articles of association and internal documents.
68. Indemnification of directors, etc.
69. Examination by directors.

PART VII
BUSINESS POWERS OF INSURERS

70. Business powers generally.
71. Approval to carry on ancillary activities.
72. Ancillary activities for life insurers.
73. Ancillary activities for general insurers.
74. Limit of ancillary activities.
75. Issuing unit-linked products.
76. Application to debts.
77. Prohibition on borrowing, pledging of assets, derivative investments of the insurer.
78. Temporary suspension.
79. Derivatives.

PART VIII
AUDITORS AND ACTUARIES OF INSURERS

80. Appointment of auditor.
81. Appointment of auditing firm as auditor.
82. Qualification of auditor.
83. Registry of Auditors.
84. Notification of appointment.
85. Termination and replacement of auditor.
86. Cessation of office.
87. Dispensing with auditor.
88. Revocation of appointment.
89. Filling auditor vacancy.
90. Term of office.
91. Examinations by auditor.

92. Audit standards.
93. Right to inspect.
94. Powers of Bank.
95. Auditor's duty.
96. Privilege of auditor.
97. Appointment of actuary.
98. Qualifications of actuary.
99. Registry of Actuaries.
100. Prohibited appointments.
101. Notification of appointment.
102. Insurer to notify Bank where actuary not qualified.
103. Cessation of duty.
104. Dispensing with actuary.
105. Revocation of appointment.
106. Filling actuary vacancy .
107. Term of office.
108. Valuations by actuary.
109. Actuarial standards.
110. Actuary's duty.
111. Right to inspect.
112. Privilege of actuary.

PART IX
REGULATORY REPORTING, EXAMINATIONS
AND CAPITAL FOR INSURERS

113. Annual financial statements.
114. Particulars of annual financial statements.
115. Annual financial statements to be made by insurer.
116. Consolidated financial statements.
117. Publication of annual financial statements.
118. Summary of annual financial statements.
119. Form and content of Annual Supervisory Filing.
120. Annual supervisory filing and other returns.
121. Auditor's report.
122. Valuation of technical provisions.
123. Insurer's report.
124. Insurer's Quarterly Supervisory Filings.
125. Summary of statutory fund position.

- 126. Power to intervene.
- 127. Power of Bank to request reports.
- 128. Onsite inspection.
- 129. Minimum capital.
- 130. Minimum solvency.
- 131. Power to increase solvency requirement.

PART X

FUNDAMENTAL CHANGES IN RESPECT OF INSURERS

- 132. Non-transferral of policies.
- 133. Publication of request to transfer.
- 134. Requirements for approval of transfer.
- 135. Changes in control.
- 136. Requirements for approval of change.
- 137. Notice to Bank.
- 138. Mergers.
- 139. Publication of merger request.
- 140. Requirements for approval of merger.

PART XI

CHANGES OF KEY PERSONNEL

- 141. Officers.
- 142. Notice to Bank.

PART XII

MARKET CONDUCT OF INSURERS

- 143. Responsibility of insurers regarding agents and brokers.
- 144. Liability of insurer.
- 145. Duty of insurers.
- 146. Insurer to file names and addresses with Bank.
- 147. Unlicensed intermediaries.
- 148. Responsibility of insurer regarding other insurers.
- 149. Improper statements re-financial standing.
- 150. Policy and related material.
- 151. Policies to be written in English.

- 152. Exemption.
- 153. Compliance.
- 154. Misleading, false or deceptive statements.
- 155. Prohibition.
- 156. Advertisements.
- 157. Consumer compensation.

PART XIII
CONSUMER PROTECTION

- 158. Dealing with complaints.
- 159. Investigation by insurer.
- 160. Investigation by Bank.
- 161. Legal recourse.
- 162. Arbitration Board.
- 163. Composition of Board.
- 164. Ruling of Board.
- 165. Appeals.
- 166. Remuneration.
- 167. Assessment of costs.
- 168. Frivolous or vexatious disputes.
- 169. Rules of Board.
- 170. Power to make information public.

PART XIV
STATUTORY FUND

- 171. Establish fund.
- 172. Assets of fund.

PART XV
STATUTORY INTERVENTION

- 173. Power of intervention.
- 174. Conditions for intervention.
- 175. Notice of intervention.
- 176. Representation by insurer.
- 177. Legal undertaking.

- 178. Emergency situations.
- 179. Exercise of intervention power.
- 180. Variation of requirements.
- 181. Control of assets.
- 182. Urgent concerns.
- 183. Hearing by Governor.
- 184. Costs.

PART XVI
JUDICIAL MANAGEMENT AND WINDING UP

- 185. Appointment of judicial manager or liquidator.
- 186. Judicial management petition.
- 187. Presentation of petition.
- 188. Stay of actions.
- 189. Order for judicial management.
- 190. Cancellation of order.
- 191. Report to Court by judicial manager.
- 192. Acceptance of judicial manager report.
- 193. Security for costs.
- 194. Immunity.
- 195. Winding-up.
- 196. Petition for wind-up.
- 197. Valuation of policy.
- 198. Notice by liquidator.
- 199. Ranking of claims.
- 200. Ranking of transferred policies and unit-linked products.

PART XVII
REGULATION OF INSURANCE AGENTS AND BROKERS

- 201. Requirement that agents be licensed.
- 202. Requirement that brokers be licensed.
- 203. Cease and desist order.
- 204. Obtaining a licence as an agent or broker.
- 205. Qualification of individuals for licences as agents or brokers.
- 206. Qualification of companies.
- 207. Indemnity insurance.

208. Application for licence.
209. Issue of licence.
210. Restrictions.
211. Continuation under this Act.
212. Term of licence.
213. Acting without a licence.
214. Renewal of agent and broker licences.
215. Suspension or revocation of agent and broker licences.
216. Hearing and appeal processes on licensing decisions.
217. Decision of Appeal Board.
218. Interim order.
219. Hearing of appeal.
220. Single principal of licensed agents.
221. Exemptions.
222. Confirmation of cover by licensed brokers.
223. Certificate of coverage.
224. Trust accounts.
225. Long term insurance funds.
226. Other obligations of licensed brokers.
227. Delays.
228. Unlicensed insurers.
229. Liability.
230. Fit and proper requirements.
231. Notification of non-compliance.
232. Placing of insurance outside of Guyana.
233. Special broker's licence.
234. Retention of documents.
235. Obligations of agents and brokers.
236. Premiums.
237. Production of accounts.
238. Long term insurance premiums.
239. Guidelines.
240. Duties of intermediaries.
241. Independence.
242. Production of licence.
243. Bank powers in relation to agents and brokers.
244. Examination under oath.

PART XVIII
REGULATION MAKING AUTHORITY

245. Regulations.

PART XIX
MISCELLANEOUS PROVISIONS

246. Creditors offering insurance relating to debt or collateral.

247. Accident surveyors and damage assessors.

248. List of experts.

249. Confidentiality of information.

250. Co-operation with other agencies.

251. Protection of Bank, employees and agents.

252. Right of access to records.

253. Production of documents.

254. Extended audits.

255. Special audit.

256. Special actuarial valuations.

257. Charging certain expenses to insurers.

258. Fees.

259. Forms.

260. Mutual insurance companies.

261. Composite insurance companies.

262. Repeal and savings.

SCHEDULE 1

Sanctioning Policy of the Bank – Guidelines

SCHEDULE 2

Types and Classes of Insurance Business

**A BILL
Intituled**

AN ACT to provide for the regulation of insurance in Guyana, the promotion of competition in the insurance industry, the protection of consumers and to repeal the 1998 and 2009 Acts on insurance and for related matters.

A.D. 2016 Enacted by the Parliament of Guyana:-

**PART 1
PRELIMINARY**

Short title and commencement. 1. This Act may be cited as the Insurance Act 2016 and subject to section 59, shall come into operation on such date as the Minister may by order appoint.

Interpretation. 2. In this Act –
 “actuary” means a Fellow of an actuarial accreditation body that is a full member of the International Actuarial Association and who is an Ordinary Member or an Affiliate Member of the Caribbean Actuarial Association;

 “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 thereby secured;

 “auditor” means a person who is a member of and in good standing with the Institute of Chartered Accountants of Guyana;

 “Bank” means the Bank of Guyana under the Bank of Guyana Act;

 “class of insurance business” means any of the classes of insurance business specified in Schedule 2.

 “the Court” means the High Court;

 “external insurer” means an undertaking carrying on insurance business which is formed under the laws of another country;

 “financial year” means the calendar year;

 “former Act” means the Insurance Act;

 “general insurance business” means insurance business listed in Schedule 2;

Cap. 91:02
[Act No. 20 of 1998]

Schedule 2

“general manager” means the most senior decision making officer in the insurer, responsible for reporting to the board of directors;

“Governor” means the Governor of the Bank of Guyana;

“holding company” means a company that owns more than fifty per cent of the voting shares in another company;

“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;

“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;

“insurance business” means the assumption of the obligations of an insurer in any class of insurance business, and includes re-insurance business, in Guyana;

“insurance company” or “company” means a body corporate which carries on or proposes to carry on insurance business in Guyana;

“insurance intermediary” means an insurance broker or agent which is duly licensed under the provisions of this Act;

“insurer” means a company carrying on insurance business and unless otherwise indicated, includes a mutual insurer and an external insurer;

“judicial manager” means a judicial manager appointed by the Court pursuant to Part XVI;

Schedule 2

“life insurance” means insurance of a class specified in Class 1 of Schedule 2;

“liquidator” means a liquidator appointed by the Court pursuant to Part XVI;

Schedule 2

“long-term insurance business” means insurance business described in Schedule 2;

“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 authorisation from the Bank 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;

“Minister” means the Minister responsible for Finance;

“mutual insurer” means an insurer owned by its policy-holders;

“net written premium” means direct premium written plus reinsurance assumed less reinsurance ceded;

“officer” includes a director, manager, secretary, treasurer, actuary or any other person designated as an officer of an undertaking by its rules;

“person” shall include –

- (a) a natural person and any corporation or other entity which is given, or is recognised as having legal personality by the laws of any country or territory;
- (b) any unincorporated association or unincorporated body of persons, whether formed in Guyana or elsewhere, including a partnership, joint venture or consortium;
- (c) the government of a country or territory, any public, local or municipal authority in Guyana or elsewhere and any international organisation or body, whether or not its members include the and whether or not having legal personality; and
- (d) a person who, under the laws of any country or territory, together holds a fiduciary, representative or official position shall be treated as a single person;

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

“policyholder” 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;

“registrant” means any insurance company, insurance intermediary, pension fund or other entity which is duly licensed under this Act;

“licence” means an authorisation issued by the Bank;

“regulations” means regulations made by the Minister under Part XVIII;

“scheme” means a proposal for the transfer, acquisition or amalgamation of an insurance business;

“solvency margin” means the minimum amount by which the assets of an insurer must exceed its liabilities, determined in accordance with a formula prescribed by regulations;

“technical provision” means an amount set aside on the balance sheet to meet liabilities arising out of insurance contracts;

“undertaking” means a body corporate, partnership or an unincorporated association carrying on a trade or business;

“underwriter” means any person named in a policy as liable to pay or contribute towards the payment of the sum secured by the policy; and

“unit-linked products” means policies or other financial products issued by an insurer, on which the liability varies in amount depending on the market value of a specified group of assets of the insurer or, in the case of an external insurer, a specified group of assets of the insurer in Guyana, but are subject to guarantees by the insurer or external insurer, as the case may be, on death or other maturity.

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| Continuation under this Act for insurers. | 3. | Every insurer registered under the former Act shall be deemed to be licensed under this Act. |
| Continuation under this Act for intermediaries. | 4. | Every insurance intermediary licensed under the former Act shall be deemed to be licensed under this Act. |
| The Bank of Guyana. | 5. | The Bank of Guyana is responsible for supervision of the insurance business in Guyana to the extent provided for in this Act. |
| Objective of the Bank. | 6. | The objective of the Bank under this Act is to supervise the administration of the Act with a view to promoting the maintenance of efficient, fair, safe and stable insurance markets for the benefit and protection of policyholders and to enhance public confidence in those markets. |
| Functions of the Bank. | 7. | <p>The Bank shall –</p> <ul style="list-style-type: none"> (a) use its best efforts to ensure that the operations of companies and other persons licensed under this Act are properly monitored and that the provisions of this Act are consistently enforced; (b) oversee the activities of the insurance industry and generally monitor risk levels within companies and across the industry as a whole, taking actions or recommending actions in accordance with the provisions of this Act which are designed to reduce risk where it is deemed to have reached levels which may be prejudicial to the interests of policyholders or the general public; (c) adopt and maintain supervisory policies and procedures that are |

generally in accordance with international standards for insurance supervision, as are relevant to the circumstances of Guyana, and ensure that such policies and procedures are made public if material;

- (d) publish explanatory guidelines for purposes of interpretation and clarity with regard to specific provisions of this Act;
- (e) ensure that its employees adhere to conflict of interest guidelines established by the Bank and approved by the Governor; and
- (f) ensure that it follows high standards of professional conduct and maintains policies and procedures that safeguard information, the confidentiality of which is protected by section 249.

Powers of the Bank.

8. In addition to any powers granted elsewhere in this Act, the Bank shall have the power to –
- (a) without any diminution of its supervisory responsibilities, outsource insurance supervisory functions to outside parties, subject to the due assurance that there are adequate arrangements in place to assess their competence, monitor their performance and ensure compliance with appropriate standards of confidentiality and independence;
 - (b) request such information from any person licensed under this Act or any employee, officer, partner, auditor or actuary of that person as may, in the opinion of the Bank, be required for the purpose of administering this Act;
 - (c) retain such outside advisors, auditors and actuaries as may be required to properly administer the provisions of this Act, subject to the same confidentiality requirements as apply to employees of the Bank;
 - (d) make recommendations to the Minister, after any appropriate consultations, with regard to any legislation necessary or desirable to properly supervise the insurance sector, in keeping with standards and principles established by the International Association of Insurance Supervisors and which are relevant to the circumstances of Guyana.

Control of entities.

9. For the purposes of this Act –
- (a) a controlling shareholder is a person who controls an entity by holding, directly or indirectly, shares to which are attached more than fifty per cent of the votes of the outstanding shares of the entity, or by exercising control in fact over the entity;
 - (b) one entity is affiliated with another entity if one of them is controlled by the other or both are controlled by the same person;

- (c) a person has a significant interest in an entity if the aggregate of the votes attached to the shares of the entity owned by that person, directly or indirectly, exceeds ten per cent of the votes attached to all of the outstanding shares of the entity;
- (d) a person shall be deemed to have a significant interest in or to control an entity if that person and one or more affiliates, or that person and one or more other persons who are closely related to or are acting in concert with that person, have together a significant interest in or control of the entity.

Relationship to
Companies Act.
Cap. 89:01

10. In case any provisions of this Act are inconsistent with any provisions in the Companies Act, the provisions of this Act shall apply.

Fit and proper criteria.

11. (1) In determining whether a person is fit and proper for the purposes of this Act, the Bank shall conduct an investigation into the person's probity, competence and soundness of judgment for fulfilling the responsibilities of the position concerned, to the diligence with which the person is fulfilling or is likely to fulfil those responsibilities and as to whether the interests of policyholders or potential policyholders of companies are, or are likely to be, in any way threatened by the person holding that position.

(2) In conducting such an investigation, the Bank shall also have regard to-

- (a) the honesty, integrity and reputation of the applicant, partner, shareholder, directors beneficial owner of a significant or controlling interest or office holder of the applicant;
- (b) the financial soundness and financial capability of the applicant;
- (c) the background of the applicant; and
- (d) such other matters as the Bank deems appropriate.

(3) In assessing the fit and proper criteria in subsection (2), the Bank shall take into account all appropriate factors including but not limited to, whether the applicant-

- (a) has been declared bankrupt or has been compounded with his creditors;
- (b) has been the subject of any proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or of any investigation which might lead to those

proceedings, under any law in any jurisdiction;

- (c) has been convicted of any offence including money laundering or terrorist financing, or is being subject to any pending proceeding which may lead to such conviction, under any law in any jurisdiction;
 - (d) has had any judgement (in particular, that associated with a finding of fraud, misrepresentation or dishonesty) entered against the relevant person in any civil proceedings or is a party to any pending proceeding which may lead to such a judgment, under any law in any jurisdiction;
 - (e) has accepted civil liability for fraud or misrepresentation under any law in any jurisdiction, or
 - (f) has engaged or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence or soundness of judgement.
- (4) The criteria in subsection (2) shall be evaluated by the Bank as often as necessary or whenever there is a change in ownership, management or control of the company.

PART II FINANCIAL PROVISIONS

Licensed insurers to be assessed to cover related expenses of Bank.

12. (1) Supervision of licensed insurers by the Bank shall be funded by an assessment on direct written premium, subject to a maximum assessment of 3 per cent for each licensed insurer.
- (2) The quantum of the assessment shall be determined by the Bank.
- (3) The assessment shall be sufficient to cover the expected expenses of the Bank as it relates to insurance supervision, after allowing for fee income.
- (4) A cap of one year's expected costs shall be placed on the amount of reserve funds that can be accumulated and the assessment reduced accordingly if this is exceeded.
- (5) If it should happen that the amount carried forward for a year is greater than the estimated required assessment for that following year, then the excess shall be credited to the account of the industry and drawn down to cover the assessment of the next and any following years for which a balance remains.

- Definition of "direct written premium". 13. For the purposes of section 12, "direct written premium" means the total amount of premiums charged to policyholders during the year, excluding taxes, and, for greater certainty, "premiums charged to policyholders", for the purposes of this definition, means direct premiums written, without regard to reinsurance assumed or ceded.
- Payment date. 14. A licensed insurer shall pay the assessment described in section 12 which is due and payable in each year on a date to be specified by the Bank.
- Budget requirements. 15. The Bank shall each year make available to the public and members of the insurance industry, information on its budget requirements for the upcoming year, along with financial information regarding the quantum and nature of its insurance supervisory expenses for the previous year.
- Assessment obligation. 16. A licensed entity not meeting its assessment obligation commits an offence under this Act.
- User fees. 17. The Bank may prescribe user fees for particular activities carried out by the Bank in respect of licensed entities.
- Recovery of debt. 18. If a licensed entity does not pay a premium, assessment or fee assessed against it within 45 days of the date set by the Bank under this Part, the unpaid amount shall be a debt due to the Bank and the Bank may recover the debt by action or any other remedy or procedure available to it for the collection of debts owed.
- Annual report on insurance supervisory activities. 19. (1) Within 90 days after the end of each fiscal year, the Bank shall prepare a report providing information on the Bank's operations with regard to insurance supervision during the previous year, including its accomplishments in light of objectives that were established by the Bank in the previous year.
- (2) The report shall also include general information with respect to the insurance market in Guyana, aggregate industry statistics and data with regard to the financial positions and profitability of individual insurers, all for the year just ended, along with any other information that the Bank may deem appropriate.
- (3) The report may be published as part of the annual report of the Bank.
- Other reports. 20. The Bank shall provide to the Minister such reports and information as the Minister may require with respect to the insurance industry in Guyana.

PART III APPEAL BOARD

- Appeals. 21. Appeals of decisions or actions of the Bank under this Act are to the Court,

- except as provided in this Part.
- Filing of appeal. 22. An insurer, an insurance intermediary or an applicant for a licence as an insurer or an insurance intermediary, may appeal a decision or action of the Bank with regard to the issuance of a licence, the withdrawal of a licence or the imposition of a penalty under Part IV, by filing an appeal with the Appeal Board within thirty days of being notified of the decision or action.
- Appeal Board. 23. The Governor shall convene the Appeal Board in any case where an insurer or insurance intermediary licensed under this Act is entitled to appeal a decision made pursuant to the Act, but the Appeal Board has the right to refuse to hear a case on the grounds that it is frivolous or vexatious.
- Composition of Appeal Board. 24. The Appeal Board shall consist of at least three persons and not more than seven persons appointed by the Minister, none of whom are active in the industry but each of whom can be presumed, based on the person's prior training and experience, to have knowledge of insurance or other related matters.
- Remuneration. 25. Members of an Appeal Board shall be compensated at such rate as may be determined by the Governor in the circumstances.
- Grounds of appeal. 26. A person referred to in section 22 shall state the grounds of appeal and send a copy of the statement of appeal which includes grounds of appeal to the Governor.
- Decision of Board. 27. The Appeal Board shall give its decision in writing within sixty working days, which may be extended with the concurrence of the Governor but in any case not to exceed six months, and the decision may confirm, vary, cancel or reverse the action, decision, ruling, direction, order, proposal or any part of it, as the case may be.
- Copy of decision. 28. The Appeal Board shall forward a copy of its decision to the Governor with a copy to the appellant, together with a written statement of the reasons for its decision.
- Further appeals. 29. Any appellant not satisfied with a ruling by the Appeal Board may appeal to the Court and any action, decision, ruling, direction, order or proposal under appeal, remains in force until or unless it is overturned by the Court.
- Rules. 30. The Appeal Board shall lay down its own rules of procedure until rules of procedure are prescribed by Regulations.

PART IV OFFENCES AND PENALTIES

- Offences and penalties. 31. Where an insurer or any person licensed under this Act has contravened a requirement imposed on him by or under this Act, or any regulation issued

- under this Act, the Bank may, within six months of the date on which the contravention was noted by the Bank, impose on him a penalty in respect of the contravention.
- Sanctioning Policy. Schedule 1 32. In prescribing a penalty pursuant to section 31 the Bank shall have regard for the Sanctioning Policy set out in Schedule 1.
- Non-compliance. 33. Non-compliance with a provision of this Act constitutes an offence.
- Separate administrative penalties. 34. Where an offence against this Act is committed by an insurer or by a licensed corporate broker 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 insurer or licensed corporate broker, that person, as well as the insurer or licensed corporate broker, commits the offence and a separate administrative penalty may be assessed against that person.
- False information. 35. Where any person signs a document required by or under this Act which that person knows to contain false information, that person commits an offence.
- Incomplete, incorrect, or false information. 36. Where any person knowingly provides incomplete, incorrect or false information to the Bank, that person commits an offence.
- Period of limitation for proceedings. 37. Proceedings for an offence shall not be commenced after the expiration of seven years from the commission of the offence.
- Penalties. 38. Any penalty assessed under this Part is without prejudice to any other power of the Bank to initiate a prosecution under this Act and any conviction or penalty imposed under this Part does not relieve the person from any other liability that may arise as a result of the matters under review.
- Judicial management or wind-up proceedings. 39. Any proceedings against an insurer 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 insurer or of any part of the business of the insurer which may be taken in respect of the matter constituting the offence.

PART V LICENSING OF INSURERS

- Licence to conduct insurance business. 40. (1) Apart from the placing of a risk in accordance with section 234, no person shall carry on business as an insurer in Guyana except in accordance with and to the extent authorised by a licence issued under section 46.
- (2) This prohibition does not apply to a foreign entity whose business in Guyana is confined to reinsurance and is included in the register of acceptable reinsurers maintained by the Bank as provided for in section 41.

- Reinsurer register. 41. (1) The Bank shall maintain a register of acceptable reinsurers that are permitted to carry on the business of reinsurance in Guyana.
- (2) A reinsurance company may be included in the register if the Bank is satisfied that –
- (a) the reinsurer has an acceptable rating from an approved international rating agency; and
- (b) the reinsurer conducts its business in Guyana in a satisfactory manner.
- Ratings. 42. Not later than the last day of September in each year the Bank shall notify the industry as to the acceptable rating categories and approved international rating agencies for the purposes of the coming calendar year.
- Obtaining an insurer licence. 43. An entity incorporated within Guyana on a joint stock basis, the objects of which relate to the carrying on of the business of insurance, may apply to the Bank for a licence to carry on business in Guyana as an insurer.
- Qualifications for the grant of an insurer licence. 44. No entity shall be granted a licence unless the Bank is satisfied that –
- (a) it has fully paid up capital and surplus that exceeds such amount pursuant to section 129 or as may be prescribed by regulation, provided that the Bank may specify a greater minimum amount of capital and surplus having regard to the kinds of risks to be undertaken by the entity;
- (b) the controlling shareholder, the members of the board of directors, the current or proposed general manager, officer, the current or proposed auditor and the current or proposed actuary, have the appropriate integrity, competency, experience and qualifications, taking account of potential conflicts of interest, so as to be fit and proper persons to perform their respective roles;
- (c) the resources of any controlling shareholder are sufficient as a source of continuing financial and other support;
- (d) the proposed internal control systems and business processes including but not limited to: risk management systems, compliance systems, internal audit systems, proposed reinsurance arrangements, and information technology systems, policies and procedures, will be adequate for the nature and scale of the business;
- (e) the business plan for the future conduct and development of the

- business is sound and feasible;
- (f) the form and structure of the entity permit it to be effectively supervised in Guyana.
- Documents in support of application. 45. Every entity that is an applicant for a licence to carry on business as an insurer shall file such material with the Bank in support of the application as may be specified from time to time by instructions issued by the Bank.
- Issue of licence. 46. After evaluating all the relevant information, the Bank may decide to issue a licence to an applicant, with or without conditions or limitations, if it is satisfied that the requirements for a licence in this Part have been met and it considers the issue of a licence to be in the public interest.
- Conditions or limitations of licence. 47. The conditions or limitations to which a licence may be subject include, without limitation, a prohibition on the issue of new policies, a limitation on the lines of business that may be written, a time limit on the licence, a limitation on the amount of premium that may be written in a particular period, a restriction on investments, including a prohibition on the ownership of a subsidiary or a particular type of subsidiary, and a limitation on the reinsurance of risks.
- Notice of decision. 48. If the Bank decides to refuse a licence or to issue a licence subject to a condition or limitation not requested or consented to by the applicant, it shall immediately give notice in writing to the applicant of that decision, with reasons and a statement of the right of the applicant to appeal the decision to the Appeal Board in accordance with any instructions that may be set out by regulations.
- Classes of insurance business.
Schedule 2 49. (1) A licence issued under this Part shall specify the classes of insurance in respect of which the holder of the licence shall be authorised to carry on operations, which may be any of the classes specified in the Schedule 2.
- Schedule 2 (2) The Minister may by Order, subject to negative resolution amend Schedule 2.
- Changes in licence. 50. An insurer may apply at any time for an amendment to its licence and, in that regard, shall file with the Bank such material as the Bank may reasonably require to enable it to decide whether the amendment should be made. After evaluating all the relevant information, the Bank may issue or refuse to issue an amended licence.
- Amendment, suspension or revocation of licence. 51. The Bank may, at any time, amend the licence of an insurer, by adding any conditions or limitations to it, or suspend or revoke the licence, if it finds that any of the following circumstances exist –
- (a) the licence was granted on the basis of information that was not materially accurate or in the absence of information that was

materially relevant;

- (b) the insurer no longer meets the requirements for licensing;
- (c) the insurer has not commenced business within one year from the date of publication of notice of the granting of its licence in the *Official Gazette* or if it suspends operations for a period of at least one year;
- (d) the insurer has failed to satisfy a final judgment against it provided that the period for appealing that judgment has expired without an appeal having been commenced or provided that an appeal commenced during the period is not being actively pursued or has been unsuccessful;
- (e) the assets of the insurer are insufficient to justify its continuance in business or to provide for its obligations;
- (f) the insurer has failed to pay an assessment under section 12;
- (g) the insurer is not in compliance with the statutory fund requirements set out in the regulations;
- (h) the insurer is not in compliance with a requirement of this Act;
- (i) there exists a state of affairs that, in the opinion of the Bank, is or is likely to be prejudicial to the interests of persons in Guyana who have policies with the insurer or to the public interest generally.

- Right of appeal. 52. (1) If the Bank takes any action in respect of an insurer under section 51, it shall immediately give notice in writing to the insurer of that decision, with reasons and a statement of the right of the insurer to appeal the decision to the Appeal Board within 30 days of the giving of the notice.
- (2) After hearing an appeal, the Appeal Board may dismiss the appeal or order the Bank to reinstate the licence of the insurer with the same scope and effect that it had before the action of the Bank or substitute some other licensing action that the Bank would be entitled to take under this Part.
- Publication in *Gazette*. 53. Notice of a decision by the Bank to issue a licence, to amend a licence or to suspend or revoke a licence, subject to such alterations as might be made as a result of any appeal made pursuant to the regulations, shall be published in the *Official Gazette* within thirty days of the decision having been made.
- Restriction on insurance business. 54. Any person that carries on insurance business in Guyana without holding a licence under this Part, commits an offence.

- External insurers. 55. An external insurer shall appoint, by legalised proxy, a natural person who is ordinarily resident in Guyana as its main representative, authorised to keep accounts of its operations in Guyana, manage its business in Guyana, represent it before Guyana public authorities and tribunals and in other legal proceedings and receive notices and other communications directed to the external insurer.
- Main representative. 56. An external insurer shall file with the Bank a copy of the legalised proxy appointing its main representative promptly after the appointment and shall, at the same time, advise the Bank in writing of the business address of the main representative.
- Removal or change in business address of main representative. 57. An external insurer shall immediately advise the Bank in writing in the event of the resignation of its main representative or the withdrawal of the authority of its main representative or of a change in the business address of its main representative.
- Interpretation. 58. In this Act, in relation to an external insurer –
 “assets” means “assets in Guyana”;
 “liabilities” means “liabilities in Guyana”;
 “business” means business in Guyana;
 “policies” means policies underwritten in Guyana;
 “policyholder” means a policyholder in Guyana;
 “products” means products in Guyana;
 “risks” means risks in Guyana;
 “complaint” means complaint from a resident of Guyana;
 references to “chairperson of the board”, “chairperson of the audit committee”, “director”, “officer” and “representative” shall all be interpreted to mean “main representative”; and
 for the purposes of sections 59 to 69, and sections 196 to 200, “insurer” excludes an external insurer.

PART VI CORPORATE GOVERNANCE OF COMPANIES

- General requirement for companies. 59. No later than six months after the coming into force of this Act, every licensed insurer shall provide the Bank with a plan acceptable to the Bank indicating how the insurer will comply with the corporate governance provisions in this Part, which shall come into force one year after the coming into force of this Act, except for sections 63(a) to 63(e) and 63(k), section 65, and sections 66 to 69, which shall come into effect immediately.
- Composition of Boards of Directors. 60. (1) The Board of Directors of every insurer shall consist of at least five directors of whom at least two shall be resident in Guyana, at least two shall be independent directors and none of whom shall be a licensed agent or broker.

- (2) For the purposes of this section and section 64, an independent director is a director who is not a member of management of the insurer or any of its affiliates and who does not have, nor does the spouse of the director, any child of the director or any other person deemed by the Bank to be a related party to the director have, a significant interest in the insurer or any of its affiliates.

Chairperson of the Board of Directors.
Cap. 89:01

61. Every insurer shall name a Chairperson of the Board and notwithstanding any of the provisions of the Companies Act, the Chairperson of the Board of an insurer shall not also be the general manager of the insurer.

Duty to appoint actuary.
Cap. 89:01

62. Subject to the other provisions of this Act, the directors of an insurer authorised to transact the business of Life Insurance shall, in exercise of their authority under this Act and under the Companies Act, appoint an actuary for the insurer.

Responsibilities of Board of Directors.
Cap. 89:01

63. Subject to the other provisions of this Act, the directors of an insurer shall, in exercise of their authority under this Act and under the Companies Act –
- (a) establish the strategic objectives and direction of the organisation;
 - (b) supervise the management of the business and affairs of the insurer with the objective of maximising shareholder returns, subject to the overriding responsibility of ensuring that the insurer's financial resources are at all times sufficient to discharge its obligations, that policyholders are fairly treated in accordance with the contractual arrangements applicable to them and that the provisions of this Act are fully complied with;
 - (c) appoint and dismiss senior management, including the general manager, and establish the level of remuneration for officers of the insurer based on criteria that promote the interests of the insurer and are not such as to encourage imprudent behaviour;
 - (d) approve procedures for identifying and dealing with conflicts of interest and for identifying and vetting related party transactions with a view to avoiding those that are not in the best interests of the insurer;
 - (e) approve procedures with respect to the fair treatment of customers, including the disclosure of information to them, the prompt assessment and payment of the legitimate claims of policyholders and beneficiaries and the handling of customer complaints as required in Part XIII;
 - (f) approve internal risk management strategies and policies for the identification, measurement, monitoring and controlling of significant risks on an on-going basis;

- (g) ensure that officers of the insurer are designated as being responsible for the internal audit function and internal control function and that for the purposes of those functions the designated officers report directly to the board of directors;
- (h) approve an investment policy of a kind that a reasonable and prudent person would apply in respect of a portfolio of investments, to avoid undue risk of loss and obtain a reasonable return, and that appropriately reflects the liability structure of the insurer and complies with regulations that may be prescribed with regard to the investment policies of insurance companies;
- (i) approve a policy for the safeguarding of any securities that are not held by a bank that is subject to supervision by the Bank;
- (j) monitor the procedures, strategies and policies referred to above to ensure that they are being adhered to by the insurer and that they are modified from time to time to take account of changing circumstances; and
- (k) approve the annual audited financial statements of the insurer.

Audit committees and their responsibilities.

64. Every insurer shall establish an audit committee comprised of at least two directors, and the Chairperson of the committee shall be an independent director in the sense of section 60, to –
- (a) review the annual financial statements of the insurer before they are approved by the directors and make any recommendations or comments on them to the board;
 - (b) review such transactions and conditions that could significantly and adversely impact the financial position of the insurer as the auditor, the actuary or any officer of the insurer may bring to the attention of the committee;
 - (c) meet with the auditor to discuss the annual financial statements;
 - (d) in the case of an insurer authorised to transact the business of Life Insurance, meet with the actuary to discuss the parts of the annual financial statements prepared by or reviewed by the actuary;
 - (e) meet with the chief internal auditor of the insurer, or the officer or employee of the insurer acting in a similar capacity, and with management of the insurer to discuss the effectiveness of the internal control procedures established for the insurer;
 - (f) with regard to the annual return or other returns of an insurer that

under this Act must be approved by the board, report to the full board with regard to any comments or findings of the audit committee before board approval is requested;

- (g) call a meeting of all the directors of the insurer to consider any matters that the audit committee considers to be of concern;
- (h) set audit priorities by reviewing and recommending an annual audit plan to the board; and
- (i) carry out any other responsibilities that may be delegated to the committee by the board of directors.

- Appointment of other committees. 65. The directors of an insurer may appoint from among their number such other committees, in addition to the audit committee, as they deem necessary and may delegate to any such committee such of their powers as they consider appropriate but any such delegation shall not limit the responsibilities of the directors.
- Duty of skill and care of directors and officers. 66. Every director and officer of an insurer in exercising any of the powers of a director or an officer and discharging any of the duties of a director or an officer shall –
- (a) act honestly and in good faith with a view to the best interests of the insurer;
 - (b) exercise the care, diligence and skill that a reasonable and prudent person would exercise in comparable circumstances.
- Articles of association and internal documents. 67. Every director, officer and employee of an insurer shall comply with this Act, the insurer's articles of association and internal documents.
- Indemnifications of directors, etc. 68. An insurer may indemnify a director or officer against any liability, including legal defence costs, that the director or officer may incur as a result of anything done or omitted to be done as a director or officer but no provision in any contract, in any resolution or in the by-laws of an insurer, relieves any director, officer or employee of the insurer from the duty to act in accordance with this Act and the regulations, or relieves a director, officer or employee from liability for a breach of the Act or regulations.
- Examination by directors. 69. Every insurer shall make available on a timely basis for examination by its directors, such information about the insurer, including accounting records, as will enable the directors to perform their responsibilities and exercise their duties under this Act.

PART VII BUSINESS POWERS OF INSURERS

- Business powers 70. Subject to the other provisions of this Part, an insurer shall not engage in any

- generally. business other than such business as generally pertains to the business of insurance
- Approval to carry on ancillary activities. 71. (1) An insurer licensed under this Act may carry on the business of insurance falling within the classes of insurance for which it is licensed, subject to any conditions or limitations on its licence.
- (2) In addition to the insurer's power under subject (1), with the prior approval of the Bank and subject to such conditions or limitations as the Bank may impose, the licensed insurer may carry on directly and without the need to operate through any other incorporated entity, any other activity reasonably ancillary to its business of insurance.
- (3) Any approval under subsection (2) is subject to revocation by the Bank.
- Ancillary activities for life insurers. 72. An ancillary activity for an insurer licensed to transact the business of life insurance includes, but is not limited to –
- (a) providing investment counselling services and portfolio management services;
- (b) engaging in the provision of real estate brokerage services;
- (c) providing information processing services within Guyana to entities in which the insurer has a significant interest that do not provide information processing services to other entities;
- (d) acting as a custodian of property; and
- (e) issuing unit-linked products.
- Ancillary activities for general insurers. 73. An ancillary activity for an insurer licensed for classes of general insurance business, includes, but is not limited to –
- (a) providing safety and risk prevention services and services respecting risk management and claims adjustment in connection with the business of insurance carried on by the insurer;
- (b) providing computer systems to brokers and agents in connection with the business of insurance carried on by the insurer;
- (c) providing support to brokers and agents in connection with the business of insurance carried on by the insurer; and
- (d) operating motor vehicle repair and appraisal centres in connection with the business of insurance carried on by the insurer.
- Limit of ancillary 74. An insurer that engages in any ancillary activities approved by the Bank may

- activities. not employ, in the aggregate, more than five per cent of the total assets of the insurer in the ancillary activities.
- Issuing unit-linked products. 75. (1) An insurer that issues unit-linked products shall maintain a separate account in respect of those products and shall establish and maintain one or more funds, which are segregated from the other assets of the insurer, consisting of those assets the value of which determines the liability of the insurer on such products, subject to any applicable insurance guarantees.
- (2) The segregated assets shall be held by a bank, subject to supervision by the Bank of Guyana.
- (3) No transfer of funds may be made to or from a fund in which segregated assets are held from or to another fund of an insurer without the prior approval in writing of the Governor.
- Application to debts. 76. Notwithstanding the provisions of any other Act, the assets of an insurer that are required under section 75 to be so segregated are not liable to seizure or other process of execution on account of the debts of the insurer and may not be subject to any composition with creditors and, upon the liquidation or bankruptcy of the insurer, those assets shall be applied exclusively to the satisfaction of the liability of the insurer with regard to its unit-linked products, except that this provision shall not prevent the holder of a security interest in a specific and identifiable asset from realising on that security.
- Prohibition on borrowing, pledging of assets, derivative investments of the insurer. 77. With regard to the statutory funds of an insurer, no insurer has the power to borrow, other than maintaining credit balances in the normal course of business, nor to pledge any assets of the statutory fund for any purposes whatsoever.
- Temporary suspension. 78. The Governor may temporarily suspend the operation of section 77 if the Governor is of the view that such action would be in the interests of policyholders in Guyana, but no borrowing shall have the effect of placing a lender in a position superior to any policyholder in case of the winding up of the insurer.
- Derivatives. 79. No insurer has the power to deal in structured instruments or derivatives other than with regard to the hedging of securities already owned, for the purpose of risk reduction and efficient portfolio management.

PART VIII AUDITORS AND ACTUARIES OF INSURERS

- Appointment of auditor. Cap. 89:01 80. Notwithstanding any provision of the Companies Act, an insurer shall have no more than one auditor.
- Appointment of 81. A Guyana incorporated insurer shall, at a properly constituted meeting of its

- auditing firm as auditor. shareholders, appoint an auditing firm for its business, and an external insurer shall appoint an auditing firm for its business in Guyana.
- Qualification of auditor. 82. An auditing firm is qualified to be an auditor of an insurer if the firm –
- (a) is able and qualified to perform audits of companies incorporated under the law of Guyana;
 - (b) has knowledge and experience in the audits of insurance companies to an extent considered satisfactory by the directors of the insurer and the Bank; and
 - (c) assigns responsibility for the audit to an individual audit partner who is a fit and proper person within the meaning of section 11.
- Registry of Auditors. 83. Commencing one year after the coming into force of this Act, the Bank shall maintain a Registry of Acceptable Auditors that is comprised of all those individual accountants who have been appointed as audit partners from time to time pursuant to section 81 and who are qualified pursuant to section 82, but the Registry shall exclude any individual audit partner who, in the opinion of the Bank, has carried out an audit of an insurer that does not meet the requirements of this Act or the findings of which are demonstrably incorrect, or is a member of a firm that has carried out such an audit.
- Notification of appointment. 84. Immediately, after the appointment of an auditor or the designation of a member of an accounting firm to conduct an audit, the insurer shall notify the Bank in writing of the appointment or designation and, if the auditing or accounting firm meets the requirements of section 82 and is not disqualified by virtue of section 85, then the Bank shall accept the appointment as notified.
- Termination and replacement of auditor. 85. An insurer shall promptly notify the Bank if it becomes aware of circumstances that would indicate that the person appointed as its auditor, or the individual designated to conduct an audit on behalf of the accounting firm that is its auditor, is not qualified in accordance with section 82, providing the Bank with a description of those circumstances.
- Cessation of office. 86. When an auditor resigns or ceases to carry out the audit functions, the auditor and the insurer shall each report that fact promptly to the Bank, providing the Bank with a statement of the reasons, in the view of the reporting party, for such resignation or cessation.
- Dispensing with auditor. 87. The appointment of an auditor of a Guyana incorporated insurer may be revoked by a resolution passed at a properly constituted meeting of the shareholders of an insurer and the appointment of the auditor of an external insurer may be revoked by the main representative of the external insurer.
- Revocation of appointment. 88. The Bank may, at any time, revoke the appointment of an auditor by notice in writing sent by registered mail to the auditor and to the insurer if, in its opinion, the auditor, or the individual designated to conduct an audit on behalf

- of the accounting firm that is its auditor, is not qualified in accordance with section 82 or is in breach of any of the auditor's or the individual's obligations under this Part.
- Filling auditor vacancy. 89. When a vacancy occurs in the office of auditor of an insurer for any reason, the directors of the insurer shall as soon as is practicable fill the vacancy, unless it has been filled at a meeting of shareholders at which the appointment of the auditor was revoked, failing which the Bank may fill the vacancy at the expense of the insurer.
- Term of office. 90. The auditor appointed to fill a vacancy shall hold the office for the unexpired term of the predecessor of that auditor.
- Examinations by auditor. 91. The auditor of an insurer shall make such examination as the auditor considers necessary to enable him to make an audit report on the annual return and other financial statements required to be filed, with the audit report, with the Bank in accordance with sections 116, 117, 118, 119, 120 and 121.
- Audit standards. 92. An auditor's examination shall be conducted in accordance with internationally accepted auditing standards, with such changes as may be determined by the Bank and any additional directions that may be made by the Bank.
- Right to inspect. 93. At the request of the auditor the following individuals shall permit timely access to available records, assets or security, and otherwise provide information, relating to the business of the insurer as is, in the opinion of the auditor, necessary to perform the duties of auditor of the insurer –
- (a) in the case of a Guyana incorporated insurer, the present and former directors, officers, employees and representatives of the insurer; and
 - (b) in the case of an external insurer, the main representative and present and former officers, employees and representatives of the external insurer.
- Powers of Bank. 94. The Bank may require the auditor to report on the procedures used in conducting an audit, to extend the scope of the audit or to conduct a special examination of the insurer, in every case at the expense of the insurer.
- Auditor's duty. 95. The auditor shall report in writing to the Bank on any transactions or conditions that have come to the auditor's attention which, in the auditor's opinion, could significantly and adversely impact the financial position of the insurer, whether or not those transactions or conditions are reflected in the financial statements or annual supervisory return of the insurer, and –
- (a) in the case of a Guyana incorporated insurer, the auditor shall also provide a copy of the report to the Chairperson of the audit

- committee of the insurer and if no audit committee has yet been established, to the Chairperson of the Board; and
- (b) in the case of an external insurer, the auditor shall also provide a copy of the report to the main representative, with a copy to the Chairperson of the Board of the external insurer, wherever located.
- Privilege of auditor. 96. Any oral or written statement or report made under this Act by the auditor or former auditor of an insurer has qualified privilege.
- Appointment of actuary. 97. (1) Every insurer licensed to transact the business of Life Insurance shall appoint an actuary for its business.
- (2) Effective one year from the coming into effect of this Act, every actuary of a life insurer shall have the qualifications set out in section 98.
- Qualifications of actuary. 98. An individual is qualified to be an actuary of an insurer if that individual meets the definition of “actuary” in section 2 and –
- (a) is a fit and proper person to perform the role of actuary, as contemplated by section 11;
- (b) is included in the Registry of Acceptable Actuaries referred to in section 99 and has not been found guilty of any criminal offence and is not an undischarged bankrupt.
- Registry of Actuaries. 99. Commencing one year after the coming into force of this Act, the Bank shall maintain a Registry of Acceptable Actuaries, from which the Bank may exclude any actuary who, in its opinion, has carried out an actuarial review in respect of an insurer that does not meet the requirements of this Act or the findings of which are demonstrably incorrect.
- Prohibited appointments. 100. The general manager or the chief financial officer of an insurer, or a person performing like functions shall not be appointed or hold the position of actuary pursuant to section 97.
- Notification of appointment. 101. Immediately after the appointment of an actuary, the insurer shall notify the Bank in writing of the appointment and, if the actuary meets the requirements of section 98 and is not disqualified by virtue of section 99, then the Bank shall accept the appointment as notified.
- Insurer to notify Bank where actuary not qualified. 102. A life insurer shall immediately notify the Bank if it becomes aware of circumstances that would indicate that the person appointed as its actuary is not qualified in accordance with section 98, providing the Bank with a description of those circumstances.

- Cessation of duty. 103. When an actuary resigns or ceases to carry out the actuarial functions, the actuary and the life insurer shall each report that fact promptly to the Bank, providing the Bank with a statement of the reasons, in the view of the reporting party, for such resignation or cessation.
- Dispensing with actuary. 104. The appointment of an actuary may be revoked by the directors of the life insurer.
- Revocation of appointment. 105. The Bank may, at any time, revoke the appointment of an actuary by notice in writing sent by registered mail to the actuary and to the life insurer if, in its opinion, the actuary is not qualified in accordance with section 98 or is in breach of any of any obligations of the actuary under this Part.
- Filling actuary vacancy. 106. When for any reason a vacancy occurs with regard to an actuary appointed in accordance with section 97, the directors of the life insurer shall as soon as is practicable fill the vacancy, failing which the Bank may fill the vacancy at the expense of the insurer.
- Term of office. 107. The actuary appointed pursuant to section 106 to fill a vacancy shall hold office for the unexpired term of the predecessor of that actuary.
- Valuations by actuary. 108. The actuary of a life insurer shall value the technical provisions of the insurer with respect to its insurance business as at the end of each financial year and shall value any other matters specified in any direction that may be made by the Bank.
- Actuarial standards. 109. An actuary's valuation pursuant to section 108 shall be in accordance with the standards of practice of the Caribbean Actuarial Association or if a standard does not exist, a standard accepted by the Bank, with such changes as may be determined by the Bank and any additional directions that may be made by the Bank.
- Actuary's duty. 110. The actuary shall report in writing to the Bank on any transactions or conditions that have come to the actuary's attention which, in the actuary's opinion, could significantly and adversely impact the financial position of the insurer, whether or not those transactions or conditions are reflected in the financial statements or annual supervisory return of the insurer, and –
- (a) in the case of a Guyana incorporated insurer, the actuary shall also provide a copy of the report to the Chairperson of the audit committee of the insurer and if no audit committee has yet been established, to the Chairperson of the Board; and
 - (b) in the case of an external insurer, the actuary shall also provide a copy of the report to the main representative, with a copy to the Chairperson of the board of the external insurer, wherever located.
- Right to inspect. 111. At the request of the actuary the following individuals shall permit timely

access to available records, assets or security, and otherwise provide information relating to the business of the insurer as is, in the opinion of the actuary, necessary to perform the duties of actuary of the insurer –

- (a) in the case of a Guyana incorporated insurer, the present and former directors, officers, employees and representatives of the insurer; and
- (b) in the case of an external insurer, the main representative and present and former officers, employees and representatives of the external insurer.

Privilege of actuary. 112. Any oral or written statement or report made under this Act by the actuary or former actuary of a life insurer has qualified privilege.

**PART IX
REGULATORY REPORTING, EXAMINATIONS
AND CAPITAL FOR INSURERS**

Annual financial statements. 113. The annual financial statements of a Guyana incorporated insurer, and the annual financial statements of an external insurer with respect to its business in Guyana, shall be prepared in accordance with International Financial Reporting Standards.

Particulars of annual financial statements. 114. Every insurer shall include in its annual financial statements such information, in addition to that normally required for the financial statements, as the Bank may direct.

Annual financial statements to be made by insurer. 115. Every insurer shall deliver to the Bank a copy of its annual financial statements, together with the report of its auditor on those statements and, in the case of an insurer licensed to transact the business of life insurance, commencing with its financial statements for the first financial year end that is at least one year after the coming into force of this Act, a report of the actuary on the valuation contemplated by section 108.

Consolidated financial statements. 116. (1) Where a Guyana incorporated insurer is a member of a group of companies, the Guyana incorporated insurer and the holding company shall submit to the Bank within ninety days after the end of its financial year and at such other times as may be required by the Bank, financial statements of all its operations both domestic and foreign, prepared in accordance with financial reporting standards and duly audited in accordance with International Financial Reporting Standards, on an individual basis and on a consolidated basis.

- (2) The Bank may require for regulatory purposes that a Guyana incorporated insurer or the holding company exclude a subsidiary, or other company in which it has a significant shareholding, from

the consolidated financial statements required under subsection (1).

- (3) Every external insurer shall –
 - (a) within ninety days after the end of the financial year, submit to the Bank, audited accounts of its operations in Guyana signed by two directors of the external insurer; and
 - (b) at the same time of submission of financial statements to the supervisory authority or other public authority in the country in which the head office of the external insurer is incorporated, submit to the Bank financial statements as required under the laws of that country.
- (4) A Guyana incorporated insurer and holding company shall submit audited financial statements on the request of the Bank in respect of any –
 - (a) subsidiary of the insurer;
 - (b) holding company or company in which the insurer or holding company is a significant shareholder; or
 - (c) member of the group which the holding company controls.
- (5) Every financial statement submitted by a Guyana incorporated insurer and holding company shall be signed by two directors of the relevant company.
- (6) If, in the opinion of the Bank, the information contained in the financial statements required under this section, indicates the likelihood of insolvency of any company under subsection (4), the Bank may, after consultation with the local insurer or the holding company require the insurer or holding company to take such measures as the Bank may consider necessary to prevent the financial condition of the company under subsection (4) from affecting the insurer or holding company and, in particular, may require that –
 - (a) the company referred to in subsection (4) –
 - (i) increase its stated capital; or
 - (ii) transfer or otherwise dispose of its business or part of its business; or

- (b) the Guyana incorporated insurer or holding company –
 - (i) cease to make any advances or incur any credit exposures to the company; or
 - (ii) make special provision for any potential losses which in the opinion of the Bank, the company is likely to incur where such company has credit exposures with the Guyana incorporated insurer.

(7) A person who fails to comply with subsection (6) commits an offence.

Publication of annual financial statements.

117. The annual audited financial statements of an insurer shall be made publically available within the first four months of the following calendar year, either by publication in a daily newspaper or via a company web site or such other means as may be agreed by the Bank.

Summary of annual financial statements.

118. For the purposes of section 117, an insurer may use a summarised form of financial statements, but if the Bank is of the view that the basis of summarisation is likely to give rise to confusion or that it omits materially important information, the Bank may require the basis of summarisation to be revised and the requirements of section 116 to be reapplied.

Form and content of Annual Supervisory Filing.

119. Every insurer shall prepare and file with the Bank on an annual basis, a Supervisory Filing in such form and in such detail as the Bank may direct, which shall be for the purpose of enabling the Bank to assess the financial position and risk profile of the insurer.

Annual Supervisory Filing and other returns.

120. The Supervisory Filing shall be filed with the Bank within 90 days of the end of the financial year or, in the case of an insurer that is only licensed under this Act to reinsure risks, within 125 days of the end of the financial year.

Auditor's report.

121. The auditor of an insurer shall attach to the Supervisory Filing a report stating whether, in the auditor's opinion, the information contained in the Supervisory Filing is in all respects consistent with the information comprising the audited financial statements.

Valuation of technical provisions.

122. In the case of an insurer licensed to transact the business of life insurance, the liabilities shown in the annual return shall include as a provision, the value of the technical provisions and other matters as may be specified under section 108.

Insurer's report.

123. Commencing with its financial statements for the first financial year end that is at least one year after the coming into force of this Act, an insurer licensed to transact the business of life insurance shall file with its Supervisory Filing,

- a report in a form determined by the Bank with respect to the provision referred to in section 108.
- Insurer's Quarterly Supervisory Filings. 124. Within thirty days of the ending of each calendar quarter that is not a year-end, every insurer shall prepare and file with the Bank, a Quarterly Supervisory Filing, in such form and in such detail as the Bank may direct, accompanied by the opinion of the insurer's auditor on the basis of a review-based engagement.
- Summary of statutory fund position. 125. The Quarterly Supervisory Filing referred to in section 124 shall include a summary of the insurer's statutory fund position in such form as the Bank may direct.
- Power to intervene. 126. Where the Bank has evidence that the Quarterly Supervisory Filing of an insurer is not a reasonable representation of the insurer's financial position and results as at the filing date, the Bank may consider the provisions of section 174(c) to be applicable and to exercise its powers of intervention accordingly.
- Power of Bank to request reports. 127. Every insurer shall file such special returns with the Bank at such times and in such form as the Bank may require, including actuarial reports on technical provisions for general insurers.
- On-site inspection. 128. The Bank, from time to time but at least once in every three calendar years, shall make or cause to be made an on-site examination of the business and affairs of each insurer, in such form and to such extent as the Bank considers to be necessary to assess the risks in the insurer, whether the insurer is complying with this Act and whether the insurer is in a sound financial condition.
- Minimum capital. 129. Commencing five years from the date on which this Act comes into force, as a condition of maintaining a licence, every insurer shall maintain on an on-going basis, assets in an amount that exceed its liabilities by not less than –
- (a) in the case of a general insurer, G\$400 million and;
 - (b) in the case of a life insurer, G\$500 million.
- Minimum solvency. 130. Minimum solvency and control levels for solvency shall be as prescribed by regulations.
- Power to increase solvency requirement. 131. (1) The Bank may direct an insurer that is otherwise in compliance with the solvency requirement as prescribed, to increase its minimum solvency margin or to provide additional liquidity.
- (2) An insurer shall comply with any such direction within the time the Bank has specified in the direction.

PART X
FUNDAMENTAL CHANGES IN RESPECT OF INSURERS

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| Non-transferral of policies. | 132. | <p>(1) No insurer shall transfer all or any portion of its policies or cause itself to be reinsured against all or any portion of the risks undertaken by it except with the prior approval in writing of the Bank or except under the direction of the Court in connection with an insurer's liquidation or winding-up.</p> <p>(2) Nothing in this section shall be taken to restrict an insurer from reinsuring any of its risks through a reinsurance transaction entered into in the ordinary course of business.</p> |
| Publication of request to transfer. | 133. | <p>(1) The Bank shall publish notice of any request for approval under section 132 in two local daily newspapers, twice consecutively in each newspaper, the cost of publication to be borne by the requester.</p> <p>(2) Such notice shall indicate that any policyholder or other interested person shall have the opportunity to object to the transfer or reinsurance within a period of 15 working days from the date of first publication of the notice and shall describe the procedure for making such an objection.</p> <p>(3) Any such objection shall be in writing and delivered to the Bank within 10 working days of the end of the 15 day period referred to above.</p> <p>(4) The agreement to effect the transfer or reinsurance shall be made available at the principal office in Guyana of each of the parties to the proposed transaction and shall be open to examination by any interested person during normal business hours, for a period of 15 days from the date of the last publication of the notice.</p> |
| Requirements for approval of transfer. | 134. | <p>The Bank may specify the information, material and evidence to be provided by the persons making the request for approval. In deciding whether or not to grant approval, the Bank shall take into account all matters that it considers to be relevant, including the nature and sufficiency of the resources of the insurer assuming the business as a source of continuing financial or other support for the business in question.</p> |
| Changes in control. | 135. | <p>(1) Except with the prior approval in writing of the Bank, no person or entity controlled by a person shall purchase or otherwise acquire any share of an insurer, or beneficial interest in any share of an insurer, or purchase or otherwise acquire control of any entity that holds any share of an insurer, or beneficial interest in any share of the insurer, if the acquisition would cause the person to have a</p> |

- significant interest in or to control the insurer.
- (2) An insurer shall promptly inform the Bank of any transaction relating to the insurer that would require such approval under subsection (1) as soon as it becomes aware of that transaction.
- Requirements for approval of change. 136. (1) The Bank may specify the information, material and evidence to be provided by the person making the acquisition, in support of a request for approval under section 135.
- (2) In deciding whether or not to grant approval, the Bank shall take into account all matters that it considers to be relevant, including the nature and sufficiency of the resources of the requester as a source of continuing financial or other support for the insurer.
- Notice to Bank. 137. If as a result of any transaction or series of transactions, any person divests themselves of a significant interest in an insurance company, that person shall notify the Bank as to the details of the transaction or series of transactions, the resulting degree of beneficial ownership of the person and any other details that the Bank may require with regard to the transactions in question.
- Mergers. 138. No insurer shall merge with any other entity except with the prior approval in writing of the Bank.
- Publication of merger request. 139. (1) The Bank shall publish notice of any request for approval of merger under section 138 in two local daily newspapers, twice consecutively in each newspaper, the cost of publication to be borne by the requester.
- (2) Any such notice shall indicate that any policyholder or other interested person shall have the opportunity to object to the merger within a period of 30 days from the date of first publication of the notice and shall describe the procedure for making such an objection.
- (3) The agreement to effect the merger shall be made available at the principal office in Guyana of each of the parties to the proposed transaction and shall be open to examination by any interested person during normal business hours, for a period of 15 days from the date of the last publication of the notice.
- Requirements for approval of mergers. 140. (1) The Bank may specify the information, material and evidence to be provided in support of a request for approval of merger, including requiring an actuarial report at the expense of the parties making the request.
- (2) The Bank shall not approve a merger unless satisfied that the merged entity will satisfy the requirements for licensing as an

insurer under this Act.

**PART XI
CHANGES OF KEY PERSONNEL**

- Officers. 141. (1) No insurer shall appoint a person as its general manager, chief financial officer, auditor, actuary or other senior officer, or member of the board of directors, or in the case of an external insurer as a main representative, unless –
- (a) the insurer, or the external insurer, as the case may be, has advised the Bank in writing that it proposes to appoint such a person; and
 - (b) the Bank has before the expiration of thirty days, beginning with the date of its receiving such written advice, notified the insurer in writing if it has any objection to that person being appointed, or that period has elapsed without the Bank having served on the insurer a written notice of objection.
- (2) The Bank may serve notice of objection if it appears to the Bank that the person concerned is not, within the meaning of section 11, a fit and proper person to be appointed to the position in question.
- (3) The Bank may take into account any written or oral representations made to it by the insurer and the person concerned in relation to a notice of objection served or to be served by him.
- (4) A person aggrieved by a decision of the Bank under subsection (2) may appeal the decision to the Court.
- Notice to Bank. 142. An insurer shall give written notice to the Bank of the fact that any person has ceased to be a general manager, chief financial officer, auditor, actuary or other senior officer, or member of the board of directors, or in the case of an external insurer a main representative, within one month of the insurer first becoming aware of such cessation.

**PART XII
MARKET CONDUCT OF INSURERS**

- Responsibility of insurers regarding agents and brokers. 143. Every insurer that authorises one or more intermediaries to market insurance on its behalf within Guyana, or to place with it insurance risks from within Guyana, shall put in place policies and procedures designed to screen those intermediaries for suitability prior to conferring such authority and to monitor their activities after the conferral of such authority.
- Liability of insurer. 144. Every insurer shall pay any compensation or other thing of value due in

respect of the service or services of a licensed intermediary, in accordance with the terms of its contract or other arrangement with that intermediary, without unreasonable delay or repeated delays.

- Duty of insurers. 145. Every insurer that appoints agents to act on its behalf shall use its best efforts to ensure that each of its agents does not engage in misconduct of the kind prescribed by regulations, complies with any guidelines issued under section 245(i) and complies with its other obligations with respect to agents as set out in this Act and regulations.
- Insurer to file names and addresses with Bank. 146. Every insurer shall file with the Bank and with such other entities as the Bank may designate, in such form and at such times as may be required by the Bank, a return identifying all insurance intermediaries on whom it has conferred the authority referred to in section 143 and all other persons dealing with the public to whom it has paid compensation, or any other thing of value for soliciting or arranging insurance within Guyana or acting or aiding in any manner in connection with the negotiation, continuance or renewal of insurance on lives, property or interests within the Guyana.
- Unlicensed intermediaries. 147. Every insurer shall have in place policies and procedures designed to reasonably ensure that it does not accept premiums from intermediaries who are not licensed by the Bank.
- Responsibility of insurer regarding other insurers. 148. Every insurer shall pay salvage and subrogation amounts due to other insurers, in accordance with the terms of any relevant policies and the terms of the contract or other arrangement between the affected insurers, without unreasonable delay or repeated delays.
- Improper statements re financial standing. 149. No person shall represent orally or in writing that the issue of a licence to an insurer or any circumstance relating to the supervision or regulation of the business of the insurer by Act or by the Bank or any of its agents or representatives is a warranty of the financial standing of the insurer or of its ability to provide for the payment of its policies at their maturity.
- Policy and related material. 150. The Bank may require an insurer to file with the Bank a copy of any form of policy that it issues within Guyana, any form of application used in connection with such a policy and any information folder, advertising brochure or any other material the insurer distributes in order to promote the sale of policies in Guyana.
- Policies to be written in English. 151. Policies issued by insurers within Guyana shall be in English, but may be worded in a foreign language on condition that an English language version appears side-by-side with the foreign language wording.
- Exemption. 152. The Bank may exempt certain kinds of policies from the requirements of section 151.
- Compliance. 153. No insurer shall issue a policy referred to in section 151 that does not comply

with the requirements of that paragraph unless it is a kind of policy that has been exempted under section 152.

Misleading, false or deceptive statements.

154. If an insurer issues a policy or uses an application within Guyana that, in the opinion of the Bank, does not comply in any substantial respect with the requirements of this Act or is unfair, misleading, fraudulent, or not in the public interest, the Bank may prohibit the insurer from issuing or using the form of policy or application and may direct that changes be made to it to rectify the situation.

Prohibition.

155. No insurer shall issue a policy or use an application for insurance in Guyana, the issue or use of which has been prohibited by the Bank under section 154.

Advertisements.

156. If an insurer distributes an information folder, advertising brochure or any other material in order to promote the sale of policies in Guyana that, in the opinion of the Bank –

- (a) fails to comply in any substantial respect with the requirements of this Act;
- (b) contains any information that is unfair, fraudulent, misleading or not in the public interest;
- (c) contains any promise, estimate, illustration or forecast that is misleading, false or deceptive;
- (d) conceals or omits to state any material fact necessary in order to make any statement contained in it not misleading in the light of the circumstances in which it was made,

the Bank may prohibit the insurer from distributing the information folder, advertising brochure or other material and may direct that changes be made to it to rectify the situation.

Consumer compensation.

157. Any insurer that has distributed material which has been prohibited pursuant to sections 154 or 156, may be required by the Bank to make good on any promise, estimate, illustration or forecast which may have been misleadingly offered to consumers.

PART XIII CONSUMER PROTECTION

Dealing with complaints.

158. (1) Every insurer shall –

- (a) establish procedures for dealing with complaints from persons having requested or received products from the insurer;
- (b) designate an officer of the insurer to be responsible for

implementing and overseeing those procedures, including the maintenance of an insurer-wide log detailing the complaints received and how they were ultimately resolved, and for acting in the capacity of an internal ombudsman with regard to dealing with public complaints;

(c) indicate on its web site and in response to enquiries, the procedures established pursuant to paragraph (a) and the name and contact details for the designated officer pursuant to paragraph (b).

(2) An officer designated pursuant to subsection (1)(b) shall not have a conflict of interest with respect to the officer's other responsibilities to the insurer.

Investigation by insurer. 159. (1) Every insurer shall, within a period of six weeks from the date of first receipt of a complaint, investigate the complaint and notify the complainant as to the results of the investigation.

(2) If the insurer determines that the complaint cannot be resolved to the satisfaction of the complainant, it shall so indicate to the complainant in writing in a letter, referred to as a final position letter.

(3) The final position letter shall also provide the complainant with the mailing address of the Bank and the name of the official in the Bank to whom the complaint should be forwarded.

(4) The final position letter should also indicate to the complainant that if the complainant desires to have the Bank conduct any further investigation, the Bank official must be provided with a copy of the correspondence between the insurer and the complainant, as well as a copy of the final position letter.

Investigation by Bank. 160. (1) The Bank will investigate any complaint received from a consumer, provided it has a copy of the final position letter and the relevant correspondence forwarded from the complainant.

(2) If the Bank, after a full examination of the facts of the case, is of the view that the matter should be resolved in favour of the complainant, it shall so advise the insurer concerned.

(3) For greater certainty, the Bank cannot compel an insurer to take any particular action with regard to a complaint.

Legal recourse. 161. If, after investigation by the insurer and by the Bank, a complaint cannot be resolved to the satisfaction of the complainant, the complainant will have recourse to the Court, or to the Arbitration Board if the complaint falls within

- the criteria established by section 162.
- Arbitration Board. 162. Where there is a dispute as to quantum with regard to a claim settlement, the complainant is an individual or small business which is not registered under the Companies Act, and the amount in dispute is not less than G\$200,000 and not more than G\$5,000,000, the Bank may convene an Arbitration Board.
- Cap. 89:01
- Composition of Board. 163. An Arbitration Board shall comprise three persons, one selected by the insurer, one selected by the complainant and one selected by the Bank, each of whom shall have experience in insurance or legal matters.
- Ruling of Board. 164. The ruling of an Arbitration Board shall be in writing, shall explain the reasons for the ruling and shall be delivered to the complainant and to the insurer in a timely manner after a decision has been reached.
- Appeals. 165. The ruling of an Arbitration Board may be appealed to the Court.
- Remuneration. 166. Members of an Arbitration Board shall be compensated at such rate as may be determined by the Governor in the circumstances.
- Assessment of costs. 167. (1) An Arbitration Board may assess costs of the Board to an insurer if it is of the view that such action is justified in the circumstances.
- (2) The Board shall not assess costs against the complainant.
- Frivolous or vexatious disputes. 168. The Bank may refuse to convene an Arbitration Board if it is of the view that the dispute is frivolous, vexatious or not of sufficient significance to justify the expense of holding a hearing.
- Rules of Board. 169. Rules with regard to the operation of Arbitration Boards may be prescribed by regulations, including modification of the amounts mentioned in section 162, but until such rules are prescribed the Board shall lay down its own rules of procedure.
- Power to make information public. 170. The Bank may publish or otherwise make public, statistical information with regard to complaints and other matters pertaining to levels of consumer service provided by insurers and intermediaries.

PART XIV STATUTORY FUND

- Establish fund. 171. Every insurer licensed under this Act to carry on insurance business shall establish and maintain a statutory fund according to rules to be prescribed by regulations.
- Assets of fund. 172. The assets within a statutory fund may not be used for any purpose other than to discharge the liabilities of the insurer with regard to its policyholders, whether or not that insurer is in liquidation.

PART XV
STATUTORY INTERVENTION

- Power of intervention. 173. Subject to the other applicable sections in this Part, the Bank may at any time intervene in the affairs of an insurer licensed under this Act.
- Conditions for intervention. 174. The power of intervention conferred by section 173 shall be exercisable where the Bank 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 fulfil 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 Bank under or for the purposes of any provision of this Act;
 - (d) an application for licence would be refused if such an application were made at the time of the proposed intervention;
 - (e) the assets of an insurer are less than its liabilities or the insurer is otherwise deemed by the Bank to be unable to meet its obligations to the public;
 - (f) the value of the assets representing the statutory fund maintained by the insurer in compliance with Part XIV, is less than the amount prescribed by the regulations;
 - (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 the Bank to intervene.
- Notice of intervention. 175. The Bank shall, before exercising the power of intervention conferred on it by section 173 shall serve on the insurer a written notice to the effect that –
- (a) it is considering exercising the power and the ground on which it may be exercised; and
 - (b) the insurer may within ten days of the date on which the notice is served make written representations to the Bank.

- Representation by insurer. 176. Before exercising its power of intervention pursuant to section 173, the Bank shall take into consideration any representations made to it pursuant to section 175 (b).
- Legal undertaking. 177. (1) In exercising its power of intervention under section 173, the Bank may enter into a legal undertaking with an insurer to remedy any of the matters that may be dealt with under that section, and any such undertaking must be carried out by the insurer according to the terms of the undertaking.
- (2) Non-compliance by an insurer with an undertaking under this section constitutes an offence.
- Emergency situations. 178. Where it appears to the Bank that an emergency situation exists in terms of policyholder interests, it may, notwithstanding the provisions of section 175, intervene pursuant to section 173, during which time the insurer must be given an opportunity to make representations in accordance with section 175(b).
- Exercise of intervention power. 179. The Bank may, where it exercises its power of intervention under section 173, require the insurer as of the date specified in the instrument –
- (a) to cease effecting any contracts of insurance either generally or with respect to a specified class or product, whether or not the effecting of the contract falls within a class of insurance business which the insurer is authorised to carry on;
 - (b) to desist from varying any existing contracts;
 - (c) to limit to a specified amount the aggregate amount of premiums to be written by the insurer, whether in respect of direct premium or reinsurance assumed premium;
 - (d) to refrain from making investments of a specified class or description;
 - (e) to realise, 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;
 - (f) to prepare and submit to the Bank at an earlier date and with greater frequency than may otherwise be required under the terms of this Act, such financial or other information as the Bank may specify;
 - (g) to have an actuary or any other person appointed by the Bank to investigate the financial position of the insurer in respect of its insurance business or any part of it and to submit to the Bank a report of the investigation on or before a specified date, which shall

be at the cost of the insurer;

- (h) to take certain actions or to refrain from taking certain actions or to limit or to modify its activities in any way specified by the Bank;
- (i) to require an insurer to deposit, in any amount the Bank considers necessary, and subject to such conditions as the Bank considers proper, securities acceptable to the Bank, and such deposit shall be made within 15 days of the date that the requirement is made or within such longer period of time as is agreed to by the Bank;
- (j) to take such action as appears to the Bank 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 and, in the case of an insurer carrying on long-term insurance business, to fulfil the reasonable expectations of policy-holders or potential policy-holders.

Variation of requirements.

180. The Bank may, where it considers it desirable to do so, rescind or vary any requirement imposed by it on an insurer pursuant to section 179.

Control of assets.

181. Where there exists any condition described in section 174, the Bank may, after giving the insurer a period of not less than fourteen days to be heard by the Governor, take control of the assets of the insurer for the protection of the policyholders.

Urgent concerns.

182. Where the Bank believes that it is a matter of urgent concern to protect the policyholders by taking control of the assets of an insurer pursuant to section 181, it may do so for a period of up to fourteen days without affording the insurer an opportunity to be heard by the Governor, but the insurer shall be entitled to be heard by the Governor during that fourteen day period.

Hearing by Governor.

183. After the insurer has been heard by the Governor, the Governor shall either return control of the insurer's assets to the insurer, or shall instruct officials of the Governor to maintain their control until –

- (a) the control order is rescinded;
- (b) a judicial manager is appointed; or
- (c) a petition for liquidation is granted,

whichever comes first.

Costs.

184. (1) Any costs to the Bank incurred with respect to its responsibilities under this Part shall be paid for by the insurer for which the Bank had to intervene.

- (2) Procedures for the reimbursement of the Bank shall be approved by the Governor.

**PART XVI
JUDICIAL MANAGEMENT AND WINDING UP**

- Appointment of judicial manager or liquidator. 185. (1) The Court may appoint as a liquidator or judicial manager any person recommended by the Governor to be a person suitably qualified to carry out the functions of a liquidator or judicial manager respectively, and to carry out the responsibilities of that position as set out under this Part.
- (2) Such person shall, subject to the provisions of this Part, have full power to perform the responsibilities of that person without further action of the Bank.
- Judicial management petition. 186. The Bank may petition the Court for an order that the insurer or any part of the insurance business of the insurer be placed under judicial management on the ground –
- (a) that the insurer is breaching or in danger of breaching any statutory fund requirements prescribed by regulation;
- (b) that the insurance business of the insurer is not being conducted in accordance with sound insurance principles and practices; or
- (c) that it is otherwise in the interest of the policy-holders that such an order be made,
- and the Court may order accordingly.
- Presentation of petition. 187. Both the insurer and the Bank are entitled to be heard on any petition presented to the Court under this Part.
- Stay of actions. 188. Where a petition is presented by the Bank under this Part 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 permission of the Court is first obtained or unless the Court otherwise directs.
- Order for judicial management. 189. (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 186, the provisions of this section and of sections 190, 191, 192, 193 and 194 shall apply.
- (2) 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.

- (3) 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 permission of the Court, the judicial manager shall not issue any new policy or renew any existing policy or enter into any new contract.
- (4) The Court shall issue such directions to the judicial manager as to that manager's powers and duties as it deems desirable in the circumstances of the case.
- (5) 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 the judicial manager shall conduct the judicial management or in relation to any matter arising in the course of the judicial management.

Cancellation of order. 190. 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 immediately 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.

Report to Court by
judicial manager. 191. (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 the judicial manager's opinion, most advantageous to the general interests of the policy-holders of the insurer –

- (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 the judicial manager 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 Bank determines.
- Acceptance of judicial manager report. 192. (1) The Court shall on an application made by the Bank, after hearing the Bank, 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 section 191(1), which it considers in the circumstances to be most advantageous to the interests of the policyholders of the insurer.
- (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.
- Security for costs. 193. An application mentioned in section 192 shall not be presented except by permission of the Court and permission 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.
- Immunity. 194. 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.
- Winding-up. 195. The Court may order the winding up of an insurer to which this Act applies, pursuant to section 191(1)(c) or on a petition by the Bank pursuant to section 196 or by a petition representing ten per cent or more of the insurer's policyholders.
- Petition for wind-up. 196. (1) Where the Bank is satisfied that it is necessary or proper that the insurer ought to be wound up, it may, with the permission of the court, present a petition for the winding-up by the Court, of the insurer on the ground –
- (a) that the insurer has contravened section 40;
- (b) in the case of an insurer the licence of which under this Act has been cancelled, that it is in the interest of the

policy-holders that the insurer be wound up;

- (c) that any officer of the insurer or its holding company refuses to comply, or has not complied with, any requirements with regard to statutory funds prescribed by regulation;
- (d) that the results of an investigation of the insurer are such that the Bank forms the view it is in the interest of the policy-holders that the insurer be wound up;
- (e) that the insurer is not meeting the requirements for its statutory fund as prescribed by regulation;
- (f) that the value of the insurer's assets are less than its liabilities, the values in each instance as determined by the Bank in accordance with the valuation rules set out in the regulations.

- (2) An insurer, other than a long term insurer, may, in respect of itself, after giving the Bank one month's notice in writing of its intention so to do, petition the Court for a voluntary order of winding-up.

Valuation of policy.

197. 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 insurer or association to be entitled to or interested in policies granted by the insurer or association, shall give notice of that value to such persons and in such a manner as the Court directs.

Notice by liquidator.

198. Any person to whom notice is given under section 196(2) is bound by the value ascertained in accordance with that section unless, within, fourteen days of receipt of the notice, the person gives notice of the person's intention to dispute the value.

Ranking of claims.

199. In any winding-up proceedings, the following claims in respect of policies of the insurer shall rank equally and ahead of claims of other ordinary creditors and immediately after the claims of creditors having a specific assignment interest in certain assets of the insurer –

- (a) claims that have arisen under policies of the insurer;
- (b) in the case of policies other than those in respect of life insurance or accident insurance, claims that have arisen by virtue of the cancellation of those policies;
- (c) in the case of policies in respect of life insurance, claims equal to

the provisions for such policies;

- (d) in the case of accident insurance, the value of such policies to be computed by the Court in accordance with such methods of computation as the Court considers to be fair and reasonable.

Ranking of transferred policies and unit-linked products.

200. (1) Where policies are transferred or reinsured in accordance with the provisions of Part X, claims in respect of those policies shall be as determined in accordance with section 199, as applicable, but the value of such policies, for the purposes of that clause, shall be the amount of the consideration paid for the assumption or reinsurance of those policies.
- (2) Claims in respect of policies evidencing unit-linked products shall be made against the segregated fund in respect of those policies and, if any such claim is not fully satisfied in this manner, any claim for the deficiency shall rank under section 199 after all other claims under that section that do not relate to unit-linked products, have been fully satisfied.

PART XVII REGULATION OF INSURANCE AGENTS AND BROKERS

Requirement that agents be licensed.

201. No person shall carry on any of the activities of an agent in Guyana except in accordance with and to the extent authorised by an agent's licence issued under this Part.

Requirement that brokers be licensed.

202. No person shall carry on any of the activities of a broker in Guyana except in accordance with and to the extent authorised by a broker's licence or a corporate broker's licence issued under this Part.

Cease and desist order.

203. (1) Without limiting the application of any other remedies available under this Act, the Bank may direct a person acting in violation of section 201 or 202 to cease and desist from such conduct but giving that person a period of time within which to apply for the requisite licence upon that person's undertaking to comply with the direction.
- (2) If such person does not submit a full and complete application for the requisite licence within that period or if that person violates the undertaking, that person shall be ineligible to apply for such a licence until such time as the Bank may waive that ineligibility in writing.

Obtaining a licence as an agent or broker.

204. Any person may apply to the Bank for a licence as an agent, any individual may apply to the Bank for a licence as a broker and any incorporated entity may apply to the Bank for a licence as a corporate broker.

Qualifications of

205. No individual shall be granted a licence under this Part unless the Bank is

individuals for licences
as agents or brokers.

satisfied that –

- (a) the individual is at least 21 years of age and is fit and proper;
- (b) the individual has achieved an acceptable score on any examination or examinations that the Bank has approved in the prescribed regulation governing qualifications of insurance intermediaries;
- (c) the individual is not in a position to offer inducement or use coercion or undue influence in order to control, direct or secure insurance business;
- (d) the individual has not been refused a licence as an intermediary or had such a licence suspended or revoked under this Act or any other statutory provision or, if any such action has been taken, the circumstances are such that it ought not to render the individual unfit to hold a licence under this Part;
- (e) the individual has met, or will be able to meet, any other requirements of this Part and any instructions and guidelines issued by the Bank under this Part that apply to the holders of the type of licence in question and does not, and will not be likely to, engage in conduct of a kind prescribed by regulation as misconduct; and
- (f) any required fee in respect of the licence has been paid.

Qualification of
companies.

206. No incorporated entity shall be granted a licence under this Part unless the Bank is satisfied that –

- (a) the individuals who will carry on activities of the kind to which the licence relates on behalf of the entity will hold the appropriate licences under this Part;
- (b) the entity is not in a position to offer inducement or use coercion or undue influence in order to control, direct or secure insurance business; and
- (c) any required fee in respect of the licence has been paid.

Indemnity insurance.

207. In addition to the applicable requirements for a licence set out in sections 205 and 206, as applicable, the individual or entity shall not be granted a licence under this section unless the Bank is satisfied that –

- (a) an insurance policy is in place providing errors and omissions coverage in respect of the activities of the individual or entity as broker, in an amount of not less than G\$10,000,000 or as may be prescribed by the Bank, with policy terms satisfactory to the Bank, all as prescribed in regulations;

- (b) if the individual or entity will have employees carrying on the activities of a broker, a fidelity insurance policy is in place providing coverage in respect of losses arising from dishonesty of employees, in a form approved by the Bank, in an amount of G\$5,000,000 or as may be prescribed by the Bank, in respect of any one occurrence.
- Application for licence. 208. Every individual or entity applying for a licence under this Part shall file such material in support of the application as may be specified in instructions issued by the Bank.
- Issue of licence. 209. After evaluating all the relevant information, the Bank may decide to issue a licence to the individual or entity applying for the licence if it is satisfied that the requirements for the licence have been met.
- Restrictions. 210. Except as permitted under the provisions of sections 221 and 233, no person may hold more than one licence under this Part at the same time.
- Continuation under this Act. 211. All agents and brokers licensed under the former Act at the time this Part comes into effect are automatically licensed, as necessary under this Act, as agents, brokers or corporate brokers, depending on their status and the nature of their activities in Guyana.
- Term of licence. 212. The term of a licence issued under this Part shall be one year from the date of issue, or one year from the date this Part comes into effect in the case of licences referred to in section 211.
- Acting without a licence. 213. Any person that acts as an insurance intermediary in Guyana without holding a licence under this Part, commits an offence.
- Renewal of agent and broker licences. 214. (1) A licence or a renewal licence shall be automatically renewed for a further one year period on payment of any renewal fee.
- (2) A licence may be cancelled on written notice to the holder of the licence if the renewal fee is not received by the Bank within 15 days after the renewal date of the licence.
- Suspension or revocation of agent and broker licences. 215. The Bank may suspend or revoke a licence issued under this Part if it finds that any of the following circumstances exist –
- (a) the licence was granted on the basis of information that was not materially accurate or in the absence of information that was materially relevant;
- (b) the holder of the licence no longer meets the requirements for licensing;

- (c) the holder of the licence has suspended its licensed activities for a period of at least one year;
 - (d) the holder of the licence is not in compliance with a requirement of this Act;
 - (e) the holder has engaged in conduct of the kind that has been prescribed by the regulations as constituting misconduct.
- Hearing and appeal processes on licensing decisions.
216. If the Bank decides to refuse a licence under section 205 or section 206, or to suspend or revoke a licence under section 215, it shall immediately give notice in writing to the applicant or the licensee of that decision, with reasons and a statement of the right of the applicant or licensee to appeal the decision to the Appeal Board within 30 days of the giving of the notice.
- Decision of Appeal Board.
217. After hearing an appeal, the Appeal Board may dismiss the appeal or order the Bank to issue a licence that was refused or reinstate a licence that was suspended or revoked or substitute a different penalty that the Bank would be entitled to impose under Part IV.
- Interim order.
218. Notwithstanding the fact that the Appeal Board is to hear the matter, in a particular case of potential suspension or revocation of a licence under section 217, the Bank may make an interim order suspending a licence or revoking a licence pending the results of an Appeal Board hearing, if it is of the opinion that the public interest might be prejudiced if such an interim order were not made and the decision had to await the receipt of a recommendation from an advisory board.
- Hearing of appeal.
219. In the case of an appeal, the Appeal Board shall hear evidence and argument from a representative of the Bank and the affected applicant or licensee and, after due consideration, shall make a written recommendation on the matter to the Bank and to the appellant with reasons and any findings of fact on which those reasons are based.
- Single principal of licensed agents.
220. (1) No licensed agent shall act or purport to act as agent for more than one insurer or represent that licensed agent's ownself to the public by advertisement or otherwise as agent of more than one insurer.
- (2) A person who fails to comply with subsection (1) commits an offence.
- Exemptions.
221. (1) Notwithstanding the provisions of section 220, where there is more than one insurance company in a group of companies controlled by the same shareholder, a single agent may represent each of the insurance companies in the group.
- (2) Notwithstanding the provisions of section 220, an agent may represent two insurers if for one of the insurers being represented

the agent sells only long term insurance and for the other insurer being represented the agent sells only general insurance.

Confirmation of cover by licensed brokers.

222. (1) After placing a policy of insurance, every licensed broker shall take steps to reasonably ensure that the policyholder concerned is, within 21 days, provided with a policy or a certificate of coverage, evidencing that the insurance has been placed, and at the same time shall ensure that each of the insurers whose names appear on the policy or certificate has a copy of the policy or certificate of coverage.
- (2) A broker who fails to comply with subsection (1) commits an offence.

Certificate of coverage.

223. A certificate of coverage referred to in section 222 shall set out –
- (a) the name and mailing address of the policyholder;
 - (b) a description of the coverage provided and the dates for which coverage will be in place;
 - (c) the full name of each insurer or other person authorised to undertake the policy;
 - (d) the amount of insurance placed with each insurer.

Trust accounts.

224. (1) All funds received by general insurance brokers from consumers, in full or partial payment of premiums due under policies of insurance, shall be treated by the brokers as funds in trust for the insurer or insurers to which they are due.
- (2) As part of the trust relationship, brokers shall maintain separate accounts in one or more banks, which are clearly denoted as trust accounts, with no intermingling of the broker's business or personal accounts with the premiums received from policyholders.
- (3) A broker that fails to comply with subsection 2 commits an offence under this Act.

Long term insurance funds.

225. All funds received by long term agents shall be paid over directly to the long term insurer.

Other obligations of licensed brokers.

226. A licensed corporate broker or its employee who is a licensed broker shall not knowingly act or aid in soliciting, negotiating or procuring any policy with an insurer that has a significant interest in the licensed corporate broker, or with an insurer in which the licensed corporate broker has a significant interest, or with an insurer that is under common ownership, directly or indirectly, with the licensed corporate broker, unless the

- relationship between the licensed corporate broker and the insurer is specified in any certificate of coverage and on the face of the policy provided to the insured.
- Delays. 227. Every licensed broker shall avoid unreasonable or repeated delays in transmitting funds to a policyholder or a claimant under a policy that are intended for such transmission.
- Unlicensed insurers. 228. A licensed broker is liable to the insured on any policy issued through the broker, directly or indirectly, that is underwritten by any person who is not a licensed insurer and is not exempt or excepted from the requirement that insurers be licensed under this Act, in the same manner as if the licensed broker had been the insurer.
- Liability. 229. For greater certainty, if the licensed broker through whom a policy of the kind referred to in section 228 is issued is an employee of a licensed corporate broker, the liability imposed by section 228 is a joint and several liability of the two licensed brokers.
- Fit and proper requirements. 230. Every licensed corporate broker shall put in place policies and procedures to screen individuals it proposes to employ as brokers for suitability prior to employing them and to monitor their activities after employing them.
- Notification of non-compliance. 231. If it comes to the attention of a licensed corporate broker that one of its employed brokers is not complying with or has not complied with the provisions of this Act, it shall immediately notify the Bank in writing of that fact.
- Placing of insurance outside of Guyana. 232. A licensed broker shall not place or assist in the placing of insurance for a client with an insurer that is not licensed as an insurer under this Act, unless —
- (a) sufficient insurance cannot be obtained on the form of policy required by the client from insurers licensed under this Act;
 - (b) the broker holds a special broker's licence under section 233;
 - (c) the broker has informed the client in writing of the following risks of the placement of insurance with an insurer not licensed under this Act —
 - (i) the insurer is not subject to regulation under this Act;
 - (ii) the jurisdiction of the claims process is outside of Guyana;
 - (iii) the Guyana insurance supervisory agency has no authority in respect of the insurer;
 - (iv) additional taxes are payable based on the amount of

premium;

- (d) after informing the client as required by paragraph (c), and obtaining the client's written consent, the special broker may proceed with placement of the policy outside of Guyana.

- Special broker's licence. 233. On application by a licensed broker the Bank may issue a special broker's licence if it is satisfied that the broker has –
- (a) at least five years of experience with no major contraventions of the law;
 - (b) made a deposit with the supervisory agency in the amount of G\$10,000,000 or as maybe prescribed by the Bank;
 - (c) demonstrated that the broker has relevant knowledge, experience or training in evaluating the positions of foreign insurers.
- Retention of documents. 234. Every holder of a special broker's licence shall maintain copies of the documentation referred to in sections 232(c) and 232(d), for a period of two years from their delivery and be able to provide the Bank at its request, with particulars of the transactions to which those documents relate at any time during that two year period.
- Obligations of agents and brokers. 235. When a premium is received by a licensed intermediary in respect of a policy, the intermediary shall provide the policyholder, within five days, with a receipt for that premium, including the name of the insurer with which the coverage is to be placed.
- Premiums. 236.
- (1) When a premium has been received by a licensed intermediary and a receipt issued pursuant to section 235, the premium is deemed to have been received by the insurer named in the receipt even if that insurer does not receive the premium as provided for under the terms of the contract or arrangement between the intermediary and the insurer.
 - (2) Every premium paid to a licensed broker shall be deposited within twenty-four hours with a bank in an account that is clearly designated as a premium account and established in such a way that the account is maintained separate and distinct from any other accounts maintained with that bank.
 - (3) Every premium paid into a premium account of a licensed broker shall constitute funds held on behalf of the insurer with which the policy in question has been placed and shall not be used by the intermediary for any other purpose.
 - (4) Funds may be withdrawn from a premium account of a licensed

broker as provided for in the contractual or other arrangement governing the relationship between the intermediary and the insurer to which the premiums are due.

- (5) Every licensed broker shall forward premiums received on behalf of an insurer to that insurer, in accordance with the terms of the contract or other arrangement with the insurer, without unreasonable delay or repeated delays.

- Production of accounts. 237. When so requested in writing by the Bank, a licensed broker shall, within 30 days of such request, provide an accounting to the Bank of all premium funds received during a period no longer than two years before the date of the request, as may be specified by the Bank.
- Long term insurance premiums. 238. An agent of a long term insurer shall indicate to clients that premium cheques should be made out to the account of the long term insurer, but if cash is received by the agent, the agent shall deposit it with the insurer as quickly as possible but in no event more than five days from the date of receipt.
- Guidelines. 239. The Bank may issue guidelines as to the fair treatment of clients and policyholders by licensed intermediaries.
- Duties of intermediaries. 240. Every licensed intermediary shall –
- (a) hold in strict confidence all information concerning the business and affairs of any of the intermediary's clients acquired in the course of the professional relationship with that client and shall not divulge any such information unless authorised by the client to do so, required by Act to do so or as necessary in order to arrange for the insurance required by the client;
 - (b) observe all relevant laws regarding the preservation and safekeeping of the property of the client entrusted to the licensed intermediary and, when there are no such laws or the intermediary is in doubt, take the same care of such property as a careful and prudent person would take of the person's own property of like description;
 - (c) not stipulate, charge or accept any fee that is not fully disclosed, or the basis for which is not fully disclosed, prior to the service being rendered, or which is so disproportionate to the service provided as to be unconscionable;
 - (d) maintain accounts and financial records in respect of the business carried out for a period of at least two years after the period to which those accounts and records relate;

- (e) comply with such instructions as may be issued by the Bank with respect to the specific accounting, financial and other records that must be maintained for the particular type of intermediary activity in which it is engaged.
- Independence. 241. A licensed intermediary who engages in another business or occupation concurrently with the practice of the intermediary vocation shall not allow such outside interest to jeopardise the intermediary's integrity, independence or competence.
- Production of licence. 242. Every licensed intermediary shall produce the intermediary's licence when requested so to do by –
- (a) the Bank or its representatives;
 - (b) any insurer that wishes to establish or that has established any business relationship with the intermediary;
 - (c) an actual or a prospective client.
- Bank powers in relation to agents and brokers. 243. (1) In carrying out the terms of this Act, representatives of the Bank may visit any bank or place of business of any licensed intermediary and may inspect the records relating to the business carried out and may request any information reasonably required to properly investigate the situation.
- (2) Every holder of a licence shall do everything possible to facilitate any inquiries by the Bank or its representatives and shall make all required information available on a timely basis.
- Examination under oath. 244. The Bank or a person acting under the authority of the Bank is entitled to examine any licensed intermediary or any employee, officer or director of that intermediary under oath.

PART XVIII
REGULATION MAKING AUTHORITY

- Regulations. 245. The Minister, may, after consulting with the Governor, make regulations as are necessary for carrying out the provisions of this Act, and without limiting the generality of the foregoing may make regulations for the purpose of –
- (a) augmenting the provisions in this Act with regard to the hearing of appeals by the Appeal Board and for other matters that may be related to the subject of appeals;
 - (b) augmenting the provisions of this Act with regard to hearings by Arbitration Boards and for other matters that may be related to the

subject of Arbitration Boards;

- (c) establishing minimum amounts of capital and liquidity which must be maintained as a condition of licensing for every insurer;
- (d) establishing minimum solvency requirements and specific control levels for solvency margins which will be utilised by the Bank when prescribing various forms of intervention pursuant to Part XV;
- (e) establishing procedures by which the Bank may specify values of assets and liabilities for the purposes of determining an insurer's solvency position pursuant to this Act;
- (f) establishing initial and annual licence fees for registrants as well as the amounts of any other fees referred to in this Act;
- (g) setting out rules with regard to the establishment and on-going operation of statutory funds to be maintained by insurers pursuant to section 171;
- (h) establishing standards for the qualification of insurance agents and insurance brokers as well as other matters related to the licensing of intermediaries;
- (i) describing certain activities of insurance intermediaries which will constitute "misconduct" for the purposes of this Act;
- (j) regulating reinsurance transactions, including but not limited to matters such as minimum and maximum retention levels;
- (k) establishing the requirements with regard to insurance policies that are required by this Act to be maintained by insurance brokers;
- (l) establishing a framework for the investment and safeguarding of insurers' funds, including in respect of transactions with related parties;
- (m) varying specific dollar amounts and percentage amounts mentioned anywhere in this Act to take account of changing circumstances over time; and
- (n) such other matters as may be the proper subject for regulations under this Act.

PART XIX
MISCELLANEOUS PROVISIONS

- Creditors offering insurance relating to debt or collateral. 246. If a lender or other person extending credit requires credit insurance coverage on the life or health of the borrower or recipient of credit, or property insurance coverage on the collateral securing that person's payment obligation, the lender or other creditor must provide the borrower or other recipient of credit with a written statement indicating that the lender or creditor has no obligation to purchase insurance coverage from a source recommended by the bank and that the lender or creditor has a reasonable period of time, which shall not be less than 48 hours, to consider alternative sources for such insurance coverage
- Accident surveyors and damage assessors. 247. Except for employees of licensed insurers, no person shall carry on in Guyana the profession of expert charged with surveying accidents and damage relating to the settlement of property and other forms of physical damage claims, to determine the circumstances of the accident and damage claims, or to define and assess the resulting material damage, unless the person has been included, at the person's request, on the list of experts established in accordance with section 248.
- List of experts. 248. (1) The Bank shall propose a list of experts of the kind referred to in section 247 indicating their particular areas of specialisation, if any, with such list to be published in the *Official Gazette*.
- (2) No person shall be included on the list of experts who is an undischarged bankrupt, who has been convicted of an offence the nature of which renders him, in the opinion of the Bank, to be unfit to carry on the profession of expert.
- (3) A person who is employed as a public servant is not eligible to be included in the list of experts maintained.
- Confidentiality of information. 249. All information regarding the business or affairs of a person licensed under this Act or an applicant for such a licence, or regarding a person dealing with or related to any of them, that is not in the public domain and was obtained by the Bank, or by any person acting under the direction of the Bank, and all information prepared from that information, is confidential and shall be treated accordingly, except as otherwise provided in this Act.
- Co-operation with other agencies. 250. Nothing in section 249 prevents the Bank from disclosing any information where –
- (a) disclosure is to a government agency for enforcement purposes;
- (b) disclosure is to a government agency that regulates or supervises financial institutions or financial intermediaries, whether within

Guyana or outside, for purposes related to that regulation or supervision, if the Bank is satisfied that the information will be treated as confidential by such agency;

- (c) an exchange of information agreement exists between Guyana and the other jurisdiction;
- (d) the information was obtained through returns filed by a licensed insurer pursuant to this Act or has been obtained as a result of a survey of the insurance industry and the Bank has concluded, on the approval of the Governor, that the information ought to be disclosed, in the annual report of the Bank or otherwise, for the purpose of ensuring a reasonable degree of transparency with regard to the business and operations of licensed insurers.

Protection of Bank,
employees and agents.

251. (1) No action lies against the Government, the Governor, the Bank, an employee of the Bank, or any person acting under the direction of the Bank or Governor, for anything done or omitted to be done in good faith in the administration or discharge of any powers or duties under this Act.
- (2) The Government indemnifies and holds harmless from any liability, including legal defence costs, the Bank, every employee of the Bank, and every person acting under the direction of the Governor, or the Bank, for anything done or omitted to be done in good faith in the administration or discharge of any powers or duties under this Act.
- (3) Neither the Bank nor the Governor nor any other officer or employee of the Bank, nor any person engaged by the Bank to carry out certain functions authorised by this Act, shall be required to testify, or to disclose any documents, in any proceeding before a court or tribunal in relation to information obtained in the discharge of such person's duties under this Act.

Right of access to
records.

252. The Bank or a person acting under the authority of the Bank has a right of access, during normal business hours, to any records, cash, assets and security held by or on behalf of an insurer or an external insurer in respect of its insurance business in Guyana, for the purpose of carrying out an examination or a special audit, all as provided for under this Act, in order to satisfy itself that the provisions of this Act are being observed and that the insurer is in a sound financial condition.

Production of
documents.

253. (1) The Bank may, by order, direct a director, officer or employee, controlling shareholder or affiliate of an insurer or any agent of an insurer, including the main representative of an external insurer, to provide the Bank or a person acting under the authority of the Bank, with such information or documents as

- may be specified in the order where the Bank believes that the production of the information or documents is necessary in order to carry out an examination under section 128 or an extended or special audit under section 255 or a special actuarial valuation under section 256 in order to satisfy itself that the provisions of this Act are being observed and that the insurer or the external insurer in relation to its business in Guyana is in a sound financial condition.
- (2) For any of these same purposes, the Bank or a person acting under the authority of the Bank is entitled to examine under oath any director, officer or employee of an insurer or any agent of an insurer, including a legal representative of an external insurer.
- Extended audits. 254. (1) The Bank may require the auditor of an insurer to report to the Bank on the extent of the auditor's procedures in the examination of the annual financial statements and may, in writing require that the auditor extend the scope of that examination and direct that any other procedure be performed in any particular case, and the auditor shall comply with any such requirement of the Bank and report to the Bank on its findings.
- (2) The Bank may, in writing, require the auditor of an insurer to make a particular examination relating to the adequacy of the procedures adopted by the insurer for the safety of its policyholders, or any other examination as, in the Bank's opinion, the public interest may require and report to the Bank its findings.
- Special audit. 255. The Bank may direct that a special audit of an insurer be made if, in the opinion of the Bank, it is so required and may appoint for that purpose an accountant or firm of accountants who would be qualified under this Act to be an auditor of the insurer.
- Special actuarial valuations. 256. The Bank may appoint an actuary, other than the actuary of the insurer if one is required to be appointed under this Act, to value the matters referred to in section 108, or to investigate any matters that could reasonably be considered to be of an actuarial nature, in respect of any insurer if the Bank is of the opinion that the appointment is necessary.
- Charging certain expenses to insurers. 257. Whenever an actuarial valuation, appraisal, audit, special examination or other expert assessment is conducted or caused to be conducted on the direction of the Bank in respect of a particular insurer under this Act, the Bank may, at any time up to the end of a period of 30 days following its receipt of the report of the assessment, direct the insurer to assume the expense of it and, if the Bank so directs, such expense shall be payable by the insurer on being approved in writing by the Bank.
- Fees. 258. The Bank may require the payment of fees in relation to any matter under

this Act and may set the amount of those fees.

- Forms. 259. (1) The Bank may approve forms for any purpose of this Act and require their use.
- (2) The forms may provide that the person required to use them shall provide the information required by the forms.
- Mutual insurance companies. 260. The provisions of this Act take precedence over the provisions in the incorporating documents or ordinances of a mutual insurer.
- Composite insurance companies. 261. After the coming into force of this Act, no new licences shall be issued in respect of insurers carrying on both long term insurance and general insurance within the same corporate entity.
- Repeal and savings.
Cap. 91:02
[Act 20 of 1998];
[Act No. 16 of 2009] 262. (1) The Insurance Act and the Insurance (Supplementary Provisions) Act 2009 are repealed.
- (2) Notwithstanding the repeal of the Insurance Act –
- (a) the provisions of Part XVI (relating to Pension Fund Plans) of the Act shall continue in force;
- (b) any subsidiary legislation made under that Act, that is not inconsistent with this Act, shall continue in force as if made under this Act until such subsidiary legislation is amended or revoked.

SCHEDULE 1

s. 32

SANCTIONING POLICY OF THE BANK - GUIDELINES

1. **General**

It is appropriate for the Bank to define a formal, coherent policy with regard to the imposition of monetary penalties so as to ensure consistency and a level playing field for registrants under the Act. In general, the approach is that the quantum of the penalty will vary with the cause of the non-compliance and the severity of the outcome.

2. **Cause of Non-Compliance**

The cause of the non-compliance relates to the culpability of the registrant. The significance of the cause will be classified as to three levels of severity:

- (a) **Local Non-Compliance:** This is a failure that can be attributed to inadvertence or to a localised breakdown in control procedures or other internal processes. For example, there may have been a break-down of internal controls in one department or division but it has not had adverse repercussions for other parts of the company. There is no evidence that the failure indicates a more wide-spread issue and no significant inputs are required by the supervisor to rectify the situation
- (b) **Systemic Non-Compliance:** This is a situation which is broader than a case of local non-compliance. In this case we see that the cause of the non-compliance has been a general failure to adopt sound business and financial practices, resulting in a major lapse in corporate governance, internal control or other business control areas. Other causes could be poor internal communications or a failure by management to dedicate sufficient resources to a particular aspect of the company's operations.
- (c) **Severe Non-Compliance:** A systemic failure which was caused intentionally or by deception, and which involved a number of areas of the company.

3. **Severity of Outcome**

This dimension focuses on the severity of the situation of non-compliance and will reflect the outcome of the violation. The nature of the failure is assessed according to two main criteria:

- (a) With respect to consumers: the extent of damage and impact, both potential and actual.
- (b) With respect to the entity: the financial implications of the situation of non-compliance relative to the equity base of the insurer.

4. Severity of the contravention is rated as minor, significant or substantial:

- (a) **Minor:** There was an impact for (1) a relatively small number of consumers (for example, not more than a few hundred or so) who were inconvenienced and/or (2) the financial significance of the non-compliance was minor compared to the equity base of the insurer.
- (b) **Significant:** In this case, a significant number of consumers were unfairly dealt

with, causing them to be overcharged for premiums, underpaid for claims or misled in a material way, and in at least some cases the losses were significant; and/or for the insurer the financial impact of the contravention was, in the opinion of the Bank, significant relative to the equity base of the insurer.

- (c) **Substantial:** Consumers suffered substantial losses or substantial numbers of consumers were unfairly dealt with, and/or for the insurer the financial impact of the contravention was, in the opinion of the Bank, substantial relative to the equity base of the insurer.

5. In light of the foregoing guidelines the Bank shall conceptually have regard to the diagram below when assessing administrative penalties under the Act:

Typical Penalties (in G\$)

Severity of Outcome			
Substantial	\$1 million or more	\$5 million or more	\$20 million or more
Significant	\$500 thousand or more	\$1 million or more	\$5 million or more
Minor		\$250 thousand or more	\$1 million or more
	Local	Systemic	Severe
	Cause of Non-Compliance		

6. **Sanctions Matrix**

When a monetary penalty is to be imposed for non-compliance with the Act, the Bank will normally apply the Guidelines to interpolate in the Sanction Matrix, shown above, to arrive at the amount of the penalty. It should be understood, however, that the Sanction Matrix is only a conceptual framework for the information of market participants. In a particular case the Bank may impose any penalty that is within the purview of the Act. The affected party has the right of appeal.

7. Note that the Bank is generally of the view that very small financial penalties have little or no impact on company behaviour. Thus for cases of “Local” Non-Compliance and “Minor” Severity, a monetary penalty will typically not be imposed.

8. Note also that the table is with references to first offences. For repeated offences by the same insurer, much higher penalties may apply. Again, the affected party has the right of appeal.
9. Sanctions may be applied to both corporate entities and individuals.
10. **Sanction Reduction**
The Bank may reduce the amount of a fine that might otherwise be imposed, after examining the circumstances, as follows:
 - (a) If there were no similar violations in the three years preceding the date of the violation – up to 20% reduction;
 - (b) The violator stopped the problematic practice on its own initiative and reported the situation to the Bank – up to 50% reduction;
 - (c) The violator has taken steps to prevent recurrence of the violation and reduced the damage, to the satisfaction of the Bank – up to 10% reduction.

SCHEDULE 2

ss. 2, 49

TYPES AND CLASSES OF INSURANCE BUSINESS**TYPE A****LONG TERM INSURANCE BUSINESS****CLASS 1 – GENERAL LIFE**

SUB-CLASS	NATURE OF INSURANCE BUSINESS
Ordinary Life	<p>The business of effecting and carrying out contracts of insurance that are payable –</p> <ul style="list-style-type: none"> (a) on the death of a person; (b) on the happening of an event or contingency dependent on human life; (c) at a fixed or determinable future time; (d) for a term dependent on human life, <p>and without restricting the generality of the foregoing includes –</p> <ul style="list-style-type: none"> (i) insurance whereby an insurer, as part of a contract of life insurance undertakes to pay an additional amount of insurance monies in the event of the death by accident of the person whose life is insured; (ii) insurance whereby an insurer as part of a contract of life insurance undertakes to pay insurance monies or to provide other benefits in the event that the person whose life is insured becomes disabled as a result of bodily injury or disease; or (iii) an undertaking to provide an annuity contract.
Group Life	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 policy owner or the insurer.
Industrial Life	The business of effecting and carrying out contracts of insurance upon human life, premiums in respect of which are contracted to be paid at intervals of less than forty days and which are usually received by means of collectors.

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

	<p>that -</p> <p>(a) are expressed 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</p> <p>(b) either are not expressed to be terminable by the insurer, or are expressed to be terminable only in special circumstances mentioned in the contract.</p>
Disability Income	<p>Insurance whereby an insurer undertakes to pay a certain sum of monies in the event of -</p> <p>(a) bodily injury to a person caused by an accident; or</p> <p>(b) sickness or disability of a person other than as a result of an accident.</p>

CLASS 3 – ANNUITIES AND PENSIONS

SUB-CLASS	NATURE OF INSURANCE BUSINESS
Pension Fund Management	<p>Effecting and carrying out -</p> <p>(a) contracts to manage the investments of pensions funds; or</p> <p>(b) contracts of the kind mentioned in paragraph (a) 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.</p>

TYPE B

GENERAL INSURANCE BUSINESS

CLASS 1 - ACCIDENT AND LIABILITY

SUB-CLASS	NATURE OF INSURANCE BUSINESS
Accident	<p>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 -</p> <p>(a) sustaining injury as the result of an accident or of an accident of a specified class;</p> <p>(b) dying as the result of an accident or of an accident of a specified class; or</p> <p>(c) becoming incapacitated in consequence of disease or of disease of a specified class, inclusive of contracts relating to industrial injury and</p>

	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, not being risks to which aircraft liability or the liability for ships sub-classes relate.
Liability (including public liability, products' liability, and professional indemnity)	Effecting and carrying on contracts of insurance against risk of 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.
Workmen's Compensation and Employer's Liability	The business of effecting and carrying out contracts of insurance against the liability of the employer to employees in respect of any injury or disease arising out of and in the course of their employment.
Credit	Effecting and carrying on contracts of insurance against risk 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 risk of loss to the persons insured arising from their having performed 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) risk of loss to the person insured attributable to interruptions of the carrying on of insurance business carried on by them or to be 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 risk of loss to the persons insured attributable to their incurring legal expenses (incurring 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 AND 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, equipment of those 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 carriers liability.
Liability for Ship	Effecting and carrying on contracts of insurance against damage arising out of or in connection with the use of vessels on sea or on inland water, including third-party risks and carriers 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.

EXPLANATORY MEMORANDUM

Background

Following its assumption of responsibility for much of the non-bank financial sector in Guyana the Bank of Guyana has taken steps to bring its regulatory framework and supervisory capacity in these areas into line with current international norms in a manner that is appropriate to the stage of development of the country and the relevant subsectors. A subsidiary objective has been to support the healthy development of the non-bank sector.

Diagnostic Findings

The diagnostic was supported by the World Bank and involved full discussions with industry participants.

Key diagnostic findings were as follows:

- (1) The insurance sector in Guyana is underdeveloped relative to its peers. Structural and economic factors contributing to this include low population density and high recent inflation rates. Industry specific factors include heavy competition pushing down non-life premiums, loss of confidence following the global credit crisis and the subsequent Clico failure (which saw nominal domestic life insurance premiums reduce by 80% over 3 years), direct overseas placement of mega risks funded by foreign governments, low risk retention and the uninsurability of some major property risks in Georgetown.
- (2) The industry is significantly overcapitalised relative to current volumes and risk levels, is conservatively managed, and there is no evident systemic risk potential.
- (3) The pension sector is still largely unsupervised, except to the extent that it is managed by insurers, and a significant increase in supervisory resources is needed.
- (4) A basic regulatory and supervisory structure is in place and has been functioning relatively well in the last few years. However the current law/regulations and supervisory infrastructure would not be able to withstand another CL Financial-type situation. For this reason the insurance and pensions law needs to be significantly upgraded to reflect international developments over the last decade, and in particular to be made much more explicit regarding relevant prudential standards and the intervention powers of the Bank. On the other hand any reforms need to reflect limited human and systems resources.
- (5) Key changes required include allowing for the move of the insurance supervisory function from the Ministry of Finance to the Bank of Guyana, the introduction of solvency rules (including corrective action triggers), updating governance requirements (and in particular requiring key board committees), more frequent and intense certification of the assets covering policyholder and member related liabilities, authority to share information where appropriate, stronger fit and proper oversight of key individuals, winding up rules and processes that recognise policyholder priority, and the

development of more flexible and lower cost consumer protection mechanisms.

The Bill has been designed on a framework basis and to a significant extent only core requirements have been included in the proposed law itself. The Bill is generally in keeping with international standards but modified somewhat to take account of the current development of the insurance industry in Guyana. The overall approach is to avoid detailed rules and instead to include risk based approaches consistent with sound business and financial practices. Other provisions have been left to regulation.

PART I – PRELIMINARY

Definitions – a number of new definitions have become necessary to accommodate a modern risk based approach, to deal with ambiguities in the existing law and to allow for the fact that mutual insurers make up a major part of the market. Key definitions include – actuary, insurer, solvency margin, and technical provision.

Control – the definition of control has been brought in line with international norms. Provisions in this Part also make it clear that the Bank of Guyana is responsible for insurance supervision in the country. To clarify the Bank’s objectives in this area, the Bill states that “The objective of the Bank under this Act is to supervise the administration of the Act with a view to promoting the maintenance of efficient, fair, safe and stable insurance markets for the benefit and protection of Guyana policyholders and to enhance public confidence in those markets.”

PART II – FINANCIAL PROVISIONS

The insurance supervisory function will be substantially funded by an assessment on direct written premiums with the quantum to be determined by the Bank. The assessment will be sufficient to cover the expected expenses of the Office, after allowing for fee income. The Bill also authorises the Bank to charge fees for various services such as the issue of licences. A cap of one year’s expected costs will be placed on the amount of reserve funds that can be accumulated and the assessment reduced if this is exceeded.

Non-payment of an assessment constitutes a serious offence and clause 51 (f) of the Bill stipulates that such a situation could lead to the imposition of conditions on an insurer’s licence or even to suspension of licence.

In line with international standards, the Bank will be required to prepare an annual report with regard to its insurance supervisory function. In addition to describing the activities of the insurance supervision department of the Bank during the previous year, the report should provide “general information with respect to the insurance market in Guyana, aggregate industry statistics and data with regard to the financial positions and profitability of individual insurers along with any other information that the Bank may deem appropriate.” The Bill also makes it clear that the insurance supervisory report may be published as part of the annual report of the Bank.

The Minister will be able to specify such other reports as he may require.

PART III – APPEAL BOARD

The Appeal Board will sit in the Bank of Guyana and be convened by the Governor on an ad hoc basis as required. Its members will comprise at least 3 but not more than 7 persons “none of whom are active in the industry but each of whom can be presumed, based on his prior training and experience, to have knowledge of insurance or other related matters.” The Board has the power to refuse to hear cases on the grounds that they are frivolous or vexatious.

The Appeal Board will provide its ruling in writing within 60 working days of the appeal being received by the Board. Also, the decision or action which is under appeal, stands until such time as the Appeal Board may rule against the decision or action. The remuneration of the appeal board shall be “at such rate as may be determined by the Governor in the circumstances.” The Bill provides for the Appeal Board to lay down its own rules of procedure until such rules are prescribed by regulations.

PART IV – OFFENCES AND PENALTIES

The Bill creates certain offences and penalties. Any officer, director, actuary or auditor who has consented to, connived in or facilitated an offence shall also be liable for that offence.

Signing of a document where the signer knows that the document contains false information is also an offence.

A limitation of 7 years applies to offences under this Bill.

Penalties are specified for certain serious offences and discretion is provided to the Bank in the imposition of others. Schedule 1 to the Bill provides a guide to the determination of sanctions. The guide takes account of the various types of compliance failures on the one hand, and the potential significance of outcomes on the other. Thus a systemic failure by an insurer, having the potential for widespread harm to policyholders, would lead to a much higher range of possible sanctions than would be the case for say, a contravention that is localised within the insurer and which would be expected to have only limited impact for policyholders.

PART V – LICENSING OF INSURERS

This section largely accords with the existing law. However –

- (1) the Bank will maintain a list of acceptable reinsurers (determined primarily on the basis of ratings by acceptable international rating agencies).
- (2) the insurer will be required to maintain acceptable risk management systems.
- (3) controlling shareholder, directors, officers, actuaries and auditors will need to satisfy fit and proper requirements, which are drawn from the relevant sections of the Financial Institutions Act.
- (4) the Bank may attach conditions to the license at issue.
- (5) after licensing the Bank may also attach conditions to or even withdraw the license in

situations where the licensing or other significant requirements are not being met. Such actions by the Bank will be able to be brought before the Appeal Board.

- (6) all license related decisions of the Bank shall be published in the *Official Gazette*.

PART VI – CORPORATE GOVERNANCE

The Bill provides that some of its provisions with regard to corporate governance will not become applicable until one year after the Act comes into force. In order to avoid a situation where, after one year, some insurers have done little to prepare for the required changes, every insurer must provide the Bank, within six months of the coming into force of the Act, with a plan describing the steps it is putting into place so as to be able to meet the new provisions. Sections of the law laying out the duties of directors will come into force immediately.

Each insurer shall have at least 5 directors of whom at least 2 must be independent. The Chairperson shall not also be the general manager or chief executive officer.

Every insurer shall have an Audit Committee of at least two directors and which is chaired by an independent director. The duties of the audit committee are listed in the Bill. The board of an insurer may also establish other committees.

In keeping with international standards and best practices, the corporate governance provisions include a so-called “duty of skill and care”. This makes it mandatory for directors to “act honestly and in good faith with a view to the best interests of the company” and to “exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.” The duty of skill and care also provides that while an insurer may indemnify directors and officers for their actions taken in good faith, they cannot be indemnified for actions in contravention of the Act or regulations, or in contravention of decisions of the Bank that are authorised under the Act. Failure by a board of directors to exercise “the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances” would constitute a contravention of the Act and therefore place directors in personal jeopardy of law suits. International experience has shown that over time, provisions such as these can make insurance company directors considerably more responsive to the needs of policyholders and more sensitive to the need to ensure that their companies are following sound business and financial practices.

PART VII – BUSINESS POWERS OF INSURERS

This Part describes the activities, separately, in which life and general insurers may legally engage. In addition to the power to conduct various types of insurance business, under the new Act insurers would be able to apply to the Bank for permission to carry on certain activities that are considered to be ancillary to the business of insurance. For example, a life insurer that has significant expertise in investment management, could, if it is able to satisfy the Bank as to its business plan (including financial projections), be authorised to provide those services to members of the public. These activities would be limited but they provide an opportunity for insurers to slightly diversify their business models and also to provide what may be beneficial services to members of the public.

It should be noted that the issue of unit-linked policies is defined to be an ancillary activity and therefore requiring the permission of the Bank. This avoids the need to add unit linked business as a separate class of long term insurance but still provides an over-arching review mechanism for the Bank.

This Part also specifies the need to segregate assets covering unit-linked contracts.

PART VIII – AUDITORS AND ACTUARIES

Insurance laws enacted over the past ten years or so have tended to somewhat broaden the role of auditors and actuaries. In addition to their traditional responsibilities with regard to verification (in the case of auditors) and valuation (in the case of actuaries), they are now also required to report to the audit committee (if one has been established, and to the Chairperson of the Bard if not) and to the Bank, in any cases where they become aware of any developments which, in their view, could significantly and adversely impact the insurer. This gives recognition to the fact that regulators have limited resources and must therefore place greater reliance on the work of these professionals.

Increased reliance in turn means that high professional and personal standards are even more important than has been the case in the past. To ensure that the Bank's reliance on these professionals is well justified, the law indicates that one year after the coming into force of the new law, the Bank will maintain a register of acceptable audit firms and a register of acceptable actuaries. To begin with, all currently appointed auditors and actuaries would be included in the register. However, in any cases where it can be demonstrated that one of these professionals has not followed the requirements of the law or has not completed an assignment in accordance with the standards of his profession, then that professional may be removed from the register.

PART IX – REGULATORY REPORTING, EXAMINATIONS AND CAPITAL

Financial reporting to the Bank is required to be in accordance with International Financial Reporting Standards (IFRS).

On the other hand, the Bill makes it clear that the Bank may specify particular accounting and valuation treatments that are to be used for the determination of the company's solvency position. Thus there is a clear distinction between financial accounting, which is in accordance with IFRS, and the determination of solvency, which will be according to the requirements of the Bank. Using this approach, if, for example, the Bank is of the view that for solvency purposes certain assets should be disallowed, or even revalued, no change is required to be made in the audited financial statements.

The financial year of every insurer will be the calendar year. The Bill requires a year-end supervisory filing, which will consist of the audited financial statements of the insurer, plus additional financial information specified by the Bank to assess the business and solvency position of the insurer.

Quarterly financial reports will be required to be filed with the Bank and will also set out insurers' positions with regard to their statutory fund and solvency requirements.

Commencing with the first annual filing every insurer that is licensed to transact life insurance will be required to file an actuarial report with respect to its life insurance technical provisions.

PART X – FUNDAMENTAL CHANGES IN RESPECT OF INSURERS

In keeping with international standards, supervisory approval will be required for changes in control, mergers and portfolio transfers (i.e. situations where it is proposed that primary liability to the policyholder will move from the original underwriting insurer to a different insurer). The approach is streamlined when compared to older statutes.

In the Bill there are publication requirements to inform policyholders about the proposed transaction and to advise them of their right to examine the relevant documents at the offices of the Bank, where they may also register any concerns they may have. The general basis of supervisory approval is for the Bank to be satisfied that proposed transactions are not contrary to the interests of the different groups of affected policyholders.

PART XI – CHANGES OF KEY PERSONNEL

Insurers will be required to notify the Bank of changes in key personnel, including auditors and actuaries, and the Bank will have the power to object to any such appointment if it has reason to believe that the subject person is not fit and proper. The definition of “fit and proper” is found in clause 11 of the Bill.

If it intends to object to an appointment the Bank must notify the insurer within one month of the date on which it was advised of the insurer’s intention to make the appointment; otherwise the appointment stands. The insurer has the right to be heard with regard to any such objection by the Bank. The insurer also has the right of appeal to the court.

PART XII – MARKET CONDUCT OF INSURERS

In addition to supervisory requirements that are directly applicable to insurance intermediaries (see Part XVII Agents and Brokers), Part XII makes insurers responsible for having in place systems to reasonably ensure that the intermediaries who represent them are suitable to act as intermediaries, are complying with the law and are not “engaging in misconduct” as may be defined in regulations. They must also have in place policies and procedures to ensure that premiums are not accepted from any intermediaries who are not duly licensed by the Bank.

Most importantly, if any policy forms or related materials come to the Bank’s attention which, in the opinion of the Bank, are in any substantial respect in contravention of the law, or are unfair, misleading, fraudulent or not in the public interest, the Bank may prohibit the insurer from issuing or using the form of policy or application or may direct that changes be made thereto to rectify the situation. This is in keeping with a risk-based approach where the Bank is able to focus its resources on the most problematic areas as opposed to being responsible for reviewing and approving large

amounts of material, which, in most cases, should not be problematic from a policyholder perspective.

The Bank is actually able to order an insurer to make good on a particularly misleading or deceptive promise, which could conceivably constitute a substantial penalty.

PART XIII – CONSUMER PROTECTION

The Bill requires insurers to be first responders to consumer complaints. Every insurer must establish policies and procedures for dealing with complaints and designate an officer to be in charge of complaint handling. The insurer must indicate on its web site and in response to enquiries, how to contact the complaint officer and to describe the procedures it has put in place for the handling of complaints.

An insurer has six weeks to investigate a complaint, and to either resolve it or to indicate in writing to the consumer why in the company's view the complaint cannot be resolved in the consumer's favour.

The Bank investigates the complaint and if it believes the complaint should be resolved in favour of the consumer the insurer is to be notified accordingly. However, the Bank cannot compel an insurer to pay a particular claim or to take any other specific action as ultimately these would be matters for the court to decide.

Prior to court action and subject to certain conditions, a consumer may apply to have a disputed claim payment heard by an Arbitration Board, which would be convened by the Bank.

An Arbitration Board would comprise three members, one selected by the consumer, one selected by the insurer and one selected by the Bank, with each member having some expertise in insurance. The policyholder and insurer would be required to represent themselves at the Board. A Board could decline to hear any case which it considered to be "frivolous, vexatious or not of sufficient significance to justify the expense of holding a hearing". Board rulings would be binding on both parties.

PART XIV – STATUTORY FUND

In order to provide greater assurance that insurance company technical provisions will be adequately covered by acceptable assets, the Bill introduces a statutory fund requirement. The assets in the statutory fund can only be used to discharge liabilities to policyholders, whether or not an insurer is in liquidation. The mechanics of the statutory fund will be spelled out in regulation.

PART XV - STATUTORY INTERVENTION

In keeping with international standards and best practices the Bill includes so-called "preventive and corrective measures" which can be invoked by the Bank on an escalating basis as risk levels increase.

In most cases an insurer would be entitled to ten days advance warning if the Bank were contemplating statutory intervention and would have an opportunity to make written representations to the Bank during that period. An exception could occur where, in the view of the Bank, the situation is an emergency, in which case the Bank could take action without such prior consultation.

Another emergency action that could be taken by the Bank is the taking control of the assets of an insurer, which is often an initial step in the process leading to the commencement of winding-up proceedings.

International experience has been that these types of interventions have the potential to be far more effective than monetary penalties in terms of encouraging companies to reasonably monitor and mitigate risks and generally to follow sound business and financial practices.

PART XVI – JUDICIAL MANAGEMENT AND WINDING UP

The Bill empowers the Bank to apply to the court to appoint a judicial manager in three serious circumstances –

- (1) the insurer is breaching or in danger of breaching the statutory fund requirements prescribed by regulation;
- (2) the insurance business of the insurer is not being conducted in accordance with sound insurance principles and practices; or
- (3) that it is otherwise in the interest of the policyholders that such an order be made.

Both the insurer and the Bank are entitled to be heard by the court before any judicial appointment is made.

A judicial manager is generally subject to court oversight with regard to significant decisions impacting the insurer's operations.

The Bank is also authorised under the Bill to apply to the court for an order to wind-up the insurer. In keeping with international standards, the Bill provides that in a winding-up situation policyholders of the company rank ahead of the claims of other creditors.

PART XVII - REGULATION OF INSURANCE AGENTS AND BROKERS

As is the case for insurers, intermediaries currently licensed under the existing law will be deemed to be licensed under the new Act upon its coming into force.

The Bill envisages the licensing of agents, individual brokers and corporate brokers by the Bank but it also establishes a duty of care on insurers and corporate brokers to reasonably oversee the activities of their intermediaries with respect to the requirements of the law.

The Bill continues many of the current supervisory practices in respect of agents and brokers.

For example, brokers are required to have errors and omissions coverage as a part of the framework of policyholder protection.

Licences are deemed to be renewed upon the payment of an annual licensing fee. This approach does not necessitate the physical renewal of the licence, which would require administrative time and effort that would not be in keeping with a risk based approach.

Significant supervisory actions, such as the revocation of an intermediary's licence, are able to be placed before an Appeal Board as described in Part III.

Although an insurance agent can generally represent only one insurer, the Bill includes two exceptions to this rule. First, where there are a number of insurance companies within the same ownership group, an agent can represent more than one insurer within the group. Second, an agent may be licensed to sell long term insurance for one insurer and short term insurance for a different insurer.

Under the Bill a broker is required to ensure that within 21 days of placing coverage, a policyholder receives a certificate of coverage setting out key aspects of the contract, including the name of the insurer and the main policy features. There is also an onus on the broker to ensure that the insurance company has a record of the policy in question. The objective is to avoid miscommunications and to ensure clarity in the placement of insurance contracts.

When a premium is paid to an intermediary the intermediary is required to provide the consumer with a receipt which includes the name of the insurer. The premium is then deemed to have been received by the insurer and the insurer is on risk, whether or not the premium is actually received by the insurer. The purpose of this provision is to ensure that if premiums are not properly collected and remitted, any resulting loss will fall to the insurer rather than the consumer.

For general insurance, the Bill stipulates that premiums received are trust funds, in trust for the insurer of record. A broker must have a specially designated bank account for premium funds and these funds cannot be intermingled in any way with the broker's own funds. The funds can only be paid out of the account in accordance with the terms of the contracts that the broker has with the insurers he represents.

Premium funds received by agents and brokers in respect of long term insurance are required to be paid over directly to the insurer. This means that if a premium is being paid by cheque the intermediary must direct the consumer to make the cheque payable to the insurer. If funds are paid in cash, the intermediary has a responsibility to ensure that they are remitted within five days to the insurer.

Intermediaries are required to safeguard the personal information of their clients.

In terms of financial reporting, the Bill indicates that the Bank may require an intermediary to provide an accounting of all premium funds for a period of up to two years after the date of the premium transaction. The Bank may issue instructions with regard to specific accounting, financial and other records that must be maintained by intermediaries.

Under the Bill, representatives of the Bank may visit any bank or place of business of any licensed

intermediary and may inspect the records relating to the business carried out and may require the disclosure of any information reasonably required to properly investigate the situation.

PART XVIII - REGULATION MAKING AUTHORITY

The Minister, in consultation with the Governor, has broad regulation making power under the Bill. Areas specified under the Bill with respect to the making of regulations include –

- i. the procedures and operational rules of the Appeal Board and Arbitration Board;
- ii. establishing the requirements with regard to insurance policies that are required to be maintained by insurance brokers;
- iii. such other matters as may be the proper subject for regulation under the Act.

PART XIX - MISCELLANEOUS PROVISIONS

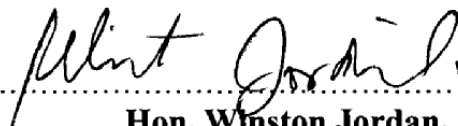
Where lenders require borrowers to have life or general insurance as part of a loan arrangement, they must provide the consumer with a written notice to the effect that the consumer is not compelled to purchase the insurance coverage offered through the lender, but in fact has 48 hours to arrange alternate coverage. This provision is meant to mitigate the leverage that a creditor has over a borrower so as to pressure him to acquire credit insurance under a policy where some part of the payment for that coverage is likely to be shared with the creditor.

No person may carry on the business of claims adjustor, accident surveyor or damage assessor, unless they are an employee of an insurance company or are on a list of (fit and proper) experts to be maintained by the Bank.

The Bank and its employees cannot be sued as long as they are carrying out their responsibilities in good faith under the law.

The Bank has broad powers to gather information that it requires for ensuring that the provisions of the law are being followed.

The Bank may exchange information with other regional insurance supervisors subject to adequate confidentiality safeguards and reciprocity.



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Hon. Winston Jordan, MP
MINISTER OF FINANCE