

THE INSURANCE ACT

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THE INSURANCE ACT

[21st December, 2001.]

Acts
26 of 2001,
6 of 2014
11th Sch.,
1 of 2016.PART I. *Preliminary*

1. This Act may be cited as the Insurance Act. Short title.
- 2.—(1) In this Act, unless the context otherwise requires— Interpreta-
tion.
- “accident insurance business” means the business of effecting and carrying out contracts of insurance (excluding contracts falling within paragraphs (c), (d) and (e) of the definition of “ordinary long-term insurance business”) against the risk of the persons insured sustaining injury or dying as a result of an accident, or of an accident of a specified type, which provides for fixed pecuniary benefits or benefits in the nature of an indemnity or both;
- “actuary” means a person who—
- (a) is a fellow of such professional organization of actuaries as may be prescribed; and
 - (b) satisfies such other requirements as may be prescribed;
- “adjuster” means a person, not being a salaried employee of an insurer or an attorney-at-law for an insurer or insured, who on behalf of an insurer or insured, for compensation, directly or indirectly—
- (a) solicits the right to negotiate the settlement of or investigate a loss or claim under a contract or a fidelity, surety or guaranty bond issued by an insurer; or

(b) investigates, adjusts or settles any such loss or claim,

and includes a person holding himself out as an adjuster, investigator, loss assessor, consultant or adviser with respect to the settlement of such losses or claims, but does not include a person employed as an appraiser, engineer or other expert solely for the purpose of giving expert advice or evidence, or a person who acts as an adjuster of marine losses only;

“agent” means any individual, firm or body corporate, not being an employee of an insurer—

(a) appointed by that insurer, to solicit applications for insurance or negotiate insurance on its behalf (otherwise than through an agent); and

(b) other than a broker, authorized by the insurer, to effectuate and countersign insurance contracts on its behalf;

“annual return” means the return required to be made under section 122 or 123 of the Companies Act;

“Appeal Tribunal” means the Appeal Tribunal established under the Financial Services Commission Act;

“appointed day” means the 21st of December, 2001.

“associated person” shall be construed in accordance with subsection (4);

“association of underwriters” means an association of individual underwriters 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—

(a) is a registered public accountant as defined in section 2 of the Public Accountancy Act; and

(b) satisfies such requirements as may be prescribed,

and includes a firm of such persons;

“bond investment business” means the business (not being life insurance business) of issuing bonds or endowment certificates by which the company, in return for subscriptions payable at periodic intervals of less than six months, contracts to pay the bond holder a sum at some future date, and includes sinking fund and capital redemption insurance business;

“broker” means any person who—

(a) in any manner solicits, negotiates or procures insurance or the renewal or continuance thereof on behalf of insurers or on behalf of agents; or

(b) arranges insurance business with such insurers or agents on behalf of prospective policy holders;

“carrying on insurance business in Jamaica” includes, subject to subsection (2)—

(a) opening or maintaining a place of business or an office or appointing or using a representative in Jamaica, whether or not such business is being arranged in or from Jamaica;

(b) the use in Jamaica of any business description or title in any language of the words “insurance”, “assurance”, “indemnity”, “guarantee”, “under-writing”, “reinsurance”, “surety”, “casualty”, or any of their derivatives, or any expression which connotes or is intended to connote insurance business; and

- (c) the making in Jamaica of any representation in any document or in any other manner offering, directly or indirectly, to arrange contracts of insurance;

“child” in relation to any person includes—

- (a) a child adopted in pursuance of an order made under the Children (Adoption of) Act;
- (b) a step-child and any other child wholly or mainly maintained by that person;

“class of insurance business” means any class of insurance business specified in section 3 (1);

“collector” includes every person, however remunerated, who calls on policy holders for the purpose of receiving premiums payable under industrial life policies;

“Commission” means the Commission appointed under section 3 of the Financial Services Commission Act;

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

“control” means the possession by a person of the power to direct or influence the direction of, the management and policies of a person, through the ownership of voting shares or by contract (other than a commercial contract for goods or non-management services) or otherwise, but does not include any such power derived from an official position with the person concerned;

“Court” means Supreme Court;

“document” includes in addition to a document in writing—

- (a) any map, plan, graph or drawing;
- (b) any photograph;

- (c) any disc, tape, sound track or other device in which sounds or other data are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;

"eligible facultative placement insurer" means an unregistered insurer with which a registered facultative placement broker may place facultative insurance placements;

"equity linked products" means life insurance or annuity products which purport to offer investment benefits that are linked to the performance of certain identifiable investments, whether or not held in separate or segregated funds;

"facultative placement broker" means a person registered under this Act to place, with eligible unregistered insurers, insurance on properties, risks or exposures located or to be performed in Jamaica;

"foreign company" means a company incorporated outside the area of the Caribbean Community and Common Market;

"general insurance business" means insurance business of any class specified in section 3(1) other than ordinary long term insurance business or industrial life insurance business;

"grandchild" means, in relation to any person, a child of that person's child;

"holding company" has the meaning specified in subsection (6);

"industrial life insurance business" means the business of effecting and carrying out insurance upon human life, premiums in respect of which are payable at intervals of less than two months in each case and are contracted to be received, or are usually received, by means of collectors sent by the insurance company to each policyholder, or to his residence or place of work;

"industrial life policy" means a policy in respect of which the premiums are contracted to be received or are usually received by means of collectors, and includes—

(a) a policy that has at any time been such a policy; and

(b) a paid-up policy (not being a policy expressed to be a non-industrial life policy) granted in lieu of an industrial life policy or of a policy referred to in paragraph (a);

"insurance business" means the assumption of the obligations of an insurer in any class of insurance business and includes reinsurance business;

"insurance consultant" means a person providing insurance services not falling within any other category, or holding himself out as such;

"insurance intermediary" means an agent (including a managing general agent), broker (including facultative placement broker and reinsurance broker), sales representative, adjuster, insurance consultant, or such other persons carrying on any business connected with insurance as may be prescribed;

"insurer" means a company carrying on insurance business and, except where otherwise stated, includes all the members of an association of underwriters which is registered as an insurer;

"liability insurance business" means the business of effecting and carrying out contracts of insurance against risks of the persons insured incurring liabilities to third parties, not being risks arising out of, or in connection with the use of, motor vehicles or vessels or aircraft or risks incidental to the construction, repair or docking of vessels or aircraft;

"life insurance business" means the undertaking of liability under policies of insurance upon human life, but does not include industrial life insurance business;

"life insurance fund" means the fund to which the receipts of an insurer in respect of his life insurance business are carried and from which payments in respect of that business are made;

"life insurance policy" means any instrument by which the payment of money is assured on death or the happening of a contingency dependent on human life, or any instrument evidencing a contract which is subject to the payment of premiums for a term dependent on human life, but does not include an instrument by which the payment of money is assured only on accidental death;

"life insurer" means a registered insurer carrying on life insurance business;

"local company" means a company incorporated under the Companies Act or under the relevant law of any member state of the Caribbean Community and Common Market;

"local policy" means a policy issued, whether in or outside Jamaica, by or on behalf of an insurer, upon an application made in Jamaica to an insurer, broker, sales representative or agent; and—

- (a) includes a life insurance policy issued outside Jamaica at the request of the policyholder, which the policyholder has agreed in writing shall be treated as a local policy for the purposes of this Act; but
- (b) does not include a life insurance policy made payable, after the date of its issue, outside Jamaica at the request of the policyholder, which the policyholder has agreed in writing shall not be treated as a local policy for the purposes of this Act;

“long term business” means insurance business of all or any of the following classes, namely, ordinary long term insurance business and industrial life insurance business and, in relation to any company, insurance business carried on by the company as incidental only to any such class of business;

“managing general agent” means any person (other than an employee of an insurer) who—

- (a) manages all or part of the insurance business of a foreign insurer; and
- (b) by whatever name called, acts as an agent for such insurer and—
 - (i) produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to five per cent or more of the policyholder surplus (as reported in the insurer’s last annual statement) in any one quarter or year;
 - (ii) adjusts or pays claims in excess of an amount determined by the Commission;

- (iii) negotiates reinsurance on behalf of the insurer;

but does not include a manager who, pursuant to a contract, manages all or part of the insurer's insurance operations, is under common control with the insurer and whose compensation is not based on the volume of premiums written;

“marine, aviation and transport insurance business” means the business of effecting and carrying out (otherwise than incidentally to some other class of insurance business) contracts of insurance—

- (a) upon vessels or aircraft, or upon the machinery, tackle, furniture or the equipment of vessels or aircraft;
- (b) upon goods, merchandise or property of any description whatever on board vessels or aircraft;
- (c) upon the freight of, or any other interest in or relating to, vessels or aircraft;
- (d) against damage arising out of or in connection with the use of vessels or aircraft, including third-party risks;
- (e) against risks incidental to the construction, repair or docking of vessels, including third-party risks;
- (f) against transit risks (whether the transit is by sea, inland water, land or air, or partly one and partly another) including risks incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance, but not including risks the insurance of which is motor vehicle insurance business; or

(g) against any other risks the insurance of which is customarily undertaken in conjunction with or as incidental to any business referred to in the foregoing paragraphs of this definition;

“motor vehicle insurance business” means the business of effecting contracts of insurance against loss of, or damage to or arising out of or in connection with the use of, motor vehicles, including third-party risks;

“mutual company” means a company whose capital is owned by the policyholders of that company and includes a company which has agreed to purchase back or is in the process of purchasing back its share capital at a fixed price and is recognized by the Commission as a mutual company;

“ordinary life insurance business” means insurance whereby an insurer assumes in return for the payment of a sum or sums of money a contingent obligation dependent on human life but does not include industrial life insurance, personal accident, sinking fund or cancellable group life insurance;

“ordinary long term insurance business” means business (excluding industrial life insurance business) of any of the following kinds, namely, effecting and carrying out contracts of insurance—

- (a) on human life or contracts to pay annuities on human life;
- (b) against the risk of the persons insured sustaining injury or dying as a result of an accident, or of an accident of a specified type;
- (c) against loss resulting from the illness or disability of a person other than loss resulting from death;
- (d) whereby an insurer undertakes to pay a certain sum or sums of money in the event of the illness or disability of a person;

- (e) against expenses incurred for vision or dental care, laboratory or x-ray services, hospitalization, or other medical or health-care services;
- (f) whether effected by the issue of policies, bonds or endowment certificates or otherwise whereby, in return for one or more premiums paid to the insurer, a sum or a series of sums is to become payable to the insured in the future, not being contracts falling within paragraphs (a), (b), (c), (d) or (e).

“pecuniary loss insurance business” means the business of effecting and carrying out contracts of insurance against any of the following risks—

- (a) risks of loss to the persons insured—
 - (i) arising from the insolvency of their debtors or from the failure (otherwise than through insolvency) of those debtors to pay their debts when due;
 - (ii) attributable to their incurring unforeseen expense; and
- (b) risks not falling within paragraph (a) nor being of such kind that the carrying on of the business of effecting and carrying out contracts of insurance against them constitutes the carrying on of some other class of insurance business;

“policy” means an insurance policy;

“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;

“prescribed securities” means any securities or class of securities prescribed by regulations made under this Act;

- “principal office” means the place in Jamaica where the insurance business of a company is controlled or managed;
- “principal representative” means the representative notified to the Commission in accordance with section 24;
- “property insurance business” means the issue of, or the undertaking of liability under, policies of insurance against loss of or damage to real or personal property of every kind and interests therein, from any hazard or cause, or against loss consequential upon such loss or damage, not being risks the insurance of which is motor vehicle insurance business or marine, aviation and transport insurance business;
- “register” means the register of policies referred to in section 124;
- “registered insurance agent” means an insurance agent registered in accordance with Part IV;
- “registered insurance broker” means an insurance broker registered in accordance with Part IV;
- “registered insurer” means an insurer registered in accordance with Part II or Part III, as the case may require;
- “reinsurance broker” means any person, other than an officer or employee of a ceding insurer, who solicits, negotiates or places reinsurance or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of that insurer;
- “reinsurer” means any registered insurer who is authorized by this Act to assume reinsurance;
- “sales representative” means an individual employed by an insurer, agent or a broker, to solicit applications for insurance or to negotiate insurance on behalf of that insurer or agent or on behalf of the client or broker, as the case may be, and includes a collector;

“scheme” means, in relation to sections 33 and 34, a proposal for the transfer, acquisition or amalgamation of an insurance business;

“sickness and health insurance business” means business of any of the following kinds, namely, effecting and carrying out contracts of insurance—

- (a) against loss resulting from the illness or disability of a person other than loss resulting from death;
- (b) whereby an insurer undertakes to pay a certain sum or sums of money in the event of the illness or disability of a person; or
- (c) against expenses incurred for vision or dental care, laboratory or x-ray services or hospitalization, or other medical or health-care services;

“spouse” includes—

- (a) a single woman who has cohabited with a single man as if she were in law his wife for a period of not less than five years; or
- (b) a single man who has cohabited with a single woman as if he were in law her husband for a period of not less than five years,

and the terms “single woman” and “single man” include widow or widower or a divorcee;

“underwriting liabilities” in relation to a member of an association of underwriters, means the liabilities of the member’s insurance business calculated in accordance with formulae fixed by the governing body of the association and approved—

- (a) in the case of an association constituted in Jamaica, by the Commission; and

(b) in the case of an association constituted in a country outside Jamaica, by the authority in that country in whom is vested the administration of the law relating to associations of underwriters.

(2) For the purposes of this Act—

(a) a person shall not be treated as carrying on insurance business in Jamaica if the only reason for so treating the person is the fact that the risk covered by a policy of insurance issued by that person is situated in Jamaica;

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(b) any of the following activities effected in any manner shall be deemed to constitute the carrying on of insurance business in or from Jamaica—

- (i) making of or proposing to make, as an insurer, an insurance contract;
- (ii) making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a business and not merely incidental to any other of the guarantor's or surety's legitimate business or activity;
- (iii) taking or receiving an application for insurance;
- (iv) receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for insurance or any part thereof;

- (v) issue or delivery in Jamaica of contracts of insurance to persons resident in Jamaica or authorized to do business in Jamaica;
- (vi) solicitation, negotiation, procurement or effecting of insurance or renewals thereof;
- (vii) dissemination of information as to insurance coverage or rates; 1/2016 S.2(a).
- (viii) forwarding of applications, delivery of policies or insurance contracts; 1/2016 S.2(a).
- (ix) inspection of risks, fixing of rates or investigation or adjustment of claims or losses; 1/2016 S.2(a).
- (x) transaction of matters subsequent to or arising out of the effecting of an insurance contract; 1/2016 S.2(a).
- (xi) representing or assisting a person or insurer in the transaction of risks with respect to properties, risks or exposures located or to be performed in Jamaica;
- (xii) transaction of any class of insurance business specifically recognized as transacting of insurance business within the meaning of this Act;
- (xiii) offering of insurance or transacting of insurance business;
- (xiv) offering an agreement or contract which purports to alter, amend or void coverage of an insurance contract.

(3) In determining whether a person is a fit and proper person for the purpose of this Act, the Commission shall consider whether he is a person—

- (a) who, whether in Jamaica or elsewhere—
 - (i) has not been convicted of an offence involving dishonesty; or
 - (ii) is not an undischarged bankrupt;
- (b) whose employment record does not give the Commission reasonable cause to believe that the person carried out any act involving dishonesty or any act involving impropriety in the handling of insurance business; or
- (c) who, in the Commission's opinion is a person of sound probity, is able to exercise competence, diligence and sound judgment in fulfilling his responsibilities in relation to insurance business and whose relationship with an insurance company will not threaten the interests of policy holders; and for the purposes of this paragraph, the Commission shall have regard to any evidence that he has—
 - (i) engaged in any business practices appearing to the Commission to be deceitful or oppressive or otherwise improper which reflect discredit to his method of conducting business;
 - (ii) contravened any provision of the Banking Services Act, the Deposit Insurance Act or any other Act being a relevant Act within the meaning of the Financial Services Commission Act.

(4) For the purposes of this Act, the following persons shall be treated as being associated with a given person ("A") and he with them, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or had ceased to exist—

- (a) a holding company or subsidiary of A;
- (b) subsidiary of a holding company of A;
- (c) a holding company of a subsidiary of A;
- (d) any company of which A has control;
- (e) any company of which A and persons connected with A together have control;
- (f) any company which together with A constitute a group;
- (g) an individual who is a director, manager or a person who has control of A or any partner or any immediate relative of such director, manager or person as aforesaid;
- (h) any company of which any of the persons referred to in paragraph (g) is a director, manager or has control.

(5) In subsection (1) "group" in relation to a company, means that company and—

- (a) any other company which is its holding company or subsidiary;
- (b) any other company which is a subsidiary of the holding company;
- (c) any company which directly or indirectly controls or is controlled by any company referred to in paragraph (a) or (b).

(6) For the purposes of this Act, "holding company" has the same meaning as in section 151 of the Companies Act which, subject to subsection (7), shall apply with such modifications as to disregard whether or not shares held or the power exercisable by one company (hereinafter called "HC") on behalf of another company are or is by virtue of a trust or as a nominee for a third party.

(7) The modifications under subsection (6) shall not apply where HC holds the shares of the other company—

- (a) solely for the *bona fide* purpose of recovering monies lent under a debenture, or other loan agreement;
- (b) solely for the *bona fide* purpose of securing credit facilities; or
- (c) solely for the purpose of any proceedings relating to bankruptcy, liquidation or receivership.

(8) The Commission may conduct such investigations as may be necessary to determine whether any company is a holding company pursuant to the provisions of this Act.

Application
of Act.

3.—(1) Subject to this section, this Act applies to all insurance intermediaries and all insurers, whether established in or outside of Jamaica that carry on in Jamaica any or all of the following classes of insurance business—

- (a) ordinary long term insurance business;
- (b) property insurance business;
- (c) accident insurance business;
- (d) liability insurance business;
- (e) pecuniary loss insurance business;
- (f) motor vehicle insurance business;
- (g) marine, aviation and transport insurance business;
- (h) industrial life insurance business;
- (i) sickness and health insurance business;
- (j) such other classes of insurance business as may be prescribed by the Minister by order, subject to affirmative resolution.

(2) A body corporate incorporated under the Companies Act that carries on any class of insurance business in any other country shall, for the purposes of this Act, be deemed to be a company carrying on such business in Jamaica.

(3) For the purposes of this Act, the reinsurance of liabilities under insurance policies shall be treated as insurance business of the class and type to which the policies would have belonged if they had been issued by the reinsurer, and all the provisions of this Act apply to such reinsurance except that a company or an association of underwriters carrying on the reinsurance shall not be required to make, in respect of such reinsurance, any deposit as required by section 21 or 69.

(4) Part II does not apply to associations of underwriters.

(5) This Act does not apply to any organization that is registered under any enactment that relates to friendly societies, co-operative societies, building societies, trade unions or to any other similar organization.

4. The Commission shall be responsible for the general administration of this Act. Commission responsible for administration of Act.

5. The Commission shall cause to be maintained separate registers of the following— Registers.

- (a) companies registered to carry on in Jamaica, the various classes of insurance business specified in section 3 (1);
- (b) association of underwriters;
- (c) insurance intermediaries,

and such other registers as may be required to be maintained under this Act or as may be prescribed.

PART II. *Regulation of Insurance Companies*
Registration

Only bodies corporate to carry on insurance business.

6. Subject to this Act, no person other than a body corporate shall carry on insurance business in Jamaica.

Registration of bodies corporate carrying on insurance business.

7.—(1) A body corporate shall not carry on any class of insurance business specified in section 3 (1) unless—

(a) it is registered by the Commission under this Act in respect of that class of insurance business; and

(b) it has—

(i) made the deposit required by section 21; and

(ii) filed with the Commission, the names and addresses of persons resident in Jamaica who are authorized to accept on behalf of the body corporate, service of process in legal proceedings.

(2) Subsection (1) shall not apply to persons carrying on insurance business pursuant to section 20.

(3) Any person who contravenes section 6 or this section shall be guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Restrictions regarding registration.

8. An insurance company shall not be registered under this Part to carry on both long term and general insurance business unless such general insurance business consists exclusively of accident insurance business.

Share capital and deposit required for registration.

9.—(1) Subject to subsection (2), no company shall be registered to carry on any class of insurance business, unless—

- (a) it has paid-up capital and surplus of the prescribed amount; and
- (b) it has deposited with the Commission, the prescribed deposit referred to in section 21.

(2) Subsection (1) (a) shall not apply to a mutual company but no company shall be registered as a mutual company unless it has, in relation to policyholders, an uncommitted reserve of the prescribed amount.

10.—(1) An application for registration under this Part shall be made to the Commission in the prescribed form and shall be accompanied by evidence of payment of the prescribed fee and by such documents as may be prescribed. Application for registration.

(2) The Commission may, upon receipt of an application under this section, request the applicant to furnish such additional information as it may consider relevant to the application.

11.—(1) The Commission shall act in accordance with subsection (2) in relation to an applicant if, after appropriate enquiry or by the production of documentary evidence or both, the Commission is satisfied in respect of the applicant that— Conditions for registration.

- (a) the requirements of sections 6, 9 and 10 have been complied with;
- (b) the company is solvent under the provisions of section 53;
- (c) the company is likely to be able to comply with such of the provisions of this Act as would be applicable to it;
- (d) the company has made adequate arrangements for reinsurance of that class of insurance business or that there is no justification for making such arrangements;

- (e) each of the persons managing or controlling the company is a fit and proper person to manage or control such a company;
- (f) the company is able to implement a policy for settlement of claims without undue delay;
- (g) the name of the company is not identical with or does not so closely resemble the name of an insurance company already registered under this Act as to be likely to deceive;
- (h) in the case of a foreign company, it—
 - (i) is lawfully constituted in accordance with the laws of the country in which it is incorporated and has undertaken insurance business in that country for at least five years before the date of the application; and
 - (ii) has appointed some person resident in Jamaica to be its principal representative in Jamaica and has informed the Commission in writing of the name and address of that person; and
- (i) the company has satisfied such other requirements as may be prescribed.

(2) The Commission may, either unconditionally or subject to such conditions as it may specify, register the insurance company in respect of the class or classes of insurance business specified in the application and shall notify the applicant accordingly.

(3) Where, in relation to all or any of the classes of insurance business specified in the application, the Commission is not satisfied as to one or more of the conditions set out in subsection (1), it shall—

(a) notify the applicant in writing that it intends to refuse to register it in respect of one or more of such classes of insurance business, giving reasons therefor; and

(b) afford the applicant an opportunity to make oral or written representations on the intended action. ^{1/2016}
^{S.3(a)}

(4) After affording the applicant an opportunity to make representations under subsection (3)(b), the Commission shall notify the applicant in writing— ^{1/2016}
^{S.3(b)}

(a) of its decision; and

(b) in the case of a decision to refuse registration, of the applicant's right under section 140 to appeal to the Appeal Tribunal.

12. The Commission shall furnish to every company registered under this Act a certificate of registration in the prescribed form which shall— ^{Certificate of registration}

(a) contain a statement of the class or classes of insurance business for which the company is registered; and

(b) be *prima facie* evidence of such registration.

Notification
of change in
particulars
specified in
application

13. Where, after the registration of a company under this Act, any change takes place in the particulars specified in the application for registration or in the particulars of the information or documents required to accompany the application, the company shall, within thirty days of such change, notify the Commission in writing of the change.

Suspension of
registration

14.—(1) Subject to subsection (2), the Commission may suspend the registration of an insurance company in respect of all or any of the classes of business in relation to which it is registered, if—

(a) it is satisfied that the company is in breach of any provision of this Act, where that breach would constitute a ground for cancellation as specified in section 15; or

(b) proceedings for its winding-up have commenced.

(2) Before taking action under subsection (1), the Commission shall give written notice to the company concerned—

(a) stating its intention to suspend the company's registration, giving reasons therefor and specifying the right of appeal under section 140;

- (b) indicating a period within which the company may make written and oral representations on the intended action; and

- (c) requiring the company to take such action as is specified in the notice to remedy the breach within the period so specified.

(3) Where a company fails to comply with a notice under subsection (2), the Commission may, subject to section 16—

- (a) immediately suspend the company's registration; or

- (b) extend the period specified in the notice; and if the breach is not remedied within that extended period, suspend the company's registration.

15.—(1) Where any of the matters specified in subsection (3) (a) or (b) applies in relation to an insurance company, the Commission may cancel the registration of the company.

Grounds for
Cancellation
of
registration.

(2) Before taking action under subsection (1), the Commission shall—

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- (a) notify the insurance company in writing that the Commission intends to cancel the company's registration in respect of all or any of the classes in relation to which the company is registered, giving the reasons therefor; and

- (b) afford the insurance company an opportunity to make oral or written representations on the intended action.

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(2A) After affording the insurance company an opportunity to make representations under subsection (2)(b), the Commission shall notify the applicant in writing—

- (a) of its decision; and

- (b) in the case of a decision to cancel registration, of the applicant's right under section 140 to appeal to the Appeal Tribunal.

(3) The Commission may take action under subsection (1) where at any time—

- (a) the Commission is satisfied that—
- (i) the registration was procured as a result of any misleading or false representation or in consequence of any incorrect information (whether the representation was made or the information was supplied wilfully or otherwise);
 - (ii) the company is insolvent;
 - (iii) the company's insurance business or any class thereof is not being conducted in accordance with sound insurance principles and practice;
 - (iv) any of the company's reinsurance arrangements are not satisfactory;
 - (v) the company has been guilty of unreasonable delay in the payment or settlement of any claim arising under any policy issued by it;
 - (vi) the company has contravened any provision of this Act or of any regulations made hereunder, or any condition, direction or requirement imposed under this Act by the Commission, or has been an accessory to any such contravention by any other person;
 - (vii) the company has failed to satisfy the obligation imposed by section 144 of the Companies Act with respect to the keeping of proper books of account or to produce books kept in satisfaction of that obligation and the Commission is unable to ascertain the company's financial position; or

(viii) thirty days have elapsed since the date before which the company was required under any provision of this Act to furnish information to the Commission and the company has, without reasonable excuse, failed to furnish that information duly and satisfactorily; or

(b) a final judgment is obtained against the company in any court in Jamaica and remains unsatisfied for more than one month.

Implementa-
tion of
proposal to
refuse or
cancel
registration.

16. Where an insurance company which has been notified under section 11(3), 14(2) or 15(1) of its right of appeal—

(a) fails to lodge any such appeal or, as the case may be, withdraws an appeal; or

(b) the result of the appeal is the confirmation, with or without variation, of the Commission's proposal, then, subject to any such variation, the Commission shall give effect to the proposal and notify the company in writing accordingly.

Summary
cancellation
of registra-
tion.

17.—(1) The Commission may at any time cancel the registration under this Act of an insurance company if—

(a) the Commission is satisfied that it—

(i) has not, within two years of its registration, begun to carry on insurance business of any class in Jamaica; or

(ii) has ceased to carry on insurance business in Jamaica for more than two years;

(b) proceedings for its winding up have commenced; or

(c) the insurance company, or its liquidator, or trustee so requests,

and it shall notify the company in writing of such cancellation.

(2) The Commission shall not cancel the registration of an insurer under subsection (1) unless the Commission is satisfied that—

- (a) the insurer has no unpaid claims in respect of the insurer's contracts of insurance made in Jamaica;
- (b) all of the insurer's contracts of insurance made in Jamaica are discharged or expired, or have been transferred or assigned to another registered insurer; and
- (c) the insurer has no outstanding fees or taxes payable to the Government.

18.—(1) Notwithstanding section 7, upon the cancellation of an insurance company's registration—

Effect of
cancellation
of registra-
tion.

(a) the company shall—

- (i) to such extent and in such manner as the Commission may determine; and
- (ii) for such period not exceeding one year or such period as the Commission may by order prescribe,

carry on business in respect of obligations under contracts of insurance entered into before such cancellation, with a view to meeting those obligations and without undue inconvenience to policyholders, until the Commission is satisfied that it has made suitable arrangements for the discharge of those obligations;

(b) the company may not, after the date of notification of cancellation, issue any new policy or enter into any new contract in relation to which registration is required.

(2) Nothing in subsection (1) (a) shall be construed as authorizing the renewal, after the notification date, of any policy issued before that date, and where any such policy is renewed after that date the company shall be regarded as having issued a new policy in contravention of subsection (1) (b), unless the Commission, in a case of hardship, otherwise permits.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and is liable on summary conviction—

- (a) in the case of a failure to comply with subsection (1) (a), to the penalties specified in section 148; and
- (b) in the case of a contravention of subsection (1) (b), to the penalties specified in section 7 (3).

Display and
surrender of
registration
certificate.

19.—(1) Every company registered under this Part shall prominently display its registration certificate at its principal office, in a part thereof to which the public have access, and a copy thereof shall be similarly displayed at each of its branches in Jamaica.

(2) A company whose registration is cancelled shall, on receipt of the notice of such cancellation, forthwith surrender the registration certificate and every copy thereof to the Commission.

(3) Every person who, without lawful excuse—

- (a) fails to comply with subsection (1) or (2); or
- (b) displays a registration certificate or any copy thereof which is no longer valid,

shall be guilty of an offence and liable on summary conviction in a Resident Magistrate's Court—

- (c) in the case of an offence specified in paragraph (a), to a fine not exceeding five hundred thousand dollars; or
- (d) in the case of an offence specified in paragraph (b) to a fine not exceeding three million dollars.

20.—(1) From and after the appointed day, a registered insurer or insurance intermediary shall not, except in the case of reinsurance and such classes of insurance as may be prescribed, place or cause to be placed with an insurer not registered under this Act, insurance in respect of property situate or liabilities arising in Jamaica, or goods being imported into Jamaica. Contracts with non-registered companies

(2) Any registered insurer or insurance intermediary who desires to enter into an insurance contract with an unregistered insurer (other than a contract relating to reinsurance) or to cause to be placed such a contract, shall apply to the Commission for permission to do so and the Commission may grant such permission if it is satisfied that—

- (a) it is not possible to obtain similar protection from an insurer registered under this Act; and
- (b) the applicant meets the prescribed requirements.

(3) For the avoidance of doubt it is hereby declared that, the Commission, by granting permission under subsection (2), does not assume any liability towards the applicant in relation to the insurance contract concerned or its placement.

21. A company shall not be registered under this Act to carry on, and shall not carry on, any class of insurance business unless it had deposited with the Commission the prescribed deposit. Amount and form of deposit by companies.

Investment of Funds of Insurance Companies

22.—(1) The funds of every insurer carrying on insurance business in Jamaica shall be invested in accordance with regulations made under this Act. Investments of funds.

(2) An insurance company which contravenes subsection (1) shall be guilty of an offence.

(3) Every insurer shall inform the Commission of—

(a) the names of persons having control of any certificate or other document of title to investments referred to in subsection (1); and

(b) the place where that document of title is kept.

(4) The Commission may, where it considers necessary, direct an insurer to—

(a) lodge any such certificate or any related document with a trust company, bank or other financial institution approved by the Commission; or

(b) keep it at the insurer's principal office.

(5) A document lodged or kept in accordance with the Commission's directions may be dealt with or released in the prescribed manner.

(6) No insurer shall increase its holding in securities or assets prescribed under subsection (1) to an amount more than the prescribed amounts without the approval of the Commission.

Prohibition
relating to
loans.

23.—(1) A registered insurer shall not, directly or indirectly—

- (a) acquire or deal in its own shares or lend money or make advances on the security of its own shares;
- (b) lend any of its funds to a director or an officer of the insurer or to the spouse or a child of a director or an officer except on the security of the insured's own policies;
- (c) grant unsecured credit facilities to any person except for—
 - (i) temporary cover, not exceeding thirty days, in the case of general insurance; 1/2016
S. 5(a).
 - (ii) advances to agents, sales representatives or to full-time employees against commissions or salaries to be earned; or 1/2016
S. 5(a).
 - (iii) facilities allowing time for the payment over of premiums to insurance companies by brokers within the prescribed period; 1/2016
S. 5(a).
- (d) enter into any guarantee or provide any security in connection with a loan by any other person to any person referred to in paragraph (b).

(1A) Nothing in subsection (1) (c) (iii) applies to other credit arrangements among insurers and brokers. 1/2016
S. 5(b)

(2) Every director of a registered insurer who knowingly contravenes subsection (1) (b) shall be guilty of an offence.

Administrative and Accounting Requirements for Insurance Companies

24.—(1) Every registered insurer shall maintain a principal office in Jamaica and shall— Maintenance of principal office and appointment of principal representative.

- (a) appoint some fit and proper person resident in Jamaica to be its principal representative in Jamaica; and

- (b) notify the Commission in writing of the situation of its principal office and of the name and address of its principal representative.

(2) A registered insurer shall, prior to or not later than seven days after any change in the particulars specified in subsection (1)(b), give written notice thereof to the Commission.

Maintenance
and separation
of funds.

25.—(1) Subject to this Act, where a registered insurer carries on—

- (a) only one of the specified classes of insurance business; or
- (b) two or more of the specified classes of insurance business,

referred to in subsection (3), the receipts and expenditure of such class of insurance business, or of each of such classes of insurance business, as the case may be, shall be entered in a separate account and shall be carried to and from a separate insurance fund, as may be prescribed.

(2) Subject to this Act, a fund of any particular class—

- (a) shall be as absolutely the security of the policyholders of that class as though it belonged to an insurer carrying on no other business than insurance business of that class;
- (b) shall not be used to satisfy liability for any of the insurer's contracts that it would not have been used to satisfy had the insurer's business been only that class of insurance; and
- (c) shall not be applied, directly or indirectly, for any purposes other than those of the class of business to which the fund is applicable.

(3) For the purposes of subsection (1), "specified classes" means the following classes, namely, ordinary long term insurance business, industrial insurance business, sickness and health and such other classes as may be prescribed.

26.—(1) Subject to subsections (2) and (8), every registered insurer shall—

Preparation
of annual
accounts, etc

- (a) within ninety days after the end of each financial year, submit to the Commission, an annual statement and related documents in the prescribed form and containing the prescribed information;

- (b) within fourteen days after the date on which the documents referred to in paragraph (a) are submitted to the Commission, cause a copy of the audited financial statements to be published—
- (i) if the insurer has a website—
 - (A) on the insurer's website; and
 - (B) in a daily newspaper printed and circulated throughout Jamaica, in accordance with such abridged form as may be prescribed by the Commission; or
 - (ii) if the insurer does not have a website, in a daily newspaper printed and circulated throughout Jamaica; and
- (c) exhibit throughout each year a copy of the latest audited financial statement in a conspicuous position in each place of business of the insurer in Jamaica.

(2) The annual statement referred to in subsection (1) shall be certified by the company's independent auditor and, in the case of long term business, by an actuary and shall relate—

- (a) in the case of a local company incorporated under the Companies Act, to its business in and outside Jamaica;
- (b) in the case of a local company incorporated under the relevant law of another member state of the Caribbean Community and Common Market, to its business in Jamaica; and
- (c) in the case of a foreign company, to its business in Jamaica.

(3) Where, in the opinion of the Commission, a document furnished by a registered insurer under this section is incorrect or incomplete in any respect or is not prepared in accordance with this Act, the Commission may, by notice in writing, require the company to amend the document or to furnish a correct or complete document or, as the case may be, a document prepared in the prescribed manner.

(4) Where an insurer fails to comply with a notice referred to in subsection (3) to the satisfaction of the Commission, the Commission may amend the document in question and notify the insurer of particulars of the amendments or may reject the document.

(5) A document amended by the Commission or by a registered insurer under this section shall be treated as having been submitted to the Commission in its amended form.

(6) Where a document is rejected by the Commission under subsection (4), the insurer concerned shall be treated as having failed to comply with this section in relation to that document unless and until it has furnished another document in accordance with the Commission's directions.

(7) An insurer which is liable under a local policy shall, at the request of the policyholder, permit him to inspect the audited financial statement in respect of its last preceding financial year and if he so requests, furnish him with a copy free of charge.

(8) This section shall not apply in the case of an insurer that carries on only a class of insurance business declared exempt for the time being by virtue of section 145.

(9) Every person who, without lawful excuse, fails to comply with any requirement of this section commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars.

Group
accounts.

27.—(1) This section applies where a registered insurer is associated with another registered insurer or with other companies in a group.

(2) In addition to the returns required by section 26, the parent company of the group shall prepare in the prescribed form and manner and submit to the Commission, within ninety days after the end of its financial year—

- (a) a consolidated balance sheet showing at the close of that year the financial position as a group of the parent company and all its subsidiaries;
- (b) a consolidated profit and loss account showing the profit or loss as a group of the parent company and all its subsidiaries during that year; and
- (c) such other documents as may be prescribed.

(3) The balance sheet and profit and loss account shall bear a certificate by an independent auditor approved by the Commission as to whether in his opinion it gives a true and fair view of the financial position referred to in subsection (2) (a) or, as the case may be, of the profit and loss referred to in subsection (2) (b).

(4) Each subsidiary or other associated company in the group shall, within ninety days of the end of its financial year, submit to the Commission an audited balance sheet and profit and loss account in respect of all business transacted by it in that year, and signed by not less than two of its directors.

(5) If in the opinion of the Commission the information contained in the consolidated accounts furnished by a registered insurer or individual accounts furnished by a registered insurer's subsidiary, parent or holding company, as the case may be, indicate the likelihood of insolvency on the part of the registered insurer, its parent or holding company or any part of its subsidiaries, the Commission may after consultation with the registered insurer, issue to the registered insurer such directions as the Commission thinks fit and without prejudice to the generality of the forgoing, the directions may require—

- (a) the increase of the paid-up capital of the registered insurer or as the case may be, the paid-up capital of the subsidiary;
- (b) the sale, transfer or other disposition of the subsidiary or of part of its business;
- (c) the winding up of the subsidiary.

Audit of
accounts of
registered
insurer.

28.—(1) The account of every registered insurer shall be audited annually by an independent auditor who shall not be an employee or an officer of the insurer.

(2) The auditor of every registered insurer shall satisfy himself that the accounts of the company have been properly prepared in accordance with the books and records of the company and shall certify whether—

- (a) he has obtained adequate information from the books and records of the insurer;
- (b) the insurer's accounts accord with the information given to him by the insurer for the purposes of the audit;
- (c) in the case of an insurer other than a mutual company, the insurer's balance sheet and profit and loss account respectively give a true and fair view of the insurer's financial position and profit and loss; and

- (d) in the case of a mutual company, the balance sheet, statement of income and expenditure and funds give a true and fair view of the insurer's financial position.

29.—(1) Every registered insurer shall keep in Jamaica, and shall make available to the Commission on request, all records in respect of its operation, including—

Keeping of
records by
insurers.
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S. 7

- (a) a record of all local policies issued by the insurer showing the insurer's rights and obligations thereunder;
- (b) a record of the aggregate amount of the premiums received on all local policies issued by the insurer; and
- (c) a record of all premiums paid in reinsurance.

(2) The records mentioned in subsection (1) shall be retained for a period of not less than seven years.

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Risk
management
procedures

29A. Every registered insurer shall establish and adhere to risk management procedures which accord with such standards as the Commission may prescribe.

Annual
investigations
into financial
position of
insurers
carrying on
long term
business.

30.—(1) Every registered insurer that carries on long term business shall—

- (a) each year, cause an investigation to be made by an actuary into its financial position, including a financial valuation of its liabilities; and

- (b) prepare and furnish to the Commission, within ninety days from the date of the investigation, an abstract of the report of the actuary and a statement of its long term business at that time.

(2) Section 26 (3), (4), (5) and (6) shall apply, with such modification as may be necessary, in relation to an abstract or statement referred to in subsection (1).

(3) Notwithstanding subsection (1), every registered insurer that carries on long term business shall submit to the Commission an annual report prepared in the prescribed form by an independent actuary indicating the value of its assets and the value of its liabilities.

31.—(1) Subject to section 32, an insurance company whether or not it has ceased to issue new policies of insurance or to assume fresh liabilities in Jamaica may, with the approval of the Commission in writing, enter into an agreement or arrangement—

Amalgamation and transfer.

- (a) to amalgamate its property and insurance business (whether in whole or in part) with the property and insurance business of any other insurance company;
- (b) to transfer its insurance business (in whole or in part) to or have it acquired by another insurance company.

(2) An application to the Commission for approval pursuant to subsection (1) shall be presented in the form of a scheme and shall be regulated in accordance with such provisions as may be prescribed.

(3) The Commission may approve any transfer, acquisition or amalgamation either unconditionally or subject to such conditions as it may specify in writing.

(4) This section applies in respect of the transfer, acquisition or amalgamation of insurance business of companies if—

- (a) the benefits accruing are from policies issued and payable in Jamaica; or
- (b) the policies are subject to the jurisdiction of the courts in Jamaica.

(5) Where an amalgamation or transfer takes place, the insurance company as amalgamated or to which business is transferred shall, within thirty days from the date of completion of the amalgamation or transfer or such longer period as the Commission may allow, deposit with the Commission—

- (a) certified copies of statements of the assets and liabilities of the companies concerned in the amalgamation or transfer, together with a statement of the nature and terms thereof;
- (b) a certified copy of the agreement or deed under which the amalgamation or transfer is effected;
- (c) a declaration signed by the secretary or manager, if any, and at least two directors of the company that to the best of their belief—
 - (i) every payment made or to be made to any person on account of the amalgamation or transfer is therein fully set out; and
 - (ii) no payments other than those set out have been made or are to be made by or with the knowledge of any parties to the amalgamation or transfer.

(6) For the purposes of this section and sections 32, 33 and 34 “insurance business” means—

- (a) the assumption of the obligations of any insurer in any class of business;
 - (b) the assumption of the business of insuring risks or liabilities;
 - (c) the renewal and issuing of documents of renewal of existing insurance and liabilities; or
 - (d) the receiving of first, subsequent or renewal premiums,
- and includes reinsurance.

(7) A person who in any statement, agreement, deed or declaration referred to in subsection (5) causes or permits the inclusion of any information which he knows to be false in a material particular or recklessly includes any information which is false in a material particular shall be guilty of an offence.

32. Where an application is made to the Commission for the approval of any transaction, arrangement or agreement under section 31, after transfer or by virtue of which effective control of the applicant company would be acquired by another person or company, the Commission shall not give approval unless it is satisfied that such person or each of the persons managing or controlling such other company is a fit and proper person to manage or control the insurance company as amalgamated or to which the whole or part of its business is transferred or acquired.

Regulation of controlling interest after transfer or amalgamation.

33.—(1) Any person who is likely to be affected by a proposed scheme may, within thirty days of publication of the prescribed notice or, as the case may be, service upon him of such notice, make an application to the Commission in respect of any matter related to the scheme.

Application by persons affected by scheme.

(2) The Commission shall, upon receipt of an application under subsection (1), fix a date for the hearing by it of the application and shall—

- (a) in writing inform the applicant of the date of the hearing; and
- (b) not less than fourteen days before the hearing, publish a notice of the application and the date of the hearing in the *Gazette* and at least three times in a daily newspaper published in Jamaica.

(3) The following persons are entitled, either in person or by their legal representatives, to be heard at the hearing—

- (a) the applicant;
- (b) every company that is interested in the application; and
- (c) any person who, in the opinion of the Commission, is likely to be affected,

and the Commission may, in dealing with the application, hear such evidence as it deems necessary.

(4) The Commission shall not approve a scheme unless—

- (a) the provisions of section 32 are complied with;
- (b) subject to paragraph (c), a number of policyholders representing not less than one-tenth of the total amount assured in any one portfolio involved in the scheme do not dissent therefrom; or
- (c) in the case of a group policy, a number of policyholders representing not less than one-quarter of the total group in any one portfolio to which the scheme relates, do not dissent therefrom; or
- (d) it is satisfied that—
 - (i) the continuing insurer is incorporated in Jamaica; or
 - (ii) the acquisition, amalgamation or transfer is not detrimental to the policyholders.

(5) Notwithstanding subsection (4), the Commission may refuse to approve a scheme where a number less than that indicated in subsection (4) dissents therefrom, if—

- (a) in its opinion, the circumstances of the case so require; or
- (b) it is satisfied that a proposed amalgamation will be detrimental to the policyholders.

(6) All expenses incurred by the Commission in obtaining any report on the scheme, including the report of any actuary, shall be defrayed by the companies concerned and any moneys due as a result of those expenses may be recovered from those companies by the Commission in a Resident Magistrate's Court as a civil debt due to the Crown notwithstanding any limitation as to amounts recoverable under the Judicature (Resident Magistrates) Act.

(7) For the purposes of subsection (4), “group policy” means a policy of insurance, not being a policy that operates in favour of a family, whereby the lives of a number of persons are insured severally under a single contract between an insurer and an employer or other person.

34.—(1) Subject to subsection (2), a scheme approved by the Commission is binding on the companies affected by it, and on all shareholders, members and policyholders and has effect notwithstanding anything contained in—

Effect of decisions of Commission and appeals.

(a) any policy or any instrument constituting the companies; or

(b) any rules or by-laws of the companies, and the directors of those companies shall cause a copy of the scheme as approved to be filed with the Registrar of Companies.

(2) An appeal from a decision of the Commission approving or disapproving a scheme may be made to the Appeal Tribunal within fifteen days of the decision.

35.—(1) Where the Commission has approved an agreement or arrangement referred to in section 31, the Minister upon application by the insurance company to which the property or business is transferred (hereinafter referred to as “the transferee insurance company”) may, if he thinks fit, make an order transferring to and vesting in the transferee insurance company, in accordance with the agreement or arrangement approved by the Commission, the property or business of the other insurance company (hereinafter referred to as “the transferor insurance company”) which is the subject of the agreement or arrangement, and thereupon—

Vesting by Minister.

(a) the property or business which is the subject of the agreement or arrangement shall vest in the transferee insurance company without further conveyance, assignment and assurance; and

- (b) without prejudice to paragraph (a), the transferor insurance company shall, if requested by the transferee insurance company, execute such formal and separate conveyances, assignments and assurances as are reasonably required by the transferee insurance company in conformity with the agreement or arrangement.

(2) A transfer or vesting effected by an order under subsection (1) shall not—

- (a) operate as a breach of covenant or condition against alienation;
- (b) give rise to any forfeiture;
- (c) invalidate or discharge any contract or security; or
- (d) except as provided in subsection (1), affect any interest in or relating to the property transferred.

(3) The transfer to and vesting in the transferee insurance company of any property or business pursuant to this section shall, if the Minister so states in the order, not be subject to the provisions of the Stamp Duty Act or the Transfer Tax Act.

Corporate Governance, Appointment of Auditor and Actuary

Duty of care
of directors
and senior
officers.

36. For the purpose of discharging his duty to act honestly and in good faith with a view to the best interests of an insurance company, a director or senior officer thereof shall take into account the interests of the company's policyholders.

Appointment
of auditor.

37.—(1) Every registered insurer, agent and broker shall appoint an auditor and shall forthwith notify the Commission of—

- (a) the auditor's appointment or the auditor's resignation;
- (b) the removal of the auditor and the reasons therefor; and
- (c) any other occurrence that causes a vacancy in the office of auditor.

(2) Where, to the knowledge of the Commission, there is a vacancy in the office of auditor under subsection (1), the Commission shall by notice in writing to the registered insurer, agent or broker, require the insurer, agent or broker to appoint an auditor by the date specified in the notice.

(3) Where a registered insurer, agent or broker fails to appoint an auditor by the date specified in the notice under subsection (2)—

- (a) the Commission shall appoint an auditor to hold office until the close of the next annual general meeting and the insurer, agent or broker shall pay the auditor so appointed, remuneration at such rate as the Commission shall direct; and
- (b) the insurer, agent or broker shall not remove the auditor before the expiration of his term of office.

(4) A registered insurer, agent or broker shall—

- (a) ensure that its auditors or one of its auditors is also the auditor of any of its subsidiaries;
- (b) where it is unable to ensure that result, deliver to the Commission, a written explanation to the satisfaction of the Commission, of the reasons therefor.

(5) The Commission may require an insurance company to appoint, in such circumstances as may be prescribed, an additional auditor to hold office for a term specified by the Commission.

(6) The insurance company shall pay to the additional auditor so appointed, remuneration at a rate specified by the Commission.

Resignation of auditor. **38.**—(1) Where an auditor appointed by a registered insurer or a registered insurance intermediary resigns at any time during the currency of his appointment, he shall notify the insurer or intermediary in writing of the reasons for his resignation.

(2) The registered insurer or registered insurance intermediary shall deliver a copy of the notice referred to in subsection (1)—

- (a) to the Commission; and
- (b) to the new auditor appointed by it.

Access to information. **39.** Every director or former director, officer, employee or agent or former officer, employee or agent, of a registered insurer or its subsidiary or holding company or a registered insurance intermediary shall, on the request of the auditor—

- (a) furnish to the auditor, all information and explanations specified in the request; and
- (b) grant the auditor access to and copies of, records, documents, books, accounts and vouchers of the insurer and its subsidiaries (if any) or its holding company (if any) or the insurance intermediary, as the auditor considers necessary for the purpose of any examination or report, being information that the auditor is permitted to require under this Act or the Companies Act.

Auditor's report. **40.**—(1) It is the duty of the auditors of a registered insurer or registered insurance intermediary, to report in writing to the chief executive officer of the insurer or intermediary, each director thereof and the Commission, any material transactions or conditions that have come to the auditors' attention in the ordinary course of the audit, which, in the auditors' opinion meet one or more of the following criteria—

- (a) any change in accounting policy or any presentation of or any failure to present, facts or figures which, in the opinion of the auditors, has the effect of misrepresenting the financial position of the insurer or intermediary;
- (b) transactions or conditions giving rise to significant risks or exposures that have the potential to jeopardize the insurer's or intermediary's financial viability;
- (c) transactions or conditions indicating that the insurer or intermediary has significant weaknesses in internal control which render it vulnerable to significant risks or exposures that have the potential to jeopardize the insurer's or intermediary's financial viability;
- (d) transactions of an irregular nature that have a significant or material impact on the insurer's or intermediary's financial position;
- (e) transactions or conditions that contravene the provisions of the Companies Act, the Financial Services Commission Act or this Act or any regulations made thereunder relating to capital adequacy or liquidity requirements or any other provisions of this Act;
- (f) any other transactions or conditions which in the opinion of the auditors, should be included in a report under this section.

(2) An auditor who refuses to comply with the provisions of this section shall be guilty of an offence.

(3) Where a report is made under subsection (1), it shall be presented at the first meeting of the insurer's or intermediary's directors following the date of its receipt by the insurer's or intermediary's chief executive officer and shall be incorporated in the minutes of the meeting.

(4) The report required under subsection (1) shall be made within thirty days after the date on which the relevant transactions or conditions came to the attention of the auditors.

(5) The Commission may require the auditor of a registered insurer or registered insurance intermediary to—

- (a) report to the Commission on the adequacy of the accounting procedures used by that insurer or intermediary;
- (b) enlarge or extend the scope of an audit;
- (c) examine and report on information prepared by the insurer or intermediary;
- (d) supply to the Commission additional information relevant to an audit; and
- (e) apply standards specified by the Commission in addition to generally accepted auditing standards.

(6) The auditor shall furnish to the insurer or intermediary a copy of the report referred to in subsection (5) (a) or (c), addressed to the directors.

(7) The auditors or former auditors of a registered insurer or registered insurance intermediary shall not be regarded as being in breach of their duty of confidentiality to the insurer or intermediary in consequence of any report made in compliance with subsection (1) or (5).

Auditor's
right to attend,
requisition
meetings.

41.—(1) An auditor of a registered insurer or registered insurance intermediary shall, in relation to matters concerning the auditor's functions or on which the auditor has made a report, be entitled—

- (a) to be given notice of and attend every meeting of the directors or audit committee of the insurer or intermediary, the business of which as notified includes such matters;
- (b) to requisition the convening of any such meeting.

(2) A notice referred to in subsection (1) shall be served in like manner as any other notice that is required for a meeting of the directors or audit committee.

42. Where the Commission has reasonable grounds to believe that the auditor of a registered insurer or registered insurance intermediary— Report by
Commission.

- (a) has failed to perform his duties or to comply with the relevant provisions of this Act;
- (b) has been a party to the preparation of or has approved a financial statement that does not fairly present the financial position of the company;
- (c) is incompetent or is guilty of professional misconduct,

the Commission shall forthwith deliver a written report to the company, the Public Accountancy Board and the Institute of Chartered Accountants of Jamaica.

43.—(1) The officers or directors of a registered insurer or registered insurance intermediary shall— Amendment
of financial
statements
and reports.

- (a) notify the auditor in writing of any facts that come to their attention, which—
 - (i) could reasonably have been determined before the date of the last annual general meeting; and
 - (ii) if known before that date, would have required a material adjustment to the financial statement presented to that meeting; and

(b) forthwith amend the financial statement and deliver it to the auditor and the Commission.

(2) Where the auditor—

- (a) becomes aware of the facts referred to in subsection (1) (a), whether by way of the notice referred to in that subsection or otherwise; and
- (b) considers it necessary to amend the report in respect of the financial statement presented to the last annual general meeting,

the auditor shall notify the Commission in writing and amend the report so that it complies with the Companies Act.

(3) Where the auditor amends the report, the directors shall send a copy thereof to the members with a statement explaining the effect of the amendment on the financial position and results of the operations of the company or intermediary.

Appointment
of actuary.

44.—(1) Every registered insurer shall appoint an actuary and shall notify the Commission in writing of such appointment.

(2) Subject to subsection (3), the actuary shall value—

- (a) the actuarial reserves and other policy liabilities of the insurer as at the end of each financial year; and
- (b) any other matter specified in any direction given by the Commission.

(3) In relation to a registered insurer carrying on general insurance business, the frequency of the actuarial valuation under subsection (2) shall be as determined by the Commission.

(4) The actuarial valuation shall be conducted in accordance with generally accepted actuarial practice and with such directions as may be given by the Commission.

(5) The Commission may, if it thinks necessary, appoint an actuary (other than the company's actuary) to conduct a valuation of the matters referred to in subsection (3) and the expenses of such a valuation, as approved in writing by the Commission, shall be paid by the company.

(6) On the request of the actuary, the directors or former directors or officers, employees or representatives of the company shall to such extent as is reasonably possible—

- (a) grant to the actuary, access to the company's records; and
- (b) provide such information and explanations as are, in the actuary's opinion, necessary to enable him to perform his duties in that capacity.

(7) The actuary shall, not less than twenty-one days before the date of the annual general meeting of the Company's shareholders and policyholders, submit to them a report in the prescribed form on the valuation conducted under this section and on such other matters as may be prescribed.

(8) The report referred to in subsection (7) shall state whether, in the actuary's opinion, the annual financial statement presents fairly the results of the valuation.

(9) The actuary shall, at least once in every financial year, meet with the company's directors or, where the directors so require, with the company's audit committee, in order to report on the company's financial position and, if so directed by the Commission, on the company's expected future financial condition.

(10) The actuary shall—

- (a) report in writing to the company's chief executive officer and chief financial officer on any matters that have come to the actuary's attention in the course of carrying out his duties, being matters that, in his opinion, have materially adverse effects on the company's financial condition and require rectification; and
- (b) forthwith send a copy of that report to the company's directors and to the Commission.

(11) Where, in the actuary's opinion, suitable action is not being taken by the company to rectify the matters referred to in the report under subsection (10), he shall notify the company's directors and the Commission accordingly.

(12) The actuary shall—

- (a) make a report in the prescribed form on the value of the company's actuarial reserves and other policy liabilities and on the company's future financial condition; and
- (b) confirm that the instructions pertaining to the capital requirements have been followed.

(13) The company shall submit the report required under subsection (11) to the Commission.

(14) Any oral or written statement made by an actuary or former actuary of a registered insurer pursuant to this section shall be protected by qualified privilege.

(15) Any actuary or former actuary of a company who in good faith makes an oral or written statement pursuant to subsection (9), (10) or (12) or section 45 shall not be liable to any civil action as a consequence of making such statement.

Resignation,
etc., of
actuary.

45.—(1) Where—

- (a) an actuary appointed by a registered insurer resigns;
or
- (b) the actuary's appointment is terminated by the insurer,

he shall notify in writing the Commission, the directors of the insurer and the newly appointed actuary thereof of the reasons therefor or, where paragraph (b) applies, the reasons therefor to the best of his knowledge.

(2) The registered insurer shall notify the Commission of the resignation or termination referred to in subsection (1).

Investigations by the Commission

Commission
may demand
information.

46. The Commission may demand from—

- (a) any local company, information relating to any matter in connection with its insurance business;
- (b) a foreign company, information relating to any matter in connection with the insurance business carried on by it in Jamaica.

47.—(1) The Commission may investigate the activities of an insurance company where it appears to the Commission that— Power to make investigations.

- (a) the company is, or is likely to become, unable to meet its obligations;
- (b) the company has failed to comply with any of the provisions of sections 25 to 30;
- (c) the company has not, within a period of one month from a date on which the Commission made a written demand for information from it, furnished that information to the satisfaction of the Commission; or
- (d) based on information in the possession of the Commission, an investigation should be carried out into the whole or any part of any class of the company's insurance business.

(2) The Commission may authorize such person as it thinks fit to carry out an investigation on its behalf and any person so authorized is hereinafter referred to as the Investigator.

(3) Where, upon an investigation, it is found that a breach of this Act has been committed, the cost of the investigation shall be recoverable against the company that committed the breach in a Resident Magistrate's Court as a civil debt due to the Crown, notwithstanding any limitation as to amounts recoverable under the Judicature (Resident Magistrates) Act.

48.—(1) In making an investigation under this Part, the Commission or the Investigator— Power to obtain information.

- (a) may require the company to produce any of its securities, books, accounts, documents or statistics for inspection and to permit the making of such extracts therefrom as are considered necessary;
- (b) may examine on oath or affirmation in relation to the company's business, any person who is, or has at any time been, a director, servant or shareholder or an auditor, actuary, officer or agent, of the company, or the holder of a policy issued by the company, or the personal representative of that policyholder or an associated person; and
- (c) may administer oaths for the purpose of paragraph (b).

(2) A person specified in subsection (1)(b) shall produce to the Commission or the Investigator on request, any securities, books, accounts, documents or statistics of the company, including, in the case of an auditor, his working papers (hereinafter referred to as specified information) that are available to him and shall, on request, furnish any information in his possession relating to the company's business.

(3) A person so specified who refuses to give information pursuant to a request or knowingly gives any false information in reply to a request made under subsection (2), shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Entry on
premises.

49.—(1) If a Resident Magistrate is satisfied on information on oath by the Commission or any person authorized in that behalf by the Commission that there are reasonable grounds for suspecting that there are on any premises any specified information the production of which has been required under section 48 and which has not been produced in compliance with that requirement, the Resident Magistrate may act in accordance with subsection (2).

(2) The Resident Magistrate may issue a warrant authorizing any member of the Constabulary Force, not below the rank of Inspector together with any other persons named in the warrant to—

- (a) enter and search the premises specified in the information (using such force as is reasonably necessary for the purpose); and
- (b) seize and remove any securities, books, accounts, documents or statistics appearing to be such specified information as aforesaid, or to take, in relation thereto, any other steps that may appear necessary for preserving them and preventing interference with them.

(3) Every warrant issued under subsection (2) shall continue in force until the expiration of the period of one month after the date on which it is issued.

(4) Any specified information seized under this section shall be returned to the person from whose possession it was seized, as soon as practicable and in any case shall not be retained for a period longer than two months or, if within that period criminal proceedings have been brought in respect of the seizure, longer than the conclusion of those proceedings.

(5) A constable who executes a warrant issued under this section shall upon the execution of the warrant, prepare a list of the property seized and give a copy thereof to the owner or occupier of the premises who is present at the time of seizure.

(6) A person who obstructs any other person in the exercise of a right of entry, search or seizure conferred by virtue of a warrant issued under this section shall be guilty of an offence.

50.—(1) Upon completion of an investigation under this Part in respect of any company, the Commission—

Action on
completion of
investigation.

- (a) shall transmit to the company a summary of the conclusions arrived at as a result of the investigation; and
- (b) may, without prejudice to any other powers conferred by this Part, issue to the company, directions in writing in accordance with subsection (2).

(2) Directions may be issued in respect of any or all classes of insurance business as the Commission thinks necessary or proper to deal with the situation disclosed in the conclusions referred to in subsection (1) (a) (including, without prejudice to the generality of the foregoing, directions prohibiting or regulating the issue of new policies, the renewal of existing policies or the entering into of any new contract).

(3) No direction issued to a company under this section shall remain in force for more than twelve months, but nothing in this subsection shall be construed as preventing the Commission from issuing any further directions to the company.

Winding Up

Winding up.

51.—(1) The Court may order the winding up of a company in accordance with the relevant provisions of the Companies Act.

(2) A company may be wound up on a petition of—

- (a) ten or more policyholders owning policies of an aggregate sum assured that is equivalent to at least twenty per cent of the total sum assured by the company; or
- (b) the Commission.

(3) A petition referred to in subsection (2) shall not be presented except by leave of the Court, and such leave shall not be granted until a *prima facie* case has been established to the satisfaction of the Court and until security for costs has been given for such amount as the Court may think reasonable.

(4) Where a company proposes to present a petition specified in this section it shall give the Commission one month's notice of its intention to do so and shall forthwith serve on the Commission a copy of any petition presented.

(5) The Commission shall be a party to any proceedings for the winding up of a company and the liquidator in such a winding up shall give the Commission such information about the affairs of the company as it may require from time to time.

(6) References in this section to a company shall include references to a company that has ceased to be registered but remains under any liability in respect of local policies.

52.—(1) Where the Commission is satisfied, after an investigation under section 47 in respect of an insurance company, or an examination of that company that it is necessary or proper for the company to be wound up, the Commission may, with the leave of the Court, present a petition for the winding up of the company by the Court, on any of the grounds specified in subsection (2) and the Court may order accordingly.

Petition for
winding up.
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S.9.

(2) The grounds referred to in subsection (1) are that—

- (a) the company has contravened section 7;
- (b) in the case of an insurance company—

- (i) that was carrying on insurance business in Jamaica before the appointed day and registration of which has been refused under this Act; or
- (ii) whose registration has been cancelled under this Act,

it is in the interest of the policyholders that the company be wound up;

- (c) an officer of the company or its holding company refuses to comply with any requirements made or questions asked under section 48 (1)(a) and (b), respectively;
- (d) the results of an investigation made under section 47 in respect of the company are such that it is in the interest of the policyholders that the company be wound up; or
- (e) the company is insolvent.

(3) The company and the Commission are entitled to be heard on any petition presented to the Court under this section.

(4) Where a petition is presented under this section for an order in respect of any insurance company, 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 without the prior leave of the Court or unless the Court otherwise directs.

Margin of solvency

53. Subject to the provisions of this Act, a registered insurer shall be deemed to be insolvent if at any time the value of its assets does not exceed its liabilities by such amount as the Commission may prescribe, having regard to the types of risks to which the company may be subjected, including insurance, credit or investment risks.

Transfer of insurance business.

54.—(1) Where the insurance business or any part thereof of an insurance company (in this section referred to as the transferor company) has been transferred to another insurance company (in this section referred to as the transferee company) under an arrangement in pursuance of which the transferor company or the creditors thereof has or have claims against the transferee company, then, if the transferee company is being wound up by or under the supervision of the Court, the Court shall act in accordance with subsection (2).

(2) Subject to this section, the Court—

- (a) shall order the transferor company to be wound up in conjunction with the transferee company; and
- (b) may by the same or any subsequent order, appoint the same person to be liquidator for the two companies; and
- (c) may make provision for such other matters as the Court may consider necessary, with a view to the companies being wound up as if they were one company.

(3) The commencement of the winding up of the transferee company shall, save as otherwise ordered by the Court, be the commencement of the winding up of the transferor company.

(4) In adjusting the rights and liabilities of the members of the several companies between themselves, the Court shall have regard to the constitution of the companies and to the arrangements entered into between the companies, in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company, or as near thereto as circumstances admit.

(5) Where any company alleged to be a transferor company is not in the process of being wound up at the same time as the transferee company, the Court shall not direct the transferor company to be wound up unless, after hearing all objections (if any) that may be made by or on behalf of the company against its being wound up, the Court is of the opinion that the company is the transferor company as alleged and that the winding up of the company in conjunction with the transferee company is just and equitable.

(6) An application may be made in relation to the winding up of any transferor company in conjunction with a transferee company by any creditor of, or person interested in either.

(7) Where—

(a) an insurance company is a transferee company to one insurance company and a transferor company to some other insurance company; or

(b) several insurance companies are each a transferor company to one transferee company,

the Court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this section.

Local
treatment in
foreign
winding up.

55.—(1) Notwithstanding anything contained in this Act, where a company that is registered in a jurisdiction outside Jamaica has a subsidiary in Jamaica and is being wound up in that jurisdiction, the Commission, upon learning of the winding up—

(a) shall investigate whether any policyholders of the subsidiary are likely to suffer loss as a result of the winding up; and

(b) may institute proceedings for the protection of those policyholders,

and the Court may grant such relief to the policyholders as it thinks fit.

(2) Costs awarded to the Commission under subsection (1) may be recovered at the discretion of the Commission, against the subsidiary or the company that is being wound up.

Supplemental
provisions as
to winding up.

56. In any proceedings upon a petition to wind up an insurance company presented by the Commission under section 52, unless the contrary is proved, evidence that the company was insolvent thirty days before the date of presentation of the petition is evidence that the company continues to be insolvent.

Ascertainment
of value of
liabilities
under
policies.

57.—(1) Where an insurance company is being wound up by or subject to the supervision of the Court or voluntarily—

- (a) 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 approved by the Court; and
- (b) the liquidator, in the case of all persons appearing by the books of the company to be entitled to or interested in policies granted by the company, shall give notice of that value to such persons and in such a manner as the Court directs.

(2) Any person to whom notice is given under subsection (1) shall be bound by the value ascertained in accordance with that subsection unless, within thirty days of receipt of the notice, he gives notice of his intention to dispute the value.

58. In the case of an insurance company that has been proved to be insolvent, the Court may, if it thinks fit, in place of making a winding up order, reduce the amount of the contracts of the company upon such terms and subject to such conditions as the Court thinks just.

Reduction of contracts as alternative to winding up.

59. Notwithstanding anything to the contrary provided in this Act or any other law, upon the winding up of an insurance company, all moneys and securities for the time being held as a deposit in respect of that company, under section 21 shall be delivered to the liquidator and shall be applied by him, in the first instance, in the discharge of the liabilities of the company in respect of policyholders ahead of all other creditors, as concerns all policies.

Application of deposits.
1/2016
S. 10.

59A. Upon the winding-up of an insurance company the liabilities of the company in respect of its policy holders shall be discharged ahead of its liabilities to unsecured creditors, other than any matters falling within Category 1 or Category 2 of section 202 of the Insolvency Act (ranking of claims).

Distribution on winding-up
1/2016
S. 11

60.—(1) Where, on the application of an insurance company carrying on general insurance business, the Commission is satisfied that the company is guaranteed by another insurance

Guaranteed companies.

company satisfying the requirements of a guarantor specified in subsection (2), the Commission may by order direct that, subject to such conditions as may be specified in the order, the provisions of section 53 shall not apply to the first-mentioned insurance company.

(2) For the purposes of this section a guarantor shall be—

- (a) a body corporate which satisfies the requirements of section 9 as to share capital and deposit and the value of whose assets exceeds the amount of its liabilities by the amount required by section 53;
- (b) a member of an association of underwriters whose assets exceed the amount of its liabilities by the amount required by section 53; or
- (c) an insurance company which, being guaranteed by another insurance company, is the subject of an order under this section.

(3) For the purposes of this section, an insurance company shall be deemed to be guaranteed by another insurance company if, but only if, all its liabilities to policyholders in respect of insurance business of any class specified in section 3(1) are reinsured with or guaranteed by the other insurance company.

(4) Any order made under this section may be revoked by the Commission—

- (a) if it ceases to be satisfied of the matters on the basis of which the order was made; or
- (b) if it is satisfied that any condition in the order has not been complied with.

PART III. *Associations of Underwriters*

61.—(1) Subject to section 150, no association of underwriters may carry on insurance business in Jamaica unless it is registered in accordance with this Part.

Associations
of under-
writers to be
registered

(2) [*Deleted by Act 1 of 2016, S. 12.*]

62. An application by an association of underwriters for registration under this Part shall be made to the Commission in such form as it may prescribe and shall be accompanied by evidence of payment of the prescribed fee and the following documents and information—

Application
for registra-
tion under
this Part.

- (a) a copy of its statute or deed of association;
- (b) the names and addresses of persons in Jamaica who, as brokers or agents, will place insurance business with the association;
- (c) in the case of an association constituted outside Jamaica—
 - (i) a certificate signed by the appropriate public authority in the country in which it is constituted stating that the association has been established for at least five years, the legislation of that country provides for the regulation of associations of underwriters and it is operating in accordance with that legislation; and
 - (ii) the names and addresses of one or more persons resident in Jamaica who are authorized to accept, on behalf of the members of the association, service of process in any legal proceedings; and
- (d) such other information as the Commission may require.

63.—(1) Where the Commission, after appropriate enquiry or after the production of documentary evidence, or both, is satisfied that an applicant association of underwriters meets the requirements of subsection (2), the Commission shall, either unconditionally or subject to such conditions as it may specify,

Conditions for
registration.

register the association of underwriters in respect of the class or classes of insurance business specified in the application, and within the prescribed period and notify the applicant accordingly.

(2) The requirements referred to in subsection (1) are that—

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S 13(a)

- (a) the requirements of sections 62 and 69 have been complied with;
- (b) the association and its members are solvent under the provisions of section 53;
- (c) the association is likely to be able to comply with such provisions of this Act as would be applicable to it;
- (d) in the case of an association of underwriters constituted outside Jamaica, there are one or more persons resident in Jamaica who are authorized by the association to accept on behalf of the members of the association, service of process in any legal proceedings;
- (e) the persons who manage the association are fit and proper persons to manage the association;
- (f) the staff employed by the applicant is, in relation to any class of insurance business to which the application relates, capable of carrying on that business in an efficient manner; and
- (g) the association has satisfied such other requirements as may be prescribed.

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S 13(b)

(3) Where the Commission is not satisfied, in respect of an applicant, as to one or more of the requirements set out in subsection (2), the Commission shall—

- (a) notify the applicant in writing that it intends to refuse to register the applicant, giving reasons therefor; and
- (b) afford the applicant an opportunity to make oral or written representations on the intended action.

(4) After affording the applicant an opportunity to make representations under subsection (3)(b), the Commission shall notify the applicant in writing—

- (a) of its decision; and
- (b) in the case of a decision to refuse registration, of the applicant's right under section 140 to appeal to the Appeal Tribunal.

64. An association of underwriters registered in accordance with this Part (in this Part referred to as a registered association) shall, within three months after the end of each financial year, furnish to the Commission—

Documents and information to be furnished to Commission

- (a) in the case of an association constituted outside Jamaica—
 - (i) a certified copy of such returns relating to the insurance business of the members during the preceding financial year as are required to be made to the responsible Minister or other public authority in the country in which the association is constituted;
 - (ii) a certificate, signed by the chairman or other presiding officer of the association and by or on behalf of the responsible Minister or other public authority, stating whether the association has complied with the requirements of the legislation for the regulation of associations of underwriters in that country;

- (a) notify the applicant in writing that it intends to refuse to register the applicant, giving reasons therefor; and
- (b) afford the applicant an opportunity to make oral or written representations on the intended action.

(4) After affording the applicant an opportunity to make representations under subsection (3)(b), the Commission shall notify the applicant in writing—

- (a) of its decision; and
- (b) in the case of a decision to refuse registration, of the applicant's right under section 140 to appeal to the Appeal Tribunal.

64. An association of underwriters registered in accordance with this Part (in this Part referred to as a registered association) shall, within three months after the end of each financial year, furnish to the Commission—

Documents and information to be furnished to Commission

- (a) in the case of an association constituted outside Jamaica—
 - (i) a certified copy of such returns relating to the insurance business of the members during the preceding financial year as are required to be made to the responsible Minister or other public authority in the country in which the association is constituted;
 - (ii) a certificate, signed by the chairman or other presiding officer of the association and by or on behalf of the responsible Minister or other public authority, stating whether the association has complied with the requirements of the legislation for the regulation of associations of underwriters in that country;

(b) immediately suspend the registration.

66.—(1) Subject to subsection (2), the Commission may, if at any time it is satisfied that the circumstances specified in that subsection so warrant, give written notice to a registered association stating—

Grounds for
Cancellation
of registra-
tion.
1/2016
S.14.

(a) that the Commission proposes to cancel the association's registration in respect of all or any of the classes of business in relation to which the association is registered, and giving the reasons therefor; and

(b) the right of appeal under section 140, and shall afford the association an opportunity to make oral or written representations on the proposed action.

(2) The circumstances referred to in subsection (1) are that the Commission is satisfied that—

(a) the registration was procured as a result of any misleading or false representation or in consequence of any incorrect information (whether such representation was made or information was supplied, wilfully or otherwise);

(b) the association or any of its members is insolvent;

(c) the insurance business of any of the association's members is not being conducted in accordance with sound insurance principles;

(d) the association has contravened any of the provisions of this Act or of any regulations made hereunder or any condition, direction or requirement imposed under this Act;

(e) the association has been guilty of unreasonable delay in the payment or settlement of any claim arising under any policy issued in Jamaica by it or on its behalf;

(f) the persons who manage the association are not fit and proper persons to manage the association; or

- (g) the employees of the association are incapable of carrying on the relevant class of insurance business in an efficient manner.

(3) Notwithstanding subsection (1), the Commission may at any time cancel the registration under this Part of a registered association if requested to do so by the association or if it is satisfied that the members of the association have not commenced business within one year of registration or have ceased to carry on business in Jamaica.

Implementa-
tion of pro-
posal to refuse
to register or
to cancel
registration.

67. Where a registered association which has been notified under section 63 (3), 65 (2) or 66 (1) of its right of appeal—

- (a) fails to lodge any such appeal or withdraw any such appeal; or
- (b) the result of the appeal is the confirmation, with or without variation, of the Commission's proposal,

then, subject to any such variation, the Commission shall give effect to its proposal and notify the association accordingly.

Effect of
cancellation
of associa-
tion's registra-
tion on insur-
ance
contracts.

68.—(1) An association whose application for registration is refused or whose registration is cancelled in accordance with this Part shall, in respect of long term business only—

- (a) to such extent and in such manner as the Commission may determine; and
- (b) for such period not exceeding one year or such period as the Commission may by order prescribe,

carry on business in respect of obligations under contracts of insurance entered into before such cancellation, with a view to meeting those obligations and without undue inconvenience to policyholders, until the Commission is satisfied that it has made suitable arrangements for the discharge of those obligations.

(2) The association may not, after the date of notification of cancellation, issue any new policy or enter into any new contract in relation to which registration is required.

69.—(1) Subject to this section, an association of underwriters shall not be registered under this Act to carry on, and shall not carry on, any class of insurance business unless it has deposited the prescribed amount with the Commission. Deposits by associations of underwriters.

(2) The Commission may authorize the investment of any deposits made under this section, and the payment of income on cash deposits invested.

PART IV. *Registration of Insurance Intermediaries*

70.—(1) No person shall, in relation to insurance business of any class specified in section 3 (1) carry on or purport to carry on, business as, or act in the capacity of, an insurance intermediary, unless he is registered under this Part to do so. Registration of insurance intermediaries.

(2) Any person who contravenes this section shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding three million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

71.—(1) An application for registration under this Part shall be made to the Commission in the prescribed form and shall be accompanied by evidence of payment of the prescribed fee and such documents as may be prescribed. Application for registration.

(2) The Commission may, upon receipt of the application, request the applicant to furnish such additional information as the Commission may consider relevant to the application.

72.—(1) No person shall be registered under this Part as an agent or sales representative of an insurance company unless that company is registered under Part II or exempted from registration thereunder. General restrictions on registration.

(2) No individual shall be registered under this Part as a sales representative of an agent or broker unless the agent or broker by whom he is so employed, being a body corporate, is registered under this Part or, is exempted from registration thereunder.

(3) No insurance company and no person carrying on business as an insurer, a sales representative or an agent shall be registered as a broker and no person carrying on business as a broker shall be registered as a sales representative or an agent.

(4) No person carrying on business as an adjuster or insurance consultant shall be registered as an agent, a sales representative or a broker.

(5) No person, being a body corporate, shall be registered as an agent or a broker unless there exists in respect of that person such minimum capital and bond insurance coverage as the Commission may prescribe.

Conditions for
registration.

73.—(1) The Commission shall, if it is satisfied in respect of an applicant that the requirements of subsection (2) are met, register that applicant, either unconditionally or subject to such conditions as it may specify as an insurance intermediary, in respect of such class or classes of insurance business as it shall specify and shall notify the applicant accordingly.

(2) The requirements referred to in subsection (1) are as follows—

- (a) the applicant possesses the prescribed qualifications;
- (b) the provisions of section 71 have been complied with;
- (c) section 72 does not apply;
- (d) the applicant is a fit and proper person to perform his functions under this Act in the capacity specified in the application;

- (e) where the application is for registration of a body of persons (whether incorporated or not) each of the persons managing or controlling the body, as the case may be, or the partners, is a fit and proper person;
- (f) where the application is for registration as a broker, that no such agreement relating to the preferential offer of insurance business has been made between the applicant and any person carrying on insurance business as might impair the applicant's impartiality in placing insurance business;
- (g) the applicant has satisfied such other requirements as may be prescribed.

(3) Where the Commission is not satisfied, in respect of an applicant, as to one or more of the requirements set out in subsection (2), the Commission shall—^{1/2016 S. 15}

- (a) notify the applicant in writing that it intends to refuse to register the applicant, giving reasons therefor; and
- (b) afford the applicant an opportunity to make oral or written representations on the intended action.

(4) After affording the applicant an opportunity to make representations under subsection (3)(b), the Commission shall notify the applicant in writing—^{1/2016 S. 15}

- (a) of its decision; and
- (b) in the case of a decision to refuse registration, of the applicant's right under section 140 to appeal to the Appeal Tribunal.

74. The Commission shall furnish to every person registered under this Part, a certificate of registration in the prescribed form stating—^{Certificate of registration.}

- (a) the class or classes of insurance business in respect of which the person is so registered;
- (b) any conditions subject to which the person is so registered; and
- (c) in the case of registration of a person as an agent, the insurance company or companies concerned,

and the certificate is *prima facie* evidence of such registration.

Suspension of
registration

75.—(1) Subject to subsection (2), the Commission may suspend the registration of a person under this Part in respect of all or any of the classes of business in relation to which it is registered, if it is satisfied that the person is in breach of any provision of this Act in circumstances where the breach would constitute a ground for cancellation specified in section 76.

(2) Before taking any action under subsection (1) the Commission shall give written notice to the person concerned—

- (a) stating its intention to suspend its registration, giving reasons therefor; and
- (b) stating the right of appeal under section 140;
- (c) requiring the person to take such action as is specified in the notice to remedy the breach within the time specified; and
- (d) indicating a period within which the person may make written or oral representations on the intended action.

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(3) Where the person concerned fails to comply with the notice under subsection (2) the Commission may—

- (a) extend the period specified in the notice under subsection (2), and if the breach is not remedied within the extended period, suspend the person's registration; or
- (b) immediately suspend the registration.

76.—(1) The Commission may—

Grounds for
cancellation
of
registration.

- (a) cancel a person's registration under this Part, at the request of that person; or
- (b) if satisfied that the provisions of subsection (2) apply to a person registered under this Part, notify that person in writing—
 - (i) of its intention to cancel the registration, giving the reasons therefor;
 - (ii) that the person may make written or oral representations on the intended action; and
 - (iii) of the person's right to appeal under section 140 to the Appeal Tribunal.

(2) The Commission may take action under subsection (1)(b) if it is satisfied that—

- (a) the registration was procured as a result of any misleading or false representation or in consequence of any incorrect information (whether the representation or information was made or supplied wilfully or otherwise);
- (b) the person has become disqualified for such registration by virtue of any of the provisions of section 72;
- (c) the person is carrying on business otherwise than in accordance with sound insurance principles and practice;
- (d) the person has been guilty of unreasonable delay in the payment or settlement of any claim arising under any policy issued by or through him;
- (e) thirty days have elapsed since the date before which the person was required under any provision of this Act to furnish information to the Commission, and the person has, without reasonable excuse, failed to furnish that information duly and satisfactorily;

- (f) the person has been guilty of fraudulent or dishonest practice;

- (g) in the case of—
 - (i) an individual, he has demonstrated that he is not a fit and proper person; or

 - (ii) a body, not all the persons managing or controlling the body or not all the partners are fit and proper persons; or

- (h) the person has contravened any of the provisions of this Act or any condition, direction or requirement imposed under this Act by the Commission or, as the case may be, has been an accessory to any such contravention by any other person.

77. Where any person who has been notified under section 73 (3) of the Commission's proposal to refuse to register him or under section 75 of a proposal to suspend his registration, or under section 76 of a proposal to cancel his registration and of his right of appeal—

Implementation proposal to refuse to register or to cancel registration.

- (a) fails to lodge any appeal, or withdraws any such appeal; or

- (b) the result of the appeal is the confirmation, with or without variation, of the Commission's proposal,

then, subject to any such variation, the Commission shall give effect to its proposal and notify the person in writing accordingly.

Summary
cancellation
of registration
under this
Part

78. The Commission may, at any time, cancel the registration of a person under this Part—

- (a) if it is satisfied that the person has not carried on business in Jamaica in the capacity for which he is registered—
 - (i) within a year of such registration; or
 - (ii) for a period of more than a year;
- (b) if, in the case of a person registered as an agent, it is satisfied that the registration under this Act of the insurance company or companies for which that person was registered in that capacity, has been cancelled or that all agency agreements concerned have been terminated; or
- (c) if the person so requests.

79.—(1) Where an agency agreement is terminated, notice in writing in the prescribed form shall forthwith be given to the Commission by the agent and the company concerned.

Information to be supplied to Commission.

(2) Where the employment of a sales representative registered under this Part is terminated—

- (a) notice in writing in the prescribed form shall forthwith be given to the Commission by the sales representative and his employer; and
- (b) if the sales representative enters any new employment in that capacity, notice in writing in the prescribed form shall forthwith be given to the Commission by the sales representative and his new employer.

(3) The Commission may demand in writing from any person registered under this Part or from his employer or principal, any information relating to any matter in connection with that person's business as an agent or a broker or sales representative, as the case may be.

(4) Any person who contravenes any of the provisions of this section shall be guilty of an offence.

80.—(1) Every individual registered under this Part shall produce his certificate of registration for inspection, if requested to do so by the Commission or by any person authorized by the Commission or any person with whom the registered person is dealing in the course of the business for which he is registered.

Production of certificate of registration.

(2) Every person who fails to comply with subsection (1) shall be guilty of an offence.

81.—(1) Every body corporate registered under this Part shall prominently display its registration certificate at its principal place of business in Jamaica, in a part thereof to which the public has access, and a copy thereof shall be similarly displayed at each of its branches in Jamaica.

Display and surrender of registration certificate.

(2) A body corporate whose registration is cancelled shall, on receipt of the notice of such cancellation, forthwith surrender the registration certificate and every copy thereof to the Commission.

(3) Every person who, without lawful excuse—

- (a) fails to comply with subsection (1) or (2); or
- (b) displays a registration certificate or any copy thereof which is no longer valid,

shall be guilty of an offence and liable on summary conviction in a Resident Magistrate's Court—

- (c) in the case of an offence specified in paragraph (a), to a fine not exceeding five hundred thousand dollars; or
- (d) in the case of an offence specified in paragraph (b), to a fine not exceeding three million dollars.

*Miscellaneous Provisions relating to Insurance
Intermediaries*

Agents, etc.

82.—(1) An agent, a broker or sales representative shall, for the purpose of receiving any premium for a contract of insurance, be deemed to be the insurer's agent and, notwithstanding any conditions or stipulations to the contrary, the registered insurer shall be deemed to have received any premium received by the agent, broker or sales representative.

(2) An insurer on whose behalf a broker, agent or sales representative has receive a premium or part thereof, shall accept liability arising under the policy, notwithstanding that the insurer has not received the premium.

Fraudulent
representa-
tions.

83.—(1) Any agent, broker or sales representative who knowingly procures by fraudulent representation, payment or the obligation for payment of any premium on an insurance policy shall be guilty of an offence.

(2) Any agent, broker or sales representative who causes an insured person to discontinue any policy of insurance without being satisfied on reasonable grounds that such discontinuance is for the benefit of the insured person, shall be guilty of an offence.

84. An agent, a broker or sales representative is personally liable to the insured person in respect of all contracts of insurance unlawfully made by or through him directly with an insurer who is not registered to carry on insurance business in Jamaica to the same extent as if that agent, broker or sales representative were the insurer.

Liability for unlawful contracts.

85.—(1) An insurer or an officer, employee or agent thereof, or a broker or sales representative shall not directly or indirectly pay or allow, or agree to pay or allow, compensation or anything of value to any person for placing or negotiating insurance on lives, property or interests in Jamaica, or negotiating the continuance or renewal thereof, or for attempting so to do, if at the date thereof, such person is not registered under this Act.

Compensation to unauthorized person for placing or negotiating insurance.

(2) A person who knowingly contravenes subsection (1) shall be guilty of an offence.

86. The rate of premium chargeable under a policy shall be the amount agreed between the proposer and the insurer or an officer, employee or agent thereof or a broker or sales representative, at the time of the making of the insurance contract, and any rate to the contrary stated in the policy shall be of no effect.

Rebating.

87. Nothing in sections 85 and 86 shall be construed as—

(a) affecting any payment by way of dividend, bonus, profit or savings that is provided for by the policy;

Bona fide salaried employees.

- (b) preventing an insurer compensating a *bona fide* salaried employee of its head or branch office or a spouse or child of that employee, in respect of insurance issued by that insurer upon the life or property of the employee; or
- (c) requiring that the employee be registered as an agent or sales representative under this Part to effect such insurance.

Returns by
insurers.

88. Every insurer shall make an annual return to the Commission in such form and at such time as the Commission may require, showing—

- (a) all persons, partnerships and companies duly authorized as its agents, brokers or sales representatives in Jamaica; and
- (b) persons, partnerships or companies to whom it has, within such period as the form or return requires, paid or allowed or agreed to pay or allow, directly or indirectly, compensation for placing or negotiating insurance on lives, property or interests in Jamaica, or negotiating the continuance or renewal thereof, or for attempting to do so.

Returns by
registered
brokers and
agents.

89.—(1) Every broker or corporate agent registered in accordance with this Part shall keep in Jamaica and shall make available to the Commission on request—

- (a) a record of all local policies issued by the broker or agent on behalf of any insurer;
- (b) a record of the aggregate amount of the premiums received on such policies; and
- (c) if the broker or agent is a company, a copy of the audited financial statements.

(2) Every broker or corporate agent shall, whenever required by the Commission, submit returns to the Commission containing such information as may be prescribed, to enable it to determine the financial position of such broker or agent and to take appropriate action where necessary.

PART V. *Long Term Insurance Business*
Issue of Policies

90.—(1) A company shall not issue any policy unless it has been approved by the Commission. Rates of premium, etc.

(2) The Commission may at any time require the company to obtain, and to furnish it with, a report by an actuary as to the suitability of the rate of premium chargeable under any class of policy issued by the company and, if the actuary considers that the rate is not suitable, a report as to the rate of premium which the actuary considers suitable in respect of that class of policy.

91. Subject to section 93, where a company issues a life insurance policy that provides that proof of age of the person whose life is insured is a condition precedent to the payment of the sum insured, the company shall, unless the age of the person whose life is insured has already been admitted by it, issue on or with the policy, a printed notice stating that proof of age of the person whose life is insured may be required before the payment of the sum insured. Notice regarding proof of age.

92.—(1) Where a company declines to accept the proof of age tendered in respect of a policy, whether issued before or after the 21st December, 2001, the policyholder may apply to a Judge in Chambers, by summons for an order directing the company to accept the proof tendered. Procedure where company declines to accept proof.

(2) The Judge in Chambers may, upon an application made to him under subsection (1), make such order in relation to the application as he thinks just.

(3) Every order under this section shall be binding on the company.

Mis-statement
of age, and
non-
avoidance of
policy.

93.—(1) Subject to the provisions of subsection (2), a life insurance policy is not avoided by reason only of a mis-statement of the age of the person whose life is insured, and in a case of such mis-statement—

- (a) the moneys provided by the policy shall be increased or decreased to the amount that would have been provided for the same premium at the true age; and
- (b) where the true age as shown by the proof is different than that on which the policy is based, the company may vary the sum insured by, and the bonuses (if any) allotted to, the policy so that as varied, they bear the same proportion to the sum insured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as issued bears to the amount of the premiums that would have become payable if the policy had been based on the true age;

(2) A policy issued after the appointed day shall not be avoided by reason only of any incorrect statement (other than a statement as to the age of the person whose life is insured) made in any proposal or other document on the faith of which the policy was issued or reinstated by the company, unless the statement—

- (a) was fraudulently untrue; or

- (b) being a statement that is material in relation to the risk of the company under the policy, was made within the period of three years immediately preceding the date on which the policy is sought to be avoided or the date of death of the insured person, whichever is the earlier.

94.—(1) Nothing in any term or condition of a life insurance policy issued after the appointed day or in this Act shall operate to exempt an insurance company from liability under the policy or to reduce the liability of the company under the policy on the ground of any matter relating to the state of health of the person whose life is insured, other than the ground specified in subsection (2). Provisions relating to state of health of insured.

(2) The ground referred to in subsection (1) is that the proposer when making the proposal or thereafter and before the making of the contract—

- (a) made an untrue statement of his knowledge and belief as regards the matter; or
- (b) failed to disclose to the company something known by him as regards that matter.

95.—(1) A minor who has attained the age of sixteen years may— Minors.

- (a) effect a policy upon his own life or upon another life in which he has an insurable interest; or
- (b) take an assignment of a policy,

and is as competent in all respects to have and exercise the powers and privileges of a policyholder in relation to a policy of which he is the holder as if he were of full age.

(2) A minor who has attained the age of sixteen years may assign or mortgage a policy with the prior consent in writing of his parent or guardian.

Insurable
interests.

96.—(1) For the purposes of this Act, but without restricting the meaning of the expression "insurable interest", the following persons shall be deemed to have an insurable interest in the life of another person as follows—

- (a) a parent or guardian of a child who is under eighteen years of age, in the life of the child;
- (b) a husband, in the life of his wife;
- (c) a wife, in the life of her husband;
- (d) a grandparent of a child who is under eighteen years of age, in the life of his grandchild;
- (e) any person, in the life of another upon whom he is wholly or partly dependent for support or education;
- (f) a company or other person, in the life of an officer or employee thereof; and
- (g) any person who has a pecuniary interest in the duration of the life of another person, in the life of that person.

(2) This section applies to policies whether effected before or after the appointed day.

*Designation of Beneficiary or Legal Personal
Representative*

Designation
of beneficia-
ries generally.

97.—(1) For the purpose of this section and sections 98 to 105—

"beneficiary" means a person, other than the insured person or his legal personal representative (except where the legal personal representative is also a beneficiary) to whom or for whose benefit insurance money is made payable in a contract or by a declaration;

"declaration" means an instrument signed by the insured person and witnessed by a Justice of the Peace or Notary Public—

- (a) with respect to which an endorsement is made on the insurance policy; or
 - (b) that identifies the contract of insurance; or
 - (c) that describes the insurance or insurance money or part thereof,
- in which the insured person designates, alters or revokes the designation of his legal personal representative, trustee or a beneficiary as one to whom or for whose benefit insurance money is payable;

"insured person" means—

- (a) the person who makes a contract of insurance with an insurer; or
- (b) in relation to a group policy, an employee on whose behalf an employer effects a group policy;

"life insured" means, except in relation to a group policy, a person on whose life an insurance policy has been made.

(2) An insured person may designate his legal personal representative, trustee or beneficiary as the person to receive the proceeds of the insurance policy—

- (a) at the time of making a contract of insurance; or
 - (b) by declaration at any time subsequent to the making of the contract.
- (3) A designation made under subsection (2)—
- (a) shall be in a form and effected in the manner specified in the contract of insurance;
 - (b) shall be deposited with the insurer at its principal office in Jamaica within the lifetime of the insured person and of the life insured;

- (c) shall, subject to section 98 (2) (b), not affect the right of an insured person to assign, exercise rights under or in respect of, surrender or otherwise deal with, the contract of insurance as provided therein or as may be agreed upon with the insurer; and
- (d) may, subject to section 98 (1) and (2) (a), be altered or revoked from time to time and such alteration or revocation shall be made by declaration which shall be deposited with the insurer at its principal office in Jamaica within the lifetime of the insured person and of the life insured.

(4) A designation made in favour of "the heirs", "next of kin" or "estate" of the insured person or the use of words of like import in a designation, shall be deemed to be a designation of the legal personal representative of the insured person.

(5) For the avoidance of doubt, where a designation is made in favour of a legal personal representative or is deemed under subsection (4) to be so made, that legal personal representative shall receive the proceeds of the insurance policy on behalf of the beneficiaries of the insured person's estate.

(6) An insurer shall, in a contract of insurance, specify the requirements for the making of a valid deposit under subsection (3) (b) and (d).

Irrevocable
designation of
beneficiaries.

98.—(1) An insured person may designate irrevocably a named beneficiary—

- (a) at the time of the making of a contract of insurance; or
- (b) by declaration at any time subsequent to the making of the contract.

(2) Where an insured person designates a beneficiary irrevocably, then so long as the designated beneficiary is alive—

- (a) subject to section 99, the insured person may not alter or revoke the designation without the beneficiary's consent;
- (b) the insured person may not assign, exercise rights under or in respect of, encash any units accruing to or surrender or otherwise deal with the insurance policy without the beneficiary's consent;
- (c) the insured person or his creditors shall have no control over the proceeds of the insurance policy; and
- (d) the proceeds of the policy shall not form part of the insured person's estate.

(3) The provisions of section 97(3) (a) and (b) shall apply to a designation made under subsection (1) of this section.

99. Where under section 98(1), in respect of a life policy, a named beneficiary is the insured person's spouse, then, if during the subsistence of the insurance policy, the named beneficiary ceases to be the insured person's spouse, otherwise than by death—

Alteration or revocation of designation on cessation of marriage.

- (a) the insured person may alter or revoke the irrevocable designation without the consent of the named beneficiary; and
- (b) such alteration or revocation shall be made by declaration which shall be deposited with the insurer at its principal office in Jamaica within the lifetime of the insured person and of the life insured.

100.—(1) Notwithstanding the designation of a beneficiary irrevocably under section 98(1), an insured person is entitled, while living, to the dividends or bonuses declared on a contract of insurance, unless the contract otherwise provides.

Insured person entitled to dividends.

(2) Unless the contract of insurance otherwise directs, an insurer may apply the dividends and bonuses declared on a contract of insurance to that contract for the purpose of keeping the contract in force.

Circumstances
in which
insurance
proceeds not
part of
insured
person's
estate, etc.

101. Where the proceeds of an insurance policy are payable to a beneficiary, such proceeds shall not form part of the insured person's estate and shall not, as from the date that the proceeds of the insurance policy become payable, be subject to the claim of any of the insured person's creditors.

Presumption
of trust
negatived.

102. For the avoidance of doubt, it is hereby declared that on a construction of a contract of insurance there shall be no presumption of a trust except in cases where the insured person expressly provided for the creation of a trust.

Appointment
of trustee.

103.—(1) An insured person may, in a contract of insurance or by declaration, appoint a trustee for a beneficiary and may alter or revoke that appointment by declaration.

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

Beneficiary
predeceasing
insured
person.

104. Where a beneficiary predeceases the insured person and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract of insurance or by a declaration, the deceased beneficiary's share of the policy proceeds shall be payable as follows—

- (a) to the surviving beneficiary;
- (b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares; or
- (c) if there is no surviving beneficiary, to the insured person or his legal personal representative.

Right to
enforce
payment of
proceeds

105.—(1) A beneficiary may, on the death of a life insured, enforce for his own benefit, and a trustee appointed pursuant to section 103 may enforce as trustee, the payment of the proceeds of an insurance policy made payable to him in the contract of insurance or by a declaration and in accordance with the provisions thereof.

(2) Notwithstanding subsection (1), the insurer concerned may set up any defence that he could have set up against the insured person or his legal personal representative.

106. A life insured under a group policy may, in his own name, enforce a right given him under a contract, subject to any defence available to the insurer against him or against the insured. Power of group life insured to sue insurer

Protection of Policies

107.—(1) The property and interest of any person in a policy effected (whether before or after the appointed day) upon his own life is not liable to be applied or made available in payment of his debts by any judgment, order or process of any court. Interest of insured protected in certain cases.

(2) In the event of a person who has effected a policy on his own life dying after the appointed day, the moneys payable upon his death under or in respect of such policy shall not be applied or made available in payment of his debts by any judgment, order or process of any court or by retainer by an executor or administrator or in any other manner, except by virtue of—

- (a) a contract or charge made by the person whose life is insured; or
- (b) an express direction contained in his will or other testamentary instrument executed by him that the moneys arising from the policy shall be so applied.

(3) A direction to pay debts, a charge of debts upon the whole or any part of the testator's estate, or a trust for the payment of debts, shall not be deemed to be an express direction referred to in subsection (2)(b).

Paid-up Policies, Surrender Values and Non-Forfeiture

108.—(1) A policyholder who desires to discontinue further premium payments on a policy on which not less than three years' premiums have been paid shall, if the policy has a cash surrender value, on application to the company, be entitled to receive a paid-up policy instead of that policy. Paid-up policies.

(2) The paid-up policy shall be payable upon the happening of the contingency upon the happening of which the amount insured under the original policy would have been payable.

Surrender of policies.

109. Notwithstanding the terms of a particular policy, the owner of a policy that has been in force for at least three years is, on application to the company, entitled to surrender the policy, and within the prescribed period after the application, to receive not less than the cash surrender value of the policy (if any) less the amount of any debt owing to the company under, or secured by, the policy.

Notice in respect of long term insurance policies by insurer.

110.—(1) Subject to section 111 (3), an insurer shall not enter into a contract for ordinary long term insurance business unless the insurer—

- (a) at the time the contract is entered into; or
- (b) not later than fifteen days thereafter,

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serves on the other party to the contract a notice containing the information specified in subsection (2).

(2) A notice mentioned in subsection (1)—

- (a) shall specify the nature and type of the policy; and
- (b) shall have annexed thereto a form of notice of cancellation for use by the other party to the contract.

(3) An insurer who contravenes this section shall be guilty of an offence.

(4) A contravention under this section does not invalidate the contract.

Insured's right of cancellation.

111.—(1) A person who has entered into a contract of insurance with an insurer may serve notice of cancellation on the insurer not later than—

- (a) the expiration of the tenth day from the date on which he receives a notice mentioned in section 110; or
- (b) ten days from the expiration of the day on which he first became aware that the contract was entered into,

whichever is the later.

(2) Subsection (1) does not apply where an insurer, having failed to serve a notice under section 110(1), within the time specified therein, does so before cancellation of the contract.

(3) A notice of cancellation need not be in the form attached to the notice required to be served under section 110(1) but shall indicate a desire to withdraw from the contract.

(4) Service of a notice of cancellation operates—

- (a) as a rescission of a contract, if it is served after the contract has been entered into; and
- (b) as a withdrawal of offer in any other case.

(5) Where a contract has been rescinded or an offer has been withdrawn as a result of the service of a notice of cancellation, any moneys paid by way of premium or otherwise, whether to the insurer or to any person acting on behalf of the insurer for the purpose of receiving the moneys, are recoverable from the insurer as a debt in civil proceedings.

112.—(1) An ordinary long term policy shall not be forfeited by reason only of the non-payment of any premium (in this section referred to as the overdue premium) if—

- (a) not less than three years' premiums have been paid on the policy; and

Non-
forfeiture
of ordinary
policies in
certain cases
of non-
payments of
premiums.

(b) the surrender value of the policy (calculated as at the day immediately preceding that on which the overdue premium falls due) exceeds the sum of the amount of the debts owing to the company under, or secured by, the policy and the amount of the overdue premium.

(2) The company may, until payment of the overdue premium, charge interest on it, on terms not less favourable to the policyholder than such terms (if any) as may be prescribed.

(3) The overdue premium and any interest charged on it under this section and unpaid shall, for the purposes of this Act, be deemed to be a debt owing to the company under the policy.

(4) Without prejudice to the generality of the foregoing provisions of this section, an ordinary long term policy on which not less than three years' premiums have been paid shall not be forfeited by reason only of the non-payment of a premium unless, on or after the day on which the premium fell due—

(a) the company liable under the policy serves a notice in the prescribed manner on the policyholder stating—

- (i) the amount due or payable to the company at the date of the notice in respect of the policy;
- (ii) that the policy will be forfeited at the end of twenty-eight days after the date of the notice if a sufficient sum is not paid to the company in the meantime; and

(b) a period of at least thirty days has passed after the service of the notice.

(5) For the purposes of subsection (4), a notice posted to the last known address of the policyholder shall be deemed to be a notice on the policyholder.

113. Where under any provision of this Part a policyholder is entitled to receive, or a company is required to grant a paid-up policy and there is any debt owing to the company under or secured by the policy, the company may elect—

Treatment of debts on grant of paid-up policies.

- (a) to treat the debt so owing as a debt secured by the paid-up policy, and thereupon the paid-up policy shall be a security for the debt so owing; or
- (b) on ascertaining the amount of the paid-up policy, to reduce the amount by taking into account, upon a basis approved by the Commission, the debt so owing to the company, and thereupon the debt shall cease to be owing to the company.

Payment of Policy Moneys

114.—(1) Subject to this section, where a policyholder, not being the person whose life is insured by the policy, predeceases the person whose life is so insured, and another person satisfies the company which issued the policy—

Death of policyholder not being life insured.

- (a) that he is entitled under the will or on the intestacy of the deceased policyholder, to the benefit of the policy; or
- (b) that he is entitled to obtain probate of the will or to take out letters of administration of the estate of the deceased policyholder,

the company may, without requiring the production of any probate or letters of administration, endorse on the policy a declaration that the person has so satisfied the company and is the holder of the policy, and thereupon that person becomes, subject to subsection (2), the holder of the policy.

(2) Subsection (1) does not confer on a person declared to be the holder of a policy any beneficial interest in the policy which he would not otherwise have had.

(3) This section applies in relation to a policy referred to in subsection (1) whether the deceased holder dies before or after the appointed day.

Unclaimed
moneys.

115.—(1) A company shall, within the prescribed period, deliver to the Commission and also publish weekly for four consecutive weeks in a newspaper circulated in Jamaica, a statement of all moneys (hereinafter called "unclaimed moneys") that have remained unclaimed and in the possession or under the control of the company for a period of fifteen or more years.

(2) The publication under subsection (1) shall state—

- (a) in respect of each policy to which it refers, the name of the person whose life is insured, the name of the policy owner (if known), their last known addresses, the amount due and the date on which it became due;
- (b) that unless within one year from the date of the first publication of the statement a claim to those moneys is established to the satisfaction of the company concerned or, failing that, to the satisfaction of a court of competent jurisdiction, the moneys will be dealt with in accordance with subsection (3).

(3) Subject to subsection (5), upon the expiration of the one year period, unclaimed moneys shall lapse to and become part of the revenues of Jamaica, and shall be paid by the company to the Accountant-General for payment into the Consolidated Fund, accompanied by a statement of account made in the prescribed form and approved by the Commission. ^{1/2016 S.19(a)}

(4) Subject to subsection (5), upon payment of unclaimed moneys to the Accountant-General under this section, the company is discharged from further liability in respect of that amount. ^{1/2016 S.19(b)}

(5) Where—

^{1/2016 S.19(c)}

- (a) a claim has been duly made under paragraph (b) of subsection (2) but has not been determined during the one year period referred to in that paragraph; or
- (b) before the expiration of the year referred to in paragraph (b) of subsection (2) the claimant lodges with the Accountant-General a certificate to the effect that the claim is being considered by a court of competent jurisdiction, signed by a Judge or Resident Magistrate of the relevant court,

the monies in question shall not be paid over to the Accountant-General under subsection (3) unless the claim has been finally determined in a manner that allows the money to be paid over to the Accountant-General.

(6) Where subsection (3) takes effect as respects any sum, not later than fifteen years after the one year period referred to in that subsection, the Accountant-General shall pay that sum to any person who establishes a claim thereto to the satisfaction of the Accountant-General.

Mutualisation

Conversion
into mutual
companies
and *vice
versa*.

116.—(1) Notwithstanding anything in its memorandum of association or other instruments of incorporation or in its articles or other rules or in this Act, a company incorporated in Jamaica that—

- (a) has a share capital; and

- (b) is registered under this Act to transact long term business, whether alone or in combination with any other class of insurance business.

may with the approval of not less than three-fourths of the number of its shareholders who together hold not less than three-fourths of its share capital and with the permission of the Commission, establish and implement a plan for the conversion of the company into a mutual company by the purchase of its shares or the conversion of the shares into debentures in accordance with such conditions as may be prescribed.

(2) Notwithstanding anything in its memorandum of association or other instruments of incorporation or in its articles or other rules or in this Act, a company incorporated in Jamaica that—

- (a) does not have a share capital; and

- (b) is registered under this Act to transact long term business, whether alone or in combination with any other class of insurance business,

may with the approval of not less than three-fourths of the number of its voting policyholders, and with the permission of the Commission establish and implement a plan for the conversion of the company into a company incorporated in Jamaica with a share capital which is distributed on an equitable basis to all policyholders, and in accordance with such conditions as may be prescribed.

PART VI. *Reserves and Dividends*

117.—(1) Every insurer shall include among the liabilities ^{Reserves.} provided in its annual statement of account, reserves as prescribed by the Commission.

(2) The Minister may, on the recommendation of the Commission, exempt any insurer from the provisions of this section.

118. No shareholders' dividend shall be paid by any local ^{Dividend not} company while its assets are less than the amount required for ^{to impair.} solvency by section 53 nor shall any dividend be paid that would reduce its assets below the same amount or impair its capital.

PART VII. *General Insurance*

Application
of this Part

119. This Part applies to all companies registered under this Act to transact insurance business in any class of such business other than ordinary long term insurance business, industrial life insurance business or sickness and health insurance business.

Notice of
pro rata
condition of
average.
1/2016
S.20

120.—(1) With respects to contracts of insurance entered into after the date of commencement of the Insurance (Amendment) Act, 2016, the Commission may, with the approval of the Minister, make regulations prescribing the form and manner in which—

- (a) notice of the *pro rata* condition of average in an insurance policy is to be given to policyholders; and
- (b) information is to be given to the public in respect of such condition.

(2) Where the provisions prescribed by regulations made under subsection are not complied with in respect of a policyholder, the *pro rata* condition of average contained in the insurance policy concerned shall be deemed to be void and of no legal effect.

Third party
rights.

121.—(1) This section applies to a policy of insurance in which premises are insured by—

- (a) an owner or occupier; or
- (b) an independent contractor,

against any liability incurred by such person in respect of injury to visitors or workmen, as the case may be, sustained on those premises.

(2) If judgment in respect of any liability to which this section applies is obtained against any person insured by the policy, then the insurer shall, subject to the provisions of subsections (3) and (4) and the terms and conditions of the policy, pay to the person entitled to the benefit of the judgment (hereinafter called the plaintiff) any sum payable thereunder in respect of the liability, without any reference to the owner, occupier or independent contractor, as the case may be.

(3) No sum is payable by an insurer under this section, unless before or within twenty-one days of the commencement of the proceedings in which the judgment is given, the plaintiff had given notice to the insurer of the bringing of the proceedings.

(4) Any term or condition of a policy which limits the right of payment conferred on the plaintiff under this section is of no effect.

PART VIII. *Miscellaneous*

122. The Commission may establish a scheme or may require registered insurers to contribute to a scheme approved by the Commission, for the collection, allocation and application, in accordance with regulations made under this Act, of monetary contributions from registered insurers and registered insurance intermediaries, for the purpose of covering prescribed risks, if the Minister, on the recommendation of the Commission, determines that—

Insurance
contributory
fund.

- (a) it is in the public interest; and
- (b) a particular insurance cover is not available.

123.—(1) Every registered insurer that authorizes one or more agents to act on its behalf shall establish and maintain a system that—

Insurer's duty
of care re
agents.

- (a) is reasonably designed to ensure that each agent complies with the requirements of this Act and any regulations made hereunder;
- (b) provides for the screening of each agent for suitability to carry on business as an agent.

(2) An insurer shall report to the Commission if it has reasonable grounds to believe that an agent who acts on its behalf is not suitable to carry on business as an agent.

Register to be kept.

124. A company shall keep at its principal office in Jamaica a register of policies in accordance with regulations made under this Act.

Replacement of lost life policy.

125.—(1) Where in relation to life insurance policy—

- (a) a policyholder; or
- (b) a person claiming the benefit pursuant to the provisions of a policy,

advises the registered insurer that the policy (in this section referred to as the original policy) is lost or has been stolen or destroyed, the registered insurer shall, subject to this section, and on the production of such reasonable evidence as to the loss, theft or destruction of the original policy, issue a replacement policy to the person referred to in paragraph (a) or (b).

(2) The registered insurer shall not issue a replacement policy unless and until it has received sufficient proof of the validity of the person's claim in respect of the policy.

(3) No replacement policy may be issued unless the applicant has given to the registered insurer an undertaking to surrender the original policy to the registered insurer if it is subsequently found.

(4) A replacement policy shall—

- (a) be a copy, as nearly as can be ascertained, of the original policy in substitution for which it is being issued;

- (b) contain copies of every endorsement on the original policy issued by the registered insurer; and
- (c) include the reason for the issue of the replacement policy.

(5) The reasonably estimated cost of the issue of a replacement policy shall be paid by the applicant at the time of application therefor.

(6) The reason for the issue of the replacement policy shall be recorded by the registered insurer in the appropriate register of policies.

(7) A replacement policy is valid and available for all purposes for which the original policy would have been valid and available and, after the issue of the replacement policy, the original policy shall become void.

(8) Where a registered insurer fails to issue a replacement policy within three months after receipt of an application in writing from a person entitled pursuant to subsection (1) so to apply, the Commission may, upon such evidence as to the loss, theft or destruction of the original policy as the Commission deems sufficient, order the registered insurer within such time as the Commission thinks fit, to issue a replacement policy.

126. A policy, other than a life insurance policy, shall not be avoided solely on the ground that the person whose life is insured died by his own hand or act, sane or insane, or suffered capital punishment, unless the risk of such happening is specifically excluded.

Effect of suicide or capital punishment on policy.

127. Any term or condition of a policy issued after the appointed day that limits, to an amount less than the sum insured, the amount payable under the policy in the event of the death of the life insured occurring as a direct result of war, is of no effect.

Liability limitation for war void.

128. Failure on the part of a company to comply with any provision of this Act shall not in any way invalidate any policy issued by the company.

Offences by company not to invalidate policies.

Local policies governed by Jamaican laws.

129.—(1) Every contract of insurance which is evidenced by a local policy shall be governed by the laws of Jamaica, notwithstanding any agreement to the contrary.

(2) Subsection (1) does not apply to marine insurance contracts.

Payment of moneys in specified currency.

130. Where any policy is issued after the 21st December 2001 in respect of which the premiums are payable or paid in Jamaica such premiums shall be payable or paid, as the case may be, and any sums payable or paid upon the maturity of such policy shall be payable or paid, as the case may be, in the currency stated in the policy.

Power to pay money into Court.

131.—(1) Subject to Rules of Court, any insurance company carrying on life insurance business may, after giving notice in writing to the Commission, pay into Court any moneys payable by the company under a contract of life insurance in respect of which, in the opinion of the directors, no sufficient discharge can otherwise be obtained.

(2) The receipt or certificate of the Registrar or Deputy Registrar of the Court shall be a sufficient discharge to the company for the moneys so paid into Court and such moneys shall, subject to Rules of Court and any regulations made under this Act, be dealt with according to the orders of the Court.

Payment without probate or administration in certain cases.

132.—(1) An insurer by whom any moneys are payable under one or more policies to the personal representative of a deceased person may, without requiring the production of the grant of probate or letters of administration, pay out of such moneys any amount (including any bonuses added to the policy or policies) not exceeding the prescribed amount to any person who satisfies the insurer that he is entitled to obtain probate of the will of the deceased person or to take out letters of administration of his estate.

(2) All persons to whom any moneys are paid under subsection (1) shall apply those moneys in due course of administration and, if the insurer thinks fit, it may require those persons to give sufficient security by bond or otherwise that the moneys so paid will be so applied.

(3) Nothing in this section shall be construed as requiring a company to see to the application of any moneys paid under this section.

133.—(1) A court, in awarding judgment to a plaintiff in respect of a claim, the liability for which is covered by a contract of insurance may, with the consent of both parties, instead of a lump sum, order specified payments with interest to be made at such intervals and over such period not exceeding three years, as the Court may specify. Structured settlements.

(2) Nothing in subsection (1) shall be construed as preventing an insurer and a person who has made a claim against an insurer from entering into a settlement agreement for the payment by the insurer of specified payments at specified intervals over a specific period in satisfaction of the claim that has been made.

(3) Amounts payable by the insured or the beneficiary in respect of payments made or, as the case may be, received pursuant to this section shall be exempt from income tax.

134.—(1) A person shall not publish in respect of any insurance company or in respect of any such company proposed to be formed after the appointed day, a prospectus, notice, circular, advertisement or other invitation offering to the public for subscription any shares in the company or proposed company, unless the prospectus, notice, circular, advertisement or other invitation is first submitted to and approved by the Commission. Approval required for notice offering shares for subscription.

(2) A person acting as promoter of a proposed company referred to in subsection (1) shall not accept any office of profit in the company or any payment or pecuniary advantage other than as provided in the prospectus, notice, circular, advertisement or other invitation.

Publication of
authorized
subscribed
and paid-up
capital.

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

Inspection of
documents.

136. Any person may, upon payment of such fee as may be prescribed, inspect at the office of the Commission any of the records specified under paragraph (a), (b) or (c) of section 29 which has been furnished to the Commission and make a copy of, or extract from, the document.

Documents to
be admitted in
evidence.

137. Every document purporting to be certified by the Commission to be a document lodged with it under this Act, and every document purporting to be similarly certified to be a copy of such a document, shall be deemed to be such a document or copy, as the case may be, and is admissible in evidence as if it were the original document, unless some variation between it and the original document is proved.

Authority to
sign
documents.

138. Any document required by or under this Act to be signed by a director or the principal officer of a company may be signed by any other officer of the company if prior to the exercise of that function that officer is thereto authorized by the board of directors and the board of directors has notified the Commission in writing of the authorization.

Printing of
documents.

139. Where under this Act, a document is required to be printed, the Commission may, in its discretion, permit it to be reproduced by such means as the Commission may approve.

Appeal.

140.—(1) Any person aggrieved by any action, decision, ruling, direction, order or proposal of the Commission in any case may, in writing, appeal to the Appeal Tribunal within thirty days of being notified of that action, decision, ruling, direction, order or proposal.

(2) A person referred to in subsection (1) shall state the grounds of appeal and send a copy thereof to the Commission.

(3) The Tribunal shall give its decision in writing and may confirm, vary, cancel or reverse the Commission's action, decision, ruling, direction, order, proposal or any part thereof, as the case may be.

(4) The Appeal Tribunal shall forward a copy of its decision to the Commission and a copy to the appellant, together with a written statement of the reasons for its decision.

141.—(1) Where—

- (a) an insurance company, an association of underwriters or other person is registered under this Act;
- (b) an application for registration under this Act of an insurance company, an association of underwriters or any other person is refused; or
- (c) the registration of an insurance company, association of underwriters or any other person is suspended or cancelled,

the Commission shall cause notice of the registration, refusal, suspension or cancellation to be published at least once in the *Gazette* and in a newspaper in nationwide circulation published in Jamaica.

(2) The Commission shall from time to time cause to be published in the *Gazette* and in a newspaper in nationwide circulation published in Jamaica, up-to-date lists of companies, associations of underwriters and persons registered under this Act.

142. Subject to this section, after twelve months from the appointed day—

- (a) no person carrying on any class of insurance business specified in section 3 shall have or use, or continue to have or use, the word "Insurance" or "Assurance", or any derivative thereof, in the name under which that person is carrying on business, unless that person is registered under this Act or exempted from registration hereunder;

Gazetting of
registration,
etc.

Restriction on
use of
insurance
terms.

- (b) no person carrying on any such class of insurance business shall have or use, or continue to have or use, in the name under which that person is carrying on business any words indicating that the person is an insurer unless that person is registered under Part II or exempted from registration thereunder;
- (c) no person registered under Part II shall, without the written consent of the Commission, carry on any insurance business unless that person has and uses as part of the business name of that person the word "Insurance" or "Assurance" or a derivative thereof;
- (d) no person registered under Part IV as a broker shall, without the written consent of the Commission, carry on business as such unless that person has and uses as part of the business name of that person the words "Insurance Broker" or "Assurance Broker"; and
- (e) no person registered under Part IV as an agent (and not also registered under Part II) shall, without the written consent of the Commission, carry on business as such unless that person has and uses as part of the business name of that person the words "Insurance Agent" or "Assurance Agent".

Extension of
time limits.

143. Where any provision of this Act requires anything to be done within a specified period of time and no provision is made for the extension thereof, that period may in any particular case be extended by the Commission.

Regulations.

144.—(1) The Commission may, with the approval of the Minister, make regulations providing for such matters as may be necessary or expedient for the purposes of this Act and without prejudice to the generality of the foregoing the regulations may make provision in relation to all or any of the following—

- (a) the qualifications of auditors and actuaries to be appointed under this Act;
- (b) the forms to be used in connection with any of the provisions of this Act;
- (c) the fees to be paid annually by persons registered under this Act;
- (d) the matters in respect of which fees are to be payable and the amount of those fees;
- (e) deposits to be made by insurance companies;
- (f) the maintenance and investment of funds by insurance companies;
- (g) the assignment of policies generally or by way of mortgage or upon trust;
- (h) the disposal and vesting of policy moneys that have remained unclaimed for the prescribed periods;
- (i) the holding of examinations for brokers, sales representatives and agents;
- (j) amalgamations and transfers falling within section 31;
- (k) the registers to be kept for the purposes of this Act;
- (l) standards of corporate governance of insurers and insurance intermediaries;
- (m) the bond insurance coverage to be maintained by insurance intermediaries;
- (n) standards for risk management procedures to be established and adhered to by insurers; ^{1/2016 S. 21(a)}
- (o) in respect of any right under this Act to make oral or written representations to the Commission, the time within which those representations shall be made. ^{1/2016 S. 21(a)}

(2) Regulations made under this section shall be subject to negative resolution and may contain such incidental or supplementary provisions as appear to the Commission to be expedient for the purposes of the regulations.

(3) Notwithstanding section 29 of the Interpretation Act, regulations made under this section may provide for the imposition of penalties on summary conviction in a Resident Magistrate's Court of a fine not exceeding three million dollars or imprisonment for a term not exceeding one year or of both such fine and imprisonment.

1/2016
S 21(b)

Exemptions.
1/2016
S 22.

145.—(1) Regulations made under this Act may authorize the Commission to exempt any class of insurance business where the Commission considers the exemption necessary, having regard to the class of insurance business and to the provisions of this Act.

1/2016
S 22.

(2) By order published in the *Gazette* the Minister may, on the recommendation of the Commission, direct that, subject to such conditions (if any) as the Commission recommends, such of the provisions of this Act as may be specified in the order shall not apply in relation to any specified insurance company or specified class of insurance company or any other specified body or person, or specified class of body or person.

Misleading
advertisement.

146. An insurance company or insurance intermediary shall not knowingly—

- (a) make or permit to be made any statement; or
- (b) issue, or permit to be issued, any advertisement, statement, circular, descriptive booklet or other document,

which is misleading or likely to mislead the public, in relation to insurance business.

Offences

147.—(1) A person commits an offence if he—

- (a) contravenes or fails to comply with any provision of this Act or any direction, condition, obligation or requirement given, imposed or made under any such provisions;
- (b) knowingly causes any person to enter into or make application to enter into, a contract of insurance with any person or body carrying on business in contravention of this Act; or
- (c) in purported compliance with a requirement imposed under any provision of this Act to supply information or provide an explanation or make a statement—
 - (i) supplies information, provides an explanation or makes a statement which he knows to be false in a material particular; or
 - (ii) recklessly supplies information, provides an explanation or makes a statement which is false in a material particular.

(2) A person required under section 48 to produce information, books, securities or other documents commits an offence if he—

- (a) destroys, mutilates or falsifies or is privy to the destruction, mutilation or falsification of such information, books, securities or other documents;
- (b) makes or is privy to the making of a false entry in such books or documents; or
- (c) fraudulently parts with, alters or makes an omission in any such books or documents or is privy to fraudulently parting with, fraudulently altering or fraudulently making an omission in any such books or documents.

(3) Where an offence against this Act is committed by a body corporate 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 body corporate, he as well as the body corporate shall be guilty of the offence.

(4) For the purposes of subsection (3), a person shall be deemed to be a director of a body corporate if he occupies in relation thereto the position of a director, by whatever name called, or is a person in accordance with whose directions or instructions (excluding directions or instructions in a professional capacity only) the directors of the body corporate or any of them act.

(5) Any proceedings against a person for an offence against this Act shall be without prejudice to the cancellation of the registration of such person under this Act or, in the case of an insurance company, to any proceedings for the temporary management, or the winding up, of the company which may be taken in respect of the matter constituting the offence.

General
penalties.

148. All offences against this Act for which no other penalty is prescribed are punishable on summary conviction in a Resident Magistrate's Court by a fine not exceeding three million dollars or imprisonment for a term not exceeding three years.

Amendment
of monetary
penalties by
order
1/2016
S.23.

149. The Minister may, by order published in the *Gazette* and subject to affirmative resolution, amend any monetary penalty imposed by or under this Act.