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Third Session Tenth Parliament Republic of
Trinidad and Tobago

SENATE

BILL

AN ACT to repeal and replace the Insurance Act,
Chap. 84:01; to reform the law relating to
insurance companies; to regulate insurance
businesses and privately administered pension
fund plans and for other related purposes

THE INSURANCE BILL, 2013

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The purpose of the Insurance (No. Bill), 2013 is to provide a new regulatory framework for the insurance industry and to continue to provide for the regulation of privately administered pension fund plans and to repeal the existing Insurance Act, Chap. 84:01.

The Bill contains twelve Parts and 294 clauses.

Clause 1 would set out the short title of the Bill.

Clause 2 would provide for the application of the Act to all persons who, whether or not resident in Trinidad and Tobago, carry on business of either insurance or pension funds, in or from Trinidad and Tobago.

Clause 3 would provide for the Act to have effect even though it is inconsistent with sections 4 and 5 of the Constitution.

PART I—Preliminary

This Part would comprise the preliminary clauses and contain clauses 4 and 5.

Clause 4 would provide the definition of certain words and phrases used in the Bill.

Clause 5 would provide an interpretation of the expressions “connected party” and “connected party group”.

PART II—Administration

This Part would contain clauses 6 to 17.

Clause 6 would provide for the Act to be administered by the Central Bank.

Clause 7 would provide for the Central Bank to produce an annual report on the performance of the insurance industry, in accordance with section 53 of the Central Bank Act.

Clause 8 would provide for the predominance of this Bill over any other written law, except the Central Bank Act, unless otherwise expressly stated in this Bill or such other written law.

Clause 9 would prescribe the powers and duties of the Inspector.

Clause 10 would give the Inspector the power to request from various persons, information related to the carrying on of insurance business in Trinidad and Tobago.

Clause 11 would give the Central Bank the power to collect statistics in relation to insurance business and would compel every registrant to comply with such a request.

Clause 12 would give the Board, the Central Bank, the Governor and the Inspector the power to delegate any of its powers, functions and duties to certain persons.

Clause 13 would provide for the Central Bank to maintain registers as prescribed under the Act or the Regulations.

Clause 14 would provide for and prescribe the timeframe within which the Central Bank shall publish or make available upon request and the payment of a fee, a list of insurers, agents, agencies, brokers, brokerages, sales representatives and adjusters, registered to carry on insurance business in Trinidad and Tobago. It would also provide for the publication of those insurers, agencies and brokerages which no longer hold a registration certificate.

Clause 15 would prohibit the disclosure of any information regarding the business or affairs of a registrant or any of its affiliates or information regarding a policyholder, consumer or other person dealing with a registrant, which is obtained in the course of official duties, except in specified circumstances.

Clause 16 would provide for supervisory information to be the property of the Central Bank and for the prohibition from disclosure of such information by a registrant or any other person to whom the information is made available, without the prior written consent of the Central Bank.

Clause 17 would provide for the payment of application and annual fees in accordance with Schedule 2, by each applicant, registrant or representative office situated in Trinidad and Tobago, and shall prescribe the date by which such payment shall be made to the Central Bank.

PART III—*Insurers*

This Part would contain nine sub-divisions and includes clauses 18 to 136.

A. REGISTRATION OF INSURERS

Clause 18 would state the non-application of this Part to a privately administered pension fund plan, an association of underwriters or an intermediary.

Clause 19 would provide an interpretation of the expression “carrying on insurance business”.

Clause 20 would prohibit a person from carrying on any class or type of insurance or reinsurance business in or from Trinidad and Tobago unless that person is a company registered under this Part. It would also provide for the imposition of other restrictions on the carrying on of insurance business in Trinidad and Tobago.

Clause 21 would provide that a company carrying on insurance business maintain a stated capital or, uncommitted assets as in the case of a mutual company, of at least fifteen million dollars. It would also prescribe a scheme which would allow insurers carrying on long-term and general insurance business at the commencement of this Bill, to increase its stated capital or uncommitted assets to the prescribed fifteen million dollars, within five years of such commencement.

Clause 22 would provide for an insurer registered under the former Act to be deemed to be registered under this Bill and for the Central Bank to issue a new certificate of registration, specifying the classes and types of insurance business for which the insurer is registered. Such registration shall be *prima facie* evidence of the registration under this Bill of an insurer registered under the former Act.

Clause 23 would detail the procedure for registration of a company to carry on insurance business in respect of any type or class prescribed in Schedule 1.

Clause 24 would empower the Central Bank, after consultation with the Minister, to accept or refuse an application for registration.

Clause 25 would detail the procedure for registration by a foreign insurance company to carry on insurance business in Trinidad and Tobago.

Clause 26 would detail the procedure for a foreign insurance company to establish, acquire, open, close or relocate a representative office in Trinidad and Tobago.

Clause 27 would detail the procedure for a local insurer to establish, close or relocate a branch outside Trinidad and Tobago.

Clause 28 would detail the criteria to be met by a company prior to it being registered to carry on insurance business in Trinidad and Tobago.

Clause 29 would provide for a company to continuously comply with the terms and conditions of its registration as well as the requirements of Schedule 5.

Clause 30 would prescribe restrictions on an insurer from transacting certain insurance business, whether in or outside Trinidad and Tobago, without the prior written approval of the Central Bank. It would also prohibit an insurer from carrying on any business for which it is not registered.

Clause 31 would prescribe that a company provide written notification to the Central Bank of any change in the particulars of its application, or in any information and the particulars in any document which it is required to produce, within five days of such change.

Clause 32 would prohibit an insurer from making any alteration to its articles of incorporation or continuance, by-laws or any other constituent document under which it is incorporated, continued or constituted, without the written approval of the Inspector.

Clause 33 would provide for an insurer to furnish the Inspector with information in respect of any new or amended standard form of proposal, policy, endorsement or application which it issues.

Clause 34 would give the Board the power to revoke the registration of an insurer in respect of any or all classes and types of insurance business.

Clause 35 would empower the Board to restrict the registration of an insurer and further to issue directions to said insurer.

Clause 36 would provide for the Board to serve written notice of the intention to restrict, or vary any restriction on the registration of an insurer, and would detail the particulars of such notice.

Clause 37 would provide for the Board to give written notice to an insurer of the withdrawal of a restriction or a condition of a restriction.

Clause 38 would give the Board the power to issue directions when giving a notice of intention to revoke registration, where registration is revoked in cases of emergency, and in the case of a voluntary winding-up, where it appears to the Board that such directions will be in the interests of the policyholders or potential policyholders of the insurer.

Clause 39 would detail the particulars of the said directions.

Clause 40 would give the Board the power to revoke or restrict the registration of an insurer in cases of emergency.

Clause 41 would allow an insurer to apply to the Central Bank for the voluntary revocation of its registration.

B. STATUTORY DEPOSITS

Clause 42 would prescribe the amount and form of the statutory deposit that an insurer is required to deposit with the Central Bank, to be registered to carry on any class and type of insurance businesses.

Clause 43 would provide for statutory deposits made by an insurer to form part of the assets of that insurer and to be retained by the Central Bank until the insurer ceases to be registered. It would also provide for the payment to an insurer of any interests or dividends accruing due on any of its approved securities.

Clause 44 would provide for an insurer to notify the Inspector in writing of the maturity of an asset held in the statutory deposit ten days prior to the maturity of such an asset. It would also provide for the Central Bank to continue to hold the cash equivalent to such an asset, and for such cash to form part of the statutory deposit.

Clause 45 would provide for an insurer whose registration has been revoked and who is not under liability to Trinidad and Tobago policyholders to apply in writing to the Central Bank for a release of its statutory deposit, and for the Central Bank to release such statutory deposit, where no opposition is filed.

Clause 46 would give the Inspector the power to release to an insurer such portion of the statutory deposit as may be in excess and as the Inspector considers appropriate in the circumstances, where the Inspector is satisfied that the statutory deposit retained is in excess and that the insurer has complied with the its obligations to continuing policyholders.

Clause 47 would give the Central Bank the power, where an insurer is in liquidation, to pay to the liquidator all monies and securities held as a statutory deposit in respect of that insurer, and the liquidator shall apply such monies and securities towards discharging the liabilities of the insurer, in accordance with the relevant provisions of this Bill.

Clause 48 would provide for the Inspector to furnish an insurer with a certificate setting out the nature and extent of any statutory deposit including any approved securities forming the whole or part of such deposit held by the Central Bank, where the insurer so demands.

Clause 49 would provide for the Inspector to notify an insurer in writing, to deposit with the Central Bank monies or approved securities sufficient to bring the value of the statutory deposit of that insurer to the amount required by this Bill, where the value of such securities depreciates to a value below that required by this Bill.

Clause 50 would provide for the Central Bank to reimburse all interested persons for the loss suffered, where any monies or approved securities retained by the Central Bank as part of the statutory deposit of an insurer, are lost, stolen, destroyed or damaged, while so retained.

Clause 51 would provide for an insurer to substitute any monies or approved securities deposited as, or as part of the statutory deposit, at any time, provided that the total amount then deposited is not less than the amount required to be deposited under this Bill, and such monies and approved securities will be subject to the same charge or liability as that for which they were substituted.

C. STATUTORY FUNDS

Clause 52 would provide that a foreign insurer registered under this Bill to carry on long-term and general insurance business shall establish and maintain a statutory fund in respect of each type of such business, place in trust additional assets to meet its statutory fund requirements, and keep such books and records as are necessary to identify the assets and liabilities attributable to each class and type of insurance business stated in its statutory fund.

Clause 53 would provide for the restriction on the use of assets in the statutory fund.

Clause 54 would prescribe the method by which the trust required to form part of a foreign insurer's statutory fund is to be created as well as the form of said trust.

Clause 55 would provide for restrictions to be placed on a trustee in respect of his dealing with any assets of an insurer, and would provide for a trustee to submit a statement showing the particulars of the assets comprising the statutory fund. The clause would also provide for a trustee convicted of an offence under this clause to make good any shortfall in the statutory fund.

Clause 56 would provide for a foreign insurer to furnish the Inspector with statements as to the assets and liabilities of which the statutory fund is comprised, those in respect of which the statutory fund was established, any assets that have since matured, and any assets that he wishes to replace.

Clause 57 would empower the Inspector to request information from or give written directions to a trustee or insurer who the Inspector believes has furnished the Central Bank with a statement of the assets in the statutory fund that is inaccurate, incomplete, misleading or unsatisfactory, or provides an insufficient or excessive value of such assets.

Clause 58 would empower the Inspector to direct a foreign insurer to transfer additional assets to the statutory fund, where

depreciation in the value of securities has caused the value of the statutory fund to fall short of that required by this Bill.

Clause 59 would give the Inspector the power to direct the trustee to release to the foreign insurer assets equal to that portion of the statutory fund that is in excess.

Clause 60 would give the Inspector the power to direct the trustee to release assets of the statutory fund to the liquidator, which the liquidator shall apply in accordance with the provisions of this Bill, where a foreign insurer is in liquidation. It would also provide for the Inspector to direct the trustee to release assets to a foreign insurer, where the registration of such insurer is revoked pursuant to clause 34(1)(g).

Clause 61 would prescribe that every foreign insurer shall invest in assets in Trinidad and Tobago an amount equal to at least seventy-five per cent of its Trinidad and Tobago dollar liability in each statutory fund. It would also provide for the interpretation of the expressions, “assets in Trinidad and Tobago” and “Caribbean Community”.

Clause 62 would prescribe the percentage of foreign assets that a foreign insurer shall invest in a foreign currency in the statutory fund, where any liability in respect of policies is payable in a foreign currency.

Clause 63 would provide for an insurer carrying on property insurance business in Trinidad and Tobago to establish a Catastrophe Reserve Fund in respect of catastrophe risks. It would also provide for such fund to be maintained at all times and to be invested in foreign assets that do not originate in Trinidad and Tobago, and which are denominated in a foreign currency.

D. OWNERSHIP OF INSURERS

Clause 64 would give the Central Bank the power, where a local insurer is a member of a related group of two or more financial entities, to direct the controlling shareholder to restructure and form a financial holding company, and to issue a permit where the restructuring is complete.

Clause 65 would give the Central Bank the power to direct a restructuring of a related group comprising two or more financial entities, where one such entity is a local insurer that is engaged in both financial and non-financial activities, to separate the financial and non-financial activities of that group.

Clause 66 would detail the circumstances under which the Central Bank may not require a restructuring.

Clause 67 would prescribe the restrictions on the activities of a financial holding company.

Clause 68 would detail the requirements for a holding company to obtain a permit to carry on business as a financial holding company.

Clause 69 would detail the requirements for a person, or a person on whose behalf shares are held either in trust or by a nominee, to become a controlling shareholder of an insurer.

Clause 70 would detail the requirements for a person, or a person on whose behalf shares are held either in trust or by a nominee, to become a significant shareholder of an insurer.

Clause 71 would detail the requirements for a financial entity, or a significant or controlling shareholder of a financial entity, to become an acquirer of an insurer, or of the financial holding company of an insurer.

Clause 72 would give the Central Bank the power, where a permit has been granted to a significant shareholder to become a controlling shareholder, or a controlling shareholder to become a financial holding company, under this Part, to revoke the significant shareholder permit prior to issuing the controlling shareholder permit, or the controlling shareholder permit prior to issuing the financial holding company permit. It would also give the Central Bank the power to revoke a permit where a person's shareholding has decreased, or to revoke the permit of a financial holding company.

Clause 73 would give the Central Bank the power to obtain from any shareholder of an insurer, information in respect of the capacity within which he holds voting shares in that insurer.

E. TRANSFER AND AMALGAMATION

Clause 74 would prescribe the form of the application to be made to the Central Bank, for the transfer or amalgamation of companies. It would also provide, in the case of a foreign insurer, the requirements for such transfer or amalgamation in respect of policies in Trinidad and Tobago.

Clause 75 would provide for a scheme, setting out the terms of the agreement or deed under which it is proposed to effect the transfer or amalgamation to be submitted to the Central Bank. It would also provide for any expenses incurred by the Central Bank in obtaining an actuarial report on such scheme, to be defrayed by the companies seeking the transfer or amalgamation.

Clause 76 would detail the procedure to be followed by the Central Bank prior to its confirmation or refusal of a scheme, where the percentage of any market share in Trinidad and Tobago of the proposed transferee or amalgamated company and any financial entity with which such company will be affiliated, would not exceed forty per cent.

Clause 77 would provide for the Central Bank to issue written notification of its decision on the scheme of transfer or amalgamation. It would also provide for a scheme confirmed by the Central Bank, to be binding on all persons, and to have effect notwithstanding anything in the articles of incorporation or continuance, by-laws or other constituent document of the companies.

Clause 78 would detail the factors to be considered by the Central Bank in determining whether or not to approve a proposed transfer or amalgamation.

Clause 79 would provide for the Central Bank to forward for the approval of the Minister, any request for transfer or amalgamation that will result in the percentage of any combined market share in Trinidad and Tobago of the proposed transferee or amalgamated company and any financial entity with which such company will be affiliated, to exceed forty per cent.

Clause 80 would provide for matters connected with the proposed transfer or amalgamation, including empowering the decision-maker to provide reasons for the refusal of the proposed transfer or amalgamation. It would also provide for the Minister to make an Order exempting transfers below a specified threshold, in accordance with this Bill.

Clause 81 would prescribe the documents to be submitted to the Central Bank, by an insurer to which insurance business is transferred or, the insurer carrying on the amalgamated insurance business, within twenty days of a transfer or amalgamation.

F. MUTUALISATION AND DEMUTUALISATION

Clause 82 would provide for an insurer with a share capital to establish and implement a plan for the conversion into a mutual company, with the approval of the Central Bank.

Clause 83 would provide for an application to be made in writing to the Central Bank, for the establishment and implementation of a plan, and would detail the contents of such plan.

Clause 84 would give the Central Bank the power to appoint an independent actuary to investigate the financial position of the applicant for mutualization, and for such actuary to furnish the

Central Bank with a report on its findings, and such other information as may be required by this Bill or by the Central Bank.

Clause 85 would provide for the approval of the plan for mutualization, by the Central Bank, where it is satisfied that the documents submitted in lieu of such application has shown that the insurer's stated capital has ceased to be an essential factor in the safeguarding of policyholders' interests, having regard to the quality and amount of the assets of the insurer, the surplus of the insurer relative to its liabilities, the nature of the business of the insurer, and any other considerations that the Central Bank may consider relevant.

Clause 86 would detail the procedure for the acceptance of a plan, by the Central Bank, and by shareholders and policyholders of the insurer.

Clause 87 would provide for the insurer to pay and the Central Bank to recover from the insurer, all expenses incurred by the Central Bank in respect of an application for approval to establish and implement a plan.

Clause 88 would give the Minister the power to prescribe by Regulations, after consultation with the Central Bank, procedures for the demutualization of a company and to ensure that all interests are treated equitably.

Clause 89 would detail the procedure for members of a company that does not have shareholders, to vote by post, notwithstanding anything contained in articles of incorporation, by-laws or other constituent document of the company. It would also restrict the applicability of this provision from an insurer incorporated outside of Trinidad and Tobago.

G. CORPORATE GOVERNANCE

Clause 90 would give the Central Bank the power to approve or refuse the appointment of a director or officer of an insurer or a financial holding company or, a person who has been adjudged bankrupt, in respect of the management of an insurer or of a financial holding company, and for the Central Bank to provide reasons for its decision.

Clause 91 would prohibit a director of an insurer or of a financial holding company from being present or able to vote at a meeting of the board of directors or a committee of the board of directors, when a contract which would result in a financial benefit to him, other than a benefit under the director's contract of employment, is being considered.

Clause 92 would prescribe the duties of a director of an insurer or a financial holding company, and would provide an interpretation of the word "remuneration".

Clause 93 would provide for the appointment of an audit committee from among those on the board of directors of an insurer.

Clause 94 would provide for each insurer and each financial holding company to submit a report to the Inspector, containing a statement signed by the chief executive officer and chief financial officer, detailing the responsibilities of the board of directors and management, and of the board's opinion on the financial condition of the actuary, either within sixty days after the end of its financial year, or when the Inspector so requires.

Clause 95 would provide for the board of directors of an insurer to establish, maintain and review written procedures of that insurer, in respect of transactions between that insurer and connected parties, connected party groups and employees.

Clause 96 would provide for the board of directors of an insurer to establish and maintain documented information systems, to identify and monitor credit exposures.

Clause 97 would provide for the board of directors of an insurer to establish, document and maintain adequate internal controls.

Clause 98 would provide for the board of directors of an insurer to undertake an annual review of its procedures, and to subsequently furnish the Inspector with such information. It would also give the Inspector the power to require the board of directors of the insurer to change its procedures or, within a specified period, to take such action to ensure compliance.

Clause 99 would give the Central Bank the power, where it is of the opinion that an insurer or financial holding company is in contravention of this Bill, to direct the board of directors to convene a special meeting and to prepare a report on the failure of the insurer to comply with the requirements of this Bill, and to fill any vacancy, where the minimum number of directors of an insurer or financial holding company falls below that required by this Bill.

Clause 100 would provide for a local insurer, a financial holding company or a foreign insurer, to annually appoint an audit entity satisfactory to the Central Bank, to be its auditor, or, in the case of a foreign insurer, the auditor of its operations in Trinidad and Tobago. It would also provide for such an audit entity to alternate the partner having primary responsibility for conducting the audit, every five years.

Clause 101 would provide for a local insurer, a foreign insurer, or a financial holding company to notify the Inspector of the removal, replacement or cessation of an auditor, and to give reasons for such a decision. It would also provide for an auditor of

an insurer or a financial holding company to notify the Inspector, the insurer and the financial holding company of his resignation or decision not to seek re-appointment.

Clause 102 would provide for the duty of an auditor of an insurer or a financial holding company to report to the chief executive officer, the board of directors and the Inspector, and in the case of a foreign insurer, the principal representative, irregular transactions or conditions. It would also provide for an auditor to inform the Inspector of the contravention or likely contravention of this Bill, the Regulations or IFRS, by an insurer or a financial holding company.

Clause 103 would provide for an insurer that is required by the Inspector to provide actuarial reports, including an insurer carrying on long-term insurance business or a general insurer carrying on the accident and sickness class of business, to appoint an actuary as a member of staff or as a consulting actuary, within three years of the commencement of this Bill, and for the insurer to notify the Inspector of such appointment.

Clause 104 would provide for an insurer carrying on long-term insurance business or a general insurer carrying on the accident and sickness class of insurance business in Trinidad and Tobago to provide actuarial reports, and to notify the Inspector of the removal, replacement or cessation of an actuary, giving reasons for such a decision, and of his resignation or decision not to seek re-appointment.

Clause 105 would provide for communication given to the Central Bank in good faith and in a professional capacity, not to be considered a violation of any contract of service between the relevant parties.

Clause 106 would provide for the Inspector to provide a report to an insurer, a financial holding company or appropriate professional association, where the Inspector believes that such person has failed to comply with the provisions of this Bill, and for the Inspector to be indemnified against any action, claim or demand by, or any liability, to any person in respect of such report.

H. PRUDENTIAL REQUIREMENTS, RESTRICTIONS AND PROHIBITIONS

Clause 107 would provide for an insurer or a financial holding company to maintain adequate capital and appropriate forms of liquidity, in accordance with the Regulations.

Clause 108 would provide for a local insurer to maintain specific assets to support its operations in the jurisdiction in which it operates, and for a foreign insurer to assign capital and maintain other specific assets to support its liabilities in Trinidad and Tobago.

Clause 109 would prescribe the circumstances under which a local insurer or a financial holding company shall not declare or pay a dividend.

Clause 110 would provide that an insurer shall invest in assets in Trinidad and Tobago an amount equal to at least seventy-five per cent of its policy benefit liabilities, other insurance and contract liabilities and the surplus which is derived from participating policies. It would also empower the board of directors of an insurer to establish and maintain policies and procedures in relation to such investments, and for the Inspector to give directions to effect such compliance.

Clause 111 would provide for an insurer to make all investments and deposits in its corporate name and to keep a written record of such transactions at its principal office in Trinidad and Tobago.

Clause 112 would impose restrictions on an insurer in respect of the number of shares or ownership interests that it can hold, in certain entities.

Clause 113 would prescribe the transactions for which a local insurer shall obtain prior approval of the Central Bank or of the Inspector.

Clause 114 would impose restrictions on an insurer in respect of the credit exposures that it can incur, whether directly or indirectly.

Clause 115 would impose restrictions on an insurer in respect of the credit exposures that it can directly or indirectly incur, to any connected party or any connected party group.

Clause 116 would provide for an insurer to report any contravention of the limitations on credit exposure to the Inspector and for the Inspector to require the insurer to reduce such credit exposure within a specified period.

Clause 117 would impose restrictions on an insurer in respect of the direct or indirect acquisition of shares, or borrowing or lending of funds.

I. JUDICIAL MANAGEMENT, SUSPENSION AND WINDING-UP

Clause 118 would provide for the judicial management of an insurer or a financial holding company by an order of the High Court, either voluntarily or upon the advice of the Inspector to the board of directors of that insurer or that financial holding company, but without prejudice to the High Court to stay or discontinue such proceedings.

Clause 119 would provide for the imposition of an order for judicial management on an insurer or a financial holding company or on any part of its business, and for the appointment of a judicial manager to implement such an order.

Clause 120 would provide for the judicial manager to file a report with the High Court stating the course that is in his opinion most advantageous to the general interests of the policyholders of the insurer, and to apply to the High Court for an order to give effect to such course.

Clause 121 would give the High Court the power to make an order giving effect to the course recommended under clause 120, which the Court considers to be most advantageous to the general interests of the policyholders of the insurer. It would also provide for such an order to be binding on all persons and to have effect notwithstanding anything contained in the articles of incorporation, by-laws or other constituent documents, of the insurer or the financial holding company.

Clause 122 would provide for the preparation of a scheme of transfer by the judicial manager, for confirmation by the Central Bank and subsequently the High Court, where an order is made by the High Court for the transfer of the business of an insurer or a financial holding company to some other company.

Clause 123 would give the High Court the power to cancel or vary any contract or agreement, other than a policy between the insurer or the financial holding company and any other person, which the Court is satisfied is detrimental to the interests of the policyholders, either of its own motion or on the application of the judicial manager, at any time, while an order for judicial management made pursuant to clause 119, is in force.

Clause 124 would indemnify the judicial manager against any action, claim or demand by, or liability to, any person in respect of any act done or omitted to be done in good faith, in the exercise or connected with the exercise of the powers conferred on him under this Part.

Clause 125 would give the High Court the power to cancel an order for judicial management, upon an application by the Central Bank or any other interested person, and for the management to vest subsequently, in the board of directors, other governing body of the company, or the liquidator or receiver appointed by the High Court.

Clause 126 would give the Board the power, on the advice of the Inspector, to suspend the business of an insurer or a financial holding company, where the Inspector is satisfied that the financial situation of such company so requires. It would also prohibit any person from restricting the access of authorized persons, to the

premises, books, records, or to other information, of an insurer or a financial holding company.

Clause 127 would provide for an insurer or a financial holding company to remain in suspension and not to carry on business, where a petition for winding-up has been made to the High Court by the Central Bank and remains pending, unless the Court otherwise authorizes, and on such conditions as the Court may specify.

Clause 128 would give the High Court the power to order the winding-up of a local insurer or a financial holding company, on an application, which may be made *ex parte*, to the High Court, and for the court to appoint a liquidator in accordance with the Companies Act with modifications.

Clause 129 would detail the procedure to be followed upon the issuance of an order of the High Court, for the winding-up of an insurer or a financial holding company.

Clause 130 would provide for a liquidator of an insurer to ascertain the value of the liability of the insurer, to every person who is entitled to or is interested in a policy issued by the insurer, in such manner as the High Court may approve, and to notify such person of the value so ascertained. It would also provide for such person to be bound by the value ascertained unless he disputes the valuation, or the High Court, by order, directs otherwise.

Clause 131 would provide for, on the winding-up of an insurer, the ascertainment of the value of the assets and liabilities of that insurer and for the application of such assets and liabilities.

Clause 132 would provide that every person who at the time of the winding-up of an insurer was a director, principal representative or officer, where the statutory fund is in deficit, shall be presumed to have had knowledge of the contravention, unless he proves otherwise. It would also provide for the High Court to order such person to make good on the sum of which the statutory fund is in deficit, which occurred because of such contravention.

Clause 133 would provide for a scheme to be prepared by the liquidator, receiver or receiver-manager where the High Court makes an order for the winding-up of part of the business of an insurer.

Clause 134 would provide that where on the winding-up of the insurer the assets of the statutory fund are insufficient to meet its liabilities, the claimants on policies shall take precedence over those of other unsecured creditors.

Clause 135 would provide for the voluntary winding-up of an insurer or a financial holding company.

Clause 136 would indemnify the receiver, receiver-manager, or liquidator against any action, claim or demand, or liability to, any person, in respect of any act done or omitted to be done in good faith, in the exercise or connected with the exercise of the powers conferred on him under this Part.

PART IV—*Intermediaries*

This Part would contain clauses 137 to 168.

Clause 137 would provide for a person to be registered to carry on business as an intermediary.

Clause 138 would detail the application process for registration as an intermediary.

Clause 139 would prescribe the restrictions on a person registered to carry on business as an intermediary.

Clause 140 would give the Central Bank the power to register applicants as intermediaries in respect of such class and type of insurance business as may be specified in the certificate of registration, and to give written reasons for the refusal of such an application.

Clause 141 would give the Central Bank the power to issue a provisional certificate to permit a person to perform the functions of a sales representative, even if said person does not meet the educational qualification necessary to be considered fit and proper to perform such functions.

Clause 142 would provide for an intermediary to be personally liable to a policyholder on all contracts of insurance made by or through him, directly or indirectly, with any company which is not registered to carry on insurance business, or on those contracts of insurance which are unlawfully made by or through him, directly or indirectly, with an insurer or foreign insurance company, in the same manner as if the intermediary had been an insurance company.

Clause 143 would prescribe the amount of professional indemnity insurance that a brokerage shall maintain.

Clause 144 would empower the Central Bank to issue a certificate of registration to a person registered under this Part, and for such certificate to be prima facie evidence that the person named therein has been registered in the capacity stated on the certificate.

Clause 145 would provide for an intermediary that was issued a certificate of registration by the Central Bank to continue to meet all registration requirements.

Clause 146 would prohibit the renewal of a certificate of registration to a sales representative, agent, broker or adjuster who

has failed to comply with the continuous education requirements, as required by the Central Bank.

Clause 147 would provide for a person registered under this Part to produce his certificate of registration when requested to do so, by a person as specified under this clause.

Clause 148 would give the Central Bank the power to revoke the registration of a person registered under this Part in respect of all or any of the classes and types of insurance business the person is registered to carry on.

Clause 149 would empower the Central Bank to immediately revoke the registration of an agent, broker, agency or sales representative, and to give such person written notice of the revocation.

Clause 150 would provide for the Central Bank to be given notice of the termination of the contract of a sales representative, agency, agent, broker, or brokerage and for such person to be issued a new certificate of registration where he enters a new contract.

Clause 151 would allow the right of appeal to any person aggrieved by a decision of the Central Bank to refuse to register said person or revoke said person's registration as an intermediary.

Clause 152 would prevent the payment of compensation to any person who at the time of placing or negotiating insurance, was not registered as an agency, brokerage or sales representative.

Clause 153 would prohibit a registrant, or officer or employee of a registrant, from making or attempting to make an agreement as to the premium to be paid for a policy other than as specified in the policy, or from providing the policyholder with a rebate of premium.

Clause 154 would prevent clauses 152 and 153 from being prejudicial to the payment of any dividend, bonus, profit or savings, which is provided for by the policy. It would also provide that nothing in this Part shall be construed to prevent a registrant from offering a policy at a special rate to a *bona fide* salaried employee, or to the spouse or child of such an employee.

Clause 155 would provide that every insurer, agency, or brokerage make a return to the Central Bank in such form and at such times as the Central Bank requires.

Clause 156 would prescribe the powers of an agency.

Clause 157 would provide for a brokerage to disclose to a consumer in writing that it has entered into an agreement under which the brokerage can commit an insurer to provide coverage to

a consumer in accordance with such criteria as may be established by the insurer.

Clause 158 would make it an offence for an agent, broker, brokerage or sales representative to procure the payment of premiums by fraudulent representation. The penalty for the offence would be a fine of one hundred and fifty thousand dollars (\$150,000) and imprisonment for ten (10) years.

Clause 159 would provide that receipts of premiums which have been received by an agency, a brokerage or a sales representative on behalf of an insurer shall be deemed to be received by the insurer.

Clause 160 would impose a duty on an agency registered to carry on general insurance business or brokerage to establish and maintain a consumer trust account for the receipt and payment of consumer funds.

Clause 161 would require an agency, brokerage or sales representative to pay over monies received from a consumer to the insurer within ten days after the end of the month in which the monies were received.

Clause 162 would require an agency, brokerage or sales representative that receives a cheque in the name of a consumer from an insurer, to deliver the cheque to the consumer within three days from the date of receipt of said cheque from the insurer.

Clause 163 would require an agency or brokerage to submit its financial statements to the Inspector within sixty days after the close of its financial year.

Clause 164 would impose a duty on every brokerage to keep monthly accounts showing receipts and expenses relating to its insurance business.

Clause 165 would require every agency to keep monthly records relating to policies issued or renewed by them.

Clause 166 would require the auditor of an agency or brokerage to include in its financial statements whether or not the requirements of sections 160, 161 and 162 have been satisfied.

Clause 167 would permit a foreign adjuster to act as an adjuster during periods of catastrophe.

Clause 168 would create offences for intermediaries who contravene the provisions of this Part. In the case of an agency or brokerage, the penalty would be twenty thousand dollars (\$20,000) and two thousand dollars (\$2,000) per day for each day the offence continues, and in the case of an agent, broker, sales representative

or adjuster, the penalty would be ten thousand dollars (\$10,000) and one thousand dollars (\$1,000) per day for each day the offence continues.

Part V—*Financial Statements and Returns*

This Part would contain clauses 169 to 181

Clause 169 would impose a duty on every insurer and financial holding company to keep at its head office, its books, vouchers, records, receipts, schedules and other documents as may be necessary to enable it to prepare the financial statements and returns required under this Bill.

Clause 170 would provide for the valuation of the assets of each insurer or financial holding company in accordance with financial reporting standards.

Clause 171 would require every local insurer and financial holding company to submit to the Inspector its financial statements of all its operations both domestic and foreign, within sixty days after the close of its financial year.

Clause 172 would provide for an insurer and a financial holding company to submit to the Inspector audited returns within sixty days of the close of its financial year. These returns must contain statements of its assets and liabilities, statements of its earnings and expenses, the auditor's reports and any other information required by the Inspector.

Clause 173 would provide a transitional period for the submission of financial statements and returns under this proposed legislation.

Clause 174 would require the auditor of an insurer or financial holding company to audit the annual returns filed by the insurer or financial holding company. The auditor must submit the report to the Inspector.

Clause 175 would empower the Inspector to require explanations from an insurer or financial holding company, where the financial statements or returns are unsatisfactory, incomplete, incorrect or misleading. The Inspector may issue compliance directions as he thinks necessary.

Clause 176 would impose liability on an insurer or financial holding company which fails to submit its financial statements or returns as required under this Act.

Clause 177 would prohibit the commingling of funds between insurance business and any other business.

Clause 178 would permit an insurer to apportion receipts and payments between various classes of insurance business.

Clause 179 would require the publication of audited financial statements in at least two daily newspapers. The Central Bank may consult with insurers to create abridged financial statements for publication.

Clause 180 would empower the Inspector to appoint an independent actuary to review the work of an insurer's actuary, the cost of which would be payable by the insurer.

Clause 181 would allow the Inspector to prohibit an insurer from recognizing in its financial statements or return, its reinsurance arrangements. This clause would impose a duty on the insurer to ensure that its reinsurance arrangements do not lapse and evidence of renewal must be provided to the Inspector.

PART VI—*Compliance Directions and Injunctive Relief*

This Part would contain clauses 182 and 183

Clause 182 would empower the Inspector to issue compliance directions in certain circumstances. Failure to comply with such directions can result in fines as high as five million dollars (\$5,000,000)

Clause 183 would empower the Central Bank to seek injunctive relief where it reasonably believes that a person is in violation of this Act.

PART VII LONG—*Term Insurance Business*

This Part contains seven sub-divisions from clauses 184 to 238.

A. ACTUARIAL INVESTIGATIONS

Clause 184 would make this Part applicable to insurers in respect of long-term insurance in Trinidad and Tobago.

Clause 185 would provide for insurers carrying on long-term insurance business to annually submit actuarial reports to the Inspector within sixty days after the close of its financial year.

Clause 186 would require the submission of annual financial condition reports which set out the prospective ability of an insurer as at a particular date to meet its future obligations to policyholders and to those to whom it owes benefits.

Clause 187 would prohibit a foreign insurer from dealing with its assets in the statutory fund except with the approval of the Inspector and on the certification of its appointed actuary. Where a foreign insurer who contravenes commits this offence, the penalty is five million dollars (\$5,000,000) and in the case of each director, five million dollars (\$5,000,000) and five years imprisonment .

Clause 188 would provide for the distribution of surplus assets in the statutory fund.

B. ISSUE OF POLICIES

Clause 189 would prevent an insurer from issuing a policy unless the pricing of policy has been approved by the actuary as being suitable that class of policy.

Clause 190 would impose certain restrictions on the commission to be paid or the reduction of premium which may be allowed.

Clause 191 would prevent an employer from entering into an annuity contract for the benefit of an employee without obtaining the prior written consent of the employee.

Clause 192 would prevent an insurer from issuing, accepting or amending any form of proposal, policy, endorsement or application unless the standard form has been approved by the Inspector.

Clause 193 would provide for an insurer to issue a notice stating that proof of age may be required before payment of the sum insured.

Clause 194 would set out the procedure where the insurer declines to accept the proof of age that has been tendered.

Clause 195 would provide that a policy may not be voided by reason only of the misstatement of the age of the life insured.

Clause 196 would enable a minor between the ages of ten and sixteen years to effect a policy or assign a policy with the written consent of his parent or a person standing in *loco parentis* to the minor.

Clause 197 would provide for the categories of persons who are deemed to have an insurable interest.

C. ASSIGNMENTS AND MORTGAGES OF POLICIES

Clause 198 would provide for the assignment of policies.

Clause 199 would provide for the effect of any notice in writing to an insurer of any trust, right, equity or any person under a policy.

Clause 200 would prevent the assignment of a policy from extinguishing the rights and liabilities arising under that policy.

Clause 201 would provide for policies that are held by trustees.

Clause 202 would provide for a Memorandum of Discharge and Deed of Release to be issued upon the payment or discharge of money or other obligation secured by the assignment of a policy.

Clause 203 would provide for existing assignments to continue to have effect.

D. PAID-UP POLICIES, SURRENDER VALUES AND NON-FORFEITURE

Clause 204 would provide for the application of this sub-division to a particular class of policies.

Clause 205 would provide for the circumstances in which a policyholder may be issued a paid-up policy.

Clause 206 would provide for the surrender of policies.

Clause 207 would enable the Inspector to suspend or vary the obligation to pay the surrender values where the payment of those surrender values would be prejudicial to the financial stability of the insurer or to the interests of its policyholders.

Clause 208 would prevent the non-forfeiture of ordinary policies by reason only of non-payment of a premium in certain cases.

Clause 209 would provide for the treatment of debts owing to the insurer where the insurer is required to issue a paid-up policy.

E. PAYMENT OF POLICY MONIES

Clause 210 would protect the interest of the life insured in certain cases.

Clause 211 would provide for a policyholder to designate his legal representative, trustee or beneficiary as the person to receive the proceeds of the insurance policy.

Clause 212 would provide for the irrevocable designation of beneficiaries.

Clause 213 would provide for the alteration or revocation of designation upon the cessation of marriage, otherwise than by death.

Clause 214 would provide for the policyholder to be entitled to dividends, notwithstanding the irrevocable designation of a beneficiary, unless the contract otherwise provides.

Clause 215 would provide for the circumstances in which the insurance proceeds would not form part of the policyholder's estate.

Clause 216 would provide that there shall be no presumption of a trust in a contract of insurance, except in cases where the policyholder expressly provides for the creation of such a trust.

Clause 217 would provide for the appointment of a trustee for a beneficiary by a policyholder, in a contract of insurance or by declaration.

Clause 218 would provide for the manner of payment of the policy proceeds where the beneficiary predeceases the life insured.

Clause 219 would enable a beneficiary or a trustee to enforce payment of the proceeds of a policy, in their respective capacities.

Clause 220 would empower a life insured under a group policy, to enforce a right given to him under the group policy, in his own name.

Clause 221 would enable an insurer to make payments to the legal personal representative of a deceased without requiring the production of a grant of probate or letters of administration in certain circumstances.

Clause 222 would provide that the insurer be discharged from further liability in certain cases.

Clause 223 would provide the procedure to be followed where the policyholder, who is not the life insured, pre-deceases the life insured.

Clause 224 would provide for an insurer to pay to the Central Bank money payable under a policy where no sufficient discharge can be obtained.

Clause 225 would set out the procedure to treat with unclaimed money.

F. PROVISIONS RELATING TO INDUSTRIAL LIFE INSURANCE BUSINESS

Clause 226 would provide for a policyholder to object to an industrial policy within twenty days of its delivery by the insurer.

Clause 227 would provide for the return of an industrial policy and premium receipt book after inspection.

Clause 228 would prohibit the falsification of entries made in a premium receipt book, making it an offence to do so.

Clause 229 would prevent an industrial policy from being voided by reason only of an incorrect or untrue statement contained in the proposal.

Clause 230 would provide for the particulars that must be specified in every industrial policy.

Clause 231 would require an insurer, in respect of each industrial policy issued by it, to issue to the policyholder a premium receipt book.

Clause 232 would provide for the premium receipt book to indicate the date to which premiums have been paid under an industrial policy.

Clause 233 would provide that any provision in an agreement making the guarantor of an agent liable to refund any commissions repayable on lapsed industrial policies is void.

Clause 234 would provide that a certificate as to the agent's or guarantor's indebtedness shall not be conclusive evidence of such indebtedness.

Clause 235 would provide for the non-forfeiture of an industrial policy in certain cases for non-payment of premiums.

G. Miscellaneous

Clause 236 would provide for the issuance of a special policy in substitution of a lost, defaced or destroyed policy.

Clause 237 would provide for a policy not to be voided merely on the ground that the persons whose life is insured suffered capital punishment or died by his own hand or act.

Clause 238 would provide that terms or conditions of a policy which limit the amount payable under a policy in the event of the death of the life insured as a result of war, shall have no force or effect unless the person who effected the policy agreed in writing to the insertion of said term or condition.

PART VIII—*General Insurance*

This Part would contain clauses 239 to 242.

Clause 239 would provide for the application of this Part to all insurers carrying on general insurance business.

Clause 240 would provide for the computation of insurance liability in respect of insurers carrying on general insurance business.

Clause 241 would provide for an appointed actuary to submit a financial condition report in accordance with 186, and where an actuary has not yet been appointed, the chief financial officer.

Clause 242 would require the appointed actuary to provide the Inspector with an annual report on the valuation of the insurer's liabilities in respect of accident and sickness class of insurance business.

PART IX—*Pension Fund Plans*

This Part would contain clauses 243 to 256.

Clause 243 would require the registration of pension fund plans under that Part in order for the pension plan to operate in Trinidad and Tobago.

Clause 244 would provide the qualifications required to be registered under this Part.

Clause 245 would prescribe the procedure as required by the Central Bank for registration.

Clause 246 would provide for the registration of any amendment to a trust deed or Rules of a registered plan in order for said amendment to be valid.

Clause 247 would provide for the Central Bank to issue a certificate of registration to an applicant pursuant to the registration of a plan or an amendment to said plan.

Clause 248 would provide that a registered plan shall not be cancelled unless the plan has been wound-up.

Clause 249 would provide for certain fees to be prescribed in Regulations.

Clause 250 would permit the Central Bank to delete provisions in the Rules of a registered plan which seek to avoid the rule against perpetuities.

Clause 251 would provide for supplementary powers of the Central Bank in relation to the supervision of registered plans.

Clause 252 would impose liability on a trustee and secretary of the registered plan for non-compliance with any of the requirements of this Part, the penalty being a fine of five thousand dollars (\$5,000.00) and a further fine of one hundred dollars (\$100.00) per day in the case of a continuing breach.

Clause 253 would require the trustees of each plan to submit annually a balance sheet and a statement of accounts to the Central Bank.

Clause 254 would provide for the appointment of an actuary who shall submit a financial condition report of the plan to the Central Bank.

Clause 255 would provide for the investment of assets of the plan in those securities as allowed in Schedule 8 and in a manner as prescribed by the Regulations.

Clause 256 would provide for the non-application of the rule of law relating to perpetuities in relation to the trusts of a registered plan.

PART X—*Associations of Underwriters*

This Part would contain clauses 257 to 266.

Clause 257 would provide for the registration of an association of underwriters by the Central Bank before it may carry on insurance business in Trinidad and Tobago. Pursuant to such registration, an association of underwriters may then carry on any class of general insurance business listed in Schedule I and the accident and sickness class of insurance business.

Clause 258 would provide for the Central Bank to inform an applicant of its decision with respect to the application for registration. Where an application has been approved, the Central

Bank shall notify the applicant in writing and also inform said applicant of the requirement to make the deposit under section 260. Where an application has been rejected, the Central Bank would be required to notify the applicant accordingly and provide reasons for the decision within ten days of the date of rejection.

Clause 259 would permit an association of underwriters to carry on its insurance business through brokerages registered under this Bill.

Clause 260 would provide for the amount required to be deposited with the Central Bank by an association of underwriters before it can be registered under this Part to carry on any class of general insurance business.

Clause 261 would require an association of underwriters to furnish the Inspector with such information and documents as he may require within six (6) months of the end of the financial year.

Clause 262 provides for the additional powers of the Inspector, among them being the power to conduct an examination and inquiry into the affairs or business of each association of underwriters including reporting requirements and production of books or papers, as well as the power to issue compliance directions to an association of underwriters.

Clause 263 would allow the Central Bank to prohibit a registered association of underwriters from writing new policies in any class of insurance business where it is satisfied that it is in the interest of policyholders to do so.

Clause 264 would prevent an association of underwriters from offering any new or amended products to policyholders without first notifying the Inspector.

Clause 265 would provide for the grounds upon which the Central Bank may revoke the registration of an association of underwriters.

Clause 266 would provide for the continuation of business relating to policies issued before the date on which an association of underwriters would have been notified of the rejection of its application for registration or revocation of its registration.

PART XI

Jurisdiction of Courts, Appeals and Offences

This Part would contain clauses 267 to 279.

Clause 267 would establish the jurisdiction of the courts of Trinidad and Tobago in respect of every policy issued in Trinidad and Tobago.

Clause 268 would provide for the limitation period in respect of offences under the Bill which are triable by a Magistrate's Court, said limitation period being ten (10) years after a person has been charged for the offence.

Clause 269 would provide for documents certified by the Governor to be received in evidence in any proceedings under this Bill.

Clause 270 would provide the procedure for appeals to decisions made under this Bill.

Clause 271 would provide a penalty of a fine not exceeding six hundred thousand dollars (\$600,000) and imprisonment of two (2) years for those offences committed under this Bill, to which no other penalty is expressly provided. However, where it is proved that the person charged intended to deceive or defraud, the penalty attached shall be a fine ten times the amount stipulated for that offence and to imprisonment for twenty years.

Clause 272 would prohibit the perpetration of a fraud on policyholders. The penalty for this offence would be a fine of ten million dollars (\$10,000,000) and imprisonment for ten (10) years in the case of a director or officer of an entity or any other individual; and a fine of twenty million dollars (\$20,000,000) in the case of an entity.

Clause 273 would prohibit the inducing of a person to enter into or cancel a contract of insurance by means of a false statement.

Clause 274 would restrict any advertisement inviting the public to enter into a contract of insurance with a person who is not a registrant.

Clause 275 would permit the Inspector to require the correction or withdrawal of a misleading or objectionable advertisement.

Clause 276 would prohibit the disclosure of information except in certain circumstances.

Clause 277 would empower the Central Bank, where there is reasonable cause to believe that a person has committed an offence referred to in Schedule 6, to issue a Notice offering that person the opportunity to discharge any liability to conviction in respect of that offence by the payment of an administrative fine specified in Schedule 6.

Clause 278 would prohibit the suppression of information which is required to be produced under this Bill, without reasonable excuse.

Clause 279 would require an insurer to enrol in an alternative dispute resolution scheme approved by the Central Bank, within sixty (60) days after this Bill comes into force.

PART XII—*Miscellaneous*

This Part would contain clauses 280 to 290.

Clause 280 would impose a duty on an insurer to fully settle all judgment claims within forty days of a judgment order unless there is a stay of execution. This clause would also prohibit an insurer from entering into an agreement to settle a judgment claim.

Clause 281 would require an insurer to issue a policy within twenty days of the acceptance of the risk.

Clause 282 would prohibit the publication of a prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription of any shares in an insurer, without prior approval being granted in accordance with the Securities Act and the approved documents are submitted to the Central Bank.

Clause 283 would provide for a register of policies to be kept by an insurer. This clause would also enable a person who has a beneficial interest in a policy to request a search to be conducted by an insurer for evidence of the existence of a policy, within twenty days of receiving such request. This clause also provides for compensation to be given to any person having a beneficial interest in a policy who was not informed that a policy existed at the date of the request.

Clause 284 would provide for the registration of all policies in the register that is required to be kept by an insurer under section 283 of the Bill.

Clause 285 would provide the method for service of notice under this Bill.

Clause 286 would provide for certain authorized persons to sign documents on behalf of a company.

Clause 287 would provide for a document to be typewritten or otherwise reproduced by such means as the Central Bank may approve, where said document is required to be printed.

Clause 288 would provide that policies shall not be invalidated for failure on the part of an insurer to comply with this Bill.

Clause 289 would permit insurance business to be carried on in any currency.

Clause 290 would provide for the Minister to consult with the registrants and other persons before making or amending the Regulations.

Clause 291 would give the Central Bank the power to issue guidelines in order to facilitate compliance with the Bill.

Clause 292 would enable the Minister to make Regulations, subject to negative resolution of Parliament and further empower the Minister to amend the Schedules by Order, upon recommendation by the Central Bank.

Clause 293 provides for the consequential amendments made to the Proceeds of Crime Act, Chap. 11:27 and the Financial Institutions Act Chap. 79:09.

Clause 294 would repeal the Insurance Act, Chap. 84:01.

Schedule 1 would prescribe the types and classes of insurance business.

Schedule 2 would detail the application and annual fees payable by insurance companies

Schedule 3 would contain the forms for absolute assignment, assignment as security and memorandum of discharge.

Schedule 4 would detail the requirements as to the trust deed and rules of registered pension fund plans as well as the required forms.

Schedule 5 would prescribe the minimum criteria for registration.

Schedule 6 would detail the administrative fines in relation to insurers, agencies, brokerages, brokers, agents, adjusters and sales representatives.

Schedule 7 would contain a model of the life insurance disclosure form.

Schedule 8 would prescribe the assets in which pension fund plans may be invested.

Schedule 9 provides details of the amendments made to the Proceeds of Crime Act, Chap. 11:27 and the Financial Institutions Act, Chap. 79:09.

THE INSURANCE BILL, 2013

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BILL

AN ACT to repeal and replace the Insurance Act,
Chap. 84:01; to reform the law relating to
insurance companies; to regulate insurance
businesses and privately administered pension
fund plans and for other related purposes

[, 2013]

WHEREAS it is enacted by section 13(1) of the ^{Preamble} Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And whereas it is provided in section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment	ENACTED by the Parliament of Trinidad and Tobago as follows:
Short title	1. This Act may be cited as the Insurance Act, 2013.
Application	2. This Act applies to— <ul style="list-style-type: none"> (a) all persons, whether or not established or resident in Trinidad and Tobago, that carry on insurance business in Trinidad and Tobago; (b) all persons that carry on business in or from Trinidad and Tobago as an intermediary; and (c) privately administered pension fund plans registered under Part IX whether administered by individual trustees or by trust corporations.
Act inconsistent with Constitution	3. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

PART I PRELIMINARY

Interpretation	4. In this Act— <p style="margin-left: 40px;">“abridged financial statements” means a summary of financial statements, the format and contents of which are agreed to</p>
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in writing between the Central Bank and the Institute of Chartered Accountants of Trinidad and Tobago;

“acquirer” means a financial entity or a significant or controlling shareholder of a financial entity that either alone or with an affiliate, relative or connected party, is entitled to exercise ten per cent or more of the voting power at any general meeting of an insurer;

“actuary” means a fellow of a professional association of actuaries and possessing such other qualifications as may from time to time be specified by the Inspector;

“adjuster” means any person registered under this Act and who for compensation, a fee or a commission investigates and negotiates settlement of claims arising under contracts of insurance, on behalf of the insurer, the insured, or any third party affected under the insurance policy but does not include—

(a) a salaried employee of an insurer while acting on behalf of such insurer in the adjustment of losses; or

(b) an agent of an insurer;

“advertisement” includes every form of advertising whether in a publication, or by display or notices, or by means of circulars or other documents, or by an exhibition of photographs or cinematographic films, or by way of sound broadcasting, television, or

telephonic, digital or electronic communication, but does not include a prospectus issued by a company;

“affiliate”, in relation to a given company (“C”), means—

(a) a company which is or has at any relevant time been—

(i) a holding company of C;

(ii) a holding company of a holding company referred to in sub-paragraph (i);

(iii) a subsidiary of a holding company referred to in sub-paragraphs (i) or (ii);

(iv) a subsidiary of C;

(v) a subsidiary of a subsidiary referred to in sub-paragraph (iv); and

(b) where C is an insurer, any company over which the insurer and any connected party or connected party group of the insurer has control,

and the word “affiliation” shall be construed accordingly;

“agency” means any company appointed by an insurer and registered to carry on the business of an insurance agency;

“agent” means an individual employed by an agency to solicit applications for insurance or negotiate insurance on behalf of the agency;

“amalgamation” means the amalgamation of two or more companies pursuant to the provisions of the Companies Act;

Chap. 81:01

“annuity contract” means a contract between—

- (a) an insurer registered to carry on long-term insurance business and an individual under which, in consideration of payment by the individual of any periodic or other amount as consideration under the contract, the insurer agrees to pay to the individual or the insured, commencing at maturity, an annuity for life; or
- (b) an insurer registered to carry on long-term insurance business and an employer, under which, in consideration of payment by the employer of any periodic or other amount as consideration under the contract on behalf of its employee, the insurer agrees to pay to an employee, commencing at maturity, an annuity for life;

“appointed actuary” means a person appointed by the insurer under section 103;

“approved financial institution” means a financial institution licensed under the Financial Institutions Act or any other financial institution subject to supervision acceptable to the Central Bank;

Chap. 79:09

“approved securities” mean such securities as may be prescribed in Regulations made under this Act;

“assignment” in relation to a policy, does not include a surrender of the policy to the company liable under the policy;

“associate” means a relationship with any person as defined in the Companies Act;

“association of underwriters” means an association of individual underwriters organized in a similar manner to the Lloyd’s system 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;

“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;

“blanket insurance” means a policy issued to an entity which is designed to provide coverage under a single limit for two or more items, two or more locations or a combination of items and or locations;

“Board” means the Board of Directors of the Central Bank as defined in the Central Bank Act;

“borrower group” includes—

(a) a family group comprising an individual and his spouse, a cohabitant, parents, children, brothers or sisters where each member of the group is substantially dependent upon the same income sources;

(b) a company in which the family group indicated in paragraph (a) has a controlling interest;

- (c) a company in which the family group indicated in paragraph (a) has a significant interest;
- (d) a group of companies which has a common significant shareholder;
- (e) a group of companies which has a common controlling interest;
- (f) a group of persons in which the credit worthiness, ability to generate funds or the future viability of each, depends on one or other members of the group;
- (g) a group of persons in which one member has power directly or indirectly to control the other members;
- (h) two or more borrowers, whether individuals, companies or unincorporated bodies, in which an insurer and any of its subsidiaries hold credit exposures, whether on a joint or separate basis, who are inter-related through common ownership, control or management; and
- (i) any other group of persons whose relationship with each other is such that it may, in the opinion of the Inspector, lead to a conflict of interest or other regulatory risk;

“broker” means an individual employed by a brokerage to solicit, negotiate or procure in any manner insurance or the renewal or continuance thereof or the settlement of any claims on behalf of existing or prospective policyholders, or reinsurance on behalf of insurers;

“brokerage” means any company registered to carry on the business of insurance brokerage;

“business of an insurance agency” means the solicitation of applications for insurance or negotiation of insurance business on behalf of an insurer and, where authorized to do so by the insurer, the effectuation and countersigning of contracts of insurance;

“business of an insurance brokerage” means the business as an independent contractor of soliciting, negotiating or procuring in any manner insurance or the renewal or continuance thereof or the settlement of any claims on behalf of existing or prospective policyholders, or reinsurance on behalf of insurers;

“capital base” means regulatory capital available as defined in the Regulations;

Chap. 79:02

“Central Bank” means the Central Bank of Trinidad and Tobago established under the Central Bank Act;

“chief executive officer” means a person who, either alone or jointly with one or more other persons is responsible under the immediate authority of the board of directors of a company for the conduct of the business of that company, whether or not the individual is formally designated as the chief executive officer;

Schedule 1

“class” means any class of insurance business prescribed in Schedule 1;

Chap. 45:55

“cohabitant” has the meaning assigned to it under the Cohabital Relationships Act;

“company” means an incorporated body;

“connected party” or “connected party group”, as the case may be, means a person or group of persons referred to in section 5;

“consumer” means a person who—

(a) uses or has used any of the services provided by a registrant

carrying on activities regulated under the Insurance Act;

- (b) has rights that are derived from, or are otherwise attributable to, the use of any such services by other persons; or
- (c) has rights that may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them;

“contract of insurance” means a contract including a reinsurance agreement, whereby one party, agrees in return for a consideration from another party to undertake liabilities under policies to make good or indemnify the insured, against any loss or damage including liability to pay damages or compensation upon the happening of a specified event;

“control” means the power of a person, either alone or with an affiliate or relative or connected party or other person or by agreement or otherwise, to—

- (a) exercise more than fifty per cent of the voting rights at any general meeting of an entity;
- (b) elect a majority of the directors of an entity; or
- (c) exercise dominant influence over the conduct of the business and affairs of an entity,

and the terms “controlling interest” and “controlling shareholder” shall be construed accordingly;

“counterparty”, for the purpose of measuring a credit exposure means the borrower, the person guaranteed, the issuer of a security

in the case of an investment in a security, or the party with whom the contract is made in the case of a derivative contract;

“credit exposure” means the amount at risk arising through the extension of credit or funds and includes, without limitation—

- (a) investments including equity, bonds and other debt instruments, participations, guarantees, acceptances including bankers acceptances and credit facilities excluding policy loans;
- (b) other claims on a counterparty including actual and potential claims;
- (c) contingent liabilities arising in the normal course of business;
- (d) reinsurance placed with connected parties; and
- (e) deposits placed with connected parties;

“credit facilities” include loans, advances, lines of credit, commitment letters, standby facilities, letters of credit and any other facilities or arrangements whereby a party agrees to provide funds, financial guarantees or commitments to a counterparty or the party undertakes on behalf of a counterparty, a financial liability to another person;

“days” mean working days;

“entity” means a company, or any trust, partnership, fund or other unincorporated enterprise or organization, but does not include an individual;

“financial entity” means an insurer, a person licensed under the Financial Institutions

Act, and any other entity that carries on a business that includes the provision of any financial service and includes the holding company of any such financial entity;

“financial group” means a related group of companies whose activities are limited to any one or more of the following:

- (a) the business of banking as defined in the Financial Institutions Act;
- (b) business of a financial nature as defined in the Financial Institutions Act;
- (c) insurance business;
- (d) the business of brokering and dealing in securities as defined in the Securities Industry Act; and Act No. 17 of 2012
- (e) subject to the approval of the Central Bank, the provision of necessary services in support of the activities of the group and includes a financial holding company and a holding company of any of the businesses as set out in paragraphs (a) to (e);

“financial holding company” means a company referred to in section 64;

“financial reporting standards” mean the International Financial Reporting Standards (IFRS) or such other accounting standards as may be prescribed in this Act and Regulations thereto or specified by the Central Bank;

“financial services” include without limitation, the business of banking, any business of a financial nature, the business of a credit union, insurance business, the business of securities and the management and administration of pension fund plans;

“financial statements” mean—

- (a) a statement of financial position as at the end of the period;
- (b) a statement of comprehensive income for the period;
- (c) a statement of changes in equity for the period;
- (d) a statement of cash flows for the period;
- (e) notes, comprising a summary of significant accounting policies and other explanatory information; and
- (f) a statement of financial position as at the beginning of the earliest comparative period when an entity applies an accounting policy retrospectively or makes a retrospective restatement of items in its financial statements, or when it reclassifies items in its financial statements;

“foreign company” means a company which is incorporated outside of Trinidad and Tobago;

“foreign insurance company” means a foreign company carrying on insurance business outside of Trinidad and Tobago;

“foreign insurer” means a branch of a foreign insurance company, which is registered to carry on insurance business in Trinidad and Tobago;

“foreign policy” means any written contract of insurance including annuity contracts issued, effected or ordinarily situated outside of Trinidad and Tobago at the time the policy was issued and includes contracts of insurance issued by overseas branches of local insurers and the term “foreign policyholder” shall be construed accordingly;

“former Act” means the Insurance Act, repealed Chap. 84:01
by this Act;

“general insurance business” means insurance
business of the classes as prescribed in
Schedule 1;

“Governor” means the Governor of the Central
Bank of Trinidad and Tobago;

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

“ICATT” means the Institute of Chartered
Accountants of Trinidad and Tobago;

“IFRS” means International Financial
Reporting Standards issued by the
International Accounting Standards Board
and as adopted by ICATT;

“industrial policy” means a policy in respect of
which the premiums are contracted to be
paid at intervals of less than forty days and
are contracted to be received by means of
collectors and includes—

- (a) a policy which at any time was an
industrial policy; and
- (b) a paid-up policy, not being a policy
expressed to be an ordinary policy
granted in lieu of an industrial
policy or of a policy referred to in
paragraph (a);

“Inspector” means the Inspector of Financial
Institutions appointed pursuant to
section 7 of the Financial Institutions Act
and includes any person appointed to act
temporarily for him;

“insurance business” means the business of
issuing contracts of insurance but does not
include self insured plans;

“insurer” means a local insurer, a foreign
insurer and includes an association of
underwriters;

“intermediary” means an agent, agency, broker, brokerage, sales representative and adjuster;

“large exposure” means the aggregate of all credit exposures to a person or a borrower group, the total of which amounts to twenty-five per cent or more of the capital base of an insurer;

“life insured” means an individual, on whose life the insurer issues a contract of insurance;

Chap. 81:01

“local company” means a company incorporated under the Companies Act, or any other written law of Trinidad and Tobago;

“local insurer” means a local company registered to carry on insurance business in Trinidad and Tobago;

Schedule 1

“long-term insurance business” means insurance business of the classes as prescribed in Schedule 1;

“market share” means the proportion of the financial services market which is serviced or controlled by a financial entity or combination of financial entities and includes indicators such as balance sheet, total premiums, loan portfolio or subset of the loans portfolio such as credit card loans;

“Minister” means the Minister to whom responsibility for finance is assigned;

“mutual company” means a company whose capital is owned by the policyholders of the company;

“officer” means—

- (a) in relation to a company or unincorporated body, a chief executive officer, chief operating officer, president, vice-president, corporate secretary, treasurer, chief financial officer, chief

accountant, chief actuary, appointed actuary, chief auditor, chief claims officer, chief compliance officer, chief underwriting officer, chief investment officer or chief risk officer and principal representative;

- (b) any other individual designated as an officer by its articles of incorporation or continuance, by-laws or other constituent document or resolution of the directors or members and also perform functions similar to those referred to in paragraph (a); or
- (c) any other individual who performs functions for the company or unincorporated body similar to those performed by a person referred to in paragraph (a), whether or not the individual is formally designated as an officer, and includes a principal representative;
- (d) in the case of an agency, any person referred to in paragraphs (a) and (b) where applicable and an agent; and
- (e) in the case of a brokerage, any person referred to in paragraphs (a) and (b) where applicable and a broker;

“paid-up policy” means a policy under which no future premiums are required;

“policy” means any written contract of insurance including annuity contracts whether contained in one or more documents including any endorsements thereon in relation to—

- (a) long-term insurance business, a policy issued or effected in Trinidad and Tobago by an insurer upon the life of an individual;

- (b) property insurance business, a policy issued or effected by an insurer upon property situated in Trinidad and Tobago;
- (c) any other class of insurance business, a policy issued or effected by an insurer where the risks covered by the policy are ordinarily situated in Trinidad and Tobago at the time the policy was issued; and
- (d) blanket insurance issued by an insurer,

but does not include contracts of insurance issued by overseas branches of local insurers;

“policy benefit liabilities” means all liabilities related to policy payments after the valuation date including those in respect of events which occurred before the valuation date, but excluding any appropriations of surplus;

“policyholder” means the person who for the time being has the legal title to the policy including any person to whom a policy is assigned and may include, in the case of long-term insurance business, a life insured;

“principal representative” means a person appointed by a foreign company pursuant to sections 25 and 26;

“qualified valuer” means a person who—

- (a) is a fellow or professional associate of the Royal Institution of Chartered Surveyors or a fellow or Associate of the Incorporated Society of Valuers and Auctioneers or the Rating and Valuation Association and has knowledge and experience in the valuation of land; or

(b) is approved for the time being by the Central Bank;

“registrant” means any person who is registered as an insurer or intermediary under this Act;

“Regulations” means regulations made under this Act;

“reinsurance” means an arrangement under which one or more assuming insurance companies, for a consideration, agrees to indemnify the ceding insurer against all or a part of the loss that the ceding company may sustain under the policy or policies that it has issued;

“reinsurer” means an insurer which underwrites reinsurance business;

“related group” means—

(a) two or more companies with the same controlling shareholder or holding company;

(b) a company in which any of the companies referred to in paragraph (a) has a significant shareholding;

(c) the direct and indirect subsidiaries of the companies referred to in paragraph (a);

(d) a company in which any of the companies referred to in paragraph (c) has a significant shareholding; and

(e) the controlling shareholder or holding company referred to in paragraph (a);

“relative” includes—

(a) a spouse or cohabitant;

(b) a parent;

(c) a brother or sister, whether or not connected by—

- (i) consanguinity;
- (ii) affinity;
- (iii) reason of a cohabitational relationship;
- (iv) adoption; or
- (v) reason of being declared a child of the family under the Matrimonial Proceedings and Property Act; or

Chap. 45:51

(d) a son or daughter, whether or not connected by—

- (i) consanguinity;
- (ii) affinity;
- (iii) reason of a cohabitational relationship;
- (iv) adoption; or
- (v) reason of being declared a child of the family under the Matrimonial Proceedings and Property Act;

“representative office” means—

(a) an office established in Trinidad and Tobago by a foreign company through which no insurance business or other business activity is carried on other than—

- (i) promoting the insurance services of the foreign company or an affiliate of the foreign company that carries on activities permitted to a member

of a financial group, other than an affiliate incorporated in Trinidad and Tobago; or

- (ii) acting as a liaison between consumers of the foreign company and other offices of the foreign company or its affiliates that carry on activities permitted to a member of a financial group, other than affiliates incorporated, or an office located, in Trinidad and Tobago; or

(b) an office established outside Trinidad and Tobago by a local insurer through which no insurance business or other business activity is carried on other than—

- (i) promoting the services of the local insurer or an affiliate of the local insurer that carries on activities permitted to a member of a financial group; or
- (ii) acting as a liaison between consumers of the local insurer and other offices of the local insurer or its affiliates that carry on activities permitted to a member of a financial group;

“sales representative” means any individual employed or contracted by an insurer, an

agency or a brokerage to solicit applications for insurance or to negotiate insurance on behalf of that insurer or agency or brokerage, as the case may be;

“self insured plans” means the practice of an entity to—

(a) assume responsibility for its losses or losses of; or

(b) provide benefits for,

its employees, members or their dependents by setting up a fund against which claims or benefits are paid or administered by the entity or an external service provider;

“significant shareholder” means a person who either alone or with one or more affiliates or relatives or connected parties is entitled, whether by agreement or otherwise, to exercise twenty per cent or more of the voting power at any general meeting of an entity and the term “significant interest” shall be construed accordingly;

“solicitation” means an act of issuing any advertisement or making any offer or invitation to the public with regard to entering into an agreement for carrying on insurance business excluding a referral;

“stated capital” means the aggregate of all stated capital accounts as defined in the Companies Act or in the case of a foreign insurer cash or approved securities;

“statutory fund” means a fund maintained by a foreign insurer under section 52;

“subsidiary” means a company of which more than fifty per cent of the shares are held, directly or indirectly, by another company;

“superannuation allowances” includes payment of a lump sum on retirement;

“supervisory information” means a record created or obtained by the Central Bank in connection with the performance of its responsibilities under this Act, such as a record concerning supervision, registration, or examination of a registrant or enforcement actions with respect to a registrant, and includes any communication or correspondence between the registrant and the Central Bank arising from its performance of such responsibilities;

“Trinidad and Tobago policyholder” means the legal holder of a policy in Trinidad and Tobago;

“type of insurance business” means long-term insurance business or general insurance business;

“uncommitted assets” mean the assets of an insurer, less liabilities, contingency reserves, appropriated surplus and other statutory reserves;

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

5. (1) For the purposes of this Act, a person is a ^{Meaning of} connected party of an insurer where the person is— ^{“connected party” and}

- (a) a financial holding company, holding ^{“connected party group”} company, controlling shareholder or significant shareholder of the insurer;
- (b) a person who holds ten per cent or more of any class of shares of the insurer or of a person referred to in paragraph (a);
- (c) an affiliate of the insurer;
- (d) an affiliate of a person referred to in paragraph (a);

- (e) a director or officer of the insurer or of a person referred to in paragraph (a);
 - (f) a relative of a director or officer of—
 - (i) the insurer;
 - (ii) a financial holding company of the insurer;
 - (iii) a holding company of the insurer;
 - (iv) a controlling shareholder of the insurer; or
 - (v) a significant shareholder of the insurer;
 - (g) a relative of a controlling shareholder or significant shareholder of the insurer where such controlling shareholder or significant shareholder is an individual; or
 - (h) an entity that is controlled by a person referred to in paragraphs (e) and (f) and (g).
- (2) For the purposes of this Act, “connected party group” of an insurer means—
- (a) in the case where an insurer is connected to a person referred to in subsection (1)(a), a group consisting of any combination of—
 - (i) the insurer;
 - (ii) the persons referred to in subsection (1)(a) (f) and (g);
 - (iii) an affiliate of the insurer; or
 - (iv) an entity controlled by any person referred to in subparagraphs (i) and (ii);

(b) in the case where the connected party is a director or officer referred to in subsection (1)(e), a group consisting of any combination of—

- (i) the insurer;
- (ii) the director or officer;
- (iii) a relative of the director or officer; or
- (iv) an entity controlled by any person referred to in subparagraphs (i) and (ii).

(3) For the purposes of this Act, in addition to the connected parties referred to in subsection (1) and the connected party groups referred to in subsection (2), the Inspector may determine that any other person is a connected party of an insurer or that any other group of persons is a connected party group of an insurer, where in the opinion of the Inspector their relationship may create a conflict of interest or may pose regulatory risk.

(4) Where the Inspector has determined that a person is a connected party in accordance with subsection (3), the Inspector shall notify the insurer of such determination and shall require the insurer to take such measures as the Inspector determines necessary to ensure that the insurer is in compliance with the provisions of this Act.

PART II ADMINISTRATION

6. (1) The Central Bank shall be responsible for the general administration of this Act and the supervision of registrants, and shall have the powers and duties conferred on it by this Act, and the Central Bank Act. Central Bank to administer Act

(2) The primary objective of the Central Bank, in respect of registrants, is to maintain confidence in, and promote the soundness and stability of, the financial system in Trinidad and Tobago.

(3) The other objectives of the Central Bank, in respect of registrants are to—

- (a) promote the existence of efficient and fair insurance markets;
- (b) maintain an appropriate level of protection for policyholders and beneficiaries of insurers; and
- (c) ensure compliance of insurers and intermediaries with legislation to combat money laundering and terrorist financing.

(4) The Governor shall keep the Minister informed of all developments and activities which affect the insurance industry in Trinidad and Tobago.

Annual report and returns to be furnished

7. The Central Bank shall include in its annual report under section 53 of the Central Bank Act, information with respect to the performance of the insurance industry.

Act to prevail

8. In the case of any inconsistency or conflict between this Act and any other written law, with the exception of the Central Bank Act, the provisions of this Act shall prevail and take precedence over such other written law, unless expressly provided to the contrary in this Act or such other written law.

Duties and powers of Inspector

9. (1) The Inspector shall have the powers and duties conferred on him by this Act.

(2) The Inspector shall examine all applications for approvals, registration and permits to be granted or issued under this Act and make recommendations thereon to the Central Bank.

(3) The Inspector shall make or cause to be made such examination and inquiry into the affairs or business of each—

- (a) registrant;
- (b) financial holding company;
- (c) subsidiary of a local insurer in Trinidad and Tobago; and
- (d) subsidiary or branch of a local insurer located outside Trinidad and Tobago,

as he considers necessary or expedient, for the purpose of satisfying himself that the provisions of this Act are being observed and that the registrant or financial holding company or subsidiary is in a sound financial condition.

(4) The Inspector shall make or cause to be made such examination and inquiry into the affairs or business of a member of a financial group if, in the opinion of the Inspector, such examination and inquiry are necessary to assess any risk that such member may pose to the registrant.

(5) The Inspector shall make or cause to be made such examination and inquiry into the affairs of any representative office of a foreign company, if in the opinion of the Inspector, such examination and inquiry are necessary to verify that no business activity is being carried on, other than that referred to in section 26.

(6) The Inspector shall report to the Governor at the conclusion of each examination and inquiry referred to in subsections (2), (3), (4) and (5).

(7) The Inspector shall take and maintain such steps or proceedings as may be necessary for the winding-up of an insurer subject to the direction of the Central Bank and the provisions of this Act.

(8) The Inspector may call upon any person who is or has been auditor, actuary, director, officer, controlling shareholder, significant shareholder or affiliate of the registrant or financial holding company, within the previous six years, to provide such information that is related to or may affect—

- (a) the condition of the registrant, financial holding company or other member of a financial group; and
- (b) any transaction between the registrant and its financial holding company or controlling shareholder and any member of its financial group,

in order to be satisfied that the registrant or financial holding company is in compliance with the provisions of the Act.

(9) In the performance of its duties under this Act, the Inspector or Central Bank shall have access to all books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including documents stored in electronic form, of any registrant or financial holding company and the right to call upon any director, officer, auditor or employee of any such registrant or financial holding company for any information or explanation as it considers necessary for the due performance of its duties.

(10) The power conferred under subsection (9) may be exercised even where the books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including documents stored in electronic form, are in the possession of another person, save that where the person who is in possession claims a lien on the books or papers the production thereof shall be without prejudice to the lien.

(11) If an examination of the affairs of a registrant, financial holding company or other member of a

financial group reveals that the registrant, financial holding company, or other member of a financial group is conducting its business in an unlawful or unsound manner or is otherwise in an unsound condition, the Inspector may require that the registrant or financial holding company or other member of a financial group forthwith or within such time as may be specified, take all such measures as he may consider necessary to rectify the situation.

(12) Where a person fails to comply with a request under subsection (8), the Inspector shall restrict any further transactions among the registrant, the financial holding company, controlling shareholder, significant shareholder or affiliate and take such other measures as he may think fit against the registrant, financial holding company, controlling shareholder, significant shareholder or affiliate, if he considers that the transactions or relationship among the registrant, financial holding company, controlling shareholder, significant shareholder or affiliate may expose the registrant to undue risk or could prejudice the interests of policyholders or potential policyholders of the registrant.

(13) A person who fails to comply with a request made pursuant to subsection (8) or (9) or a restriction made pursuant to subsection (12) or who obstructs a person in the performance of his duties under this section commits an offence and is liable on summary conviction, in the case of a registrant or financial holding company, to a fine of six hundred thousand dollars and in the case of a director, officer or employee of the registrant or financial holding company, to a fine of six hundred thousand dollars and to imprisonment for two years.

(14) A registrant or financial holding company that fails to take measures required by the Inspector

pursuant to subsection (11), commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and in the case of a continuing offence to a fine of sixty thousand dollars for each day that the offence continues.

(15) The Inspector or any person authorized in writing by the Central Bank or any designated members of staff of the Central Bank may enter into the premises of any registrant or financial holding company to—

- (a) inspect any books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including documents stored in electronic form, and take any copies of the whole or any part of any such record; or
- (b) determine whether there is compliance with this Act or any Regulations made thereunder.

(16) Where the Inspector, any person authorized by the Central Bank or any designated member of staff of the Central Bank is—

- (a) prevented from exercising ;
- (b) required to exercise outside normal working hours; or
- (c) required to exercise urgently,

powers given to him under subsections (9) and (15), the Inspector may apply to a Judge of the High Court for an *ex parte* order authorizing him or any person authorized in writing by the Central Bank or any designated member of staff to enter into the premises of the registrant or financial holding company or to have access to all of its documents listed in subsection (9).

(17) The application referred to in subsection (16) shall show reasonable cause for the Inspector or a person authorized by the Central Bank or a designated

member of staff to enter into the premises of the registrant or financial holding company to fulfil the requirements of subsection (15) or to have access to such documents listed in subsection (9).

(18) Where the provisions of this Act require anything to be done within a specified period of time and the person who is required to comply with the time limit prescribed is unable to do so because of circumstances beyond his control, including but not limited to the occurrence of any hurricane, storm, fire, flood or any similar natural disaster or events such as industrial unrest, riot, public disorder or the like, the Inspector shall grant such extension of time as may be reasonably sufficient for the doing of the act or thing.

10. (1) The Inspector may require a—

- (a) financial holding company, insurer, agency or brokerage, or employee or any person acting on its behalf; Power of Inspector to request information
- (b) controlling shareholder, or significant shareholder of an insurer or financial holding company;
- (c) subsidiary of the insurer or financial holding company;
- (d) company or unincorporated body that is an affiliate or associate of the insurer or financial holding company;
- (e) company that is a member of a related group or financial group of which an insurer is a member; or
- (f) present or former director, officer, actuary, auditor or controlling shareholder or significant shareholder of any person referred to in paragraphs (a) to (e),

to furnish such information in such form and within such period of time as the Inspector may require.

- (2) The Inspector may from time to time require—
- (a) verification from the auditor, actuary of an insurer, financial holding company or any other entity referred to in subsection (1) with respect to the accuracy of information submitted pursuant to that subsection and may itself verify the accuracy of such information by inspecting such insurer, financial holding company or other entity; or
 - (b) an officer or any other person in charge of an insurer, a financial holding company, agency or brokerage to supply, within such time as may be specified, any information relating to the insurer, financial holding company, agency or brokerage, or any connected party or connected party group, or any person over which the insurer, financial holding company, agency, brokerage, or the directors or officers of the insurer, financial holding company, agency or brokerage have control.

(3) A request for information under subsection (1) or (2), shall be in writing.

(4) The Inspector may exercise the powers under subsection (1) in relation to any person who is or is about to be elected or appointed as a director or officer of an insurer, financial holding company, agency or brokerage to determine whether the person is a fit and proper person in accordance with the criteria of Schedule 5 to hold the particular position which he holds or to which he is about to be elected or appointed.

(5) A person whom the insurer, financial holding company, agency or brokerage proposes to elect as a director or appoint as an officer shall be entitled to

refuse to supply the documents requested by the Inspector pursuant to subsection (4) if he no longer intends to stand for election or take up the appointment and has so advised the Inspector.

(6) Subject to subsection (5), a person who fails to supply information or produce the documents required under this section within the time specified commits an offence.

11. (1) The Central Bank shall collect statistics in relation to insurance business. Power of Central Bank to collect statistics

(2) Every registrant shall, for the purpose of enabling the Central Bank to collect statistics under this section, furnish the Central Bank with information in form and at such times as specified by the Central Bank.

12. (1) The Governor or the Inspector may delegate in writing any of his functions, powers or duties to any officer, employee or agent of the Central Bank. Appointment and delegation

(2) The Central Bank shall appoint, upon such terms and conditions as it may think fit, such persons as may be considered necessary to assist the Inspector in the performance of his duties.

(3) The Central Bank shall exercise any of its functions, powers and duties under this Act, through any officer, employee or agent.

(4) The Central Bank shall, whenever it considers necessary, cause arrangements for the services of an actuary, auditor or any other competent person to be made available for the purpose of advising the Inspector on matters arising under this Act.

(5) The Board may delegate in writing any of its functions, powers or duties to a committee appointed by the Board comprising a minimum of three members of the Board.

Central Bank to
maintain registers

13. The Central Bank shall maintain such registers as may be required or authorized to be maintained under this Act or the Regulations and in particular shall maintain separate registers of—

- (a) companies which are registered to carry on the various classes of insurance business in Trinidad and Tobago;
- (b) associations of underwriters; and
- (c) agents, agencies, brokers, brokerages, sales representatives and adjusters.

Information to be
published by the
Central Bank

14. (1) No later than the thirty-first day of March in each year, the Central Bank shall broadcast and publish in the *Gazette* and in at least two daily newspapers circulated in Trinidad and Tobago a list of insurers, agents, agencies, brokers, brokerages, sales representatives and adjusters registered to carry on insurance business in Trinidad and Tobago.

(2) The Central Bank shall make available to any person on request and on payment of such fee, if any, as it may reasonably require, a list of the insurers, agents, agencies, brokers, brokerages, sales representatives and adjusters registered either at the date of the request or at such earlier date, being not more than twenty days earlier, as may be specified in the request.

(3) The Central Bank shall publish a notice in the *Gazette* and in at least two daily newspapers circulated in Trinidad and Tobago, of all insurers, agencies and brokerages ceasing to hold a registration certificate, for each quarter.

Prohibition against
disclosure

15. (1) No director, officer or employee of the Central Bank or person acting under the direction of the Central Bank shall disclose any information regarding the business or affairs of a registrant or any of its affiliates

or information regarding a policyholder, consumer or other person dealing with a registrant that is obtained in the course of official duties.

(2) Notwithstanding subsection (1) or any other written law, the Central Bank, or a person authorized in writing by the Central Bank, may disclose the information referred to in subsection (1) to—

- (a) any local or foreign regulatory agency or body that regulates financial entities, for regulatory purposes;
- (b) any entity providing compensation or insurance for policyholders and consumers of financial services in Trinidad and Tobago for purposes related to its operations;
- (c) the Financial Intelligence Unit established under the Financial Intelligence Unit of Trinidad and Tobago Act; or
- (d) any person designated under any other written law authorizing the disclosure of such information,

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if the Central Bank is satisfied that the information will be treated as confidential by the agency or body to whom it is disclosed and used strictly for the purpose for which it is disclosed and not otherwise.

(3) Notwithstanding subsection (1) or any other written law, the Central Bank, or a person authorized in writing by the Central Bank, shall disclose the information referred to in subsection (1) to any person, in accordance with an order of the court.

(4) The Central Bank may enter into a Memorandum of Understanding with any person mentioned in subsection (2) with respect to sharing information, but the absence of such Memorandum of Understanding shall not prevent the disclosure of information by the Central Bank to such person.

(5) A director, officer or employee of the Central Bank or any person acting under the direction of the Central Bank may disclose, at such times and in such manner as it deems appropriate, such information obtained by the Central Bank under this Act as the Central Bank considers ought to be disclosed for the purposes of the analysis of the financial condition of an entity registered pursuant to this Act and that—

- (a) is contained in any return, statement or other document required to be filed with the Central Bank pursuant to this Act and the Regulations and Guidelines made under this Act; or
- (b) has been obtained as a result of any industry-wide or sectoral survey conducted by the Central Bank in relation to an issue or circumstance that could have an impact on the financial condition of financial institutions generally or the financial system of Trinidad and Tobago.

(6) Where the Central Bank determines that the disclosure of information concerning a registrant or non-registrant in addition to that referred to in subsection (5) would be in the best interests of—

- (a) the financial system of Trinidad and Tobago; or
- (b) the policyholders, consumers, other customers, creditors or shareholders of such registrant or non-registrant as the case may be,

the Central Bank or any person acting under the direction of the Central Bank may disclose such information by broadcast and by publication in the *Gazette* and in at least two daily newspapers circulated in Trinidad and Tobago and by any other means that the Central Bank considers appropriate.

(7) This section does not apply to information which at the time of the disclosure is or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular individual to be ascertained from it.

(8) Notwithstanding any provision in this section, the Central Bank may publish information relating to the insurance industry including statistics collected under section 11, so long as the publication does not disclose details regarding any particular registrant or policyholder.

(9) Notwithstanding any provision in this section, the Central Bank may publish or make available to any person on request and on payment of such fee as specified by the Central Bank, documents submitted pursuant to section 172(1)(a) and (b).

16. Supervisory information is the property of the Central Bank and may not be disclosed by a registrant or any other person to whom the information is made available without the prior written consent of the Central Bank.

17. (1) Each applicant, registrant or representative office situated in Trinidad and Tobago shall pay the relevant fees set out in Schedule 2 to the Central Bank.

(2) Annual fees referred to in Schedule 2 shall be payable no later than the 31st day of January in each year or such later date as may be specified by the Central Bank, except that where a registration or permit is granted or a branch, subsidiary or representative office is opened for the first time after the first quarter in any year, the fee payable shall be calculated on a *pro rata* basis.

PART III

INSURERS

A. Registration of Insurers

Non-application of
Part

18. This Part does not apply to a privately administered pension fund plan, an association of underwriters or an intermediary.

Carrying on
insurance business

19. (1) For the purposes of this Act, carrying on insurance business in or from Trinidad and Tobago includes but is not limited to any or all of the following:

- (a) making of or proposing to make a contract of insurance;
- (b) making of or proposing to make, as guarantor or surety, any contract of guaranty or surety-ship as a business and not merely incidental to any other of the guarantor's or surety's legitimate business or activity;
- (c) taking or receiving an application for insurance;
- (d) the collection or receipt of any premium or other consideration for insurance or any part thereof;
- (e) issue of contracts of insurance to persons resident in Trinidad and Tobago or authorized to do business in Trinidad and Tobago; and
- (f) solicitation, negotiation, procurement or effecting of insurance or renewals thereof,

whether carried on directly by a person or through another person acting with the actual or apparent authority or on behalf of the first person.

(2) A person shall not be treated as carrying on insurance business in Trinidad and Tobago if the only reason for so treating the person is either of the following:

- (a) the risk covered by a policy of insurance issued by that person is situated in Trinidad and Tobago; and
- (b) the person makes, collects or receives in Trinidad and Tobago renewal premiums under a policy issued outside of Trinidad and Tobago.

20. (1) Except as otherwise expressly provided in this Act, no person may carry on any type of insurance business or reinsurance business in or from Trinidad and Tobago unless that person is a company that is registered under this Part. Restrictions on carrying on insurance business

(2) An insurer shall only carry on the classes and types of insurance business for which it is registered under this Part.

(3) A person other than an insurer shall not—

- (a) describe himself as an insurer; or
- (b) so hold himself out as to indicate or be reasonably understood to indicate that he is an insurer.

(4) No person other than an insurer, agency or brokerage shall trade or carry on any business or undertaking under any name or title, in any language, which includes the words “insurance”, “assurance”, “indemnity”, “guarantee”, “underwriting”, “reinsurance”, “surety”, “casualty”, or any of their derivatives, or any other expression which connotes or is intended to connote insurance business.

(5) Notwithstanding subsection (1), a foreign company which does not have an established place of business in Trinidad and Tobago may, without being

registered under this Part, carry on insurance business in Trinidad and Tobago if its activities relate only to the acceptance of reinsurance ceded by an insurer.

(6) Where the Central Bank has reasonable grounds to believe that a person is carrying on any aspect of insurance business without being registered under this Act, it may—

- (a) require information from, inquire into, and examine the affairs of that person, and it may take any action that the Central Bank sees fit to ensure that the person discontinue the activity; and
- (b) apply for an *ex parte* order of a judge of the High Court, authorizing the Inspector or any person authorized in writing by the Central Bank or any designated member of staff of the Central Bank to enter into the premises where it is suspected that such insurance business is being carried on, to determine whether there is compliance with this Act.

(7) Where the Central Bank obtains an *ex parte* order under subsection (6)(b), the Inspector, or any person authorized in writing by the Central Bank or any designated member of staff of the Central Bank shall enter the premises and examine any books, records, accounts, vouchers, minutes of meetings and other documents, including documents stored in electronic form and take any copies of such documents.

(8) Where an examination has been conducted under subsection (7) and the Central Bank is satisfied that the provisions of this Act are being contravened, the Central Bank may seek injunctive relief under section 183.

(9) A person who contravenes subsections (1), (2) or (3) commits an offence and is liable on summary conviction to a fine of ten million dollars and to imprisonment for ten years.

(10) In addition to subsection (9), where a person in contravention of subsection (1), (2) or (3) is a company, every director or officer of such company is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

21. (1) Subject to subsections (2) and (3) no company shall be registered as an insurer to carry on long-term or general insurance business unless it has and maintains at all times—

- (a) in the case of a company with share capital, a minimum stated capital of fifteen million dollars; and
- (b) in the case of a mutual company, uncommitted assets of at least fifteen million dollars.

(2) An insurer which immediately before the commencement of this Act was registered to carry on only long-term or only general insurance business but is not in compliance with subsection (1), shall within five years of the commencement of this Act, increase its stated capital, to not less than the amount specified in subsection (1), in the following manner:

- (a) an insurer registered to carry on only long-term insurance business shall have minimum stated capital or uncommitted assets of—
 - (i) five million dollars at the end of the first year;
 - (ii) eight million dollars at the end of the second year;
 - (iii) eleven million dollars at the end of the third year;
 - (iv) thirteen million dollars at the end of the fourth year; and

- (v) fifteen million dollars at all times at the end of the fifth year, following commencement;
- (b) an insurer registered to carry on only general insurance business shall have minimum stated capital or uncommitted assets of—
 - (i) three million dollars at the end of the first year;
 - (ii) six million dollars at the end of the second year;
 - (iii) nine million dollars at the end of the third year;
 - (iv) twelve million dollars at the end of the fourth year; and
 - (v) fifteen million dollars at all times at the end of the fifth year, following commencement.

(3) An insurer which immediately before the commencement of this Act was registered to carry on both long-term and general insurance business shall be required to maintain at all times stated capital of at least twenty-two million, five hundred thousand dollars.

(4) On the commencement of this Act, an insurer which is not in compliance with subsection (3) shall, within five years of the commencement of this Act, increase its stated capital to not less than the amounts as follows:

- (a) six million dollars by the end of the first year;
- (b) ten million, five hundred thousand dollars by the end of the second year;
- (c) fifteen million dollars by the end of the third year;

- (d) nineteen million dollars by the end of the fourth year; and
- (e) twenty-two million, five hundred thousand dollars at all times at the end of the fifth year,

following commencement.

(5) Within six months following commencement of this Act, an insurer that is subject to subsection (2), (3) or (4) shall submit a plan acceptable to the Central Bank for increasing its stated capital or uncommitted assets, as the case may be, to the amounts required pursuant to subsection (2), (3) or (4).

(6) If an insurer fails to submit a plan when required to do so or fails to implement an accepted plan, the Central Bank may impose any conditions on the registration of the insurer that it considers to be necessary or appropriate until such time as the stated capital requirement is met.

(7) A company which has applied to be registered as an insurer under this Act may be required, based on the particular circumstances of the company, to provide capital in excess of the minimum stated capital under subsection (1), in cash or approved securities and in accordance with regulations made under this Act.

(8) An insurer shall physically hold in Trinidad and Tobago all capital required under this section and section 107.

22. (1) An insurer which at the commencement of this Act is registered as an insurer under the former Act shall be deemed to have been registered under section 24 and the Central Bank shall, upon receipt of the insurer's certificate of registration issued under the former Act, issue a new certificate of registration duly signed by the Governor, which shall specify the classes and types of insurance business in respect of which the

Companies
registered under
former Act

insurer is registered and shall be *prima facie* evidence that the insurer named in the certificate has been registered under this Act.

(2) A company which immediately before the commencement of this Act is registered to carry on both long-term insurance business and general insurance business may continue to carry on both types of insurance business, subject to the requirements of this Act for each type of insurance business.

(3) In reissuing a certificate of registration under subsection (1), the Central Bank shall consider whether the insurer has carried on a class and type of insurance business in Trinidad and Tobago within the period of twelve months prior to the commencement of this Act and the insurer shall only be registered in respect of the classes of insurance business that it was carrying on at such time.

(4) A company which is registered to carry on general insurance business and accident and sickness class of insurance business shall not be considered to be carrying on long-term insurance business.

(5) The accident and sickness class of insurance business of a company described in subsection (4) shall be subject to the same requirements under this Act as those applicable to long-term insurance business.

Application for
registration

Schedule 1

23 (1) A company may apply to the Central Bank for registration under this Act to carry on insurance business in respect of any of the types and classes prescribed in Schedule 1.

(2) Except as provided in subsection (3), every application for registration shall be made to the Central Bank in writing and shall be accompanied by—

(a) a statement of the applicant's name and the address of its—

(i) registered office and head office in Trinidad and Tobago, in the case of

an application by or on behalf of a local company; or

- (ii) principal office in Trinidad and Tobago and head office outside Trinidad and Tobago in the case of an application by a foreign company;
- (b) the name, address, nationality, experience, and other relevant information, including the information prescribed in Schedule 5 pertaining to—
- (i) each director and officer or proposed director and officer and all existing and proposed shareholders holding five per cent or more of any class of shares; or
 - (ii) the principal representative or proposed principal representative under section 25 or 26 and any other officers who will be resident in Trinidad and Tobago in the case of an application by a foreign company;
- (c) the name, address, nationality, experience, and other relevant information, including the information prescribed in Schedule 5 pertaining to the actuary and auditor or proposed actuary and auditor;
- (d) in the case of a foreign insurer, the name and address of the proposed trustee for its statutory fund;
- (e) a certified statement or where this cannot be produced, such proof as the Central Bank may require of the applicant's ability to meet the requirement of a minimum stated capital of not less than such amounts as may be required pursuant to section 21;

- (f) a certified copy of the articles of incorporation or continuance, by-laws or other constituent document and the certificate of incorporation or certificate of continuance under which the applicant is incorporated, continued or constituted;
- (g) in the case of an application by or on behalf of a company that has been carrying on business other than that of insurance business prior to the application, a copy of its audited financial statements for the three consecutive years immediately preceding the application, except that where the local company has been functioning for less than three years, a copy of audited financial statements for each year it has been in operation shall be sufficient;
- (h) in the case of an application by or on behalf of a foreign company that has been carrying on long-term insurance business prior to the application, a copy of the actuarial reports for the three consecutive years immediately preceding the application, except that where the foreign company has been functioning for less than three years, actuarial reports for each year it has been in operation shall be sufficient;
- (i) a business plan for the three consecutive years immediately following the approved commencement date of carrying on insurance business, details of which are prescribed by Regulations made under this Act;
- (j) statement showing its stated capital in the case of a company which has shareholders;
- (k) evidence of payment of the prescribed application fee in Schedule 2;

- (l) details of any refusal from a regulatory authority to carry on any class of insurance business in any other jurisdiction;
- (m) approval from the relevant regulatory authority in the jurisdiction of incorporation to carry on insurance business in Trinidad and Tobago; and
- (n) such further information as the Central Bank may require.

(3) If an insurer is applying to amend its registration to carry on additional classes of business, the Central Bank may waive such items of information otherwise required under subsection (2) as it believes are unnecessary or inapplicable.

(4) Every application submitted under this section shall be signed by—

- (a) two directors; and
- (b) the chief executive officer or the secretary,

who shall certify that the information given in the application is true and correct.

(5) A person who certifies the information on an application under subsection (4) which contains any false particular commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

24. (1) The Central Bank may, on an application duly ^{Registration of} made in accordance with section 23, and after being ^{company} provided with all such information and documents as it may require under that section, after being satisfied that this Act and any Regulations have been complied with, and after consultation with the Minister, approve or refuse the application.

(2) Where the decision is made to refuse an application, the Central Bank shall notify the applicant

in writing of its rejection and shall give reasons to the applicant.

(3) The Central Bank shall upon approval of an application, notify the applicant in writing of its approval and the requirement to make the deposit pursuant to section 42.

(4) Upon receipt of evidence by the applicant that the deposit has been made in accordance with section 46, the Central Bank shall issue a certificate of registration to the applicant duly signed by the Governor, which shall specify the classes and types of insurance business in respect of which the insurer is registered and shall be *prima facie* evidence that the insurer named in the certificate has been registered under this Act.

(5) Registration to carry on insurance business may contain such terms and conditions as the Central Bank considers necessary or appropriate taking into account the particular circumstances of the proposed insurer.

(6) Where the Central Bank imposes terms and conditions on registration under subsection (5), it shall inform the applicant in writing of the reasons for doing so.

(7) Notice of registration by the Central Bank shall be broadcast and published in the *Gazette* and in at least two daily newspapers circulated in Trinidad and Tobago and notwithstanding the date of publication the registration shall take effect on the date specified in the certificate of registration.

(8) Registration issued under this Act shall be valid until it is revoked.

(9) An insurer that wishes to vary the classes of business for which it is registered, shall first obtain the approval of the Central Bank and the Central Bank—

(a) may require the insurer to increase its stated capital and to satisfy such additional prudential criteria and requirements as to

management, as the Central Bank considers necessary; and

(b) shall amend the certificate of registration issued under subsection (4) or section 22.

(10) It shall be a condition of every registration that the insurer shall—

(a) comply with such terms and conditions as may be specified; and

(b) within five days of any change in its officers, including a principal representative of a foreign insurer, notify the Central Bank in writing of such change.

(11) Where the Central Bank has registered a company to carry on any or all of the classes of general insurance business, it may also register such company to carry on accident and sickness class of insurance business.

(12) The accident and sickness class of insurance business of a company described in subsection (11) shall be subject to the same requirements under the Act as those applicable to long-term insurance business.

(13) Where the Central Bank has registered a company to carry on insurance business, the insurer may underwrite or accept reinsurance in respect of the specific classes of insurance business for which it is registered.

25. (1) A foreign insurance company may apply to the Central Bank to carry on insurance business in Trinidad and Tobago in accordance with the provisions of this Part. Registration of a foreign insurance company

(2) The Central Bank may grant registration under this Part to a foreign insurance company to carry on insurance business in Trinidad and Tobago, providing such company is subject to regulation and supervision in its home jurisdiction that is satisfactory

to the Central Bank and the foreign insurance company has met all applicable registration requirements under this Part.

(3) A foreign insurer registered in accordance with subsection (2) shall—

- (a) maintain a principal office in Trinidad and Tobago;
- (b) appoint an employee who is ordinarily resident in Trinidad and Tobago to be its principal representative for the purposes of this Act, and who shall be responsible for the day to day management of the principal office of the foreign insurer;
- (c) give the principal representative a power of attorney expressly authorizing the principal representative to receive all notices, pleadings or any other document from the Central Bank and shall submit that registered power of attorney to the Central Bank; and
- (d) where a vacancy occurs in the position of principal representative, without delay, fill the vacancy and submit the new registered power of attorney to the Central Bank.

(4) A foreign insurer shall submit to the Central Bank the name, address, nationality, experience and other relevant information, including the information specified in Schedule 5 pertaining to the principal representative and shall obtain the Central Bank's approval to appoint such person as its principal representative prior to making an appointment under subsection (3)(b) and (d).

Representative
offices of foreign
insurance company

26. (1) A foreign insurance company shall not—

- (a) without the prior approval in writing of the Central Bank, establish, acquire or open any representative office in Trinidad and Tobago; or

(b) without at least five days' prior notice in writing to the Central Bank, close or relocate a representative office in Trinidad and Tobago.

(2) A foreign insurance company applying for approval to establish, acquire or open a representative office pursuant to subsection (1) shall—

(a) appoint a person who is ordinarily resident in Trinidad and Tobago to be its principal representative for the purposes of this Act and who shall be responsible for the day to day management of the representative office;

(b) give the principal representative a power of attorney expressly authorizing the principal representative to receive all notices from the Central Bank and shall submit that registered power of attorney to the Central Bank; and

(c) where a vacancy occurs in the position of principal representative, fill the vacancy and submit the new registered power of attorney to the Central Bank.

(3) In determining whether to grant approval under subsection (2), the Central Bank shall take into account whether—

(a) the principal representative is a fit and proper person; and

(b) the foreign insurance company has paid the application fee set out in Schedule 2.

27. (1) A local insurer shall not—

(a) establish a branch outside Trinidad and Tobago unless it has—

(i) made an application in writing to the Central Bank;

Branches and
representative offices

- (ii) paid the fee prescribed in Schedule 2;
and
- (iii) received the prior written approval
from the Central Bank; or
- (b) close or relocate a branch outside Trinidad
and Tobago unless it has—
 - (i) given the Central Bank at least five
days' written notice;
 - (ii) paid the fee prescribed in Schedule 2;
and
 - (iii) received the prior written approval
from the Central Bank.

(2) In determining whether to grant approval under subsection (1), the Central Bank shall take into account the financial condition of the insurer and such other criteria as may be specified by the Central Bank.

(3) A local insurer shall not, without at least five days prior notice in writing to the Central Bank establish, acquire, open, close or relocate a representative office outside Trinidad and Tobago.

Refusal to register
company

28. (1) A company shall not be registered in respect of any class and type of insurance business unless the Central Bank is satisfied that—

- (a) the company has made in respect of that
type of insurance business the deposit
required to be made under section 42;
- (b) the proposed trustee is fit and proper in
accordance with Schedule 5;
- (c) the company has made arrangements for
the management of risks, including internal
control systems and information technology
systems, policies and procedures that will
be adequate for the nature and scale of that
class or type of insurance business;

- (d) the company has reinsurance arrangements that are adequate for the nature and scale of the insurance risks that it undertakes or plans to undertake;
- (e) the acquirers, controlling shareholders, significant shareholders, directors, officers, auditor, and actuary, where the company is required to appoint an actuary under this Act, of the company, and those who occupy such other positions as may be designated by the Central Bank, are fit and proper persons in accordance with Schedule 5 to perform their respective roles;
- (f) the acquirers, controlling shareholders, significant shareholders of the company have complied with sections 69 to 71;
- (g) in the case of a company which is carrying on or proposes to carry on some other form of business in addition to insurance business, such other form of business is or would be associated with the insurance business and the carrying on of such other form of business is not or would not be contrary to the interest of policyholders;
- (h) in the case of a foreign company it has appointed an individual resident in Trinidad and Tobago to be its principal representative and has informed the Central Bank of the name and address of that individual;
- (i) having regard to the knowledge and competence of its officers, the company is, in relation to that class of insurance business, capable of carrying on such business efficiently;
- (j) that the policy and practice of the company in dealing with claims are conducive to the fair, efficient and speedy settlement thereof;
- (k) the business plan for the future conduct and development of the business is sound and feasible; and

(l) the company is not part of a larger organizational or group structure that would hinder its effective supervision.

(2) A company shall not be registered to carry on insurance business unless, in addition to complying with the requirements of subsection (1), it satisfies the Central Bank that it meets the capital adequacy and liquidity requirements established in accordance with section 107.

(3) The Central Bank shall not register a company to carry on both long-term and general insurance business except as provided in section 22.

Continuous
registration
requirement

29. (1) Where the Central Bank is satisfied that a company meets the requirements under sections 21, 22 and 23 and has approved an application and issued a certificate of registration under this Part, the insurer shall continuously meet all registration requirements under this Part and comply with all terms and conditions of its registration and the requirements of Schedule 5.

(2) An insurer that contravenes subsection (1) commits an offence.

Restrictions on
activities of insurer

30. (1) An insurer shall not transact insurance business in Trinidad and Tobago with an unregistered—

(a) company which carries on, purports to carry on or represents itself as carrying on insurance business; or

(b) person who carries on, purports to carry on or represents itself as carrying on insurance business as an intermediary.

(2) A local insurer shall not carry on insurance business outside of Trinidad and Tobago unless the Central Bank has given written prior approval pursuant to section 27.

(3) For the purposes of subsection (2) the transaction of insurance business does not include the ceding of insurance business to reinsurers outside of Trinidad and Tobago.

(4) An insurer shall within five days notify the Central Bank in writing if it cedes insurance business to a reinsurer and shall provide the Bank with all information regarding the reinsurer that the Central Bank may request.

(5) Where the Central Bank has reasonable grounds to believe that a reinsurer poses an undue risk to Trinidad and Tobago policyholders, the Central Bank may by written direction prohibit the insurer from ceding insurance business to such reinsurer.

(6) Except as provided for in section 28(1)(g), an insurer shall not carry on any business other than insurance business, and the establishment, distribution and sale of collective investment schemes.

(7) A company shall not be registered as both an insurer and an intermediary.

(8) Notwithstanding subsection (7), an insurer which immediately before the commencement of this Act was also registered as an agent, shall be allowed to carry on both its insurance business and its business as an insurance agency for a period of five years after the commencement of this Act.

(9) An insurer which is allowed to carry on both insurance business and business of an insurance agency pursuant to subsection (8), shall within five years of the commencement of this Act, separate its insurance business from its business of an insurance agency by incorporating a separate entity to carry on its business of an insurance agency and the provisions of section 112 shall apply.

(10) An insurer which carries on both insurance business and business of an insurance agency shall maintain separate records and accounts in respect of each business and shall in addition to its obligations under this Act to submit financial statements and returns to the Inspector, submit audited or unaudited financial statements or returns in respect of either its insurance business or its business as an insurance agency in the format and time as may be required by the Inspector.

Company to notify
Central Bank of any
change in particulars
specified in the
company's application

31. Where subsequent to the registration of a company under this Act there is any change—

- (a) in the particulars specified in the application of the company; or
- (b) in any information and in the particulars in any documents which the company is required to furnish under section 23,

the company shall, within five days of such change, notify the Central Bank in writing of the change except as provided in section 32.

Amendment of
articles of
incorporation and
other constituent
documents

32. (1) An insurer shall not make any alteration to its articles of incorporation or continuance, by-laws or any other constituent document under which it is incorporated, continued or constituted, unless it has notified the Inspector, in writing, that it proposes to make the alteration and the Inspector either—

- (a) has, in writing, approved the proposed alteration; or
- (b) has not, within twenty days of receipt of the notification, indicated in writing to the insurer any disapproval of the proposed alteration.

(2) The Inspector shall not disapprove a proposed alteration unless such proposed alteration is, or is likely to result in, a breach of—

- (a) the terms and conditions of the insurer's registration; or
- (b) the provisions of this Act or any Regulations.

(3) Notwithstanding any written law to the contrary an alteration made to the articles of incorporation or continuance, by-laws or any other constituent document of an insurer in contravention of subsection (1) shall be void.

(4) Every insurer shall within ten days of the date on which any alteration is made to its articles of incorporation or continuance, by-laws or other constituent document, submit to the Inspector a copy of the altered articles of incorporation or continuance, by-laws and other constituent documents.

33. (1) Every insurer registered to carry on general insurance business shall, at least twenty days prior to the date of the issue of a new or amended standard form of proposal, policy, endorsement or application, furnish the Inspector with the following forms where applicable:

Duty of company to furnish Inspector with copy of form of policy, endorsement or application

- (a) the standard form of proposal;
- (b) the standard form of policy;
- (c) the standard form of endorsement;
- (d) the standard form of application; and
- (e) such other information as the Inspector may specify.

(2) The Inspector may prohibit an insurer from issuing a new or amended standard form under this section if—

- (a) the Inspector requests further information; or
- (b) such issue, in the opinion of the Inspector, is fraudulent, unjust, imprudent, or not in the public interest,

and the Inspector shall give written reasons for the prohibition.

(3) Where the Inspector receives further information requested under subsection (2)(a), he may continue to prohibit the issue of a new or amended standard form within twenty days of receiving such information.

(4) If the Inspector does not prohibit an insurer from issuing a new or amended standard form, in accordance with subsection (2) or (3), the insurer may proceed to issue the new or amended standard form.

(5) Notwithstanding that an insurer has issued a new or amended standard form in accordance with subsection (4), the Inspector may subsequently prohibit the insurer from continuing to issue the new or amended standard form, if in the opinion of the Inspector the continued use will be fraudulent, unjust, imprudent, or not in the public interest and the Inspector shall give written reasons for the prohibition.

(6) An insurer which continues to issue a standard form the issue of which is prohibited by the Inspector under subsection (2), (3) or (5) commits an offence.

Revocation of
registration

34. (1) The Board may revoke the registration of an insurer in respect of any or all classes and types of insurance business for which it is registered where—

- (a) any of the criteria specified in Schedule 5, is not or has not been fulfilled or is unlikely to be or may not have been fulfilled in respect of the insurer;
- (b) the insurer has failed to comply with any obligation imposed on it under this Act or its Regulations, or any other written law;
- (c) it has failed to comply with any obligation imposed on it by any written law for the prevention of money laundering or terrorist financing including the Proceeds of Crime Act, the Anti-Terrorism Act, the Financial Intelligence Unit of Trinidad and Tobago Act and any Regulations made thereunder;
- (d) the insurer has provided the Central Bank with false, misleading or inaccurate information;

- (e) the Central Bank has subsequently discovered that any information provided under section 23 which led to the registration of the insurer is false, misleading or inaccurate;
- (f) the interests of policyholders or potential policyholders of the insurer are in any way threatened, whether by the manner in which the insurer is conducting or proposes to conduct its affairs;
- (g) the insurer has not carried on insurance business in Trinidad and Tobago within the period of twelve months from the day on which the certificate of registration was issued or having carried on insurance business in Trinidad and Tobago, has subsequently not done so for any period of more than six months;
- (h) a receiver or manager of the insurer has been appointed;
- (i) the insurer fails to comply with any requirement, prohibition, compliance direction, or any other direction issued by the Central Bank, the Inspector or the Board under this Act;
- (j) the insurer becomes illiquid and is unable to meet its obligations;
- (k) the holder of any debenture secured by a charge has taken possession of any property of the insurer comprised in or subject to the charge;
- (l) the insurer has merged or has been amalgamated with another company;
- (m) the business of the insurer is no longer the business for which it was registered;

- (n) the Board is satisfied that the policy and practice of the insurer in dealing with claims are unfair or that there is unreasonable delay in the settlement of claims payable under policies issued by it;
- (o) the insurer is insolvent within the meaning of section 107;
- (p) the reinsurance arrangements of the insurer are not adequate;
- (q) a final judgment obtained against the insurer in any court and in relation to which there is no stay of execution and the judgment remains unsatisfied for at least forty days;
- (r) an insurer has an affiliate located outside Trinidad and Tobago and the relevant supervisory authority in that country has withdrawn from the affiliate an authorization or registration corresponding to any which may be conferred by this Act;
- (s) in the case of an affiliate, wherever incorporated, of an insurer—
 - (i) a winding-up order has been made;
 - (ii) a resolution for its voluntary winding-up has been passed; or
 - (iii) an order for the appointment of a receiver has been made.

(2) Subject to section 40, before the registration is revoked, the Board shall give the insurer written notice of its intention, specifying—

- (a) the grounds upon which the Board intends to revoke the registration;
- (b) the date on which such proposed revocation is to take effect; and

(c) the place and period of time during which the insurer may make written representations to the Board.

(3) After serving a notice of intention to revoke the registration, and after taking into account any representations under subsection (2), the Board shall decide whether to—

(a) revoke the registration; or

(b) restrict the registration pursuant to section 35.

(4) The Board shall inform the insurer, by notice in writing, of its decision.

(5) Where the Board decides to revoke the registration, the notice of revocation shall include the date on which the revocation takes effect, a statement of the grounds for the decision and the right of appeal of the insurer under subsection (9) and section 270.

(6) When the Board serves a notice of intention to revoke a registration under this section, it may direct the Inspector to take charge of all books, records and assets of the insurer or any portion thereof or direct the Inspector to apply to the High Court to appoint a judicial manager, and to do all such things as may be necessary to safeguard the interests of policyholders, creditors and shareholders of the insurer until any appeal filed pursuant to subsection (9) has been determined.

(7) The Inspector may incur expenses to carry out the provision of subsection (6), including, without limitation, costs in connection with—

(a) utilities;

(b) rent; and

(c) administrative expenses of maintaining the business of the insurer but not including policyholder liabilities,

and any such costs shall be paid by the insurer.

(8) Where the insurer does not have adequate funds or the ability to meet the costs referred to in subsection (7), the Central Bank may provide funding to cover such costs which funding shall be recoverable as a civil debt payable to the Central Bank by the insurer.

(9) Where an insurer is aggrieved by a decision of the Board to revoke its registration pursuant to subsection (5), that insurer may appeal that decision in accordance with section 270.

(10) Where a decision is made to revoke a registration under subsection (5), the insurer shall cease carrying on insurance business from the date on which the revocation shall take effect.

(11) When a decision is made to revoke a registration of all classes of insurance business for which a local insurer is registered, the Central Bank shall apply to the High Court for an order for the winding-up of the local insurer if the local insurer is under liability to Trinidad and Tobago policyholders.

(12) The Board shall not revoke the registration of a foreign insurer in respect of any class of insurance business as long as the foreign insurer is under liability to Trinidad and Tobago policyholders whose policies belong to that class unless the Board is satisfied that—

- (a) reasonable provision has been or is being made to meet that liability; and
- (b) adequate arrangements have been or are being made for payment in Trinidad and Tobago of premiums and claims on those policies.

Restriction of
registration

35. (1) Where it appears to the Board that there are grounds on which its power to revoke the registration of an insurer under section 34 is exercisable, the Board may consider the circumstances and restrict the registration of the insurer instead of revoking it.

(2) The registration may be restricted by issuing such directions as the Board thinks necessary to protect the interests of the policyholders or potential policyholders.

(3) Directions issued under this section may—

- (a) require the insurer to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
- (b) stipulate limitations on the issuance of policies, the incurring of credit exposures or the distribution of profit;
- (c) prohibit the insurer from soliciting insurance business, either generally or from persons who are not already policyholders;
- (d) require the removal of any director or officer; or
- (e) impose any other relevant restrictions.

(4) A direction imposed under this section may be varied or withdrawn by the Board.

(5) An insurer or any director or officer thereof who fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section, commits an offence and is liable on summary conviction—

- (a) in the case of an insurer, to a fine of six hundred thousand dollars; or
- (b) in the case of a director or officer to a fine of six hundred thousand dollars and to imprisonment for two years.

36. (1) Where the Board proposes to—

- (a) restrict the registration; or
- (b) vary any restrictions imposed on the registration of an insurer,

Notice of restriction or
variation of restriction

it shall serve written notice of intention to do so on the insurer.

(2) A notice of intention to restrict or to vary a restriction shall specify the proposed restriction or the

proposed variation, as the case may be, and shall state the grounds on which the Board proposes to act and particulars of the insurers options under subsection (4).

(3) Where—

- (a) the ground for a proposed restriction or variation of a restriction is that it appears to the Board that the criteria of Schedule 5 is not or has not been fulfilled, or is unlikely to be or may not have been fulfilled in the case of any person; or
- (b) a proposed restriction consists of or includes a condition requiring the removal of any person as director or officer,

the Board shall serve on that person a copy of the notice of intention to restrict or vary a restriction together with a statement of his options under subsection (4).

(4) An insurer which is served with a notice of intention to restrict or vary a restriction, and a person who is served with a copy of it under subsection (3) may, within the period of ten days commencing from the day after which the notice was served, make written representation to the Board.

(5) After serving a notice of intention to restrict or vary a restriction, and after taking into account any representations made under subsection (4) the Board shall decide whether to—

- (a) proceed with the action proposed in the notice;
- (b) restrict or vary the restriction in a different manner; or
- (c) take no further action.

(6) The Board shall serve on the insurer and on any such person served with notice in subsection (3), written notice of its decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision and shall give particulars of the appeal process under section 270.

37. Where the Board withdraws a restriction or a ^{Withdrawal of a} condition of a restriction, the withdrawal shall be ^{restriction} effected by written notice to the insurer.

38. (1) The Board may give an insurer directions— ^{Directions to insurer}

- (a) when giving a notice of intention to revoke the registration of an insurer under section 34;
- (b) at any time after such notice of intention to revoke its registration has been given to the insurer; or
- (c) when giving a notice of revocation of its registration under section 40 and in the case of the voluntary winding-up of the insurer as referred to in section 135.

(2) Directions under this section shall be such as to appear to the Board to be desirable in the interests of the policyholders or potential policyholders of the insurer, whether for the purpose of safeguarding its assets or otherwise, and may, in particular—

- (a) require the insurer to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
- (b) impose limitations on the issuance of policies and the incurring of credit exposures;
- (c) prohibit the insurer from soliciting business either generally or from persons who are not already policyholders;
- (d) prohibit the insurer from entering into any other transaction or class of transactions;
- (e) require the removal of any director or officer; or
- (f) contain such other requirements as may be considered necessary in any particular case.

(3) An insurer or any director or officer thereof who fails to comply with any requirement or contravenes any prohibition imposed by a direction under this section commits an offence and is liable on summary conviction—

(a) in the case of an insurer, to a fine of five million dollars; or

(b) in the case of any director or officer, to a fine of five million dollars and to imprisonment for five years.

Notification and confirmation of directions

39. (1) Directions under sections 35 and 38 shall be given by notice in writing, and shall state the reasons for which the directions are given, and may be varied by a further notice containing directions, or cancelled by the Board by notice in writing to the insurer.

(2) Where a direction requires the removal of a person as director or officer of the insurer, the Board shall serve on that person a copy of the direction together with a statement of his options under subsection (3).

(3) An insurer to which a direction is given and a person who is served a copy of it under subsection (2) may, within the period of ten days commencing from the day after which the direction is given, make verbal or written representations to the Board and the Board shall take any such representations into account in deciding whether to confirm, vary or cancel the direction.

(4) Where the Board decides to confirm, vary or cancel a direction it shall serve written notice of its decision on the insurer and such notice shall state particulars of the appeal process under section 270.

Mandatory revocation and restriction in cases of emergency

40. (1) The Board shall revoke the registration of an insurer if—

(a) a winding-up order has been made against it;

- (b) all its assets have passed into the ownership of another person; and
- (c) a resolution for its voluntary winding-up has been passed in accordance with section 135.

(2) No notice of intention is required to be given—

- (a) under section 34 in respect of the revocation of a registration in any case in which revocation is mandatory under subsection (1); or
- (b) under section 36 in respect of the imposition or variation of a restriction on the registration in any case in which the Board considers that the restriction should be imposed or varied as a matter of urgency.

(3) In any such case as mentioned in subsection (2), the Board may by written notice to the insurer revoke the registration or impose or vary the restriction.

(4) A notice under subsection (3) shall state the reasons for which the Board has acted and, in the case of a notice imposing or varying a restriction, give particulars of the insurer's right to appeal under section 270.

(5) Where—

- (a) the grounds for a proposed restriction or variation of a restriction are that it appears to the Board that the criteria of Schedule 5 are not or have not been fulfilled, or are unlikely to be or may not have been fulfilled in the case of any person; or
- (b) a proposed restriction consists of or includes a condition requiring the removal of any person as director or officer,

the Board shall serve on that person a copy of the notice to restrict or vary a restriction together with a statement of his option under subsection (6).

(6) An insurer which is served with a notice to restrict or vary a restriction, or a person who is served with a copy of it under subsections (3) and (5) respectively may, within the period of ten days commencing from the day after which the notice was served, make written representation to the Board.

(7) After serving a notice under subsection (3) or (5) imposing or varying a restriction and taking into account any representations made in accordance with subsection (6), the Board shall decide whether to—

- (a) confirm or rescind its original decision; or
- (b) impose a different restriction or to vary the restriction.

(8) The Board shall, within the period of fifteen days commencing from the day after which the representations have been made, give the insurer written notice of its decision under subsection (7) and any notice giving a decision under subsection (7)(b) shall state the reasons for the decision.

(9) Where the notice under subsection (8) contains a decision to take the action specified in subsection (7)(b) the notice under subsection (8) shall have the effect of imposing the restriction or making the variation specified in the notice with effect from the date on which the notice is served.

Voluntary revocation
and restriction

41. (1) An insurer may make an application to the Central Bank to have its registration voluntarily revoked at any time after it has been issued a certificate of registration under section 22 or 24.

(2) Every application for voluntary revocation shall be made to the Central Bank in writing and shall be accompanied by such information as the Central Bank may require and evidence of payment of the prescribed revocation fee.

(3) Where the Central Bank receives an application for voluntary revocation, it shall place restrictions on the registration of the insurer in accordance with the provisions of section 35 to cease writing new business and any other restrictions and directions and, no notice of intention under sections 34 and 36 is required to be given.

(4) The Central Bank shall direct the insurer to broadcast and publish in the *Gazette* and in at least two daily newspapers circulated in Trinidad and Tobago a notice approved by the Central Bank—

- (a) informing the public of its application to have its registration voluntarily revoked and the reasons thereof;
- (b) requiring persons or their legal personal representative to submit a claim to the insurer within three months from the date of publication in the *Gazette* or daily newspapers, whichever is published later; and
- (c) containing any other information required by the Central Bank.

(5) The insurer shall comply with all directions of the Central Bank with respect to the format of the notice and periods of publishing required under subsection (4).

(6) The insurer shall be required to provide evidence satisfactory to the Central Bank that it is not under liability to any policyholder and shall comply with the directions of the Central Bank with respect to ascertaining whether the insurer is under liability to any policyholder.

(7) Where the Central Bank is satisfied that the insurer has discharged all its liabilities to policyholders or that the insurer has made all reasonable efforts to

discharge its liabilities to policyholders and no sufficient discharge can otherwise be obtained, the Central Bank shall apply to the High Court for an order—

- (a) to revoke the registration of the insurer;
- (b) to apply the assets in the statutory fund, catastrophe reserve fund or statutory deposit to any outstanding policyholders' liabilities or to release the assets of the statutory fund, catastrophe reserve fund or the statutory deposit to the insurer if there are no liabilities;
- (c) to receive payment of any money in respect of outstanding liabilities of the insurer; and
- (d) for directions for any other matter.

(8) Where the High Court grants an order for revocation under subsection (7), the registration of the insurer shall be deemed to be revoked as at the date of the order.

(9) Where the Central Bank receives any money pursuant to an order under subsection (7), it shall be a good and valid discharge to the insurer for the money so paid in respect of its liabilities to policyholders, and the money shall be dealt with according to the order.

(10) The Central Bank shall pay into the Consolidated Fund any monies received under this section and there shall be paid from the consolidated fund such sums as are necessary to give effect to this section and the order granted under subsection (7).

(11) Nothing in this section shall be construed so as to prevent the Central Bank from revoking or restricting the insurer's registration under other provisions in this Act, from making an application for the winding-up of the insurer or taking any other action under this Act.

B. Statutory Deposits

42. (1) An insurer shall not be registered to carry on any class and type of insurance business and shall not carry on such business unless it has made the appropriate statutory deposit required in this section. Amount and form of statutory deposits

(2) An insurer shall deposit with the Central Bank three million dollars of the minimum stated capital required pursuant to section 21 as follows:

(a) where an application has been approved in accordance with section 24(3), the statutory deposit shall be made immediately upon receipt of the notice of approval; and

(b) in the case of an insurer which immediately before the commencement of this Act was registered to carry on insurance business, the statutory deposit shall be made on or before the end of the first year following the commencement of this Act.

(3) In addition to the statutory deposit required pursuant to subsection (2), an insurer registered to carry on general insurance business shall deposit with the Central Bank an amount equivalent to forty per cent of the premium income net of reinsurance premiums of the insurer with respect to Trinidad and Tobago general insurance business during the financial year last preceding the date of the deposit.

(4) In the case of an insurer that is carrying on both long-term insurance business and general insurance business, the insurer shall deposit with the Central Bank six million dollars of the minimum stated capital required under section 21 which amount shall be allocated equally between its long-term and general insurance businesses.

(5) In addition to the statutory deposit required pursuant to subsection (4), an insurer that is carrying

on both long-term insurance business and general insurance business shall, in respect of its general insurance business, deposit with the Central Bank an amount equivalent to forty per cent of the premium income net of reinsurance premiums of the insurer with respect to Trinidad and Tobago general insurance business during the financial year last preceding the date of the statutory deposit.

(6) An insurer shall at all times maintain the statutory deposit required under this section and shall fund the deposit as follows:

(a) annually, based on its audited financial returns; and

(b) quarterly, based on its quarterly return,

within five days after the period for submission of its returns under section 172.

(7) A statutory deposit made under this section may be in the form of cash or approved securities or any combination thereof.

(8) An insurer who contravenes subsection (6) commits an offence and is liable on summary conviction to a fine of five million dollars and each director is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

Statutory deposits to
form part of assets

43. (1) All statutory deposits made by an insurer pursuant to this Act shall form part of the assets of the insurer.

(2) All interest and dividends accruing due on any approved securities deposited under section 42 shall be paid to the insurer.

(3) A statutory deposit made under section 42 in respect of any type of insurance business shall be retained by the Central Bank until the insurer ceases to be registered in respect of that class of insurance

business or the statutory deposit is required in the winding-up of the insurer.

44. (1) An insurer shall notify the Inspector, in writing, of the maturity of an asset held in the statutory deposit at least ten days prior to the maturity date of such asset.

Maturity of assets in the statutory deposit

(2) Where an asset in the statutory deposit has matured the Central Bank shall continue to hold the cash equivalent of the asset and such cash shall form part of the statutory deposit.

45. (1) An insurer whose registration has been revoked and is not under liability to Trinidad and Tobago policyholders may apply in writing to the Central Bank for a release of its statutory deposit.

Release of deposit upon revocation

(2) On making an application under subsection (1) the insurer shall—

(a) file with the Central Bank a list of Trinidad and Tobago policyholders whose risks have not been provided for and who have not surrendered their policies; and

(b) publish at least once a week for twelve consecutive weeks in the *Gazette* and in at least two daily newspapers circulated in Trinidad and Tobago a notice—

(i) of its intention to apply to the Central Bank for the release of its statutory deposit on a date specified in the notice being a day not less than four months after the date of the publication of the first notice; and

(ii) requesting any policyholder who is opposed to the release of the statutory deposit to file his opposition in respect of any

outstanding liabilities with the Central Bank on or before the date specified in the notice.

(3) Where no opposition is filed with the Central Bank in accordance with subsection (2)(b)(ii), the Central Bank may release the statutory deposit to the insurer.

(4) Where the Central Bank has received any opposition under subsection (2)(b)(ii) the Central Bank may—

- (a) apply to the High Court for a winding-up order in accordance with section 34(11); or
- (b) apply to the High Court for an order to make payment from the statutory deposit to those policyholders and to release any remaining funds to the insurer.

Release of statutory deposit where an insurer is still a going concern

46. (1) Notwithstanding section 43(3), an insurer may apply in writing to the Inspector for a partial release of its statutory deposit where it is in excess of the requirements of this Act.

(2) The Inspector, where he is satisfied that—

- (a) the statutory deposit retained by the Central Bank is in excess of the requirements of section 42; and
- (b) an insurer has fully complied with the requirements of sections 63 and 107,

in respect of continuing policyholders, may release to the insurer such portion of the excess in the statutory deposit as the Inspector considers appropriate in the circumstances.

Central Bank may release statutory deposit to liquidator

47. Notwithstanding the provisions of section 43, where an insurer is in liquidation, the Central Bank shall pay to the liquidator all monies and securities held as a statutory deposit under section 42 in respect of that insurer and the liquidator shall, in accordance with the provisions of this Act, apply such monies and securities towards discharging the liabilities of a long-term

insurer in respect of policy liabilities as determined under the Regulations and in the case of a general insurer, the liabilities as determined under section 240.

48. The Inspector shall, where an insurer SO Inspector to furnish certificate of deposit demands, furnish it with a certificate setting out the nature and extent of any statutory deposit held by the Central Bank under this Act in respect of the insurer together with particulars of any approved securities forming the whole or part of the deposit.

49. (1) Where the Inspector is satisfied that by reason Deposit to be increased where in deficit of depreciation in the value of securities or for any other cause, the value of approved securities deposited by an insurer under section 42 falls short of the value required by this Act, the Inspector shall by notice in writing require the insurer to deposit within five days with the Central Bank monies or approved securities, or both, to a value which the Inspector considers sufficient to bring the amount of the statutory deposit up to the value required by this Act.

(2) An insurer which fails to deposit with the Central Bank monies or approved securities, or both, when required to do so by notice under subsection (1) commits an offence and is liable on summary conviction to a fine of five million dollars and each director is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

50. Where any monies or approved securities, or both, Responsibility for lost securities retained by the Central Bank as, or as part of the statutory deposit required to be made by an insurer under section 46 are, while so retained, lost, stolen, destroyed or damaged, the loss suffered by all persons interested in the monies or the approved securities shall be remedied by the payment of monies by the Central Bank for that purpose.

51. An insurer may at any time substitute for any Substitution of statutory deposit monies or approved securities retained by the Central Bank as, or as part of the statutory deposit required to

be made under section 42, any other monies or approved securities where the total amount then deposited is not less than the amount required to be deposited under this Act and the monies or approved securities so substituted shall be subject to the same charge or liability as the monies or approved securities for which they were substituted.

C. Statutory Fund and Other Asset Requirements

Establishment of
statutory fund

52. (1) A foreign insurer registered under this Act to carry on long-term insurance business, general insurance business or both long-term and general insurance business shall establish and maintain at all times a statutory fund in respect of each type of such business.

(2) The statutory fund referred to in subsection (1) shall be established—

- (a) at the date on which the insurer commences to carry on its insurance business; or
- (b) in the case of a foreign insurer registered before the commencement of this Act, immediately after the coming into force of this Act.

(3) The fund referred to in subsection (1) shall be established and maintained in accordance with this section.

(4) Every foreign insurer carrying on long-term insurance business in Trinidad and Tobago shall place in trust in Trinidad and Tobago assets equal to the formula $(A + B) - (C + D)$, where—

- (a) A is its policy benefit liabilities pursuant to section 185 and other insurance and contract liabilities;
- (b) B is the surplus which is derived from participating policies registered in Trinidad and Tobago in excess of paragraph (a), if any;
- (c) C is the total amount due from policyholders;

(d) D is the amount deposited with respect to such business pursuant to section 42.

(5) For the purposes of subsection (4), where a foreign insurer establishes and maintains a statutory fund in respect of long-term insurance business, policy loans shall be excluded from its assets and deducted from its policy benefit liabilities.

(6) Every foreign insurer carrying on general insurance business in Trinidad and Tobago shall place in trust in Trinidad and Tobago assets equal to the formula $A - (B + C)$, where—

(a) A is the insurance liabilities pursuant to section 240 with respect to its Trinidad and Tobago policyholders;

(b) B is the total amount due from policyholders;

(c) C is the amount deposited with respect to such business pursuant to section 42.

(7) A foreign insurer shall place in trust additional assets to meet its statutory fund requirements under subsections (4) and (5) as follows:

(a) annually, based on its audited financial returns; and

(b) quarterly, based on its quarterly return,

within five days after the period for submission of its returns under section 172.

(8) A foreign insurer shall keep such books of accounts and other records as are necessary for the purpose of identifying the assets and liabilities attributable to each class and type of insurance business with respect to its statutory fund.

(9) A foreign insurer who contravenes this section commits an offence and is liable on summary conviction to a fine of five million dollars and each director of that

foreign insurer is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

Restriction on use of
assets representing
statutory fund

53. (1) Where a foreign insurer is registered to carry on general insurance business, the assets in respect of a class of general insurance business may be transferred to any other class of its general insurance business.

(2) Subject to subsection (4), where a foreign insurer is registered to carry on long-term insurance business, the assets of the statutory fund in respect of a class of its long-term insurance business shall not be applied to any other class of its long-term insurance business.

(3) Subject to subsection (4), where a foreign insurer is registered to carry on both long-term and general insurance business, the assets of the statutory fund in respect of—

- (a) its general insurance business shall not be applied to its long-term insurance business;
- (b) its long-term insurance business shall not be applied to its general insurance business;
- and
- (c) participating policyholders shall not be applied to any type or class of its long-term insurance business.

(4) Where a foreign insurer is registered to carry on long-term insurance business or both long-term and general insurance business and where the value of the assets placed in the statutory fund in respect of a class of such long-term insurance business is shown on an actuarial investigation made under this Act to exceed the amount of the liabilities attributable to such class of long-term insurance business, the restriction imposed by subsections (2) and (3) shall not, subject to section 188, apply to so much of those assets as represents the excess.

(5) Where a foreign insurer is registered to carry on general insurance business and accident and sickness class of business, the assets of the statutory fund in respect of—

- (a) its general insurance business shall not be applied to its accident and sickness class of business; and
- (b) its accident and sickness class of business shall not be applied to its general insurance business.

(6) Notwithstanding the provisions of this section and subject to section 54(1), a foreign insurer may exchange, at fair market value, assets representing each statutory fund for other assets of the insurer.

(7) Where an asset has been placed in trust in the statutory fund, any subsequent mortgage or charge shall be void.

(8) A court shall not impose a charge on an asset that is placed in the statutory fund.

54. (1) A trust referred to in section 52 shall be created by trust deed in such form as may be approved by the Central Bank. Method of creating trust

(2) The trustee shall be a company approved by the Inspector as fit and proper in accordance with Schedule 5.

(3) The foreign insurer shall obtain the Inspector's prior approval under subsection (2) before the trust is created or changed.

(4) For the purposes of this section and notwithstanding subsection (1), the Inspector may deem the assets of an institution to be held in trust by—

- (a) an institution licensed under the Financial Institutions Act; or
- (b) a foreign financial institution approved by the Inspector,

and such institution shall be deemed to be a trustee.

(5) No connected party of the foreign insurer shall be the trustee or agent of the trustee.

(6) The Inspector may require the foreign insurer to replace the trustee whenever a contravention of section 55 or 57 occurs.

(7) The trustee shall inform the Inspector with immediate effect of any proceedings brought against it by a policyholder in respect of its obligations under the trust.

(8) The Central Bank shall have power to act on behalf of policyholders for breach of obligations by the trustee where such breach has resulted in a loss to the statutory fund.

Restriction on trustee
dealing with assets

55. (1) A trustee shall not deal with any assets or the proceeds of a matured asset held in trust by him or act on any instructions from the insurer in respect thereof, without the prior written approval of the Inspector.

(2) A trustee shall submit to the Inspector a statement, in a form as specified by the Central Bank, showing particulars of the assets comprising the statutory fund as follows:

- (a) within thirty days after the end of each quarter; or
- (b) at any other time as required by the Central Bank.

(3) A trustee who contravenes the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and in addition for any shortfall in the statutory fund in accordance with subsection (4).

(4) Where a trustee is convicted of an offence under subsection (3), the Magistrate may order the trustee to make good any shortfall in the statutory fund.

56. (1) A foreign insurer shall, within three months after the date on which it established its statutory fund furnish the Inspector with a statement in a form as specified by the Central Bank, showing particulars of the assets and liabilities of the foreign insurer in respect of which the statutory fund is established, as at the date of the establishment of the statutory fund.

Insurer to furnish particulars of liabilities and assets with respect to statutory fund

(2) A foreign insurer shall notify the Inspector, in writing, of the maturity of an asset held in trust in the statutory fund and shall be obliged to replace the matured asset in accordance with section 58.

(3) Where an asset in the statutory fund has matured, the proceeds of the matured asset shall remain in trust and shall form part of the foreign insurer's statutory fund until released by the Inspector in accordance with subsection (4).

(4) Where a foreign insurer wishes to replace any asset held in trust in the statutory fund, the foreign insurer shall make an application, in writing, to the Inspector and the Inspector may release the asset.

57. (1) Where it appears to the Inspector that—

- (a) a statement furnished to the Central Bank under sections 55(2) or 56 is in any respect unsatisfactory, incomplete, inaccurate, misleading or otherwise fails to comply with the requirement of that section; or
- (b) the value of the assets or of the assets included in a particular class as shown by the statement is insufficient or excessive,

Inaccurate or misleading particulars

the Inspector may require information from the trustee or the foreign insurer within a period as specified by the Inspector.

(2) After considering any explanation made by or on behalf of the trustee or foreign insurer, the Inspector

may give to the trustee or foreign insurer such directions in writing as he thinks necessary for the variation of the statement or for an increase or decrease in the value of the assets.

Statutory fund to be increased where in deficit

58. (1) Where the Inspector is satisfied that by reason of depreciation in the value of securities or for any other cause, including a notification under section 56(2), the value of the statutory fund of a foreign insurer under section 52 falls short of the value required by this Act, the Inspector shall direct the foreign insurer in writing, to transfer to the statutory fund within five days additional assets he considers sufficient to bring the amount of the statutory fund up to the value required by this Act.

(2) A foreign insurer which fails to transfer assets to the statutory fund when directed to do so under subsection (1) commits an offence and is liable on summary conviction to a fine of five million dollars and each director is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

Application for a release of statutory fund where in excess

59. (1) A foreign insurer may apply in writing to the Inspector for a release of part of its statutory fund or funds.

(2) On making an application under subsection (1) the foreign insurer shall include—

- (a) such information as the Inspector may require to establish that the statutory fund is in excess of the requirements of this Act; and
- (b) in the case of a foreign insurer carrying on long-term insurance business, the certificate of its actuary required under section 187.

(3) Where the Inspector is satisfied on reasonable grounds that the statutory fund is in excess of the requirements of this Act, he may authorize the trustee

to release to the foreign insurer assets equal to a portion of the excess.

60. (1) Where a foreign insurer is in liquidation, the Inspector shall direct the trustee to release the statutory fund assets to the liquidator who shall apply such assets in accordance with the provisions of this Act. Release of statutory fund upon winding-up or revocation

(2) Where pursuant to section 34(1)(g) the registration of a foreign insurer is revoked because it has not carried on insurance business for either of the specified periods and the foreign insurer is not under liability to its Trinidad and Tobago policyholders, the Inspector shall direct the trustee that it shall release the assets to the foreign insurer.

61. (1) Every foreign insurer shall invest in assets in Trinidad and Tobago an amount equal to at least seventy-five per cent of its Trinidad and Tobago dollar liability in each statutory fund. Local assets ratio

(2) For the purposes of subsection (1), assets of a foreign insurer not exceeding ten per cent of its Trinidad and Tobago liability in each statutory fund shall be deemed to be assets in Trinidad and Tobago where such assets—

- (a) are approved by the Central Bank; and
- (b) originate in any of the member states of the Caribbean Community.

(3) For the purposes of this Part—

- (a) “assets in Trinidad and Tobago” means assets which—
 - (i) originate in and are physically held in Trinidad and Tobago, and are denominated in Trinidad and Tobago currency; or
 - (ii) where denominated in a foreign currency, are fully guaranteed by the Government of Trinidad and Tobago; and

(b) “Caribbean Community” means the Caribbean Community established by the Treaty of Chaguaramas.

Currency matching

62. Subject to section 61 (2), where any liability in respect of policies is payable in a foreign currency, the foreign insurer shall invest in foreign assets in that foreign currency an amount not less than seventy-five per cent of such foreign currency statutory fund requirement, in each statutory fund.

Catastrophe Reserve Fund

63. (1) Every insurer carrying on property insurance business in Trinidad and Tobago shall establish and maintain at all times in respect of catastrophe risks a fund to be known as a Catastrophe Reserve Fund.

(2) Subject to subsection (3), every insurer required to establish a Catastrophe Reserve Fund shall, at the end of each financial year, transfer to that fund an amount not less than twenty per cent of its net written premium income on its property insurance business in Trinidad and Tobago for that year.

(3) Where at the end of any financial year, the Catastrophe Reserve Fund is equal to or more than the net written premium income on its property insurance business in Trinidad and Tobago for that financial year, the insurer is not required to transfer any further assets to the Catastrophe Reserve Fund for that year.

(4) The fund shall be invested only in assets that do not originate in Trinidad and Tobago and are not denominated in Trinidad and Tobago dollars.

(5) An insurer under this section shall not withdraw any of the assets comprising its Catastrophe Reserve Fund unless—

- (a) catastrophe losses in excess of two million dollars have occurred in Trinidad and Tobago and the ultimate net loss of the insurer is estimated to exceed seven point five per cent of its capital and uncommitted assets; or
- (b) the insurer ceases to write property insurance business and either a winding-up order has been made against the insurer or

the insurer is no longer under liability under policies relating to property business relating to catastrophe risks.

(6) The provisions of sections 52 to 57, 58 and 60 apply *mutatis mutandis* to a Catastrophe Reserve Fund.

(7) For the purposes of this section—

- (a) “liability” includes expenses of litigation and other expenses of the insurer arising from a catastrophe loss, but does not include office expenses and salaries of the insurer’s officials or its employees;
- (b) “recoveries” includes reinsurance recoveries;
- (c) “ultimate net loss” means the liability of an insurer arising out of a catastrophe loss after deducting an amount for salvages and recoveries, but before the deduction of any catastrophe excess of loss reinsurance cover.

(8) An insurer who contravenes this section commits an offence and is liable on summary conviction to a fine of five million dollars and each director is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

Restructuring of
ownership may be
required

D. Ownership of Insurers

64. (1) Where a local insurer is a member of a related group in which there are two or more financial entities, the Central Bank shall, in writing, direct the controlling shareholder to engage in a restructuring to form a financial holding company, such that the local insurer is directly controlled by the financial holding company and the resulting structure allows for consolidated supervision.

(2) In lieu of or in addition to, a restructuring under subsection (1), the Central Bank shall direct the controlling shareholder of the local insurer to undertake

any other measures that are necessary or appropriate to identify, assess and manage—

(a) the relationship among the local insurer and other members of the related group; and

(b) the risks resulting from such relationship.

(3) In directing a restructuring under subsection (1), the Central Bank shall require that the financial holding company be the direct subsidiary of the ultimate parent company of the related group.

(4) A restructuring directed under subsection (1) shall be carried out within twelve months of the date of the direction, however the Central Bank may, in its discretion, extend this period by notice in writing to the local insurer to a maximum of two years from the date of such direction.

(5) Where a restructuring is completed under this section and the Central Bank is satisfied that the requirements for a permit under section 68 have been met, the Central Bank shall grant a permit and the provisions of section 68 shall apply *mutatis mutandis* to the grant of a permit under this section.

Restructuring of group where entities are engaged in both financial and non-financial activities

65. (1) Where a related group comprises entities that engage in both non-financial activities and financial activities and such group contains at least two financial entities, one of which is a local insurer, the Central Bank shall require a restructuring in accordance with section 64, to separate the financial activities from the non-financial activities.

(2) Where a financial holding company is formed under subsection (1), the other financial entities in the related group shall be either directly or indirectly controlled by the financial holding company, local insurer or licensee registered under the Financial Institutions Act.

66. The Central Bank shall not require a restructuring Restructuring not required in certain cases under section 64—

(a) where an insurer is directly controlled by a foreign company that provides financial services and—

- (i) is subject to regulation by a foreign regulatory authority acceptable to the Central Bank and there are no obstacles to obtaining information from that regulatory authority; and
- (ii) does not directly or indirectly control an entity that engages in non-financial activities; and

(b) where the local insurer is a member of a related group which comprises only financial entities and all the insurers in the related group—

- (i) are controlled by a holding company that only performs the activities stated in section 68(1); or
- (ii) are controlled by a licensee registered under the Financial Institutions Act.

67. (1) A financial holding company shall not carry Restriction on activities of financial holding company on any activity other than the activities stated in section 68(1).

(2) A financial holding company shall not guarantee on behalf of any person the payment or repayment of any sum of money, except where the person is a member of the financial group.

(3) Subject to and in accordance with the limits permitted under sections 112, 114 and 115 on a consolidated basis, a financial holding company may invest its funds in the shares of or ownership interests in any entity or make any other investment that its directors consider necessary or advisable to manage the financial holding company's liquidity.

(4) A financial holding company which contravenes this section commits an offence and is liable on summary conviction—

- (a) to a fine of five million dollars where such offence is committed with the consent or connivance of, or attributable to any negligence on the part of, any director or officer of the financial holding company;
- (b) to a fine of five million dollars and to imprisonment for five years; and
- (c) in the case of a continuing offence, to a fine of five hundred thousand dollars for each day that there is non-compliance.

Requirements for a permit

68. (1) A holding company that does not carry on any activity other than—

- (a) acquiring of financial entities and administering the holdings of the financial group; or
- (b) providing management, advisory, financing, accounting, information processing services to entities in the financial group as well as such other services approved by the Central Bank,

and only controls, whether directly or indirectly, financial entities and is not itself an insurer shall apply for a permit under this section.

(2) Where a holding company is a foreign financial entity but is excluded from a restructuring under section 66(a), the foreign financial entity shall not be required to apply for a permit under this section.

(3) Notwithstanding section 66(b)(i), a holding company in a related group of financial entities that only performs the activities stated in subsection (1) shall apply for a permit under this section.

(4) An application for a permit to carry on the business of a financial holding company shall be accompanied by the following information:

- (a) capital resources and capital structure, including the identity of its controlling shareholder and significant shareholders;
- (b) organizational, managerial and legal structures;
- (c) composition of the board of directors;
- (d) fitness and propriety of directors, officers, controlling shareholder and significant shareholders in accordance with the criteria in Schedule 5;
- (e) audited financial statements for the past three years, if applicable;
- (f) strategic and operational business plans;
- (g) financial plans, including projections for the next three years;
- (h) sources of funds for initial and ongoing costs; and
- (i) any other information that the Central Bank may require.

(5) In determining whether to grant a permit, the Central Bank shall—

- (a) take into account the information referred to in subsection (4), and in particular, whether the applicant has satisfied the criteria in Schedule 5, or may be as such to prejudice the interests of the policyholders of the insurer; and
- (b) determine whether ownership of shares by the applicant, given the corporate affiliations or structure of the applicant, will hinder effective supervision under this Act or would be likely to prejudice the interests of policyholders of the insurer.

(6) The Central Bank may attach conditions to a permit under this section, including, without limitation, conditions to ensure that—

- (a) the capital available to the financial group is adequate or will not jeopardize the financial position of the insurer or insurers, and any licensee under the Financial Institutions Act within the financial group;
- (b) no double or multiple gearing or excessive leveraging of capital exists or will take place;
- (c) the financial group is structured and managed in such a manner that it may be supervised by the Central Bank;
- (d) each member of the financial group maintains adequate internal control mechanisms enabling it to provide any data or information relevant to its supervision; and
- (e) activities or operations of subsidiaries or affiliates that may be injurious to the insurer or insurers and any licensee under the Financial Institutions Act that are members of the financial group are prevented,

and may, at any time, vary or remove such conditions, or add further conditions to such permit.

(7) Where a financial holding company fails to comply with any condition of its permit, the Central Bank shall issue directions to the financial holding company and section 182 shall apply *mutatis mutandis* to this section.

(8) A financial holding company that fails to comply with any condition of its permit commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and in the case of a

continuing offence to a fine of sixty thousand dollars for each day that the offence continues.

(9) When a financial holding company is required to restructure under section 64 or 65, the Central Bank will take into consideration the members of the related group in determining whether this Act or the Financial Institutions Act shall take precedence for purposes of requiring a restructuring based on the relative size of activities of the group in the banking sector and in the insurance sector.

69. (1) Notwithstanding any other law but subject to Requirements for controlling shareholder section 71 a person, or a person on whose behalf shares are held either in trust or by a nominee, shall not become a controlling shareholder of an insurer without first obtaining a written permit from the Central Bank.

(2) Where a person becomes beneficially entitled after probate of a will or a grant of letters of administration to shares such as to make him a controlling shareholder, he shall apply for a permit within one month of this fact coming to his knowledge.

(3) A person who holds shares that entitle him to exercise or control more than fifty per cent of the voting power at any general meeting of an insurer prior to the commencement of this Act, is deemed to hold a permit under this section.

(4) In determining whether a permit should be granted, the Central Bank shall take into account, without limitation the criteria in Schedule 5 as to whether the proposed shareholder is a fit and proper person or may be such as to prejudice the interests of the policyholders of the insurer and whether ownership by a controlling shareholder who is—

- (a) part of a group of relatives each of whom is substantially dependent upon the same source of income; or
- (b) in the case of a company, an affiliate of another company,

would be likely to prejudice the interests of policyholders of the insurer.

(5) Where a permit is granted or deemed to be granted under this section the controlling shareholder shall—

- (a) provide the Central Bank with such relevant information as the Central Bank may require from time to time; and
- (b) comply with such terms and conditions as may be specified in the permit.

(6) Where—

- (a) a controlling shareholder is no longer a fit and proper person;
- (b) a person under subsection (2) is not granted a permit; or
- (c) after the commencement of this Act, a person who, without being granted a permit under this section, obtains shares such as to make him a controlling shareholder,

that person shall be notified in writing by the Central Bank of this fact and he shall be required to take such steps to reduce his shareholding in such manner and in such time as may be specified by the Central Bank.

(7) Where the Central Bank gives a notice—

- (a) under subsection (6)(a) and (b), the person is entitled to receive dividends and to exercise voting rights until such time as the shares are disposed of in accordance with subsection (6) or an order of the High Court is made under this section; and
- (b) under subsection (6)(c) a person shall not be entitled to receive any dividends or to exercise any voting rights.

(8) Where a controlling shareholder is notified that he is no longer fit and proper he may, within the period of ten days commencing the day after which the notice is received, make written representations to the Central Bank which shall take such representations into account in determining whether to withdraw or vary the notice.

(9) Where a person fails to comply with the Central Bank requirements under subsection (6), his shares shall be subject to disposal in accordance with subsections (10) and (11), without prejudice to any other penalty which may be incurred by any party pursuant to this Act.

(10) Where the circumstances so warrant, the Central Bank may apply to the High Court for an order for the disposal of shares on such terms and conditions as the High Court deems appropriate.

(11) Where shares referred to in subsection (10) are sold in pursuance of an order of the High Court the proceeds of sale, less the costs of the sale, shall be paid into High Court or into such fund as the High Court may specify for the benefit of the persons beneficially interested in the disposed shares, or to such person as the High Court may direct.

(12) Where a controlling shareholder fails to comply with any condition of its permit, the Central Bank shall issue directions to the controlling shareholder and section 182 shall apply *mutatis mutandis* to this section.

(13) A person who—

- (a) knowingly or wilfully supplies false information to the Central Bank under this section commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and to imprisonment for two years; or

(b) contravenes any other provision of this section commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and to imprisonment for two years and in the case of a continuing offence, to a fine of sixty thousand dollars for each day that the offence continues.

Requirements for
significant
shareholder

70. (1) Notwithstanding any other law but subject to section 71 a person, or a person on whose behalf shares are held either in trust or by a nominee, shall not become a significant shareholder of an insurer without first obtaining a written permit from the Central Bank.

(2) Where a person becomes beneficially entitled to shares, after probate of a Will or a grant of Letters of Administration, such as to make him a significant shareholder, he shall apply for a permit within one month of this fact coming to his knowledge.

(3) A person who, on the coming into force of this Act, holds shares that entitle him to exercise twenty per cent or more of the voting power at any general meeting of an insurer is deemed to hold a permit under this section for such shares.

(4) In determining whether a permit should be granted, the Central Bank shall take into account, without limitation the criteria contained in Schedule 5 as to whether the proposed shareholder is a fit and proper person or may be such as to prejudice the interests of the policyholders of the insurer and whether ownership by a significant shareholder who is—

(a) part of a group of relatives each of whom is substantially dependent upon the same source of income; or

(b) in the case of a company, an affiliate of another company,

would be likely to prejudice the interests of policyholders of the insurer.

(5) Where a permit is granted or deemed to be granted under this section the significant shareholder shall—

- (a) provide the Central Bank with such relevant information as the Central Bank may require from time to time; and
- (b) comply with such terms and conditions as may be specified in the permit.

(6) Where—

- (a) a significant shareholder is no longer a fit and proper person;
- (b) a person under subsection (2) is not granted a permit; or
- (c) after the commencement of this Act, a person who, without being granted a permit under this section, obtains shares such as to make him a significant shareholder,

shall be notified in writing by the Central Bank of this fact and he shall be required to take such steps to reduce his shareholding in such manner and in such time as may be specified by the Central Bank.

(7) Where the Central Bank gives a notice—

- (a) under subsection (6)(a) and (b), the person shall be entitled to receive dividends and to exercise his voting rights until such time as the shares are disposed of in accordance with subsection (6) or an order of the High Court is made under this section; and
- (b) under subsection (6)(c), a person shall not be entitled to receive any dividends or to exercise any voting rights.

(8) Where a significant shareholder is notified that he is no longer fit and proper he may, within the period of ten days commencing the day after which the notice is given, make written representations to the Central Bank which shall take such representations into account in determining whether to withdraw or vary the notice.

(9) Where a person fails to comply with the Central Bank requirements under subsection (6), his shares shall be subject to disposal in accordance with subsections (10) and (11), without prejudice to any other penalty which may be incurred by any party pursuant to this Act.

(10) Where the circumstances so warrant, the Central Bank may apply to the High Court for the disposal of shares on such terms and conditions as the High Court deems appropriate.

(11) Where shares referred to in subsection (10) are sold in accordance with an order of the High Court, the proceeds of sale, less the costs of the sale, shall be paid into High Court or into such fund as the High Court may specify for the benefit of the persons beneficially interested in the disposed shares or to such person as the High Court may direct.

(12) Where a significant shareholder fails to comply with any condition of its permit, the Central Bank shall issue directions to the significant shareholder and section 182 shall apply *mutatis mutandis* to this section.

(13) A person who—

- (a) knowingly or wilfully supplies false information to the Central Bank under this section; or
- (b) contravenes any other provision of this section,

commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars or to imprisonment for two years and in the case of a continuing offence to a fine of sixty thousand dollars for each day that the offence continues.

Requirements for
acquirer

71. (1) A financial entity or a significant or controlling shareholder of a financial entity shall not become an acquirer of an insurer or of the financial holding company of an insurer without obtaining a permit issued by the Central Bank under this section.

(2) Where a financial entity or a significant or controlling shareholder of a financial entity has been issued a permit to become an acquirer under this section, such acquirer shall not become a significant or controlling shareholder of the insurer without applying for a permit under section 69 or 70 as appropriate.

(3) In considering an application for an acquirer to become a significant or controlling shareholder the Central Bank shall take into account the matters listed in subsection (5) and the provisions of this section shall apply *mutatis mutandis* to section 69 or 70.

(4) An application for a permit under subsection (1), shall be made in writing by the proposed acquirer and submitted to the Central Bank together with such information as the Central Bank may require.

(5) In determining whether to issue a permit to the proposed acquirer, the Central Bank shall take into account such relevant matters including, without limitation—

- (a) the criteria set out in Schedule 5;
- (b) the size and concentration of economic power in the combination of the proposed acquirer and the insurer, holding company or the financial holding company of the insurer; and
- (c) whether the business or a part of the business of the acquirer, insurer, holding company or financial holding company of the insurer has failed or is being conducted in an unlawful or unsound manner or is otherwise in an unsound condition.

(6) In considering the criteria referred to in subsection (5)(b), the Central Bank shall take into account, without limitation—

- (a) the combined market share in Trinidad and Tobago of the insurer and any financial entity affiliated with the insurer, the

proposed acquirer and any financial entity that is affiliated with the proposed acquirer; and

- (b) whether the size of, and concentration of economic power in, the combination of the proposed acquirer and the insurer will prevent or lessen substantially, or is likely to prevent or lessen substantially, competition in the financial services industry in Trinidad and Tobago.

(7) Subject to subsection (8), after due consideration of the matters referred to in subsection (5), the Central Bank may—

- (a) issue a permit to the proposed acquirer;
- (b) refuse to issue a permit to the proposed acquirer; or
- (c) issue a permit to the proposed acquirer subject to such conditions, requirements or restrictions as the Central Bank deems appropriate.

(8) Where the combined market share in Trinidad and Tobago of the insurer and any financial entity affiliated with the insurer, the proposed acquirer and any financial entity that is affiliated with the proposed acquirer would exceed forty per cent, the Central Bank shall forward to the Minister for his approval, the application referred to in subsection (4), together with its recommendation and any other relevant information.

(9) In determining whether or not to approve the issue of a permit to the proposed acquirer, the Minister shall consult with the Central Bank and shall take into account the public interest, which shall include, without limitation—

- (a) the interests of the financial services industry in Trinidad and Tobago; and

(b) the interests of consumers of financial services in Trinidad and Tobago.

(10) After due consideration of the matters referred to in subsection (9), the Minister may—

(a) approve the issuance of a permit to the proposed acquirer;

(b) refuse approval of the issuance of a permit to the proposed acquirer; or

(c) approve the issuance of permit to the proposed acquirer subject to such conditions, requirements or restrictions as the Minister thinks appropriate,

and the Central Bank shall act in accordance with the Minister.

(11) Where the issuance of a permit is refused, pursuant to subsection (7)(b) or (10)(b), the reasons for the refusal shall be sent to the applicant.

(12) The provisions of section 69(2) and (4) to (13) shall apply *mutatis mutandis* to this section.

(13) Where an acquirer fails to comply with any condition of its permit, the Central Bank shall issue directions to the acquirer and section 182 shall apply *mutatis mutandis* to this section.

(14) A person who contravenes any provisions of this section commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars or to imprisonment for two years and in the case of a continuing offence, to a fine of sixty thousand dollars for each day that the offence continues.

72. (1) Where a permit has been granted to a person Revocation of permits who is a significant shareholder to become a controlling shareholder under this Part, the Central Bank shall revoke the significant shareholder permit prior to issuing the controlling shareholder permit.

(2) Where a permit has been granted to a person who is a controlling shareholder to become a financial

holding company under this Part, the Central Bank shall revoke the controlling shareholder permit prior to issuing the financial holding company permit.

(3) Where the Central Bank is satisfied that a permit which has been granted under this Part is no longer required as a result of a decrease in a person's shareholding, the Central Bank shall revoke the permit.

(4) The Central Bank may revoke the permit of a financial holding company in accordance with section 34, 40 or 41 and the provisions of such sections shall apply *mutatis mutandis* to this section.

Information required
from shareholders

73. The Central Bank may, by notice in writing, require any shareholder of an insurer to submit written information—

- (a) as to whether that shareholder holds any voting shares in the insurer as beneficial owner or as trustee or nominee; and
- (b) if he holds those voting shares as trustee or nominee, the person for whom he holds them either by name or by such other particulars sufficient to enable those persons to be identified, and the nature of their interest,

and the shareholder shall comply with the requirement within such time as may be specified in the notice.

E. Transfer and Amalgamation

Application for
transfer or
amalgamation

74. (1) Notwithstanding any other law, a transfer or an amalgamation shall not take place where one of the transferring or amalgamating companies is an insurer or the financial holding company of an insurer, without the prior approval in writing of—

- (a) the Central Bank pursuant to section 78(2); or
- (b) the Minister pursuant to section 79(3).

(2) An application for approval under subsection (1) shall be made in writing, jointly, by all the companies

proposing to transfer or amalgamate, and the following documents shall be submitted to the Central Bank along with the application:

- (a) in the case of an amalgamation, the proposed amalgamation agreement referred to in section 221 of the Companies Act, the scheme of transfer and the resolution of the board of directors approving the amalgamation; and
- (b) in the case of a transfer, the proposed transfer agreement, the scheme of transfer and the resolution of the board of directors approving the transfer,

and such further information as the Central Bank may require.

(3) In the case of a foreign insurer the requirements of this section and sections 75 to 81 shall apply only to the transfer or amalgamation of insurance business relating to its policies in Trinidad and Tobago.

75. (1) A scheme shall set out the terms of the agreement or deed under which it is proposed to effect the transfer or amalgamation and shall contain such further provisions as are necessary to give effect thereto.

Submission of scheme
of transfer or
amalgamation

(2) The following documents shall be submitted to the Central Bank together with the scheme of transfer or amalgamation:

- (a) audited financial statements as at the proposed date of transfer or amalgamation of the companies engaged in the transfer or amalgamation;
- (b) audited returns as at the proposed date of transfer or amalgamation of the companies engaged in the transfer or amalgamation;
- (c) projected financial statements showing the financial position after amalgamation or transfer;

- (d) a detailed list of outstanding claims as at the proposed date of transfer or amalgamation of the companies engaged in the transfer or amalgamation;
- (e) a copy of the actuarial and other reports, if any, upon which the scheme was founded;
- (f) a copy of the proposed notice to be published in the *Gazette* and draft letter to policyholders;
- (g) a draft copy of the statutory declarations as required under the Companies Act;
- (h) reinsurance arrangements for policies to be transferred; and
- (i) any other documents as may be required by the Central Bank.

(3) The Central Bank may cause a report on the scheme to be made by an independent actuary and shall cause a copy of the report to be sent to each of the companies engaged in the transfer or amalgamation.

(4) All expenses incurred by the Central Bank in obtaining the report of any actuary on the scheme shall be defrayed by the companies engaged in the transfer or amalgamation, and any sum due in respect of those expenses may be recovered summarily as a civil debt by the Central Bank from the companies either jointly or severally.

Procedure prior to
confirmation of scheme

76. (1) Where the percentage of any market share in Trinidad and Tobago of the proposed transferee or amalgamated company and any financial entity which will be affiliated with it would not exceed forty per cent, the Central Bank shall give directions concerning—

- (a) the publication of advertisements of the scheme;
- (b) the giving of notices to shareholders, policyholders or creditors of the companies; and

(c) the holding of meetings of any insurer or financial holding company affected,

and such directions shall be complied with by the person to whom they are given.

(2) Where the Central Bank is satisfied that the scheme of transfer or amalgamation is ready for inspection, the Central Bank shall direct the companies to broadcast and to publish in the *Gazette* and in at least two daily newspapers circulated in Trinidad and Tobago as may be approved by the Central Bank, a notice of intention to transfer or amalgamate within twenty days of the date of such direction.

(3) The scheme shall be open for inspection by any policyholder or shareholder affected by it, for a period of fifteen days after the publication of the notice referred to in subsection (2), at the office of each company engaged in the transfer or amalgamation.

(4) Any person who objects or is aggrieved by the proposed transfer or amalgamation shall inform the Central Bank and the companies of his objection either during the period of inspection or within twenty days after the expiration of such period of inspection.

(5) After the period of objection under subsection (4), the Central Bank shall notify the companies and any person who objects to or is aggrieved by the transfer or amalgamation of the date for the hearing of the confirmation of the scheme.

(6) At the hearing, the companies are entitled to appear and to be heard either through one of its officers or through an Attorney-at-law.

(7) The Central Bank may hear such other evidence as the Central Bank considers necessary and any person who, in the opinion of the Central Bank, is likely to be affected by the scheme is entitled to be heard.

77. (1) The Central Bank shall inform the companies of its decision at the hearing and shall give notification Confirmation of
scheme of transfer or
amalgamation

in writing of such decision within five days of the date of the hearing.

(2) Where the Central Bank confirms the scheme, it shall be binding on all persons and shall have effect notwithstanding anything in the articles of incorporation or continuance, by-laws or other constituent document of the companies.

(3) Where the Central Bank refuses to confirm a scheme, it shall include reasons for its refusal in the notification under subsection (1).

Approval of transfer
or amalgamation by
the Central Bank

78. (1) In determining whether to approve a proposed transfer or amalgamation, the Central Bank shall consider the following:

- (a) the terms of the proposed transfer or amalgamation agreement and any amendments thereto;
- (b) the proposed changes to the articles of incorporation or continuance of the companies;
- (c) the criteria set out in Schedule 5 as it applies to all companies proposing to transfer or amalgamate;
- (d) the size and concentration of economic power in the proposed transferee or amalgamated company including—
 - (i) the size of the proposed transferee or amalgamated company in terms of any combined market share that will be serviced or controlled by the proposed transferee or amalgamated company in Trinidad and Tobago;
 - (ii) the size of any of the affiliates of the proposed transferee or amalgamated company; and
 - (iii) whether such size and concentration will prevent or lessen substantially,

or is likely to prevent or lessen substantially, competition in the financial services industry in Trinidad and Tobago;

- (e) whether the business or a part of the business of—
- (i) the transferee or any of the amalgamating companies; or
 - (ii) the holding companies of the transferee or any of the amalgamating companies,

has failed or is being conducted in an unlawful or unsound manner or is otherwise in an unsound condition; and

- (f) any other relevant matters as determined by the Central Bank.

(2) After due consideration of the matters referred to in subsection (1) and after the scheme of transfer or amalgamation has been confirmed pursuant to section 77(2), the Central Bank may—

- (a) approve the proposed transfer or amalgamation and may impose conditions, restrictions or requirements including publishing requirements; or
- (b) refuse the proposed transfer or amalgamation.

79. (1) Where the Central Bank has received an application for a transfer or amalgamation under section 74(2) and all the documents required under section 75, if the Central Bank determines that the percentage of any combined market share in Trinidad and Tobago of the proposed transferee or amalgamated company and any financial entity that will be affiliated with it would exceed forty per cent, the Central Bank shall forward to the Minister the application for his approval, the proposed transfer or amalgamation agreement and any other relevant information together with its recommendation.

Approval of transfer
or amalgamation by
Minister

(2) In determining whether to approve the proposed transfer or amalgamation, the Minister shall consult with the Central Bank and shall take into account the public interest and the matters prescribed in section 78(1).

(3) After due consideration, the Minister may—

(a) approve the proposed transfer or amalgamation subject to the confirmation of the scheme of transfer or amalgamation and on such conditions, requirements or restrictions as he deems appropriate; or

(b) refuse the proposed transfer or amalgamation.

(4) Where the Minister has given approval subject to the confirmation of the scheme of transfer, sections 76 and 77 shall then apply *mutatis mutandis* to this section.

Miscellaneous
transfer or
amalgamation

80. (1) Where the Central Bank or the Minister refuses the proposed transfer or amalgamation, the Central Bank or the Minister shall give notice in writing of its decision and reasons for so doing.

(2) The companies shall submit copies of any approval of the proposed amalgamation by the Central Bank or the Minister and the confirmation of the scheme of amalgamation by the Central Bank to the Registrar of Companies and the Registrar of Companies shall not issue a certificate of amalgamation under the Companies Act unless the Registrar of Companies receives these documents.

(3) A person who contravenes section 74(1) or who breaches any condition, requirement or restriction attached to an approval commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and in the case of a continuing offence to a fine of sixty thousand dollars for each day that the offence continues.

(4) A purported transfer or amalgamation done in contravention of sections 74 to 80 shall be null and void, but shall be without prejudice to the accrued rights of any *bona fide* party without notice.

(5) The Minister may by Order exempt transfers below a specified threshold from the requirements of sections 74 to 80.

(6) Where the Central Bank or the Minister has approved a transfer or amalgamation, the transfer or amalgamation agreement shall not be amended without prior written approval of the Central Bank or the Minister.

81. Where any class of insurance business carried on by an insurer is transferred to or amalgamated with the insurance business of another insurer, the insurer to which the insurance business is transferred or the insurer carrying on the amalgamated insurance business shall, within twenty days after the transfer or the amalgamation submit to the Central Bank—

Return to be made in
case of transfer or
amalgamation

- (a) a certified copy of the agreement or deed under which the transfer or the amalgamation was effected;
- (b) a statutory declaration made by the Chairman of the board of directors or by the principal representative of the insurer—
 - (i) specifying every payment made or to be made to any person in respect of the transfer or amalgamation; and
 - (ii) stating that to the best of his knowledge and belief no other payment, other than those specified has been or is to be made in monies, policies, bonds, valuable securities, property of any

description or any other valuable consideration, by or with the knowledge of any parties to the transfer or amalgamation;

- (c) a copy of the registered scheme of transfer; and
- (d) a copy of a notarized declaration form.

F. Mutualisation and Demutualisation

Conversion into
mutual company

82. (1) An insurer which has a share capital may, with the approval of the Central Bank, establish and implement a plan in accordance with the provisions of this Part.

(2) In this section and in sections 83 to 89—

“plan” means a plan for the conversion of an insurer which has a share capital into a mutual company through the purchase by the insurer of its shares or the conversion of the shares into debentures.

Application to
establish a plan

83. (1) Every application for approval to establish and implement a plan shall be made in writing to the Central Bank.

(2) In addition to the application required under subsection (1), the board of directors of the insurer shall submit to the Central Bank a plan which shall include—

- (a) particulars relating to the financial state of the insurer;
- (b) a statement of any actual or contingent liability as determined by the insurer’s actuary;
- (c) any changes which are proposed to be made in its articles of incorporation, by-laws or other constituent document; and
- (d) such other information as the Central Bank may require.

84. (1) Where the Central Bank receives an Appointment of independent actuary application made in accordance with section 83 the Central Bank shall appoint an independent actuary to investigate the financial position of the insurer.

(2) The actuary appointed under subsection (1), shall, on the completion of his investigation, furnish the Central Bank with a report of his findings.

(3) In addition to the findings of the actuary the report shall state—

- (a) the price which should be offered for the shares of the company;
- (b) the terms and conditions of the security which should be offered in exchange for the shares; and
- (c) such other information as the Central Bank may require.

85. Where after considering the information submitted Approval of application under section 83(2) and the report of the actuary appointed under section 84 the Central Bank is satisfied that the stated capital of the insurer has ceased to be an important factor in safeguarding the interests of the policyholders of the insurer, having regard to—

- (a) the quality and amount of the assets of the insurer;
- (b) the surplus of the insurer relative to its liabilities;
- (c) the nature of the business carried on by the insurer; and
- (d) any other considerations which the Central Bank may consider relevant,

the Central Bank may approve the application referred to in section 83.

86. (1) When a plan is approved by the Central Bank— Acceptance of plan by shareholders and holders of policies

- (a) the Central Bank shall give directions concerning the publication of a notice in the

Gazette and in at least two daily newspapers circulated in Trinidad and Tobago;

- (b) the plan shall be laid as a special resolution before the shareholders of the insurer at a special general meeting and there shall be recorded in the minutes of the meeting the number of votes cast in favour of or against confirmation of the resolution; and
- (c) the Board of Directors shall send by post to each holder of a policy, whether or not issued, effected or situated in Trinidad and Tobago, of the insurer at his last known address—
 - (i) a ballot paper; and
 - (ii) a circular approved by the Central Bank, inviting each of those holders of policies to vote by post on the resolution referred to in paragraph (b) within the time specified in the circular.

(2) The resolution shall only be effective where it is approved by not less than seventy-five per cent of the votes cast by the shareholders at the special general meeting and by not less than seventy-five per cent of the votes cast by the holders of policies in accordance with the circular referred to in subsection (1)(c)(ii).

(3) Where the resolution is effective the shareholders shall sell their shares to the insurer at such price as stated in the plan approved by the Central Bank.

Recovery of expenses

87. All expenses incurred by the Central Bank in connection with an application for approval to establish and implement a plan shall be paid by the insurer, and any sum due in respect of those expenses may be recovered from the insurer by the Central Bank as a civil debt.

88. (1) The Minister may, after consultation with the ^{Demutualisation} Central Bank, prescribe by Regulations procedures for approval of a plan for the conversion of a mutual company into a company with shareholders.

(2) Regulations under subsection (1) shall establish procedures that ensure that the interests of the members of the mutual company, the holders of policies whether or not issued in Trinidad and Tobago, and other stakeholders are treated equitably.

89. (1) An insurer which does not have shareholders ^{Voting by post} shall, notwithstanding anything contained in articles of incorporation, by-laws or other constituent document of the company, within one year of its registration under this Act make arrangements for—

- (a) the establishment of a postal voters' roll in relation to voting in contested elections of directors of the insurer or on questions pertaining to the alterations of the articles of incorporation, by-laws or other constituent document of the company;
- (b) the enrollment on the postal voters' roll of any member of the insurer entitled to vote in such elections or on such questions, who applies to be enrolled;
- (c) the voting by post in any such election or on any such question by every member enrolled; and
- (d) the inspection of the postal voters' roll and the taking of copies of or extracts from the roll on and after the close of nominations and before the close of the voting in any such election, by any person nominated for election as a director of the insurer.

(2) All regular votes of members given in pursuance of the arrangements referred to in subsection (1) shall be valid and effectual for all purposes.

(3) Where a member who is enrolled on the postal voters' roll of a company fails to exercise his right to vote by post on three consecutive occasions on which he is entitled to do so, the insurer may remove his name from the roll, but the member is eligible for re-enrolment.

(4) The provisions of this section do not apply to an insurer which is incorporated outside of Trinidad and Tobago.

G. Corporate Governance

Persons debarred
from management

90. (1) A person who has been—

- (a) adjudged bankrupt;
- (b) a director or officer of a company in the ten years immediately preceding—
 - (i) a winding-up order made by a court; or
 - (ii) the date that the company had been placed in receivership;
- (c) a director or officer during the ten years prior to the revocation of the registration or licence of a former insurer or former licensee under the Financial Institutions Act, unless such revocation was due to—
 - (i) its amalgamation with another company, pursuant to section 34(1)(l);
 - (ii) its voluntary winding-up, pursuant to section 40(1)(c); or
 - (iii) the company not carrying on business, pursuant to section 34(1)(g);
 or
- (d) a director or officer during the ten years prior to the revocation of the registration or licence of a foreign company carrying on

insurance business, business of a financial nature or business of banking, by a foreign regulatory agency or body that regulates financial entities, unless such revocation was due to—

- (i) its amalgamation with another company, pursuant to section 34(1)(l);
- (ii) its voluntary winding-up, pursuant to section 40(1)(c); or
- (iii) the company not carrying on business, pursuant to section 34(1)(g),

shall not, without the express approval of the Central Bank, act or continue to act as a director or officer or, be concerned in any way in the management of an insurer or financial holding company.

(2) A person who—

- (a) has been convicted by a court for an offence involving fraud, a contravention of the Proceeds of Crime Act and the Anti-Terrorism Act or any Regulations made thereunder or such other written law in relation to the prevention of money laundering and the combating of terrorist financing as may be in force from time to time;
- (b) is or was convicted of an offence under this Act; or
- (c) is not a fit and proper person in accordance with the criteria prescribed in Part A of Schedule 5,

shall not act or continue to act as a director or officer of, or be concerned in any way in the management of an insurer or financial holding company.

(3) A director or officer of a local insurer within a financial group—

(a) shall apply to the Central Bank for its prior approval, if he proposes to be appointed as a director or officer of a financial entity outside the financial group; or

(b) may be appointed as a director or officer of another company within the financial group without obtaining the Central Bank's approval.

(4) Where for the purpose of subsection (2)(c) a person is not regarded, or is no longer regarded, as fit and proper by the Central Bank, the Central Bank shall serve a notice on the insurer or financial holding company and on the person concerned informing them that the Central Bank proposes to disqualify the person from being a director or officer, stating the reasons for its intention to disqualify and giving particulars of the appeal process under section 270.

(5) Within the period of ten days, commencing from the day after which the notice under subsection (4) is served—

(a) the insurer or financial holding company; or

(b) the person concerned,

may make written representations to the Central Bank which shall take such representations into account in deciding whether or not to disqualify the person from acting as a director or officer.

(6) The Central Bank shall inform—

(a) the insurer or financial holding company;
and

(b) the person concerned,

in writing of its decision and shall give reasons for its decision.

(7) Where the decision of the Central Bank referred to in subsection (6) is to disqualify the person, that person shall forthwith cease to be a director or officer of the insurer or financial holding company.

(8) Where—

- (a) the Central Bank places a restriction on the registration of an insurer;
- (b) it appears to the Central Bank that an insurer's capital or liquidity is inadequate and the Central Bank has so notified the insurer; or
- (c) the Central Bank has exercised any of its powers in relation to the insurer under the special emergency powers under the Central Bank Act,

the insurer and any financial holding company shall notify the Central Bank of the nomination of a person for election or appointment as a director or as an officer at least twenty days before the effective date of election or appointment as the case may be.

(9) An insurer of a company referred to in subsection (8), shall not elect a person as a director or appoint a person as an officer if within twenty days of the election or appointment the Central Bank disapproves of the election or appointment as the case may be.

(10) A person who has been a director or officer of an insurer in the ten years immediately preceding the Central Bank's exercise of its special emergency powers under the Central Bank Act shall not, without the express approval of the Central Bank act as director or officer or, be concerned in any way in the management of an insurer, financial holding company or a licensee under the Financial Institutions Act.

(11) Notwithstanding the liability of a person under subsection (13), it shall be the duty of every

insurer and financial holding company to ensure that its directors and officers do not act or continue to act in contravention of this section.

(12) Any—

(a) person who contravenes subsection (1), (2) (a) or (b) or (3); or

(b) financial holding company or insurer upon which notice has been served under subsection (4) and which permits a person who contravenes subsection (1) or (2) to act or continue to act as a director of or be concerned in any way in the management of the insurer or financial holding company,

commits an offence and is liable on summary conviction in the case of an individual to a fine of five million dollars and to imprisonment for five years and to a fine of five hundred thousand dollars for each day that the offence continues, and in the case of an insurer or a financial holding company to a fine of five million dollars and to a fine of five hundred thousand dollars for each day that the offence continues.

(13) A person referred to in subsection (2)(c) who contravenes subsection (7) commits an offence and is liable on summary conviction to a fine of five million dollars and imprisonment for five years and to a fine of five hundred thousand dollars for each day that the offence continues.

Restriction on voting
power of director

91. A director of an insurer or of a financial holding company shall not be present, or vote at a meeting of the board of directors or a committee of the board of directors when a contract which would result in a direct or indirect financial benefit, other than a benefit under the director's contracts of employment, accruing to—

(a) the director or a relative of the director;

(b) a company of which the director or a relative of the director is an officer; or

- (c) a company in which the director or a relative of the director holds a beneficial interest,

is being considered.

92. (1) The directors of an insurer or of a financial holding company shall notify the Inspector of any developments that pose material risks to the insurer or financial holding company. Duties of directors

(2) Every director of an insurer shall be responsible for ensuring that the statutory fund is maintained in accordance with the requirements of section 52.

(3) Notwithstanding section 52(9), where—

- (a) the statutory fund of an insurer does not meet the requirements of section 52; or
- (b) the Central Bank has exercised its special emergency powers under the Central Bank Act and the insurer's statutory fund is in deficit,

the Central Bank may apply to the High Court to examine the conduct of any past or present director and such director, in respect of a contravention under this subsection, shall be presumed to have committed misfeasance unless he proves that the contravention occurred without his knowledge and that he used all due diligence to prevent the occurrence thereof.

(4) Where a director is unable to disprove the misfeasance referred to in subsection (3), the High Court may compel him to fund the deficit in the statutory fund or any part thereof by way of compensation for the misfeasance.

(5) A director of an insurer or of a financial holding company who—

- (a) resigns;

- (b) receives a notice, or otherwise learns, of a meeting of shareholders called for the purpose of removing him from office; or
- (c) receives a notice, or otherwise learns, of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office upon his resignation or removal from office or because his term of office has expired or is about to expire,

shall submit within five days to the Inspector a written statement giving the reasons for his resignation, removal or departure from office, or, where applicable, the reasons that he opposes his removal or departure from office or any proposed action or resolution and he may submit a copy of such statement to the insurer or financial holding company.

(6) The directors of an insurer or of a financial holding company shall establish and maintain procedures for the determination of remuneration for themselves and officers of the insurer or financial holding company.

(7) An insurer or a financial holding company shall submit to its audit committee an annual report containing complete and accurate information regarding the total remuneration paid to directors and officers, within twenty days after the end of its financial year and such report shall be made available for review by Central Bank.

(8) An insurer shall not award or pay any bonus to its directors and officers where—

- (a) the assets of the insurer are insufficient to meet the requirements under the Regulations; or
- (b) the bonus would reduce the assets of the insurer below the amount referred to in paragraph (a).

(9) For the purposes of this section—

(a) “remuneration” means all cash and non-cash pay elements and includes base salary, allowances, bonuses, whether fixed or variable, and any other benefit that would accrue to a director or officer which may be quantifiable; and

(b) “bonus” means any special payment made in accordance with some formula dependent on profits of the insurer or volume of business written by the insurer or some combination of both.

93. (1) The board of directors of an insurer shall Audit committee appoint from among their number an audit committee, which shall consist of at least three directors—

(a) a majority of whom shall be independent directors; and

(b) at least one of whom shall be a financial expert.

(2) The chair of the audit committee shall be an independent director.

(3) Subsection (1)(a) shall not apply in respect of a local insurer to which section 22 applies until six months after the commencement of this Act.

(4) The duties of the audit committee shall include, without limitation—

(a) the review of, and report to the board of directors on, the annual financial statements and other returns prior to approval by the board;

(b) the review of such returns of the insurer as the Inspector may specify; and

(c) ensuring that an appropriate framework for internal control procedures is in place.

(5) For the purposes of this section—

(a) a “financial expert” means a person who has the necessary financial education, a sound

understanding of generally accepted accounting principles, financial statements and the way in which financial statements are prepared and audited and substantive experience as—

- (i) a qualified accountant;
 - (ii) an auditor;
 - (iii) a chief financial officer;
 - (iv) a comptroller; or
 - (v) actuary;
- (b) a “qualified accountant” means a person who is a member of the ICATT or such other professional association as may be approved by the Central Bank; and
- (c) an “independent director” means a director who—
- (i) is not the holder of five per cent or more of the shares of the insurer or of a connected party of the insurer;
 - (ii) is not a current officer of the insurer or of a connected party of the insurer;
 - (iii) is not a relative of a current officer or director, or of a person who was, within two years prior to his appointment, an officer or director of the insurer or a connected party of the insurer;
 - (iv) is not the auditor, nor has been employed by the auditor of an insurer nor the auditor of any of the connected parties of the insurer within three years prior to his appointment;
 - (v) has not been employed by the insurer or any of its connected parties within three years prior to his appointment;

- (vi) not an incorporator of the insurer or of a connected party of the insurer;
- (vii) is not a professional adviser of the insurer or of a connected party of the insurer;
- (viii) is not a significant supplier to the insurer or of a connected party of the insurer; and
- (ix) is not indebted to the insurer or any of its affiliates, other than by virtue of a fully collateralized loan.

94. Each insurer and each financial holding company shall submit to the Inspector, within sixty days after the end of its financial year and at such other times as may be required by the Inspector, a report which contains—

- (a) a statement signed by its chief executive officer and chief financial officer and, in the case of a foreign insurer, its principal representative, which acknowledges the board of directors' and management's responsibility for—
 - (i) preparing financial statements;
 - (ii) establishing and maintaining an adequate internal control structure and procedures for financial reporting;
 - (iii) establishing and maintaining adequate procedures for the settlement of claims; and
 - (iv) complying with this Act and any Regulations made hereunder and Guidelines issued by the Central Bank.
- (b) a statement signed on behalf of its board of directors that it has received the financial condition report of the actuary or chief financial officer pursuant to section

186 or 241 and that it is satisfied that the risk management systems and internal controls are adequate for managing its risks and are being properly applied; and

- (c) a statement signed on behalf of its board of directors certifying that claims are settled in accordance with the established procedures.

Policies and procedures for transactions with connected parties and employees

95. The Board of Directors of an insurer shall—

- (a) establish and maintain written procedures for all transactions between the insurer and—
- (i) connected parties;
 - (ii) connected party groups; or
 - (iii) employees; and
- (b) review annually transactions referred to in paragraph (a) to ensure compliance with its procedures.

Information systems for credit exposures

96. The board of directors of an insurer shall establish and maintain documented information systems that identify and monitor the credit exposures referred to in sections 114 and 115.

Internal controls

97. The board of directors of an insurer shall establish, document and maintain adequate internal controls.

Maintenance of policies and procedures

98. (1) The Board of Directors of an insurer shall review annually the procedures required under sections 95, 96 and 97.

(2) The Board of Directors shall provide to the Inspector—

- (a) upon request, the procedures required under sections 95, 96 and 97; and
- (b) within sixty days after the end of its financial year, the results of the compliance reviews referred to in subsection (1).

(3) Where the procedures referred to are inadequate, the Inspector may require the board of directors to change the procedures, within a specified period.

(4) Where the board of directors of an insurer fails to comply with subsection (2) and sections 95, 96 and 97, the Inspector may direct the board of directors to take within a specified period as he thinks fit, such action to effect compliance.

99. (1) Where the Central Bank is of the opinion that an insurer or financial holding company is in contravention of this Act or any other written law, the Central Bank shall, by notice in writing—

Central Bank may
require directors or
shareholders meeting

- (a) require the board of directors of an insurer or financial holding company to convene a special meeting of the board of directors; or
- (b) require the board of directors of the insurer or financial holding company to convene a special meeting of shareholders to report on the failure of the insurer or financial holding company to implement measures required to be taken by the Central Bank,

and the Central Bank shall be invited to attend and be heard at such meetings.

(2) Where an insurer or financial holding company is in contravention of the minimum number of directors required under the Companies Act, the Central Bank shall have the power to convene a special meeting of shareholders to fill the vacancies and the Central Bank shall be heard at such meeting.

100. (1) A local insurer and a financial holding company shall appoint annually an audit entity satisfactory to the Central Bank to be its auditor.

Appointment of
auditor

(2) A foreign insurer shall appoint annually an audit entity satisfactory to the Central Bank to be the auditor of its Trinidad and Tobago operations.

(3) An audit entity is qualified to be the auditor of an insurer or financial holding company if—

- (a) each member is independent, within the meaning of subsection (4), of the insurer or the financial holding company; and

(b) at least one member—

- (i) is a practising member in good standing with ICATT or is the holder of a valid Practising Certificate from such other professional association of accountants or auditors as the Central Bank may approve; and
- (ii) has knowledge and experience satisfactory to the Central Bank, in the audits of insurers and other financial institutions.

(4) For the purposes of this section, a member of an audit entity is not independent of an insurer or a financial holding company if he—

- (a) is a connected party of the insurer or the financial holding company;
- (b) has any business relationship with the insurer or the financial holding company or with any of their respective connected parties, other than in his capacity as the auditor thereof or as a policyholder;
- (c) beneficially owns or controls, directly or indirectly, five per cent or more of the shares or other securities of the insurer or the financial holding company or of any of their respective affiliates;
- (d) is indebted to the insurer or any of its affiliates other than by virtue of a fully collateralized loan; and
- (e) has within two years immediately preceding the appointment of the audit entity, been a receiver, receiver-manager, liquidator or trustee in bankruptcy of any affiliate of the insurer or the financial holding company, other than a subsidiary or affiliate acquired through a realization of security.

(5) An insurer or financial holding company shall not appoint an audit entity to be the auditor of the

insurer or financial holding company pursuant to subsection (1) or (2) unless—

- (a) the insurer or financial holding company has served written notice on the Central Bank of its intention to make such appointment; and
- (b) the Central Bank has failed to serve on the insurer or financial holding company a written notice of objection to the appointment within twenty days either of—
 - (i) the date on which the insurer or financial holding company served notice of its intention to make the appointment pursuant to paragraph (a); or
 - (ii) the date of receipt of all information requested by the Central Bank in respect of the notice,

whichever is the later.

(6) A member of an audit entity shall not be the audit partner, having primary responsibility for the audit of an insurer or a financial holding company for a period of more than five consecutive years.

(7) The auditor of an insurer or financial holding company shall not provide to that insurer or financial holding company—

- (a) book-keeping or other services related to its accounting records or financial statements;
- (b) financial information systems design and implementation services;
- (c) actuarial services;
- (d) internal audit outsourcing services; or
- (e) such other non-audit related services as the Central Bank may specify.

(8) If an insurer or financial holding company fails to appoint an auditor satisfactory to the Central Bank, the Central Bank shall appoint such auditor at

the expense of the insurer or the financial holding company, as the case may be.

Notification in respect
of auditors

101. (1) A local insurer or a financial holding company shall forthwith give written notice, together with reasons, to the Inspector if—

- (a) it proposes to give notice to its shareholders of a resolution to remove an auditor before the expiration of his term of office;
- (b) it gives notice to its shareholders of a resolution to replace an auditor at the expiration of his term of office with a different auditor; or
- (c) a person ceases to be an auditor of the local insurer or financial holding company otherwise than in consequence of a resolution referred to in paragraphs (a) and (b).

(2) A foreign insurer shall forthwith give notice together with reasons to the Inspector if its auditor—

- (a) is removed before the expiration of his engagement;
- (b) is replaced at the expiration of his engagement with a different auditor; or
- (c) ceases to be its auditor in circumstances otherwise than those set out in paragraphs (a) and (b).

(3) The auditor of an insurer or a financial holding company shall forthwith give written notice to the Inspector and to the insurer or financial holding company if he—

- (a) resigns before the expiration of his term of office; or
- (b) does not seek to be re-appointed,

together with the reasons for such resignation or decision not to seek reappointment.

(4) The auditor of an insurer or of a financial holding company who receives a notice, or otherwise

learns, of a meeting of directors or shareholders called for the purpose of—

- (a) removing the auditor from office; or
- (b) appointing another person as auditor because the term of office of the auditor has expired or is about to expire,

may submit to the insurer or financial holding company a written statement giving the reasons why he opposes his proposed removal or the appointment of another person as auditor, and if he submits such a statement he shall submit a copy of the statement to the Inspector.

(5) Where the auditor of an insurer or of a financial holding company receives notice under subsection (4) as a result of a disagreement with the board of directors or the officers of an insurer or of a financial holding company, the auditor shall submit to the insurer or the financial holding company, and to the Inspector, a written statement setting out the nature of the disagreement.

(6) Where the auditor of an insurer or financial holding company has resigned or the appointment of the auditor has been revoked, no person shall accept an appointment as auditor of that insurer or financial holding company until the person has requested and received from the auditor who has resigned or whose appointment as auditor has been revoked, a written statement of the circumstances and reasons for such resignation or why, in the opinion of the former auditor, his appointment was revoked.

(7) Notwithstanding subsection (6), a person may accept an appointment as auditor of an insurer or financial holding company if, within fifteen days after a request under that subsection is made, no reply from the former auditor is received.

102.(1) Where the auditor of an insurer or of a financial holding company discovers, in the ordinary course of an audit, any irregular transactions or conditions which, in the opinion of the auditor meets one or more of the following criteria:

Duties of auditor to report to board of directors and Inspector

- (a) any change in accounting policy or any presentation of or any failure to present facts or figures which, in the opinion of the auditor, has the effect of misrepresenting the financial position of the insurer or financial holding company;
- (b) transactions that have a significant or material impact on the financial position of the insurer or financial holding company;
- (c) transactions or conditions giving rise to significant risks or large exposures that have the potential to jeopardize the financial viability of the insurer or financial holding company;
- (d) transactions or conditions indicating that the insurer or financial holding company has significant weaknesses in internal controls which render it vulnerable to significant risks or exposures that have the potential to jeopardize its financial viability; and
- (e) any other transactions or conditions which, in the opinion of the auditor, should be included in a report under this section,

the auditor shall report such findings in writing to the chief executive officer and the board of directors of the local insurer or financial holding company, or to the principal representative in the case of a foreign insurer, and to the Inspector.

(2) Where the auditor of an insurer or a financial holding company discovers, in the ordinary course of an audit, that the insurer or financial holding company has contravened, is contravening or is likely to contravene this Act, the Regulations or any applicable IFRS, the auditor shall report in writing such findings to the Inspector.

(3) Where the auditor of an insurer or of a financial holding company discovers, after receiving a request in writing from the Inspector for an investigation, any such transactions or conditions as set out in subsection (1), the auditor shall report such findings to the Inspector, and the Inspector shall share those findings with the insurer or financial holding company at such time as he deems necessary.

(4) The auditor of an insurer or financial holding company shall meet with the Inspector in camera at least once annually to discuss any matter relating to this Act and its Regulations.

(5) Any person who contravenes this section commits an offence and is liable on summary conviction—

(a) in the case of the audit entity, to a fine of five million dollars; and

(b) in the case of an individual, to a fine of five million dollars and to imprisonment for five years.

103.(1) An insurer carrying on long-term insurance business or a general insurer carrying on the accident and sickness class of insurance business in Trinidad and Tobago, and every other insurer that is required by the Inspector to provide actuarial reports shall appoint an actuary pursuant to subsection (3). Appointment of actuary

(2) Within three years of the commencement of this Act, a general insurer carrying on insurance business in Trinidad and Tobago shall appoint as a member of its staff or as a consulting actuary, a person approved by the Inspector to be the appointed actuary of the insurer.

(3) An insurer shall not appoint a person to be its appointed actuary or any other actuary required to submit a report or certificate to the Inspector under this Act unless—

(a) the insurer has served written notice on the Inspector of its intention to make such appointment;

- (b) the insurer has submitted the information specified in Schedule 5 to the Inspector;
- (c) the Inspector has failed to serve on the insurer a written notice of objection to the appointment within twenty days of the date on which the insurer served notice of its intention to make the appointment pursuant to paragraph (a) or the date on which all information required under paragraph (b) was submitted to the Inspector, whichever is later; and
- (d) there is no situation in which an actuary's duty to the insurer or statutory duties comes into conflict with the actuary's personal interests or with the duties of the actuary to another party.

(4) The chief executive officer and the chief financial officer or a person performing like functions may not be appointed as or hold the position of appointed actuary of an insurer.

Notification in respect
of actuary

104.(1) An insurer that is required by the Central Bank and this Act to provide actuarial reports, shall forthwith give written notice together with reasons to the Inspector if its appointed actuary—

- (a) is removed before the expiration of his engagement;
- (b) is replaced at the expiration of his engagement with a different actuary; or
- (c) ceases to be its actuary in circumstances otherwise than those set out in paragraphs (a) and (b).

(2) The appointed actuary of an insurer shall forthwith give written notice to the Inspector and to the insurer if he—

- (a) resigns before the expiration of his engagement; or
- (b) does not seek to be re-appointed,

together with the reasons for such resignation or decision not to seek reappointment.

(3) An appointed actuary who receives a notice, or otherwise learns that—

(a) his engagement is going to be discontinued;
or

(b) another person is to be appointed as actuary of the insurer because the engagement of the actuary has expired or is about to expire,

may submit to the insurer a written statement giving the reasons why he opposes his proposed removal or the appointment of another person as appointed actuary, and shall submit a copy of any such the statement to the Inspector.

(4) Where the appointed actuary of an insurer receives a notice under subsection (3) as a result of a disagreement with the board of directors or the officers of an insurer, the actuary shall forthwith submit to the insurer, and to the Inspector, a written statement setting out the nature of the disagreement.

(5) Where the appointed actuary of an insurer has resigned or the appointment of the actuary has been revoked, no person shall accept an appointment as an appointed actuary of that insurer until the person has requested and received from the actuary who has resigned or whose appointment as actuary has been revoked, a written statement of the circumstances and reasons for such resignation or why, in the opinion of the former actuary, his appointment was revoked.

(6) Notwithstanding subsection (5), a person may accept an appointment as the appointed actuary of an insurer if, within fifteen days after a request under that subsection is made, no reply from the former actuary is received.

105.(1) Where an auditor or former auditor of an insurer, or financial holding company or an actuary or former actuary of an insurer communicates information Protection for whistle blowers

or gives an opinion to the Central Bank or the Inspector in good faith and—

- (a) he is required to give such information or opinion to the Central Bank or the Inspector under this Act or the Central Bank Act; or
- (b) where he reasonably believes that the insurer or financial holding company is in contravention of any written law,

such communication shall not be considered as a violation of any contract for services between the auditor, former auditor, actuary or former actuary and the insurer or financial holding company.

(2) This section applies to any matter of which an auditor, former auditor, actuary or former actuary becomes aware in his capacity as auditor, former auditor, actuary or former actuary and which relates to the business or affairs of the insurer or any of its affiliates or any director or officer or relative of such persons, or the principal representative in the case of an insurer that is a foreign insurer, in relation to which the information is given.

- (3) Subsection (1) shall apply *mutatis mutandis* to—
 - (a) any other person who is required to give information to the Central Bank or the Inspector under this Act; or
 - (b) any employee or external service provider of the insurer or financial holding company who provides information to the Central Bank or the Inspector regarding the conduct of an insurer, its affiliate or any director, officer or relative of such persons, or the principal representative in the case of a foreign insurer, which the employee or external service provider reasonably believes constitutes a violation of any written law.

(4) This section applies to the former auditor and former actuary of a former insurer or former financial holding company.

106. (1) Where the Inspector has reasonable grounds to believe that the auditor or actuary of an insurer or financial holding company— Referring matters to the professional association for auditors and actuaries

- (a) has failed to perform his duties or to comply with the 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 insurer, financial holding company, agency or brokerage; or
- (c) is incompetent or is guilty of professional misconduct,

the Inspector or Central Bank shall deliver a written report to the insurer, financial holding company and as appropriate ICATT, the Caribbean Actuarial Association or such other professional association that may in the opinion of the Inspector be relevant.

(2) Where the Inspector has made a report under subsection (1) in good faith, the Inspector shall not be subject to any action, claim or demand by, or any liability to, any person in respect of which the report was made.

H. Prudential Requirements, Restrictions and Prohibitions

107. (1) An insurer or financial holding company shall in relation to its operations on an individual and consolidated basis maintain— Capital adequacy and liquidity

- (a) adequate capital; and
- (b) adequate and appropriate forms of liquidity,

and shall comply with the Regulations.

(2) An insurer which has been reissued a certificate of registration under section 22 shall within

five years of the commencement of this Act increase its regulatory capital requirement ratio in accordance with the Regulations.

(3) Notwithstanding subsections (1) and (2), the Inspector may direct the insurer or financial holding company to—

- (a) increase its capital in excess of the minimum amount required under the Regulations; or
- (b) provide additional liquidity in such forms and amounts,

based on the particular circumstances of the insurer or financial holding company.

(4) An insurer or financial holding company shall comply with a direction under subsection (3) within such time as the Inspector may specify.

(5) Where an insurer does not comply with its capital adequacy requirements under this section the insurer commits an offence and is liable on summary conviction to a fine of five million dollars and each director is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

Branch liabilities

108. (1) A local insurer which carries on insurance business through overseas branches shall maintain specific assets to support its overseas liabilities in each jurisdiction in which it operates.

(2) A foreign insurer shall assign capital and maintain other specific assets in Trinidad and Tobago to support its liabilities in Trinidad and Tobago.

Restriction on
payment of dividend

109. (1) A local insurer or financial holding company shall not declare or pay a dividend—

- (a) where the assets of the local insurer are insufficient to meet the requirements under the Regulations;

- (b) where the dividend would reduce the assets of a local insurer below the amount referred to in paragraph (a);
- (c) where in the case of a local insurer the statutory deposit, catastrophe reserve fund or capital is less than the amount required under this Act;
- (d) until all the capitalized expenditure, including preliminary expenses, organisation expenses, share-selling commission and brokerage of the local insurer not represented by tangible assets has been completely written off;
- (e) in the event of the Central Bank's exercise of its special emergency powers under the Central Bank Act without first obtaining the Central Bank's approval; or
- (f) where in the case of a financial holding company, any of the conditions referred to in paragraphs (a) to (e) apply to any of its local insurer subsidiaries.

(2) Where an insurer, a holding company or foreign insurance company declares a dividend but the statutory fund, statutory deposit, catastrophe reserve fund or capital of its Trinidad and Tobago operations is less than the amount required under this Act, it shall not apply, allocate or transfer any part of its assets in Trinidad and Tobago to pay dividends.

(3) An insurer, holding company, foreign insurance company or financial holding company who contravenes this section commits an offence and is, liable on summary conviction to a fine of five million dollars and each director is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

110.(1) An insurer shall invest in assets in Trinidad ^{Assets} and Tobago an amount equal to at least seventy-five per cent of its policy benefit liabilities, other insurance and contract liabilities and the surplus which is derived from participating policies.

(2) For the purposes of subsection (1), “assets in Trinidad and Tobago” shall have the same meaning as in section 61(3).

(3) Subject to subsection (1), where any liability in respect of policies is payable in a foreign currency, the insurer shall invest in foreign assets in that currency an amount not less than seventy-five per cent of such foreign currency.

(4) The assets of an insurer, including the assets of a statutory fund, shall be invested in accordance with this Act and with the Regulations.

(5) The board of directors of an insurer shall establish and maintain written policies and procedures relating to the investment of its assets.

(6) Where the board of directors of an insurer fails to comply with subsection (5) the Inspector may require the board of directors to take such action, within a specified period, to effect compliance.

Investments to be
made in corporate
name

111.(1) All investments and deposits of an insurer shall be made in its corporate name and no director or officer of the insurer and no member of a committee which can exercise any authority over the investments and deposits of the insurer shall—

- (a) either directly or indirectly be a beneficiary or accept any fee, brokerage, commission, gift or other consideration for or on account of any loan, deposit, purchase, sale, payment or exchange made by or on behalf of the insurer; and
- (b) be pecuniarily interested in any purchase, sale or loan made by or on behalf of the insurer, whether as principal or agent and whether solely or jointly, save that where the director, officer or member of the committee is a policyholder he is entitled to all the benefits accruing to him under the terms of his contract.

(2) In respect of each credit exposure of an insurer, a written record showing the authorization thereof shall be made and signed by an officer of the insurer or by the chairman of the committee authorizing the credit exposure.

(3) Investment records are to be maintained in the insurer's principal office in Trinidad and Tobago.

(4) The insurer shall keep a separate record of all investments.

(5) Investments may be maintained in book-entry form if properly recorded with the Central Securities Depository of Trinidad and Tobago or such other recognized depository as the Central Bank may determine.

(6) A person who contravenes subsection (1) commits an offence and in the case of an insurer is liable on summary conviction to a fine of five million dollars and in the case of a director or officer is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

112. (1) An insurer shall not, directly or indirectly hold shares or ownership interests in any entity, not including a financial entity, if such holding would result in—

- Limits on acquisition
of shares or ownership
interests by a local
insurer
- (a) the insurer having the power to—
 - (i) exercise twenty per cent or more of the voting rights at any general meeting of the entity;
 - (ii) elect twenty per cent or more of the directors or officers of the entity; or
 - (iii) exercise significant influence over the conduct of the business and affairs of the entity;
 - (b) the insurer holding shares in a company or ownership interests in an unincorporated entity of a value equal to twenty five per cent or more of the capital base of the insurer; or

(c) the aggregate value of all such shareholdings and ownership interests referred to in paragraph (b) exceeding one hundred per cent of the capital base of the insurer.

(2) The restrictions imposed under subsection (1) shall not apply where such shareholding or ownership interest is acquired—

(a) in the administration of the estate of a deceased person; or

(b) in the course of the satisfaction of debts due to the local insurer,

but such shareholding or ownership interest shall be disposed of at the earliest possible time but in any event, not later than five years from the date of acquisition or such further period as the Central Bank may permit.

(3) Notwithstanding subsection (1) and subject to subsection (6), an insurer shall not, without first obtaining the approval in writing of the Central Bank, acquire shares in such number that would equal ten per cent or more in any class of shares in a financial entity.

(4) The restrictions imposed under subsection (1) shall not apply to the holding of shares in a company which provides necessary services in support of the activities of the insurer provided that the insurer first obtains approval in writing of the Central Bank.

(5) An insurer shall not directly or indirectly hold any shares or ownership interest in a brokerage or agency.

(6) Within sixty days of the coming into force of this Act, an insurer shall notify the Central Bank of any shares held by it in any company referred to in subsection (4) and the Central Bank may approve the holding of the shares or require the insurer to dispose of its ownership interests if the Central Bank is of the opinion that the company does not provide necessary services in support of the activities of the insurer.

(7) Within sixty days of coming into force of this Act, an insurer shall notify the Central Bank of any shares and ownership interests held by it in excess of any limit imposed by this section and the Central Bank shall require the insurer to dispose of any excess shares or ownership interest within such time as the Central Bank shall specify.

113.(1) A local insurer shall not without the prior approval of the Central Bank— Approval for certain transactions

- (a) directly or indirectly establish or acquire a subsidiary in or outside of Trinidad and Tobago; or
- (b) enter into an agreement for sale or other transfer of—
 - (i) any of its subsidiaries of the local insurer; or
 - (ii) its controlling or significant interest in a financial entity.

(2) A local insurer shall not without prior approval of the Inspector—

- (a) enter into an agreement for sale or other transfer of ten per cent or more of—
 - (i) its assets;
 - (ii) the assets of any of its subsidiaries; or
 - (iii) the assets of any entity in which it has a controlling or significant interest; or
- (b) undertake any other restructuring that would result in a reduction in its capital.

114.(1) An insurer shall not, directly or indirectly, incur a credit exposure to a person including a borrower group or related group in an aggregate amount that exceeds twenty-five per cent of its capital base, other than a credit exposure that is— Limits on credit exposures

- (a) fully guaranteed by the Government of Trinidad and Tobago;

- (b) fully guaranteed by a sovereign state, other than the Government of Trinidad and Tobago, with an investment grade rating from a credit rating agency approved by the Central Bank and said guarantee is explicit, unconditional, legally enforceable and irrevocable over the life of the credit exposure in question;
- (c) extended directly to the Government of Trinidad and Tobago;
- (d) fully secured at all times by cash in Trinidad and Tobago dollars or other currencies readily convertible to Trinidad and Tobago dollars, delivered to the insurer and placed with it in a special account, in an approved financial institution, secured by a charge in favour of the insurer; or
- (e) for a period of less than twenty days and fully secured by investments that are investment grade, as rated by a credit rating agency approved by the Central Bank, provided that the insurer shall give the Central Bank prior notice of such exposure being incurred.

(2) An insurer shall not, directly or indirectly, incur any large exposure to a person including a borrower group or related group if by so doing the aggregate principal amount of all such large exposures would exceed eight hundred per cent of the capital base of the insurer.

(3) The aggregate principal amount referred to in subsection (2) shall include the aggregate principal amount for connected parties referred to in section 115(1)(b).

(4) Where, in any particular case—

- (a) an insurer is in contravention of the limits referred to in subsections (1) and (2) ; or

(b) a credit exposure of an insurer is not prudent,

the Inspector may require an insurer to reduce its credit exposure, increase its stated capital pursuant to section 21(7), or, where applicable, make adequate provisions for potential losses.

(5) Within sixty days of the commencement of this Act, an insurer shall notify the Inspector of—

(a) all credit exposures to persons including borrower groups or related groups which are in excess of the limits under this section; and

(b) the measures that the insurer shall take in order to—

(i) reduce within a period of three years the excess credit exposures granted so that they are within the limits in subsections (1) and (2); or

(ii) provide within a period of two years, additional capital in accordance with the capital adequacy requirements under this Act.

(6) Any modification of, addition to, or renewal or extension of a credit exposure referred to in subsection (5) shall be subject to the limits imposed by this section.

(7) Notwithstanding subsection (6), the limits imposed by this section shall not apply to modifications which seek to reduce the insurer's credit exposure to any person, related group or borrower group.

(8) Where a sovereign state loses its investment grade rating from a credit rating agency approved by the Central Bank—

(a) any credit exposure incurred by the insurer shall be subject to the limit in subsection (1); and

(b) the provisions of section 116 shall apply.

(9) The Central Bank may, from time to time, establish criteria to be taken into account in determining exposure to risk, by publication of a notice in the *Gazette* or through directions to a particular insurer.

(10) The requirements of this section shall apply—

(a) to an insurer on an individual basis and on a consolidated basis to include where applicable, all the domestic and foreign—

(i) subsidiaries of the insurer; or

(ii) companies in which the insurer is a significant shareholder; and

(b) on a consolidated basis, to a financial holding company and all of the domestic and foreign members of the financial group that the financial holding company controls.

Limits on credit exposures to connected parties

115.(1) An insurer shall not, directly or indirectly, incur credit exposures—

(a) to any connected party or connected party group in a principal amount exceeding ten per cent of its capital base; or

(b) to all connected parties and connected party groups in an aggregate principal amount exceeding twenty-five per cent of its capital base.

(2) Subject to section 117(1), subsection (1) shall not apply to—

(a) a subsidiary of an insurer where no other connected party holds any share in such subsidiary; or

(b) a holding company or financial holding company of an insurer that is itself an insurer or permit holder under this Act.

(3) For the purposes of subsections (1) and (2), equity investments in wholly owned subsidiaries that are insurers, shall not be taken into account in the determination of credit exposure.

(4) Notwithstanding subsection (1), an insurer shall not incur credit exposures to—

- (a) a director of the insurer; or
- (b) an officer of the insurer; or
- (c) a relative of a person referred to in paragraphs (a) and (b),

in an amount exceeding—

- (i) in the case of a non-executive director or relative of a non-executive director, two per cent of the capital base of the insurer; or
- (ii) in the case of an executive director, officer, or relative of an executive director or officer, two per cent of the capital base of the insurer or two years' emoluments of the director or officer, whichever is the lesser.

(5) The limit referred to in subsection (4) shall not apply to a loan made on the security of a mortgage on the principal residence in Trinidad and Tobago of a director or officer of the insurer where the amount of the loan does not exceed eighty per cent of the value of the property at the time the loan is made.

(6) Any credit exposure incurred by an insurer to a connected party or to a connected party group under this section shall be—

- (a) on similar terms and conditions on which such credit exposure is offered to the public; and
- (b) subject to the approval of the board of directors.

(7) Within sixty days of the commencement of this Act, an insurer shall notify the Inspector of all credit exposures to connected parties and connected party groups which are in excess of the limits fixed under this section or not in accordance with subsection (6).

(8) With the exception of subsections (7) and (10), this section does not apply in respect of any credit exposure incurred by an insurer to a connected party or a connected party group prior to the commencement of this Act.

(9) Any modification of, addition to, renewal or extension of a credit exposure referred to in subsection (7) shall be subject to the limits imposed by this section.

(10) Where, in the opinion of the Inspector, a credit exposure incurred by an insurer to a connected party or to a connected party group exposes the insurer to excessive risk, or does not accord with the terms and conditions referred to in subsection (6)(a), the Inspector may require the insurer to set aside or direct that changes be made to the credit exposure, or require the insurer to limit or reduce the credit exposure.

(11) This section shall apply—

(a) to an insurer on an individual basis, and on a consolidated basis to include where applicable, all the domestic and foreign—

(i) subsidiaries of the insurer;

(ii) companies in which the insurer is a significant shareholder; and

(b) on a consolidated basis, to a financial holding company and all of the domestic and foreign members of the financial group that the financial holding company controls.

Reporting
contravention of credit
exposure limits

116.(1) Where an insurer has contravened the limitations on credit exposures referred to in sections 114 and 115, the insurer shall inform the Inspector within two days of such contravention.

(2) A person who contravenes subsection (1) commits an offence and is liable for any contravention of sections 114 and 115.

(3) Where an insurer informs the Inspector that it has contravened a credit exposure limit, the Inspector shall require the insurer to reduce its credit exposure or take such other steps within a specified period as he determines appropriate.

- 117.** (1) An insurer shall not directly or indirectly— Prohibitions with respect to acquiring shares, borrowing or lending funds
- (a) acquire its own shares or the shares of its holding company or financial holding company, except that an insurer shall be allowed to acquire and cancel shares issued by it pursuant to the Companies Act;
 - (b) deal in, underwrite or grant credit exposures on the security of its own shares or the shares of a holding company, financial holding company or subsidiary of the insurer;
 - (c) grant credit except for—
 - (i) unsecured credit to any person for temporary cover for general insurance, which shall not exceed twenty days; or
 - (ii) advances to agents, sales representatives or to employees against commissions or salaries to be earned; or
 - (d) pledge or otherwise deal with assets in excess of its uncommitted assets.

(2) The provisions of subsection (1)(a) shall not apply to a foreign insurer.

(3) The restriction imposed under subsection (1)(a) shall not prevent an insurer from acting as trustee of a pension fund plan, or from investing the assets of the plan in shares of the insurer or in a financial holding company, holding company or subsidiary of the insurer up to a limit of ten per cent of the assets of the pension fund plan, inclusive of revaluation gains and losses on the shares.

I. Judicial Management, Suspension and Winding-up

- 118.** (1) Where the Inspector is satisfied that— Application for judicial management
- (a) a ground for revocation under section 34(1) exists; or

- (b) the insurer or financial holding company has failed to submit financial statements and returns in accordance with sections 171 and 172 and that the true financial position of an insurer or financial holding company is uncertain; or
- (c) an financial holding company is no longer considered to be fit and proper in accordance with Schedule 5,

he shall advise the Board accordingly.

(2) The Board may, after receiving the advice of the Inspector and where it is of the opinion that it is necessary or proper for the insurer or financial holding company or any part of its business be placed under judicial management, direct the Central Bank to apply to the High Court for an order of judicial management.

(3) An insurer or financial holding company may, after giving the Central Bank one month's notice in writing of its intention to do so apply to the High Court for an order that it or any part of its business be placed under judicial management.

(4) Where an application is made to the High Court under this section—

- (a) the insurer or the financial holding company, as the case may be; and
- (b) the Central Bank,

shall be entitled to be heard on the application.

(5) Where an application is made under this section for an order in respect of any insurer or financial holding company, all actions and the execution of all writs, summonses and other processes against the insurer or financial holding company shall, by virtue of this section, be stayed and shall not be proceeded with, without the prior leave of the High Court or unless the High Court directs otherwise.

119. (1) An order for the judicial management of an insurer or financial holding company or of any part of its business shall be subject to the provisions of this section and of sections 118 and 120 to 125. Judicial management

(2) The High Court shall appoint a judicial manager who shall receive such remuneration from the insurer or financial holding company and may at any time cancel the appointment and appoint some other person as the judicial manager.

(3) The High Court may, if it thinks fit, charge the remuneration charges and expenses of the judicial manager on the property of the insurer or financial holding company in such order of priority, in relation to any existing charges on that property, as it thinks fit.

(4) Where an order for judicial management is made under this section, the management of the insurer or financial holding company or of that part of its business to which the order relates shall, on and after the date specified in the order, vest exclusively in the judicial manager.

(5) A person who is appointed judicial manager, shall not, except with the leave of the High Court, issue any new policies other than paid-up policies.

(6) The High Court may from time to time issue to the judicial manager such directions regarding his powers and duties as it considers necessary.

(7) The judicial manager shall act under the control of the High Court and may at any time apply to the High Court for instructions as to the manner in which he shall conduct the judicial management or in relation to any matter arising in the course of the judicial management.

(8) The judicial manager shall give a report on the status of the judicial management to the Central Bank on a monthly basis and shall provide the Central Bank with such information as it may from time to time require and shall report to the Central Bank whenever he intends to apply to the High Court for instructions

and shall at the same time furnish the Central Bank with particulars of the application.

(9) The Central Bank is entitled to be heard on any application made pursuant to subsection (7) and may make an application to the High Court to be heard on any matter relating to the conduct of the judicial management.

Report by judicial
manager

120.(1) The judicial manager shall conduct the management with the greatest economy compatible with efficiency, and shall as soon as possible after his appointment, file with the High Court a report stating which of the following courses is in the circumstances, in his opinion most advantageous to the general interests of the policyholders of the insurer:

- (a) the transfer of the business of the insurer to some other company in pursuance of a scheme to be prepared in accordance with sections 74 to 81 (whether the policies of the business continue for the original sums insured, with the addition of bonuses that are attached to the policies, or for reduced amounts);
- (b) the carrying on of its business by the insurer (whether the policies of the business continue for the original sums insured, with the addition of bonuses that are attached to the policies, or for reduced amounts) or financial holding company;
- (c) the winding-up of the insurer or financial holding company or of any part of its business; or
- (d) the dealing with part of the business of the insurer or financial holding company in one manner, and with another part in another manner.

(2) The judicial manager shall, as soon as he has filed the report, furnish a copy thereof to the Central Bank and make a written application to the High Court for an order to give effect to the course stated in the report.

(3) The report or a copy thereof shall be open for inspection by any person during official hours at the registry of the High Court in which the report is filed or at such other place as the Central Bank determines.

(4) Where the judicial manager recommends the transfer of the business of the insurer or financial holding company in accordance with subsection (1)(a), the Central Bank shall assess whether the proposed transfer meets the criteria of sections 78 and 79 and advise the High Court of its assessment during the hearing under section 121(1).

121. (1) The High Court shall on the hearing of an application made under section 120(2)—

Decision of High Court on report of judicial manager

(a) after hearing the Central Bank, the judicial manager and any other person who in the opinion of the High Court ought properly to be heard; and

(b) after considering the report of the judicial manager,

make an order giving effect to the course which it considers in the circumstances to be most advantageous to the general interest of the policyholders of the insurer.

(2) An order of the High Court under subsection (1) shall be binding on all persons, and shall have effect notwithstanding anything contained in the articles of incorporation or continuance, by-laws or other constituent documents of the insurer or financial holding company.

122. (1) Where an order is made by the High Court for the transfer of the business of an insurer or financial holding company to some other company, the judicial manager shall prepare a scheme of transfer in accordance with section 75.

Transfer of business to another company

(2) The judicial manager shall submit a copy of scheme of transfer to the Central Bank at least ten days before making an application to the High Court for a confirmation of the scheme in accordance with subsection (3).

(3) The judicial manager shall apply to the High Court for a confirmation of a scheme of transfer and the Central Bank shall be entitled to be heard by the High Court on its confirmation.

(4) Until a scheme of transfer is confirmed by the High Court, the management of the insurer or financial holding company shall continue to be vested in the judicial manager.

(5) Where the High Court confirms a scheme of transfer, the High Court shall order the Registrar of Companies to issue a certificate of amalgamation under the Companies Act.

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Cancellation of contracts or agreements

123. The High Court may, either of its own motion or on the application of the judicial manager, at any time while an order made under section 119 is in force with respect to an insurer or financial holding company, after hearing all persons who, in the opinion of the High Court are entitled to be heard, cancel or vary, either unconditionally or subject to such conditions as the High Court thinks just, any contract or agreement, other than a policy between the insurer or financial holding company and any other person, which the High Court is satisfied is detrimental to the interests of the policyholders.

Indemnity

124. The judicial manager shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the exercise of or in connection with the exercise of the powers conferred on him under this Part.

Cancellation of judicial management order

125.(1) The judicial manager, the Central Bank or any interested person may at any time apply to the High Court for the cancellation of an order made by the High Court under section 119.

(2) Where an application is made under subsection (1) and the High Court has heard the Central

Bank on such application, the High Court may cancel the order if it appears to it that—

- (a) the purpose of the order has been fulfilled; or
- (b) it is undesirable for the order to remain in force.

(3) Upon the cancellation of an order the judicial manager shall be divested of the management which shall thereupon vest in the board of directors, other governing body of the company, the liquidator or receiver appointed by the High Court.

126. (1) Where the Inspector is satisfied that—

Suspension of
operations

- (a) an insurer is unable to meet the minimum capital adequacy requirements or is unlikely to meet the liabilities due to the policyholders of the insurer;
- (b) a financial holding company is insolvent or that its continuation in business is likely to involve a loss to the policyholders of the insurer; or
- (c) an insurer or financial holding company fails to submit financial statements and returns in accordance with sections 171 and 172 so that the true financial position of the insurer or financial holding company is uncertain,

he shall advise the Board accordingly.

(2) The Board may, after receiving the advice of the Inspector and after considering all the relevant facts and circumstances, order the insurer or financial holding company to suspend business forthwith for a period of forty days.

(3) Where the Board directs the Inspector to suspend business under subsection (2), it may also direct the Inspector to take charge of all the books, records, other documents, including electronically stored information, and assets of the insurer or financial

holding company and to take all such measures as may be necessary to—

- (a) prevent the continuation in business by that insurer or financial holding company during the period of suspension; and
- (b) preserve the assets of the insurer or financial holding company.

(4) All costs incurred by the Inspector under subsection (3) shall be treated as a loan by the Central Bank to the insurer or financial holding company and shall be repaid out of the funds of the insurer or financial holding company or in the event that the insurer or financial holding company is liquidated.

(5) An order made under subsection (2) shall cease to have effect—

- (a) if the Board makes a further order permitting the insurer or financial holding company to resume business either unconditionally or subject to such conditions as it may consider necessary in the public interest or in the interests of the policyholders and potential policyholders of the insurer and other creditors of the insurer or financial holding company; or
- (b) upon the expiration of the period of forty days from the day on which it is made, unless—
 - (i) the Board extends the order for a period not exceeding a further forty days; or
 - (ii) in the case of a local insurer or financial holding company, a petition is made to the High Court by the Central Bank, for the winding-up of the insurer or financial holding company in accordance with section 128.

(6) Notwithstanding section 9(13), any person who directly or indirectly prevents the Inspector, any person authorized in writing by the Central Bank or a designated member of staff of the Central Bank from—

- (a) entering the premises of an insurer or financial holding company; or
- (b) having access to its books, records or other documents, including electronically stored information; or
- (c) having the items in paragraph (b) made readily available,

during a period of suspension, commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

(7) Where the Board suspends the business of an insurer or financial holding company under this section, all claims, actions and the execution of all writs, summonses and other processes against the insurer or financial holding company shall, by virtue of this section, be stayed and shall not be proceeded with, without the prior leave of the High Court or unless the High Court directs otherwise.

127. Where the Board has suspended the operation of an insurer or financial holding company and a petition for winding-up is made by the Central Bank, an insurer or a financial holding company shall remain in suspension and shall not carry on business while the petition is pending unless it is authorized to do so by the High Court and on such conditions, if any, as may be specified by the High Court.

128. (1) The High Court may order the winding-up of a local insurer or financial holding company and appoint a liquidator in accordance with the Companies Act subject to the modification that the local insurer or financial holding company may also be ordered to be wound up on the petition of—

- (a) the Central Bank; or
- (b) ten or more policyholders owning policies of an aggregate of not less than twenty per

cent of the aggregate sum assured of the insurer.

(2) A petition shall not be presented except by leave of the High Court, and such leave shall not be granted unless—

(a) a *prima facie* case has been established to the satisfaction of the High Court; and

(b) security for costs for such amounts as the High Court may think reasonable has been given.

(3) The Central Bank shall be a party to any proceedings under the Companies Act relating to the winding-up of an insurer or financial holding company.

(4) A reference in this section to an insurer shall include an insurance company which has ceased to be registered under this Act but remains under any liability in respect of Trinidad and Tobago policyholders.

(5) A petition for winding-up made by the Central Bank under this Act may be heard *ex parte*.

(6) The appointment of a liquidator, receiver or receiver-manager does not in any way absolve any director or officer of the insurer or financial holding company from liability arising from wilful neglect, fraudulent transactions, abuse of policyholders funds or from any breach of the provisions of this Act.

Procedure on
winding-up

129. (1) An order of the High Court for the winding-up of an insurer or financial holding company shall be subject to the provisions of this section and sections 130 to 132.

(2) Subject to subsections (4) and (6), a liquidator appointed under section 128 shall act under the control of the High Court and may apply to the High Court at any time for instructions as to the manner in which he shall conduct the winding-up or in relation to any matter arising in the course thereof.

(3) The liquidator shall furnish the Central Bank with—

- (a) such information as the Central Bank may from time to time require within the period specified by the Central Bank;
- (b) all documents submitted to the Registrar of Companies as required under the Companies Act within five days of such submission; or
- (c) particulars of any application that the liquidator intends to make under subsection (2) at least ten days prior to the making of such application.

(4) The Central Bank is entitled to be heard on an application under subsection (2) and may make an application to the High Court to be heard on any matter relating to the conduct of the winding-up.

(5) The liquidator may, in the case of an insurer which was carrying on long-term insurance business, continue to carry on the business with a view to its being transferred as a going concern to another insurer, whether in existence or being formed for that purpose.

(6) For the purposes of exercising his functions under subsection (5), the liquidator may agree to the variation of any contracts of insurance in existence at the date of the order but he shall not effect any new contracts of insurance.

(7) Where the liquidator is satisfied that the interests of the creditors in respect of liabilities of the insurer or financial holding company require the appointment of a special manager, he may apply to the High Court for such an appointment.

(8) The High Court may on an application under subsection (7), appoint a special manager to act during such time and with such powers as the High Court may direct.

(9) A liquidator or a special manager, or both, shall receive such remuneration as the High Court directs.

(10) In addition to any other action that the Central Bank may take, it is entitled to make complaints to the Registrar of Companies who shall enquire into the matter and take such appropriate action.

Ascertainment of
value of liability
under policies

130. (1) The liquidator shall ascertain, in such manner and on such basis as the High Court may approve, the value of the liability of the insurer to every person who, according to the books of the insurer, is entitled to or is interested in a policy issued by the insurer and shall in such manner as he thinks proper give notice to every such person of the value so ascertained.

(2) A person to whom notice is given under subsection (1) shall be bound by the value ascertained by the liquidator unless he disputes the valuation in such manner and within such time as is prescribed by Rules of Court or as the High Court, in any particular case, by order directs.

Application of certain
assets

131. (1) The value of the liabilities and of the assets of each statutory fund of a foreign insurer shall, on winding-up of the foreign insurer, be ascertained separately from the value of any other liabilities or from the value of any other assets of the foreign insurer, and no assets of the statutory fund shall be applied to the discharge of any liabilities other than those in respect of that statutory fund except in so far as those assets exceed the liabilities of that statutory fund.

(2) Where on the winding-up of a foreign insurer the liabilities and assets of a statutory fund of the foreign insurer have been ascertained and there is a surplus of the assets over the liabilities, there shall be added to the liabilities of that statutory fund an amount equal to the proportion of the surplus equivalent to the proportion of the profits, if any, in the classes of insurance business to which the statutory fund relates, which was allocated to shareholders and policyholders during the ten years immediately preceding the commencement of the winding-up.

(3) The assets of the statutory fund referred to in subsection (2) shall be deemed to exceed the liabilities of

that statutory fund only in so far as the assets exceed the liabilities after the addition referred to in that subsection, but where it appears to the High Court that by reason of special circumstances it would be inequitable for the amount specified to be added to the liabilities of a statutory fund, the amount to be added shall be such amount as the High Court directs.

(4) Notwithstanding subsection (1), the expenses of the liquidator shall be a first charge on the assets of the insurer and the liquidator shall only seek to recover the expenses from the assets in—

- (a) the statutory deposits of the insurer; and
- (b) where applicable, the statutory fund of the foreign insurer,

to such extent that the other assets of the insurer are insufficient.

(5) On a winding-up, a liquidator shall ascertain the value of liabilities and assets of the insurer's Trinidad and Tobago operations and of each jurisdiction in which the local insurer carries on overseas branch operations, and the assets in respect of a specific jurisdiction shall first be applied to discharge the liabilities of that jurisdiction.

132. (1) Where in the course of the winding-up of an insurer, the High Court is satisfied that the statutory fund is in deficit in contravention of the Act, every person who at the time of the contravention was a director, the principal representative or an officer of the insurer shall be deemed in respect of the contravention to have been guilty of misfeasance unless he proves that the contravention occurred without his knowledge and that he used all due diligence to prevent the occurrence thereof.

(2) Where a person as specified in subsection (1) has failed to prove that the contravention referred to in subsection (1) occurred without his knowledge and that he used all due diligence to prevent the occurrence thereof, the High Court may assess the sum by which the statutory fund is in deficit and may order said person to contribute to the statutory fund the whole or any part of that sum by way of compensation.

Winding-up of part of
business of insurer

133. (1) Where the High Court makes an order for the winding-up of part of the business of an insurer a scheme for the purpose of the winding-up shall be prepared and submitted for the confirmation of the High Court by the liquidator, receiver or receiver-manager appointed in respect of the insurer or financial holding company where the order is made pursuant to section 128.

(2) Any scheme prepared under this section shall provide—

- (a) for the allocation and distribution of the assets and liabilities of the insurer between any classes of business affected by the winding-up, including the allocation of any surplus assets which may arise on the proposed winding-up;
- (b) for any future rights of every class of policyholders in respect of their policies; and
- (c) for the manner in which any part of the business of the insurer may be wound up and may contain such provisions as are expedient for giving effect to the scheme.

(3) The provisions of sections 130 to 132 shall apply, with such adaptations as are necessary, on a winding-up in accordance with a scheme under this section.

Priority of
policyholders

134. On the winding-up of an insurer in the event that the assets are insufficient to meet—

- (a) policy benefit liabilities;
- (b) unexpired risks and outstanding claims; or
- (c) the aggregate of (a) and (b),

the claimants on policies shall have priority over other unsecured creditors.

Voluntary winding-up

135. (1) An insurer or financial holding company shall not pass a resolution for a voluntary winding-up or commence a voluntary winding-up without first applying for the written approval of the Central Bank.

(2) An insurer or financial holding company that makes an application for approval of the voluntary winding-up under subsection (1) shall submit to the Central Bank—

- (a) the draft resolution to voluntarily wind-up;
- (b) the draft of the advertisement that the insurer or financial holding company intends to publish as required under the Companies Act and subsection (6)(a);
- (c) any draft statutory declaration that the directors intend to make pursuant to section 410 of the Companies Act;
- (d) audited financial statements of the insurer or financial holding company;
- (e) the name and other particulars of the proposed liquidator in the case of a members' voluntary winding-up; and
- (f) such other information as the Central Bank may require.

(3) The Central Bank shall not provide the approval referred to in subsection (1) unless it is satisfied that the voluntary winding-up will be effected in a manner that would not pose undue risks to policyholders and consumers of the insurer or adversely affect public confidence in the financial system of Trinidad and Tobago.

(4) The Central Bank shall, within forty days of receipt of the documents referred to in subsection (2), communicate to the insurer or financial holding company, its approval or non-approval of the voluntary winding-up of the insurer or financial holding company.

(5) Where the Central Bank has given the insurer or financial holding company approval to voluntarily wind up, the insurer or financial holding company shall hold a meeting to pass the resolution to voluntarily wind up within forty days of the date of approval.

(6) An insurer or financial holding company shall within ten days after it has passed the resolution to

voluntarily wind up give notice of the resolution—

- (a) by broadcast and by publication in the *Gazette* and in two daily newspapers circulated in Trinidad and Tobago;
- (b) to the Registrar of Companies; and
- (c) to its policyholders and other customers, in such form and containing such information as the Central Bank may require.

(7) Section 129(3)(a) and (b) shall apply *mutatis mutandis* to this section.

(8) An insurer or financial holding company that contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine of six hundred thousand dollars and every director who votes for or consents to a resolution authorizing a voluntary wind-up in contravention of this section also commits an offence and is liable, on summary conviction, to a fine of six hundred thousand dollars and to imprisonment for two years.

(9) The provisions of this section shall apply, with such modifications as are necessary on a voluntary winding-up in accordance with the provisions of the Companies Act.

Protection of receiver,
receiver-manager and
liquidator

136. The receiver, receiver-manager, or liquidator shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the exercise of or in connection with the exercise of the powers conferred on him under this Part.

PART IV INTERMEDIARIES

Registration of
intermediaries

137. (1) No person may, in respect of any class and type of insurance business, carry on business as an agency or brokerage unless that person is registered under this Part and no person other than a company may be registered as an agency or brokerage.

(2) No individual may, in respect of any class and type of insurance business, carry on business as a

broker, agent, sales representative or adjuster unless he is registered under this Part.

(3) A company which at the commencement of this Act is registered as an agent or broker under the former Act, shall be deemed to have been registered as an agency or brokerage, as applicable, under this Part.

(4) An individual who at the commencement of this Act is registered as an agent or broker under the former Act, shall be deemed to have been registered as an agent or broker, as applicable under this Part.

(5) An individual which at the commencement of this Act is registered as a salesman or adjuster under the former Act, shall be deemed to have been registered as a sales representative or adjuster under this Part.

(6) Where the Central Bank has reasonable grounds to believe that a person is carrying on any aspect of insurance business without being registered under this Act, the provisions of section 20(6) shall apply.

(7) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of three hundred and fifty thousand dollars and every director and officer of such company is liable on summary conviction to a fine of one hundred and fifty thousand dollars and to imprisonment for five years.

(8) An individual who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars and to imprisonment for ten years.

138. (1) An application for registration under this Part shall be made to the Central Bank, in accordance with the form specified by the Central Bank and shall be accompanied by evidence of payment of the application fee prescribed in Schedule 2. Application for registration

(2) On receipt of an application, the Central Bank may request the applicant to furnish such additional information as the Central Bank may consider necessary.

(3) Where a company wishes to be registered as an agency of more than one insurer in accordance with

section 156 (3) a separate application shall be made in respect of each insurer.

Restrictions on
registration

139. (1) An individual shall not be registered as a sales representative in respect of any particular class and type of insurance business where the insurer, agency or brokerage by which he is employed or contracted at the time of his application for registration as a sales representative—

(a) is not registered under this Act; or

(b) is carrying on the particular class and type of insurance business in contravention of this Act.

(2) An individual shall not be registered as a sales representative with more than one brokerage, agency or insurer at any particular time.

(3) A significant or controlling shareholder, director, officer or other employee of a brokerage shall not be registered as a sales representative, an agency or an agent of an insurer.

(4) A significant or controlling shareholder, director, officer or other employee of an insurer shall not be registered as a broker or brokerage or as a sales representative of a brokerage.

(5) An individual shall not be registered as an agent or broker with more than one agency or brokerage as applicable.

(6) A company shall not be registered to carry on the business of an insurance brokerage or the business of an insurance agency under this Part unless it has in its employ at least one broker or agent, as applicable, and such broker or agent shall be an officer of the brokerage or agency, as the case may be.

(7) An agency shall not carry on any business other than the business of an insurance agency except for the distribution and sale of collective investment schemes.

(8) A brokerage shall not carry on any business other than the business of insurance brokerage except for the distribution and sale of collective investment schemes and the administration of self administered plans.

(9) An agency or brokerage who contravenes subsection (7) or (8) commits an offence and is liable on summary conviction to a fine of three hundred and fifty thousand dollars and every director and officer of such company is liable on summary conviction to a fine of one hundred and fifty thousand dollars and to imprisonment for five years.

140.(1) Subject to this Part, the Central Bank may either unconditionally or subject to such conditions as the Central Bank considers necessary, register an applicant as an intermediary in respect of such class and type of insurance business as may be specified in its certificate of registration.

Central Bank to
register person under
this Part

(2) The Central Bank may, subject to sections 137 and 138, register an applicant as an intermediary where the Central Bank is satisfied—

- (a) that the applicant is a fit and proper person in accordance with the criteria set out in Schedule 5;
- (b) that the applicant has complied with all obligations imposed on it by or under this Act and Regulations made thereunder;
- (c) that the applicant is competent to carry on business as an intermediary in the particular class and type of insurance business in which the person applied to be registered;
- (d) in the case of a company applying to carry on business as a brokerage, that it has such stated capital and professional indemnity cover as required pursuant to section 143;
- (e) in the case of a company applying to carry on business as a brokerage, that no agreement relating to the preferential offer of insurance business and which is likely to impair the applicant's impartiality in placing insurance business, such as an agreement for preferential terms of commission or other compensation, has been made between the applicant and any other person carrying on insurance business, except that a brokerage may enter

into an agreement as provided for under section 157;

- (f) in the case of an application to be an agent, broker, sales representative or adjuster, that the applicant has complied with any requirement imposed by the Regulations relating to the passing of any examination and has the relevant experience prescribed by the Regulations.

(3) The Central Bank shall, where it refuses an application for registration under this Part, notify the applicant in writing of its refusal either generally or in respect of a particular class of insurance business, give reasons for its refusal and inform the applicant of his right to appeal under section 151.

Provisional
certificates for sales
representative

141. (1) Where a person does not have the educational qualification necessary to be considered fit and proper for registration as a sales representative, but an insurer has endorsed his application to be a sales representative and he otherwise meets the fit and proper requirements, the Central Bank may issue a provisional certificate permitting the person to perform the functions of a sales representative for a period of not more than one year.

(2) The provisional certificate issued under subsection (1) shall be subject to the following conditions:

- (a) the person holding a provisional certificate shall be supervised by a registered sales representative;
- (b) all documents, including an application form, which are usually signed by a sales representative in relation to the sale of a policy shall be signed by both the person holding a provisional certificate and the supervisory registered sales representative; and
- (c) any other condition which in the opinion of the Central Bank is necessary for the protection of policyholders.

(3) Where a person holding a provisional certificate does not achieve the educational qualification necessary to be registered as a sales representative by the expiry date of the provisional certificate—

(a) the Central Bank shall not renew the provisional certificate or shall not at any subsequent time grant a new provisional certificate to that person; and

(b) the person shall immediately stop performing the functions of a sales representative.

(4) Where a person holding a provisional certificate achieves the necessary educational qualification to be registered as a sales representative, he may apply for such registration under the provisions of this Part at any time before the expiry of the provisional certificate or at any time thereafter provided that the person cannot perform the functions of a sales representative during any period in which he is not registered.

142. (1) An intermediary is personally liable to a Personal liability policyholder on all contracts of insurance—

(a) made by or through him directly or indirectly with any company which is not registered in Trinidad and Tobago or elsewhere to carry on insurance business; or

(b) unlawfully made by or through him directly or indirectly with an insurer or foreign insurance company in the same manner as if the intermediary had been an insurance company.

(2) Where an intermediary places insurance business with a foreign insurance company he shall disclose this information to the consumer and receive the signed authorization of the consumer in a form approved by the Central Bank.

(3) An intermediary which places business with a foreign insurance company shall comply with such reporting requirements as may be specified by the Central Bank.

(4) An intermediary who contravenes subsections (2) or (3) commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars and every director or officer is liable on summary conviction to a fine of eighty thousand dollars and to imprisonment for five years.

Capital and
professional
indemnity cover

143. (1) Each brokerage shall maintain professional indemnity insurance of at least ten million dollars, with a maximum deductible of fifty thousand dollars or ten per cent of stated capital, whichever is greater.

(2) Each brokerage shall maintain at all times minimum stated capital of at least five hundred thousand dollars, which shall be in the form of cash and approved securities.

(3) A brokerage which immediately before the commencement of this Act is registered as a broker but is not in compliance with subsection (2), shall within three years of the commencement of this Act increase its stated capital to not less than the amount prescribed in subsection (2) as follows:

- (a) two hundred thousand dollars by the end of the first year;
- (b) three hundred and fifty thousand dollars at the end of the second year; and
- (c) five hundred thousand dollars at the end of the third year,

following commencement.

(4) Within six months following commencement of this Act, a brokerage that is subject to subsections (2) and (3) shall submit a plan acceptable to the Central Bank for increasing its minimum stated capital to the amounts required under subsections (2) and (3).

(5) If a brokerage fails to submit a plan when required to do so or fails to implement an accepted plan, the Central Bank may impose any conditions on the registration of the brokerage that it considers to be necessary or appropriate until such time as the stated capital requirement is met.

(6) A brokerage that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars and in the case of a continuing offence, to a fine of fifteen thousand dollars per day for each day the offence continues and every director or officer is liable to a fine of eighty thousand dollars and imprisonment for five years and in the case of a continuing offence to a fine of eight thousand dollars for each day the offence continues.

144. (1) The Central Bank shall issue a certificate of registration to every person registered under this Part. Certificate of registration

(2) A certificate of registration shall—

- (a) be valid for such period as is stated in the certificate, not to exceed one year from the date of issue for a certificate issued to an agency, agent, broker, brokerage or adjuster and not to exceed three years from the date of issue for a certificate issued to a sales representative;
- (b) be renewable for the periods stated in paragraph (a);
- (c) state the types of insurance business and each class in respect of which the person is registered;
- (d) where a company is registered as an agency, specify the insurer in respect of which the company is so registered;
- (e) where an individual is registered as a sales representative, specify the insurer, agency or brokerage, as applicable, in respect of which the person is so registered; and
- (f) where an individual is registered as an agent or broker, specify the agency or brokerage as applicable, in respect of which the individual is registered.

(3) The Central Bank shall issue a schedule to every certificate of registration of an agency or brokerage, which shall list the names of the agents or brokers registered to such agency or brokerage, as applicable.

(4) The certificate of registration shall be prominently displayed at the principal place of business of the agency or brokerage and a copy thereof shall be similarly displayed at each of its offices in Trinidad and Tobago.

(5) A certificate of registration shall be *prima facie* evidence that the person named therein has been registered in the capacity stated therein.

(6) A company which without reasonable excuse fails to comply with the provisions of subsection (4) commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars.

Continuous
registration
requirement

145. Where the Central Bank has issued a certificate of registration pursuant to section 144, the intermediary shall continuously meet all registration requirements and comply with all terms and conditions of its registration.

Continuous education
requirement

146. A certificate of registration shall not be renewed if the sales representative, agent, broker or adjuster to whom it is issued has not complied with continuing education requirements as required by the Central Bank.

Certificate to be
produced on request

147. Every person registered under this Part shall produce his certificate of registration when requested to do so by—

- (a) any person authorized in writing by the Central Bank;
- (b) the insurer or a person in respect of which he is registered to carry on business as a sales representative; and
- (c) an actual or a prospective customer.

Revocation of
registration

148. (1) The Central Bank may revoke the registration of a person registered under this Part in respect of all or

any of the classes and types of insurance business the person is registered to carry on where—

- (a) any of the criteria prescribed in Schedule 5, is not or has not been fulfilled or is unlikely to be or may not have been fulfilled in respect of the person;
- (b) the person has failed to comply with any obligation imposed on it by or under this Act and the Regulations;
- (c) the Central Bank has been provided with false, misleading or inaccurate information by or on behalf of the person or, in connection with an application for registration, by or on behalf of a person who is or is to be a director or officer of the person;
- (d) in the opinion of the Inspector, the interests of policyholders or potential policyholders of the insurer were in any way threatened, whether by the manner in which the person is conducting or proposes to conduct its affairs;
- (e) the person has not carried on business as an intermediary in Trinidad and Tobago, within one year of being registered to carry on such business or has not carried on such business in Trinidad and Tobago for a period of more than six months;
- (f) in the case of a person registered as an agency or a brokerage, a receiver, receiver-manager or liquidator has been appointed;
- (g) the person fails to comply with any requirement, prohibition, compliance direction or any other direction issued by the Central Bank;

- (h) in the case of a person registered as a brokerage, the stated capital or professional indemnity insurance of the broker is less than the amount prescribed in section 143;
- (i) in the case of a person registered as an agency or a brokerage, the company has merged or has been amalgamated with another company and the registration is no longer required;
- (j) the business of the person is no longer the business for which it was registered;
- (k) a final judgment obtained against the person in any court and from which no appeal is pending remains unsatisfied for at least forty days;
- (l) the person has committed, is committing, is about to commit, or is pursuing or is about to pursue a course of conduct that is an unsafe or unsound practice;
- (m) the person has been convicted of fraud; or
- (n) the person requests that registration be revoked.

(2) Before registration is revoked by the Central Bank under subsection (1), the Central Bank shall give to the person written notice of its intention to do so, specifying the grounds upon which the Central Bank proposes to revoke the registration and the date on which such proposed revocation is to take effect, and shall require the person to submit to the Central Bank within a specified period a written statement of any objections to the revocation of the registration.

(3) After serving a notice of intention under subsection (2), to revoke the registration, and after taking into account any objection under subsection (2), the Central Bank shall decide whether to revoke the registration and shall inform the person by notice in writing, of its final decision.

(4) Where the Central Bank decides to revoke the registration under this section, the notice of revocation shall include the date on which the revocation takes effect, a statement of the grounds for the decision and the appeal process under section 151.

149. (1) The Central Bank shall immediately revoke Mandatory revocation the registration of an agent, broker, agency or sales representative where the Central Bank has—

- (a) received notice under section 150(1) that the contract of an agent, broker, agency or sales representative has been terminated; or
- (b) revoked the registration of an insurer, agency or brokerage in respect of which an agent, agency, broker, or sales representative has been registered.

(2) Where the Central Bank has revoked the registration of an agent, agency, broker or sales representative under subsection (1), the Central Bank shall give written notice of the revocation to the agent, agency, broker or sales representative.

150. (1) Where the contract of—

- (a) a sales representative has been terminated Notice of termination of agent, agency, broker or sales representative to be given by the insurer, agency or brokerage in respect of which it or he was registered to carry on such business;
- (b) an agency has been terminated by the insurer; or
- (c) an agent or broker has been terminated by the agency or brokerage in respect of which he has been registered,

the insurer, agency or brokerage which terminates the contract shall give written notice to the Central Bank in the form approved by the Central Bank, within five days of such termination.

(2) Where an agent, agency, broker or a sales representative enters into any new contract with a

relevant registrant, the agent, broker, agency or sales representative shall reapply for registration under section 138.

(3) An agent, broker or sales representative that enters into a new contract with an agency, a brokerage or an insurer, shall not conduct any insurance business unless he has received a certificate of registration in respect of such agency, brokerage or insurer, as the case may be.

(4) An agency, brokerage or insurer shall not conduct any insurance business with an agent, broker or sales representative unless such agent, broker or sales representative has received a certificate of registration in respect of such agency, brokerage or insurer, as the case may be.

(5) An agent, broker or sales representative that contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of eighty thousand dollars and to imprisonment for ten years.

(6) An agency, brokerage or insurer that contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars and every director or officer is liable to a fine of eighty thousand dollars and to imprisonment for five years.

Right of appeal

151. A person who is aggrieved by the decision of the Central Bank to refuse to register him or to revoke his registration as an intermediary under this Part may invoke the appeal process under section 270.

Restriction on payment of compensation for placing or negotiating insurance

152. Where, at the date of placing or negotiating insurance a person is not registered as an agency, a brokerage or a sales representative, no insurer and no officer, employee or agent of the insurer shall pay, agree to pay or allow to be paid to that person compensation or anything of value for placing, negotiating or attempting to place or negotiate insurance or for negotiating the continuance or renewal of insurance other than reinsurance.

153. No registrant, and no officer or employee of a ^{Rebating} registrant shall directly or indirectly—

- (a) make or attempt to make an agreement as to the premium to be paid for a policy other than as specified in the policy; or
- (b) pay, allow, give, offer or agree to pay, allow or give a rebate of the whole or part of the premiums stipulated by the policy or any other consideration or thing of value intended to be in the nature of a rebate of premium, to any person who is a policyholder or any person applying for insurance in respect of any class of business.

154. (1) Nothing in sections 152 and 153 shall affect ^{Exemption for payment of dividend to salaried employee} any payment by way of dividend, bonus, profit or savings, which is provided for by the policy.

(2) Nothing shall be construed so as to prevent a registrant from offering a policy at special rates to a *bona fide* salaried employee or the spouse or a child of such employee, in respect of insurance issued for any class of business or so as to require such employee to be registered under this Part.

155. (1) Every insurer shall make a return to the ^{Company to make return to the Central Bank} Central Bank within sixty days after the end of the financial year in such form and at such other times as the Central Bank requires, showing all persons—

- (a) registered as its agencies and sales representatives in Trinidad and Tobago; and
- (b) to whom it has, within such period as may be specified in the form, paid or agreed to pay or allowed to be paid directly or indirectly, compensation for placing or negotiating any class of insurance business or negotiating the continuance or renewal of such insurance or for attempting to do so.

(2) Every agency or brokerage shall make a return to the Central Bank within sixty days after the end of the financial year in such form and at such other

times as the Central Bank requires, showing all persons—

- (a) registered as its agents, brokers or sales representatives in Trinidad and Tobago as the case may be; and
- (b) to whom it has, within such period as may be specified in the form, paid or agreed to pay or allowed to be paid directly or indirectly, compensation for placing or negotiating any class of insurance business or negotiating the continuance or renewal of such insurance or for attempting to do so.

Authority of agency

156. (1) Subject to subsection (3), no agency shall—

- (a) be an agency for more than one insurer;
- (b) act or purport to act on behalf of more than one insurer;
- (c) represent himself to the public by advertisement or otherwise as the agency of more than one insurer.

(2) Notwithstanding subsection (1), where an agency is unable to negotiate insurance on behalf of an applicant for insurance with the insurer in respect of which he is registered to carry on business, the agency may procure the insurance from another insurer if that insurer obtains in each case the consent in writing of the insurer in respect of which the agency is registered, and the agency receives the prior approval of the Central Bank under subsection (3).

(3) Where the Central Bank has received an application from an agency to act on behalf of more than one insurer together with a copy of the consent mentioned in subsection (2), the Central Bank may approve the application—

- (a) in respect of a different class within any one type of insurance business; or
- (b) in respect of a different type of insurance business.

(4) The Central Bank may refuse to grant or may revoke an approval granted under subsection (3) where it is satisfied that the granting or continuance of such approval is not in the public interest.

(5) An agency that contravenes subsection (1) or (3) commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and every director or officer is liable to a fine of one hundred and fifty thousand dollars and to imprisonment for five years.

157. (1) In the case of a brokerage that has entered into an agreement under which the brokerage can commit an insurer to provide coverage to a consumer in accordance with such criteria as may be established by the insurer, the brokerage shall disclose such arrangement to the consumer in writing in such manner as may be specified by the Central Bank.

Disclosure of preferential arrangements by brokerage

(2) A brokerage that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars and every director or officer is liable to a fine of eighty thousand dollars and to imprisonment for five years.

158. (1) An agent, agency, broker, brokerage or a sales representative shall not—

Offence to procure payment of premium by fraudulent representation

- (a) knowingly procure by fraudulent representations payment or the obligation for payment of any premium on an insurance policy;
- (b) cause the policyholder to discontinue a policy without the policyholder being satisfied on reasonable grounds that the discontinuance of that policy is to the benefit of an insured; or
- (c) cause the policyholder to replace a long term insurance policy without first obtaining the customer's signature on the disclosure form as provided for in Schedule 7.

(2) An agent, broker, or sales representative who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars and to imprisonment for ten years.

(3) An agency or brokerage who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and every director or officer is liable to a fine of eighty thousand dollars and to imprisonment for five years.

Receipt of premium

159.(1) Premiums or other payments due that are received by an agency, brokerage or a sales representative on behalf of an insurer shall be deemed to be received by the insurer notwithstanding any conditions or stipulations to the contrary.

(2) Upon receipt of any premium or other payment due from a consumer, the agency, brokerage or sales representative shall issue to the consumer a receipt, which shall be considered to be a receipt of the insurer.

(3) If a premium is paid to an agency, brokerage, or sales representative then the insurer shall not avoid liability under the contract of insurance.

Consumer trust
account

160.(1) An agency registered to carry on general insurance business or a brokerage shall establish and maintain a consumer trust account for the receipt and payment of consumer funds.

(2) An agency registered to carry on general insurance business or a brokerage shall deposit monies received from a consumer for the account of an insurer or from an insurer for the account of a consumer in the consumer trust account.

(3) An agency or a brokerage transacting general insurance business shall be permitted to deduct from the consumer trust account any commission and other deduction to which it may by agreement be entitled.

(4) A brokerage transacting long-term insurance business shall not be permitted to deduct from the consumer trust account any commission and other deductions.

(5) Subject to subsection (3), an agency registered to carry on general insurance business or brokerage shall not commingle the monies to be deposited in the consumer trust account with any other monies of the agency or the brokerage.

(6) Each agency registered to carry on general insurance business and brokerage shall report to the Central Bank on such consumer trust account in accordance with the timing, form and content of such reports as the Central Bank may specify.

(7) An agency or brokerage that contravenes subsection (1), (2), (4) or (5) commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and every director or officer is liable to a fine of one hundred and fifty thousand dollars and to imprisonment for five years.

161. (1) An agency, brokerage or sales representative that receives monies from a consumer for the account of an insurer registered to carry on general insurance business or the accident and sickness class of business shall pay over such monies to the insurer within ten days after the end of the month in which the monies were received. Payment of premium to insurer

(2) An agency, brokerage or sales representative of an insurer that receives monies from a consumer for the account of an insurer registered to carry on long-term insurance business shall pay over such monies to the insurer within three days from the date on which it received such monies.

(3) Where an insurer at the request of a brokerage provides temporary cover in respect of general insurance on credit in accordance with section 117(1)(c)(i), the brokerage is liable to the insurer for the premium due in respect of such cover and such premium may be sued for and recovered from the brokerage as a civil debt.

(4) An agency, brokerage or sales representative that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and every director or officer is liable to a fine of one hundred and fifty thousand dollars and to imprisonment for five years.

162. (1) An agency, brokerage or sales representative that receives a cheque in the name of a consumer from an insurer shall deliver or make reasonable efforts to deliver the cheque to the consumer within three days from the date on which the cheque was received. Payment to consumer

(2) Notwithstanding subsection (1), where an agency or brokerage receives a cheque in the name of a

consumer from an insurer in respect of an accident and sickness claim, the agency or brokerage shall deliver or make reasonable efforts to deliver the cheque to the consumer within ten days from the date on which the cheque was received.

(3) An agency or brokerage that receives a cheque in its name from an insurer for the account of a consumer shall deposit such cheque in its consumer account within three days on which it was received.

(4) An agency or brokerage that makes a deposit in accordance with subsection (3) shall pay over or make reasonable efforts to pay over the same to the consumer within seven days from the date on which such deposit was made.

Financial statement of intermediary

163. (1) Every agency and brokerage shall submit to the Inspector within sixty days after the end of its financial year, and at such other times as may be required by the Inspector, financial statements prepared in accordance with financial reporting standards and duly audited in accordance with International Standards on Auditing.

(2) Every financial statement submitted by an agency or brokerage shall be signed by a director and an agent or broker, as the case may be.

(3) The provisions of section 173 shall apply *mutatis mutandis* to this section.

Monthly accounts

164. Every brokerage shall keep, in relation to insurance placed with it relating to each class or classes of insurance business for which it is registered, monthly accounts showing all receipts and expenses relating to such insurance business and such accounts shall be completed not later than fifteen days after the end of the month in respect of which they are prepared.

Monthly records of agencies

165. Every agency shall keep, with respect to policies issued or renewed by them, such monthly records as will enable the amounts due to them by the insurer or due from them to the insurer to be determined, and such records shall be completed not later than fifteen days

after the end of the month in respect of which they are prepared.

166. The auditor of an agency or brokerage shall include in its opinion to the financial statements whether or not the agency or brokerage has satisfied the requirements of sections 160, 161 and 162.

Audit of accounts of agencies and brokerage

167. (1) For the purposes of this section “foreign adjuster” means a person who is registered in another jurisdiction to carry on the business of an adjuster and is permitted under this section to act as an adjuster during periods of catastrophe.

Persons may act as adjusters during a catastrophe

(2) In the event of a catastrophe an insurer, brokerage or adjuster may retain the services of a foreign adjuster and notwithstanding section 137 (2), such person may carry on the business of an adjuster in accordance with this Part.

(3) An insurer, brokerage or adjuster which retains the services of a foreign adjuster under subsection (2) shall submit a certified copy of that person’s certificate of registration in another jurisdiction to the Inspector within five days of retaining such person.

(4) Upon receipt of a certificate of registration under subsection (3), the Inspector may—

- (a) prohibit the person from further acting as an adjuster; or
- (b) allow the person to continue acting as an adjuster upon such terms and conditions as may be appropriate.

(5) A person who continues to act as an adjuster when prohibited by the Inspector or acts in contravention of terms and conditions set by the Inspector under subsection (4) commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and to imprisonment for ten years.

(6) The Inspector may notify insurers, brokerages or adjusters of the date on which the catastrophe shall

be deemed to be terminated for purposes of this section and any person who continues to act as an adjuster after such date commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and to imprisonment for ten years.

Offences for
intermediaries

168. (1) A person who contravenes any provision of this Part commits an offence and the offence shall be deemed to be continued so long as the default continues.

(2) All offences against this Part for which no other penalty is expressly provided are punishable—

(a) in the case of an agency or brokerage, by a fine not exceeding twenty thousand dollars and to an additional fine of two thousand dollars for each day the offence continues; and

(b) in the case of agent, broker, sales representative or adjuster, by a fine not exceeding ten thousand dollars and to an additional fine of one thousand dollars for each day the offence continues.

PART V

FINANCIAL STATEMENTS AND RETURNS

Duty of company to
keep books, vouchers,
etc.

169. (1) Every insurer and financial holding company shall keep at its head office, or in the case of a foreign insurer at the office of its principal representative in Trinidad and Tobago, such books, vouchers, records, receipts, schedules and other documents as may be necessary to enable it to prepare the financial statements and returns required under this Act.

(2) Every insurer and financial holding company shall cause its books, vouchers, records, receipts, schedules and other documents to be readily available for examination and shall assist as far as possible in facilitating the examination.

Valuation of assets

170. (1) The assets of each insurer and financial holding company shall be valued in accordance with

financial reporting standards and such values shall be used for the financial statements, reports, and returns required under this Act or the Regulations.

(2) Where the financial reporting standards do not provide a method for valuing certain assets, the board of directors of an insurer or financial holding company shall approve a methodology to value such assets.

(3) The fair value of property shall be determined by the appraisal of a qualified valuer at the time of acquisition and thereafter on a tri-annual basis.

(4) Notwithstanding subsection (3), an insurer or financial holding company shall cause annual appraisals of its property to be conducted where there are significant and volatile market fluctuations in value.

(5) The Inspector may require new appraisals to be conducted by a qualified valuer from a list of qualified valuers provided by the Inspector, at the insurer's or financial holding company's expense, whenever he considers it advisable.

171.(1) Every local insurer and financial holding company shall submit to the Inspector within sixty days after the end of its financial year and at such other times as may be required by the Inspector, financial statements of all its operations both domestic and foreign, prepared in accordance with financial reporting standards and duly audited in accordance with International Standards on Auditing, on an individual basis and on a consolidated basis. Financial statements

(2) The Inspector may require for regulatory purposes that a local insurer or financial holding company exclude a subsidiary, or other company in which it has a significant shareholding, from the consolidated financial statements required under subsection (1).

(3) Every foreign insurer shall—

(a) within sixty days after the end of its financial year, submit to the Inspector, audited accounts of its operations in Trinidad and Tobago signed by two directors of the foreign insurer; and

(b) at the same time of submission of financial statements to the supervisory authority or other public authority in the country in which the head office of the foreign insurer is incorporated, submit to the Inspector financial statements as required under the laws of that country.

(4) A local insurer and financial holding company shall submit audited financial statements on the request of the Inspector in respect of any—

(a) subsidiary of the insurer;

(b) financial holding company or company in which the insurer or financial holding company is a significant shareholder; or

(c) member of the financial group which the financial holding company controls.

(5) Every financial statement submitted by a local insurer and financial holding company shall be signed by two directors of the relevant company.

(6) If, in the opinion of the Inspector, the information contained in the financial statements required under this section, indicates the likelihood of insolvency of any company under subsection (4), the Inspector may, after consultation with the local insurer or the financial holding company require the insurer or financial holding company to take such measures as the Inspector may consider necessary to prevent the financial condition of the company under subsection (4)

from affecting the insurer or financial holding company and, in particular, may require that the—

- (a) the company referred to in subsection (4)—
 - (i) increase its stated capital; or
 - (ii) transfer or otherwise dispose of its business or part of its business; or
- (b) the local insurer or financial holding company—
 - (i) cease to make any advances or incur any credit exposures to the company; or
 - (ii) make special provision for any potential losses which in the opinion of the Inspector, the company is likely to incur where such company has credit exposures with the local insurer.

(7) A person who fails to comply with subsection (6) commits an offence and is liable on summary conviction to a fine of five million dollars and, in the case of a continuing offence, to a fine of five hundred thousand dollars per day for each day that the offence continues.

172. (1) Every insurer and financial holding company ^{Returns} shall submit to the Inspector within sixty days after the end of its financial year and at such other times as may be required by the Inspector, and in such form as the Inspector may from time to time specify, audited returns prepared in accordance with the Act and financial reporting standards on an individual and a consolidated basis, signed by the chief financial officer and one director of the company containing—

- (a) statements of its assets and liabilities;
- (b) statements of its earnings and expenses;
- (c) the reports of the auditor as required by section 174; and
- (d) any other information that the Inspector may require.

(2) Where an insurer is carrying on long-term insurance business, every balance sheet which it is required to prepare under subsection (1) shall bear a certificate signed by its actuary in accordance with the Regulations.

(3) Every insurer and financial holding company shall submit to the Inspector quarterly returns in a form as specified by the Inspector within twenty days after the end of each quarter.

(4) Every insurer and financial holding company shall submit to the Inspector a quarterly return showing all credit exposures amounting to ten per cent or more of the capital base of the insurer or financial holding company within twenty days after the end of each quarter.

(5) The Inspector may apply additional reporting requirements under this section to an insurer or a financial holding company, including—

- (a) subsidiaries of the insurer or financial holding company and companies in which the insurer or financial holding company is a significant shareholder;
- (b) members of a financial group which the insurer controls; and
- (c) minority holdings of the insurer or financial holding company.

(6) No statement or return shall in any case be required in respect of the affairs of any particular policyholder of an insurer.

(7) Every insurer and financial holding company shall submit to the Inspector within twenty days at the end of every quarter a list of—

- (a) its shareholders including beneficial and nominee shareholders who hold five per cent or more of its stated capital; and

(b) any agreement with respect to the voting of shares of the insurer or financial holding company.

(8) Whenever a person becomes the holder of five per cent or more of the stated capital of an insurer or financial holding company, the insurer or financial holding company shall, within twenty days of the person becoming such a holder, notify the Inspector.

173. Notwithstanding sections 171(1), 172(1), 179(1) and 186(3) an insurer and financial holding company shall be permitted to submit its audited financial statements and returns and to publish its audited financial statements within four months after the end of its financial year, for the first year following the commencement of this Act. Transition period for submitting financial statements and returns

174. (1) The auditor of an insurer or financial holding company shall— Audits of returns

(a) audit the returns of the insurer or financial holding company filed annually pursuant to section 172(1); and

(b) report annually in writing to the Inspector on the adequacy of the accounting procedures, records and such internal control systems of the insurer or financial holding company as may be relevant to its financial reporting function;

(2) The auditor of an insurer shall report annually in writing to the Inspector on whether the—

(a) insurance liabilities relating to unexpired general insurance policies have been calculated in accordance with the provisions of section 240;

(b) provisions regarding the settlement of outstanding claims are adequate, having regard to the latest estimated cost of settlement of such claims; and

(c) apportionments made under section 178 were made in an equitable manner.

(3) The provisions of subsection (2)(a) and (b) shall apply only to an insurer carrying on general insurance business.

(4) The Inspector may, by notice in writing to an insurer or financial holding company require its auditor to comply with such other reporting requirements as the Inspector may stipulate in addition to International Standards on Auditing with respect to the report and annual returns referred to in subsection (1).

(5) The Inspector—

(a) shall, in relation to the audit of an insurer or financial holding company have access to the working papers of the auditor for a period not exceeding four years preceding the date of submission of the audit report; and

(b) may require the auditor of an insurer or financial holding company to provide him with any further information that he considers relevant.

(6) Every insurer and financial holding company shall pay the expenses incurred by its auditor in the performance of the duties and obligations set out in this Part.

(7) Where the auditors, for the purpose of meeting their responsibilities under this section—

(a) are unable to obtain all the information they require; or

(b) are not completely satisfied with the information contained in the returns on which they are reporting,

they shall in their report specify the matters in respect of which they were unable to obtain information or were not completely satisfied with such information.

(8) The auditor of an insurer or financial holding company shall monitor and evaluate compliance with the Proceeds of Crime Act and the Anti-Terrorism Act and any regulations made thereunder, any guideline on anti-money laundering and combating terrorist financing issued by the Central Bank and submit an annual report including recommendations to the Central Bank within four months of the end of its financial year.

175. (1) Where it appears to the Inspector that any financial statement or return submitted to the Central Bank by an insurer or financial holding company in accordance with sections 171 and 172—

- (a) is in any particular unsatisfactory, incomplete, incorrect or misleading; or
- (b) does not comply with the requirements of this Act,

he may, by notice in writing, require such explanations as he considers necessary to be made by or on behalf of the insurer or financial holding company within such time as is specified in the notice.

(2) After considering any explanations made by or on behalf of the insurer or financial holding company or where no explanations were made within the time specified in the notice or where the Inspector does not serve a notice under subsection (1), the Inspector may reject the financial statement or return.

(3) Where the Inspector rejects any financial statement or return under subsection (2), he may give directions as he thinks necessary for varying the financial statements or returns within such time as he may specify or he may proceed to issue compliance directions in accordance with section 182.

176. An insurer or financial holding company which fails to submit any financial statement or return to the Inspector in accordance with sections 175 and 176 or which submits such a document that is in any particular unsatisfactory, incomplete, incorrect or misleading or that does not comply with the requirements of this Act commits an offence.

No commingling of funds

177. An insurer shall not commingle the funds of its insurance business with the funds of any other business.

Apportionment of receipts and payments between various classes of insurance business

178. (1) Where an insurer is carrying on more than one class of insurance business and an amount received or paid by the insurer is not received or paid wholly in respect of any one class of insurance business the insurer shall, for the purposes of section 174, apportion the amount in an equitable manner between the several classes of insurance business to which the receipt or payment may be applicable.

(2) Where there is an apportionment under this section the auditors shall state in their report whether they are satisfied that the apportionment was made in an equitable manner.

(3) Whenever the Inspector requires the reporting of financial results by classes within a type of insurance business and an amount received or paid by the insurer is not received or paid wholly in respect of any one class or type of insurance business, an insurer shall, for the purposes of that report, apportion the amount received, paid, or apportioned with respect to the relevant class or type of insurance business in an equitable manner between the several classes within that type of insurance business.

Publication of financial statements

179. (1) Every insurer and financial holding company shall within sixty days after the end of its financial year publish in at least two daily newspapers circulated in Trinidad and Tobago and exhibit in a conspicuous place in each of its offices, the audited financial statements referred to in section 171(1) or, in the case of a foreign insurer, the audited financial statements referred to in section 171(3).

(2) An insurer shall—

(a) in addition to the audited financial statements referred to in subsection (1),

keep at each of its offices, such other information for the protection of policyholders and other consumers as the Central Bank may specify from time to time; and

(b) during normal business hours make copies of the information referred to in paragraph (a) available for inspection by its policyholders and other consumers upon request.

(3) The Central Bank may consult with insurers to create abridged financial statements for the purpose of publication.

(4) Where the Central Bank and insurers have agreed to abridged financial statements under subsection (3), the Central Bank shall publish a notice in the *Gazette* and in at least two daily newspapers circulated in Trinidad and Tobago.

(5) Following a publication under subsection (4), every insurer and financial holding company may publish abridged financial statements instead of its financial statements in accordance with the requirement under subsection (1).

180. (1) The Inspector may appoint an independent actuary to review the work of an insurer's actuary or to make an independent investigation into the insurer's financial condition, if the Inspector is of the opinion that the appointment is necessary. Power to appoint independent actuaries

(2) The independent actuary shall submit a report to the Inspector and the insurer on the results of such review or investigation.

(3) The costs incurred in carrying out the review or investigation under subsection (1) are payable by the insurer.

181. (1) The Inspector may prohibit an insurer from recognising in its financial statements or returns any asset or any reduction of liabilities, or require that the amounts thereof be varied, in respect of reinsurance, any arrangement having the effect of reinsurance, or Power to prohibit recognition of reinsurance

any other arrangement with another insurance company if, in the opinion of the Inspector—

- (a) there is a significant possibility that the insurer's counterparty or counterparties under such reinsurance or other arrangement may default on their obligations thereunder;
- (b) the reinsurance or other arrangement does not result in a reduction of risk for the insurer commensurate with the amount of the asset or reduction in liability that would result from its recognition;
- (c) the reinsurance or other arrangement is not adequate in terms of criteria set out in Guidelines; or
- (d) it would significantly increase the risk that the insurer is or is likely to be unable to meet its liabilities.

(2) An insurer shall not allow its reinsurance arrangements to lapse.

(3) Evidence of the renewal of reinsurance shall be provided to the Inspector within twenty days of the expiration of the previous reinsurance arrangement.

PART VI

COMPLIANCE DIRECTIONS AND INJUNCTIVE RELIEF

Compliance directions **182.** (1) Notwithstanding any other action or remedy available under this Act, if the Inspector reasonably believes that any person including the principal representative of a foreign insurer—

- (a) has committed, is committing, or is about to commit an act, or is pursuing or is about to pursue any course of conduct, that is an unsafe or unsound practice;
- (b) has committed, is committing, or is about to commit an act, or is pursuing or is about to pursue a course of conduct, that may directly or indirectly be prejudicial to the interest of policyholders;

- (c) has violated, is violating or is about to violate any of the provisions of any law;
- (d) has breached any requirement or failed to comply with any measure imposed by the Central Bank or Inspector in accordance with this Act or the Regulations;
- (e) is unlikely to meet the liabilities due to policyholders of the insurer; or
- (f) is likely to continue in business that would result in a loss to the policyholders of the insurer,

the Inspector may direct the person to—

- (i) cease or refrain from committing the act, pursuing the course of conduct, or committing a violation; or
- (ii) perform such acts which in the opinion of the Inspector, after consultation with the Governor, are necessary to remedy the situation or minimize the prejudice.

(2) For the purposes of this section, the term “unsafe or unsound practice” shall include, without limitation, any action or omission that is contrary to generally accepted standards of prudent operation and conduct, the possible consequences of which, if continued, would be a risk of loss or damage to the registrant, policyholders or consumers.

(3) Subject to subsection (6), before a direction is issued under subsection (1), the person to whom the direction is to be issued shall be served with a notice specifying—

- (a) the facts of the matter;
- (b) the directions that are intended to be issued; and
- (c) the time and place at which the person served with the notice may make representations to the Inspector.

(4) If the person served with the notice referred to in subsection (3) fails to make representation at the time and place stipulated by the said notice, the Inspector may proceed to issue directions.

(5) Where, after considering the representations made in response to the notice referred to in subsection (3), the Inspector determines that the matters specified in the notice are established, the Inspector may proceed to issue directions to the person served with the notice.

(6) Notwithstanding subsection (3), if after consultation with the Governor the Inspector is of the opinion that the length of time required for representations to be made might be prejudicial to the interests of policyholders or to the stability of the financial system, the Inspector may issue an emergency direction with respect to the matters referred to in subsection (1), exceeding twenty days.

(7) A person shall be entitled to make representations during the period specified by the Inspector under subsection (6).

(8) A direction made under subsection (6), shall be complied with during the period specified and shall continue to have effect after the expiration of such period if no representations are made to the Inspector within that period or, if representations have been made, the Inspector notifies the person to whom the direction was issued that he is not satisfied that there are sufficient grounds for revoking the direction.

(9) If a person fails to comply with a direction issued or made under subsection (4), (5) or (6) respectively, the Inspector may, in addition to any other action that may be taken under this Act, apply to the High Court for an order requiring that person to comply with the direction and any other order the High Court deems fit.

(10) A person who fails to comply with directions under subsection (4), (5) or (6) commits an offence and is liable, on summary conviction in the case of—

- (a) an insurer or financial holding company, holding company, controlling share holder, or significant shareholder to a fine of five million dollars and, in the case of a continuing offence, to a fine of five hundred thousand dollars for each day that the offence continues;
- (b) a director or officer, other employee or agent, or principal representative of an insurer or financial holding company, to a fine of five million dollars and to imprisonment for five years;
- (c) an agency or brokerage, to a fine of one hundred and fifty thousand dollars and in the case of a continuing offence to a fine of fifteen thousand dollars for each day the offence continues;
- (d) a director, officer or other employee of an agency or brokerage, to a fine of eighty thousand dollars and in the case of a continuing offence to a fine of fifteen thousand dollars for each day the offence continues; and
- (e) an agent, broker, sales representative, adjuster or any other person, to a fine of eighty thousand dollars and in the case of a continuing offence to a fine of eight thousand dollars for each day the offence continues.

183. Where the Central Bank reasonably believes that Injunctive relief a person is in violation of this Act, or is engaged in any activity or course of conduct described under section 182(1), the Central Bank may in addition to, or in lieu of other actions authorized under this Act—

- (a) seek a restraining order or other injunctive or equitable relief, to prohibit the continued

violation or prevent the activity or course of conduct in question or any other action; or
 (b) pursue any other remedy which may be provided by law.

PART VII

LONG-TERM INSURANCE BUSINESS

A. *Actuarial Investigations*

Application of this Part

184. (1) This Part shall apply to all insurers in respect of their Trinidad and Tobago business, in any class of long-term insurance.

(2) This section and sections 185, 186, 189 and 190 shall also apply to local insurers in respect of their business outside Trinidad and Tobago, in any class of long-term insurance.

Actuarial reports

185. (1) Every insurer carrying on long-term insurance business shall each year cause its actuary to make a valuation of its liabilities in respect of every class of long-term insurance business in accordance with the Regulations and shall submit the actuarial report to the Inspector within sixty days after the end of its financial year.

(2) The actuarial report required under subsection (1) shall include a description of any matters for which the actuary was unable to obtain information or for which the actuary was not satisfied with the information provided.

(3) Where an insurer causes its actuary to make an investigation and the results of the investigation are made public, the insurer shall cause a copy of the actuarial report to be submitted to the Inspector within five days of making the results of such report public.

Financial condition reports

186. (1) For the purpose of this section, “financial condition report” means a report on the prospective ability of an insurer as at a particular date to meet its future obligations to policyholders and to those to whom it owes benefits.

(2) The appointed actuary shall carry out an annual investigation of the insurer regarding its current and expected future conditions so as to identify plausible threats and actions which will mitigate those threats.

(3) The appointed actuary shall submit a financial condition report in accordance with the Regulations, to the Inspector within sixty days after the end of each financial year, from the end of the second year following the commencement of this Act.

(4) In addition to the annual requirement in subsection (3), where the appointed actuary of an insurer discovers any matters or conditions that, in the opinion of the actuary, could have material adverse effects on the financial condition of the insurer and may require corrective action, the actuary shall immediately report such findings in writing to—

- (a) the Inspector;
- (b) the chief executive officer and the board of directors of the local insurer; or
- (c) to the principal representative in the case of a foreign insurer.

187. (1) A foreign insurer shall not pay, apply, allocate or transfer any part of the surplus assets of its long-term insurance statutory fund except with the approval of the Inspector and on the certification of its appointed actuary. Actuary to certify dealings with assets of statutory fund

(2) A foreign insurer who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five million dollars and each director is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

188. (1) Where an insurer complies with section 107 and holds a regulatory capital requirement ratio as defined in the Regulations of at least one hundred and fifty per cent, the insurer may, with the approval of its appointed actuary, and subject to subsection (2), pay, Distribution of surplus

apply, allocate or transfer the surplus or a part of it in a manner consistent with the provisions of the articles of incorporation, by-laws or other constituent document of the insurer.

(2) The cumulative sum of the amount paid or allocated to or for the benefit of the shareholders of the insurer and the amount transferred to another statutory fund under subsection (1) in respect of that part of the surplus which is derived from participating policies registered in Trinidad and Tobago shall not exceed one-quarter of the cumulative amount paid or allocated to or for the benefit of the holders of these policies.

(3) For the purpose of this section, only the cumulative sum in subsection (2) can be included in the regulatory capital ratio referred to in subsection (1).

(4) An insurer who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five million dollars and each director is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

B. Issue of Policies

Pricing of policy

189.(1) An insurer shall not issue any policy unless the pricing of policy has been approved by an actuary as being suitable for the class of policy to which the policy belongs.

(2) The Inspector may at any time require the insurer to obtain and to furnish the Inspector with a report by the appointed actuary as to the appropriateness of the pricing of any class of policy.

(3) Where a report is required under subsection (2), the insurer shall not issue any policy of that class unless it has obtained from the appointed actuary approval as to the pricing of policy.

(4) When approving the pricing under subsection (1) in respect of any class of policy, an actuary shall have regard to —

- (a) the maximum rate of commission proposed to be paid to any person; and
- (b) the maximum rate of reduction of premium to be allowed to any person,

in respect of that class of policy.

190. Where the pricing of a policy is approved by an actuary in respect of any class of policy, the insurer shall not, except with the approval of an actuary, pay or allow in respect of any policy of that class a commission or a reduction of premium at a rate greater than—

- (a) the maximum rate of commission or reduction of premium to which the actuary had regard to when approving the rate of premium; or
- (b) the maximum rate of commission or reduction of premium payable by the insurer, immediately prior to the commencement of this Act, in respect of policies of that class, if any, issued at the rate of premium so approved,

whichever is the greater.

191. An employer shall not enter into, and an insurer shall not issue, an annuity contract for the benefit of an employee unless the employer has first obtained the written consent of the employee.

192. (1) Every insurer registered to carry on long-term insurance business shall not issue, accept or amend any form of proposal, policy, endorsement or application unless the standard form has been approved by the Inspector.

(2) Where an insurer has submitted a request for approval under this section, the insurer shall also submit—

- (a) details of the pricing under section 189(1); and

(b) copies of the following forms where applicable—

- (i) the standard form of proposal;
- (ii) the standard form of policy;
- (iii) the standard form of endorsement;
and
- (iv) the form of application.

(3) The Inspector may specify such other information as he thinks necessary for the review of a standard form under this section.

(4) A form of proposal shall be framed so as to require a person making a proposal for a life policy to specify the date of birth of the person whose life is proposed to be insured and the person making the proposal shall supply those particulars to the best of his knowledge and belief.

(5) Where an insurer has submitted a request for approval with all of the required information, a standard form under this section will be deemed to be approved sixty days after the request and all of the required information is received by the Inspector, unless he informs the insurer otherwise.

Insurer may give notice requiring proof of age

193. Where an insurer issues a life policy which provides that proof of age of the life of the insured is a condition precedent to the payment of the sum insured, the insurer shall, unless the age of the life insured has already been admitted by it, issue on or with the policy a printed notice stating that proof of age of the life insured may be required prior to the payment of the sum insured.

Procedure where insurer declines to accept proof of age tendered

194. Where an insurer declines to accept the proof of age tendered in respect of a policy, whether issued before or after the commencement of this Act, the policyholder or his legal personal representative may apply to the High Court for an order directing the insurer to accept the proof tendered.

195. (1) An insurer shall only enter into a contract of insurance with the insured person or a person who has an insurable interest in the insured person.

Policy not to be avoided
by reason only if
misstatement of age of
the life insured or
other incorrect
statement

(2) A policy is not voided by reason only of a misstatement of the age of the life insured.

(3) Where there is proof of the true age of the life insured and such age is greater than the age on which the policy is based, the insurer 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 which have become payable under the policy as issued bears to the amount of the premiums which would have become payable if the policy had been based on the true age.

(4) Where there is proof of the true age of the life insured and such age is less than the age on which the policy is based, the insurer shall either—

(a) 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 which have become payable under the policy as issued bears to the amount of the premiums which would have become payable if the policy had been based on the true age; or

(b) reduce, as from the date of issue of the policy, the premium payable to the amount which would have been payable if the policy had been based on the true age and repay the policyholder the amount of over-payments of premium less any amount paid as the cash value of bonuses in excess of the cash value which would have become payable if the policy had been based on the true age.

(5) A policy issued after the 10th day of December, 1966, shall not be voided by reason only of any incorrect statement, other than a statement as to the age of the life insured, made in any proposal or other document on the faith of which the policy was issued or reinstated by the insurer unless the statement—

- (a) was fraudulently untrue; or
- (b) is material in relation to the risk of the insurer under the policy and was made within the period of three years immediately preceding the date on which the policy is sought to be avoided or the date of the death of the life insured, whichever is the earlier.

Minors may effect policies or take assignments of policies

196. (1) A minor who has attained the age of ten years but has not attained the age of sixteen years may, with the written consent of his parent or of a person standing in *loco parentis* to the minor—

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

(2) A minor who has attained the age of sixteen years—

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

and subject to subsection (3), is as competent in all respects to have and exercise the powers and privileges of a policyholder as he would had he been of full age.

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

- (4) This section does not—
- (a) impose on a minor any liability to which, but for this section, he would not be subject;
 - (b) confer on a minor any power or capacity which, but for this section, he would not have;
 - (c) validate a receipt, a discharge or a surrender of, or security over a policy given by a minor which, but for this section would not be valid; or
 - (d) validate any assignment of a policy which, but for this section, would not be valid.

197. (1) An insurable interest shall be deemed to be Persons who are deemed to have insurable interest had by—

- (a) a grandparent, a parent, or a legal guardian of a child under eighteen years of age or a person in *loco parentis* to such child, in the life of the child;
- (b) a parent in the life of a son or daughter of any age, whether or not connected to the parent by—
 - (i) consanguinity;
 - (ii) affinity;
 - (iii) reason of a cohabitational relationship;
 - (iv) adoption; or
 - (v) reason of being declared a child of the family under the Matrimonial Proceedings and Property Act;
- (c) a brother or sister in the life of each other, whether or not connected to each other by—
 - (i) consanguinity;
 - (ii) affinity;
 - (iii) reason of a cohabitational relationship;
 - (iv) adoption; or

(v) reason of being declared a child of the family under the Matrimonial Proceedings and Property Act;

(d) a son or daughter in the life of a parent;

(e) a husband, in the life of his wife;

(f) a wife, in the life of her husband;

(g) a person, in the life of his or her cohabitant as defined in the Cohabital Relationships Act;

(h) any person, in the life of another upon whom he is wholly or in part dependent for support or education;

(i) a company or other legal person in the life of a director, officer or employee thereof; and

(j) a person who has a pecuniary interest in the duration of the life of another person, in the life of that person.

(2) No insurer shall issue a policy on the life of a person unless that person signs the insurance application form, except for minors.

(3) Nothing in this section shall be construed as limiting or restricting the meaning of insurable interest as understood immediately before the commencement of this Act.

C. Assignments and Mortgages of Policies

Assignment of policies **198.** (1) Subject to section 201, every assignment of a policy shall be by deed or by other instrument, and if by other instrument, such instrument shall be in accordance with the forms set out in Schedule 3.

Schedule 3

(2) An assignment is not binding on the insurer liable under the policy until written notice of the date and purport of the assignment is received by the insurer at its principal office in Trinidad and Tobago.

(3) Every insurer shall register in the register of policies required to be kept by section 283, the date and

purport of every assignment of which it receives notice and the date on which the notice is received.

(4) A copy of an entry made in accordance with subsection (3), and certified by the secretary or any director or authorized person or by the Attorney-at-law for the insurer shall—

(a) as regards the registration and the date of registration of the assignment, be conclusive evidence thereof; and

(b) as regards the date on which the notice was received, be *prima facie* evidence thereof.

(5) Priority of claims under any assignment shall be determined according to the order in which notice is received by the insurer, except that a subsequent assignee does not, by giving notice first, obtain priority over a previous assignment of which he had notice when taking the assignment.

(6) An assignee under a duly registered assignment shall have all the powers and be subject to all the liabilities of the assignor under the policy, and may sue in his name on the policy, but nothing in this section shall be construed so as to admit the assignee to membership of an insurer or to deprive the assignor of his membership in respect of a policy, except as provided in the instruments constituting the insurer or in its articles of incorporation, by-laws or other constituent document.

(7) The receipt of the assignee shall be a discharge to the insurer for all monies paid by the insurer under the policy.

(8) The insurer shall be notified in writing of every trust, right, equity or interest created in respect of a policy.

199.(1) Notwithstanding anything contained in Effects of notice section 202, an insurer shall not be entitled to any protection under that section or rely upon any of the provisions of that section where the insurer—

(a) has not acted in good faith; or

(b) has received notice in writing of any trust, right, equity or interest of any person.

(2) Where an insurer receives notice in writing of any trust, right, equity or interest of any person, the insurer may, if it thinks fit pay to the Central Bank any money payable under the policy, and the receipt of the Central Bank for the money shall be a valid discharge to the insurer for the money so paid.

(3) Money paid to the Central Bank pursuant to subsection (2), shall be paid by the Central Bank to such person or persons as the High Court orders.

Assignment of policy to insurer not to extinguish rights and liabilities

200. (1) The rights and liabilities arising under a policy shall not be deemed, either at law or in equity, to be merged or extinguished by reason only of an assignment of the policy, whether at law or in equity, to the insurer which issued the policy.

(2) Notwithstanding anything to the contrary in sections 198, 199 or 201, but subject to subsection (3), no assignment of an industrial policy shall be valid without the consent of the insurer liable under such policy.

(3) Where the insurer refuses its consent to the assignment of an industrial policy, the policyholder may appeal to the Central Bank.

Policies held by trustees

201. Where an insurer is satisfied that a policy has been issued or transferred to or the ownership of a policy is otherwise vested in persons as trustees and those persons are no longer the trustees for the purposes of the trust the insurer may, if it sees fit, at the request in writing of the persons claiming to be trustees for the time being for the purposes of the trust and on the evidence of a statutory declaration by one of those persons verifying the claim, record the names of those persons as the holders of the policy, and thereupon those persons shall become the holders of the policy.

Memorandum of discharge and deed of release

202. (1) Upon the payment or discharge of any money or other obligation secured by an assignment of a policy, the assignee shall give to the assignor a memorandum of discharge in the form as prescribed in Schedule 3 and

Schedule 3

shall also execute a deed of release in favour of the assignor.

(2) Upon the presentation of the memorandum of discharge to the insurer, the insurer shall register the discharge in its register of policies.

203. (1) Every assignment of a policy made under the former Act and every notice of an assignment or of a trust, right, equity or interest of any person, made or given under the former Act shall, without prejudice to anything contained therein, have effect for all purposes, as if made or given under this Act. Existing assignments and notices to continue to have effect

(2) Every assignment registered in a register of policies under the former Act shall be deemed to have been registered under this Act.

D. Paid-up Policies, Surrender Values and Non-Forfeiture

204. (1) Sections 205 to 209 shall not apply to— Application to class of policy

- (a) an instrument securing the grant of an annuity for a term dependent upon human life, not being a deferred annuity, during the period of deferment; or
- (b) a policy which provides insurance against contingencies none of which may happen, not being a policy which provides for the payment of a sum of money if the life insured by the policy survives a specified period.

(2) The Minister may after consultation with the Central Bank declare by Order, subject to negative resolution of Parliament, that the provisions of this section and of sections 205 to 209 shall apply in respect of any policy or class of policies with such modifications as may be prescribed by the Order and where such a declaration is made the provisions of this section and of sections 205 to 209 shall apply in respect of that policy or class of policies accordingly.

205. (1) A policyholder who desires to discontinue further premium payments on a policy on which not less Paid-up policies

than three years' premiums have been paid in cash shall, where the policy has a cash surrender value, be entitled on application to the insurer to receive in lieu of the cash surrender value a paid-up policy.

(2) Where a paid-up policy is issued pursuant to subsection (1) and the contingency occurs which would have rendered the insurer liable under the original policy, the insurer shall thereupon be liable under the paid-up policy.

Surrender of policies

206. (1) This section applies to all policies whether or not surrender provisions are expressly included in the policies.

(2) The owner of—

(a) a policy in respect of which there is no contractual obligation on the owner to make any payments of premiums after the first year for which the policy is in force; or

(b) a policy, other than a policy referred to in paragraph (a), that has been in force for at least three years,

shall, on application to the insurer, be entitled to surrender the policy and to receive not less than the cash surrender value of the policy less the amount of any debt owing to the insurer under or secured by the policy and any applicable surrender penalties.

Inspector may suspend or vary obligation of insurer to pay surrender value

207. The Inspector may, on an application by an insurer, suspend or vary for such period and subject to such conditions as the Inspector thinks fit, the obligation of the insurer to pay surrender values where in the Inspector's opinion the payment of those surrender values would be prejudicial to the financial stability of the insurer or to the interests of its policyholders.

Non-forfeiture of ordinary policies in certain cases of non-payment of premiums

208. (1) An ordinary policy shall not be forfeited by reason only of non-payment of any premiums where the surrender value of the policy, calculated as at the day immediately preceding that on which the premium falls

due, exceeds the sum of the amount of the debts owing to the insurer under, or secured by, the policy and the amount of the overdue premium.

(2) An insurer may until payment of the overdue premium, charge compound interest on it, on terms not less favourable to the policyholder than such terms, if any, as may be specified in the policy.

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

(4) Notwithstanding the provisions of subsection (1), a policy which has a cash surrender value 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 insurer liable under the policy serves a late-payment notice on the policyholder stating—

- (i) the date of the notice, the due date of the premium and the amount due or payable to the insurer; and
- (ii) that the policy will be forfeited at the expiration of twenty days after the date of the notice if the premium or a sum sufficient to keep the policy in force is not paid to the insurer within that period; and

(b) a period of at least twenty days has elapsed after 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 service of the notice on the policyholder.

(6) Where an insurer accepts a premium on a lapsed policy and that premium is not refunded within sixty days of receipt, the policy is deemed to be reinstated.

Treatment of debts on
issue of paid-up
policies

209. Where in pursuance of any provision of this Part a policyholder is entitled to receive or an insurer is required to issue a paid-up policy and there is any debt owing to the insurer under, or secured by, the policy the insurer may elect—

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

E. Payment of Policy Monies

Interest of life insured
to be protected in
certain cases

210. (1) The property and interest of any person in a policy upon his own life shall not be liable to be applied or made available in payment of his debts by any judgment, order or process of any court.

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

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

(3) The provisions of subsection (2)(b) shall apply only where no named beneficiary has been designated in accordance with section 211.

211.(1) A policyholder may designate his legal personal representative, trustee or beneficiary as the person to receive the proceeds of the insurance policy—

Designation of beneficiaries generally

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

(2) A designation made under subsection (1)—

- (a) shall be in the form and effected in the manner specified in the contract of insurance;
- (b) shall be submitted to the insurer at its principal office in Trinidad and Tobago within the lifetime of the policyholder;
- (c) shall, subject to section 212(2)(b), not affect the right of a policyholder 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 212(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 submitted to the insurer at its principal office in Trinidad and Tobago within the lifetime of the policyholder.

(3) Where the policyholder is the life insured, a designation made in favour of the “heirs”, “next-of-kin” or “estate” of the life insured 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 life insured.

(4) Where a designation is made in favour of a legal personal representative or is deemed under subsection (3) to be so made, that legal personal representative shall receive the proceeds of the insurance policy on behalf of the beneficiaries of the life insured's estate.

(5) An insurer shall, in a contract of insurance, specify the requirements for the making of a valid submission under subsection (2)(b) and (d).

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

Irrevocable
designation of
beneficiaries

212. (1) A policyholder 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 a policyholder designates a beneficiary irrevocably, then so long as the designated beneficiary is alive—

(a) subject to section 203, the policyholder shall not alter or revoke the designation without the beneficiary's consent; and

(b) the policyholder shall not assign, exercise rights under or in respect of, encash any units accruing to, surrender or otherwise deal with, the insurance policy without the beneficiary's consent.

(3) The provisions of section 211(2)(a) and (b) shall apply to a designation made under subsection (1).

(4) For the purposes of sections 212 to 220 "declaration" means an instrument signed by the policyholder and signed and witnessed by a Justice of the Peace, Notary Public or Commissioner of Affidavits

in which the policyholder designates, alters or revokes the designation of his legal personal representative, trustee or a beneficiary.

213. Where under section 212(1), in respect of a life policy, a named beneficiary is the policyholder's spouse or cohabitant then, if during the subsistence of the insurance policy, the named beneficiary ceases to be the policyholder's spouse or cohabitant, otherwise than by death—

- (a) the policyholder 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 submitted to the insurer at its principal office in Trinidad and Tobago within the lifetime of the policyholder.

214. (1) Notwithstanding the designation of a beneficiary irrevocably under section 212(1), a policyholder is entitled, while living, to the dividends or bonuses declared on a contract of insurance, unless the contract otherwise provides.

(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.

215. Where the policyholder is the life insured and where the proceeds of an insurance policy are payable to a beneficiary, such proceeds shall not form part of the policyholder'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 policyholder's creditors.

216. Except in cases where the policyholder expressly provides for the creation of a trust, there shall be no presumption of a trust in a contract of insurance.

Appointment of trustee

217. (1) A policyholder 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) Where an insurer makes a payment to a trustee for a beneficiary, the insurer shall be discharged from further liability to the extent of the payment.

Beneficiary predeceasing life insured

218. Where a beneficiary predeceases the life insured 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 estate of the life insured.

Right to enforce payment of proceeds

219. A beneficiary may, on the death of a life insured, enforce for his own benefit, and a trustee appointed pursuant to section 217 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.

Power of group life insured to sue insurer

220. A life insured under a group policy may, in his own name, enforce a right given to him under the group policy.

Payment of policy monies without production of grant of probate or letters of administration in certain cases

221. (1) Where under a policy, money is payable by an insurer to the legal personal representative of a deceased person the insurer may, without requiring the production of any grant of probate or letters of administration, pay the money together with any bonuses, which have been added to the policy, to a person who satisfies the insurer that he is entitled—

- (a) under the will or on the intestacy of the deceased person, to the property of such person; or

(b) to obtain probate of the will of the deceased person or to take out letters of administration of his estate,

but the insurer shall not in the aggregate pay to such person more than twenty-five thousand dollars and shall retain such percentage of the total sum due under the policy for payment as may be determined by the Board of Inland Revenue for the purposes of such duties as may be due on the estate of the deceased.

(2) Every person to whom money is paid pursuant to this section shall apply the money in administering the estate of the deceased and, if the insurer thinks fit, it may require those persons to give sufficient security by bond or otherwise that the money paid will be so applied.

(3) Where under a policy there is no named beneficiary, the insurer may pay a maximum sum of twenty-five thousand dollars to a funeral home to offset funeral expenses of the life insured without requiring the production of any grant of probate or letters of administration.

222. Where an insurer makes a payment pursuant to section 221, the insurer shall be discharged from all further liability with respect to—

- (a) the money paid to the Board of Inland Revenue; and
- (b) the application of the money paid under any policy issued by it.

223. (1) Where the policyholder, not being the life insured, pre-deceases the life insured and a person satisfies the insurer that he is entitled—

- (a) under the will or on the intestacy of the deceased policyholder, to the benefit of the policy; or

(b) to obtain probate of the will or to take out letters of administration of the estate of the deceased policyholder,

the insurer may, without requiring the production of any grant of probate or of letters of administration, endorse on the policy a declaration that the requirements of paragraphs (a) or (b) have been satisfied and that the person has become the policyholder.

(2) Subsection (1) does not confer on a person who becomes the policyholder any beneficial interest in the policy which he would not otherwise have had.

(3) This section does not apply to—

(a) a policy, the surrender value of which at the date of the death of the deceased policyholder, exceeds ten thousand dollars; or

(b) a policy which is one of two or more policies held by the deceased policyholder and issued by the same insurer if the aggregate of the surrender values of those policies at the date of the death of the deceased policyholder, exceeds ten thousand dollars.

(4) For the purposes of subsection (3), the surrender value of a policy is the amount, including any amount in respect of bonus additions, which would be paid by the insurer issuing the policy upon its surrender.

Insurer may pay
money to the Central
Bank

224. (1) An insurer may pay to the Central Bank any money payable by it in respect of a policy for which, in the opinion of the insurer, no sufficient discharge can otherwise be obtained.

(2) The receipt of the Central Bank for any money paid under subsection (1) shall be a good and valid discharge to the insurer for the money so paid, and the money shall be dealt with according to an order made by the High Court.

(3) The Central Bank shall pay into the Consolidated Fund any monies received under this section and there shall be paid from the Consolidated Fund such sums as are necessary to give effect to this section any order granted under subsection (2).

(4) Upon the payment of monies to any person pursuant to an order made by the High Court under subsection (2), the Central Bank shall be discharged from all further liabilities, costs, claims, actions, or any liability in damages or any other remedy whatsoever including costs to such person or his heirs and assigns.

225. (1) Every insurer shall within forty days after the end of its financial year broadcast and publish in the *Gazette* and in at least two daily newspapers circulated in Trinidad and Tobago a statement showing all policies in respect of which amounts remain payable by the insurer for a period of seven years and the statement shall be submitted to the Central Bank within five days of publication. Unclaimed money

(2) The insurer may deduct the cost of publication from any unclaimed money.

(3) Every statement broadcast and published under subsection (1) shall require the person entitled to the amount payable or his legal personal representative to submit a claim to the insurer within sixty days from the date of publication in the *Gazette* or daily newspapers, whichever is published later.

(4) Where any amount payable under a policy included in the statement broadcast and published under subsection (1) remains unclaimed, the insurer shall pay such sum into the Central Bank within twenty days after the expiration of the period stated in subsection (3).

(5) Every insurer shall, at the time of making the payment to the Central Bank referred to in subsection (4), submit a listing in respect of each policy which shall specify—

- (a) the policy number and date of issue;
- (b) the name and last known address of the policyholder; and
- (c) the amount due and the date on which it became due.

(6) The Central Bank shall pay into the Consolidated Fund any money received under subsection (4).

(7) Where unclaimed money is paid into the Central Bank and a person subsequently makes a claim on such money, the insurer if it is satisfied that the person is entitled to the money shall request the Central Bank to pay over the money to the insurer.

(8) Where the Central Bank has received a request in accordance with subsection (7), the Central Bank shall release the money to the insurer and the insurer shall thereupon pay the money to the person.

(9) Where unclaimed money is paid into the Central Bank under subsection (4), and the insurer subsequently sells or disposes of that class of insurance business, the purchasing insurer shall be entitled to make the request under subsection (7) and the Central Bank shall release the money to that insurer which shall thereupon pay the money to the person.

(10) Where unclaimed money is paid into the Central Bank under subsection (4) and the insurer has ceased to carry on insurance business and has not sold or disposed of such business, a person may apply to the Central Bank for a release of the money and the person shall furnish the Central Bank with information and documents as may be specified by the Central Bank.

(11) The Central Bank, where it is satisfied that the person who applied for a release under subsection (10) would have been paid the unclaimed money by the insurer, may release the monies to the person.

(12) Where the insurer has paid into the Central Bank an amount in respect of a policy and the insurer satisfies the Central Bank that the amount paid exceeds the amount which would have been payable under the policy, the Central Bank shall refund to the insurer the amount of the excess.

(13) There shall be paid from the Consolidated Fund such sums as are necessary to give effect to this section.

(14) In this section, “unclaimed money” means all sums of monies which become legally payable by an insurer in respect of policies and are not claimed within seven years after the maturity date of the policy.

F. Provisions Relating to Industrial Life Insurance Business

226. (1) Where within twenty days of the delivery of Objection to policies an industrial policy by an insurer—

- (a) to the policyholder; or
- (b) at the place of abode of the policyholder, to some other person residing at that place and apparently not less than sixteen years of age,

and by whom any premium in respect of the policy is paid on behalf of the policyholder, the policyholder returns the policy to the insurer with an objection in writing to any term or condition of the policy, the insurer shall forthwith refund any premium paid in respect of the policy which shall thereupon be cancelled.

(2) Where an industrial policy is sent by post by an insurer to the person to whom it is issued, it shall, unless the contrary is proved, be deemed to have been delivered to him at the time at which it would reach him in the ordinary course of post.

(3) For the purposes of this section, a policy shall be deemed to have been returned to an insurer with an objection if the policy and the written objection are posted for transmission to the insurer by registered letter.

227. Where an insurer which carries on industrial life Return of industrial policy and premium receipt book after inspection insurance business, or any person authorized by such insurer takes possession of an industrial policy or a premium receipt book or any other document issued in connection with the policy, a receipt for the policy, book or document shall be given to the person from whom it was received, and the policy, book or document shall be returned to that person on demand at any time after the expiration of twenty days from the receipt thereof, unless—

- (a) it is required for the purposes of evidence in legal proceedings;

- (b) the policy has been terminated by reason of the satisfaction of all claims arising under it; or
- (c) in the case of a policy, the insurer is entitled to retain the policy as security for money owing to the insurer by the policyholder.

Falsification

228. A person who wilfully makes or orders or allows to be made any entry or erasure in or omits any entry or orders or allows any entry to be omitted from a collecting book or a premium receipt book, with intent to falsify the book or to evade any of the provisions of this Act, commits an offence.

Voidance of policy

229. (1) Where an agent or sales representative of an insurer writes or fills in any particulars in a proposal for an industrial policy with the insurer, then, notwithstanding any agreement to the contrary between the applicant and the insurer, a policy issued in pursuance of the proposal shall not be void by reason only of an incorrect or untrue statement contained in such particulars unless the incorrect or untrue statement was in fact made by the applicant to the agent or sales representative for the purposes of the proposal.

(2) The burden of proving that an incorrect or untrue statement was made by the applicant lies on the insurer.

(3) Nothing in this section shall allow the voidance of any policy for any reason or in any circumstances for or in which the policy could not have been void apart from the provisions of this section.

Particulars to be specified in policies

230. Every industrial policy issued by an insurer shall contain—

- (a) an endorsement or a statement in distinctive type specifying whether the policy is or is not a participating policy; and

(b) a short statement in a form approved by the Central Bank setting out—

- (i) the right of the policyholder to be granted a paid-up policy;
- (ii) the right of the policyholder to surrender his policy and to receive in cash the surrender value of the policy; and
- (iii) the conditions under which the policy may be forfeited.

231. (1) An insurer shall, in respect of each industrial policy issued by it, issue to the policyholder a premium receipt book Issue of premium receipt book.

(2) An insurer shall not issue or permit to be used one premium receipt book in respect of two or more policies held by different policyholders who are not members of the same household.

(3) Every premium receipt book issued by an insurer shall contain in respect of each policy to which it relates—

- (a) an endorsement or a statement in distinctive type of the particulars referred to in section 230;
- (b) an entry made by the insurer of the following matters:
 - (i) the surname and initials of the policyholder and, where the policy is issued in respect of the life of a person other than the policyholder, the surname and initials of that person;
 - (ii) the date and number of the policy;
 - (iii) the amount of the weekly or other periodical premium; and

- (c) a notice stating that proof of age may be required before payment of the sum insured.

Premium receipt book to show date to which premiums have been paid

232. (1) Every payment in respect of premiums under an industrial policy made to an agent, a sales representative or an employee of the insurer shall be recorded by the agent, sales representative or employee in the premium receipt book so as to clearly indicate the date to which premiums have been paid in respect of the policy or policies to which the premium receipt book relates, and the record shall—

- (a) where it is the first entry on a page of the premium receipt book, be signed by the agent, sales representative or employee with his usual signature; and
- (b) where it is not such an entry, be signed by the agent, sales representative or employee with his usual signature or be initialed by him.

(2) Where a premium receipt book relates to more than one policy and any payment for premiums on the policies is made which is less than the aggregate of the weekly or other periodical premiums in respect of all those policies, the person making the payment shall be required by the agent, sales representative or employee of the insurer to state the policy or policies in respect of which no payment or an insufficient payment is made, and the agent, sales representative or employee shall clearly record the fact stated in the premium receipt book.

(3) The insurer shall, unless the amount of the deficiency referred to in subsection (2) is paid before any further premiums are paid—

- (a) cause a separate premium receipt book to be issued in accordance with section 231 in respect of any policy in relation to which the deficiency exists; and

(b) cause to be cancelled the particulars and entry relating to any such policy in the premium receipt book.

233. Any provision in an agreement whereby the guarantor of an agent of any insurer is or may be required to pay to the insurer the amount of any commissions repayable by the agent on account of lapsed industrial policies shall be void.

Guarantor not liable to refund commission on lapsed policies

234. Any provision in an agreement whereby the production in any legal proceedings of a certificate signed by an officer of an insurer may be deemed to be conclusive evidence of the indebtedness or the amount of the indebtedness to the insurer of any agent or of any guarantor of an agent shall be void.

Certificate as to agent's or guarantor's indebtedness not conclusive evidence thereof

235. (1) An industrial policy on which less than one year's premiums have been paid shall not be forfeited by reason only of the non-payment of any premium, unless the premium has remained unpaid for not less than four weeks after it became due.

Non-forfeiture of industrial policy in certain cases of non-payment of premiums

(2) An industrial policy on which at least one year's but less than two years' premiums have been paid shall not be forfeited by reason only of the non-payment of any premium, unless the premium has remained unpaid for not less than eight weeks after it became due.

(3) An industrial policy on which at least two years' premiums have been paid shall not be forfeited by reason only of the non-payment of any premium, unless the premium has remained unpaid for not less than twelve weeks after it became due.

(4) Where an industrial policy on which at least three years' premiums have been paid has been forfeited by reason of the non-payment of any premium, the insurer shall, without requiring any application from the policyholder, issue a paid-up policy for an amount not less than that specified in the table included in the policy.

(5) Where a paid-up policy is issued pursuant to subsection (4) and the contingency occurs which would have rendered the insurer liable under the original policy, the insurer shall thereupon be liable under the paid-up policy.

(6) The insurer shall notify the policyholder in writing of the fact that the paid-up policy has been granted and shall specify the amount of the policy and the contingency upon which the policy is payable.

(7) An industrial policy shall not be forfeited by reason only of the non-payment of any premium where the non-payment is as a result of non-collection by the insurer.

G. Miscellaneous

Lost policy

236. (1) Where—

- (a) the holder of a policy; or
- (b) a person claiming the benefit of the provisions of section 219 or 221 in respect of a policy,

alleges that the policy is lost, defaced or has been destroyed, the insurer liable under the policy may, subject to this section, on written application by the holder of the policy or by the person referred to in paragraph (b) and upon such evidence as to the loss, defacement or destruction of the policy as the insurer considers sufficient, issue to the applicant a special policy in substitution for the policy.

(2) Where an application is made under subsection (1)(b), the insurer shall not issue a special policy to such person unless it is satisfied that the provisions of section 221 or 223 should be applied in favour of the applicant.

(3) A special policy shall—

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

- (b) contain copies of every endorsement on the original policy registered by the insurer; and
- (c) state the reason for the issue of such a policy.

(4) Before issuing a special policy, the insurer shall give at least twenty days notice of its intention to do so in the *Gazette* and in at least two daily newspapers circulated in Trinidad and Tobago.

(5) The costs of the advertisement and all other costs incurred in the issue of a special policy shall be paid by the applicant at the time when the application is made.

(6) The fact that a special policy has been issued and the reason for its issue shall be recorded by the insurer in the appropriate register.

(7) Where an insurer fails to issue a special policy within six months after the receipt of a written application under subsection (1) the High Court may, on an application by the policyholder or beneficiary and upon such evidence as to the loss or destruction of the original policy as it deems sufficient, order the insurer, upon such terms and within such time as the High Court thinks fit, to issue a special policy to the applicant.

(8) Where the holder of a special policy or a person claiming the benefit of the provisions of section 221 or 223 in respect of a special policy, claims that the special policy is lost or has been destroyed the provisions of this section shall apply as if the special policy were an original policy issued by the insurer.

237. A policy shall not be void merely on the ground that the person whose life is insured suffered capital punishment or died by his own hand or act, whether or not at the time of his death he was mentally ill, where, upon the true construction of the policy, the insurer thereby agreed to pay the sum insured on the happening of either of those events.

Effect of capital punishment or suicide on policy

Conditions as to war
risk void

238. Any term or condition of a policy which 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 result of war, shall not have any force or effect unless the person who effected the policy agreed in writing to the insertion in the policy of that term or condition.

PART VIII GENERAL INSURANCE

Application of this
part

239. Except as explicitly provided otherwise, this Part shall apply to all insurers carrying on general insurance business.

Computation of
insurance liabilities

240. (1) Every insurer shall include in its financial statements and returns adequate provisions for unexpired risks and outstanding claims determined in accordance with financial reporting standards.

(2) Every insurer shall furnish to the Inspector details of the methods and assumptions used in calculating the liabilities required under subsection (1) at the time of submission of its financial statements and returns.

(3) The Inspector may disallow any methods or assumptions used in calculating the liabilities referred to in subsection (1) where, in the opinion of the Inspector, they do not result in adequate provision for liabilities and the Inspector may—

- (a) direct an insurer to adopt any method or assumption as he considers necessary; and
- (b) reject the financial statements and returns and the provisions of section 175(3) shall apply *mutatis mutandis* to this section.

(4) For the purposes of this section—

- (a) “outstanding claims reserve” means the amount set aside by an insurer at the end of its financial year for the purpose of meeting

its unsettled claims, (including claims in respect of which the amounts have not been determined and claims arising out of incidents which have not been notified to the insurer) under contracts of insurance, in respect of incidents occurring before the end of that year and for the purpose of meeting expenses likely to be incurred in connection with the settlement of such claims; and

(b) “provision for unexpired risk” means the amount set aside by an insurer at the end of its financial year, in respect of risk to be borne by the insurer after the end of its financial year under contracts of insurance entered into before the end of that year and includes, the unearned premium less any deferred acquisition cost plus any additional provision for unexpired risk, required as a result of the liability adequacy test in the financial reporting standards.

241. (1) The appointed actuary of an insurer carrying Reports for general insurance business on general insurance business shall investigate the financial condition of the insurer and submit a report in accordance with section 186, and the provisions of that section shall apply *mutatis mutandis* to this section.

(2) Notwithstanding subsection (1), within three years of the commencement of this Act, the report required to be submitted under this section may be prepared by the chief financial officer of an insurer where an actuary has not yet been appointed.

242. (1) Every insurer carrying on general insurance Inspector may require actuarial reports business that includes the accident and sickness class of insurance business shall each year cause its appointed actuary to make a valuation of its liabilities in respect of accident and sickness class of insurance business and to furnish the Inspector with a report of the result of the investigation within sixty days after the end of its financial year.

(2) The Inspector may require an insurer carrying on general insurance business to cause an actuary to make an investigation into its future financial condition, including a valuation of its liabilities, and to furnish the Inspector with a report of the result of the investigation.

(3) A report referred to in subsection (1) and (2) shall include a description of any matters for which the actuary was unable to obtain information or for which the actuary was not satisfied with the information provided.

(4) Where an insurer causes an actuary to make an investigation and the results of the investigation are made public, the insurer shall cause a copy of the actuarial report to be submitted to the Inspector within five days of making the results of such report public.

PART IX

PENSION FUND PLANS

Plan to be registered

243. (1) No person may establish or operate a pension fund plan (hereinafter referred to as “a plan”) in Trinidad and Tobago unless the plan is registered under this Part.

(2) A plan which was registered under the former Act or the Insurance Act, 1966 shall be deemed to be registered under this Part.

Qualifications for registered of plan

244. (1) Subject to the provisions of this Part, where a plan establishes a fund under trusts which are subject to the laws of Trinidad and Tobago, in connection with an undertaking or a combination of undertakings carried on wholly or partly in Trinidad and Tobago, and the main purpose of that fund is—

(a) the provision of superannuation allowances on retirement to persons employed in the undertaking or in the combination of undertakings in connection with which the fund is established;

- (b) the provision of pensions to the spouses of persons who are or have been so employed and of periodical allowances to or in respect of the children of such persons; or
- (c) the assurance of capital sums on the death of persons who were so employed,

such a plan shall be qualified for registration under this Part if the Rules of the plan comply with the requirements set out in Part I of Schedule 4.

Schedule 4

(2) Where a plan establishing a fund for any of the purposes set out in subsection (1)(a), (b) or (c) is in operation before the commencement of this Act that plan shall, subject to such directions as to the amendment of its Rules as the Central Bank may give, be treated as qualified for registration under this Part although—

- (a) the fund created under the plan is not established under trusts; or
- (b) the plan does not comply with the requirements set out in Part I Schedule 4.

245. (1) An application for the registration of a plan ^{Registration} under this Part shall be addressed to the Central Bank and shall—

- (a) be in the form prescribed;
- (b) be signed by the trustees of the plan;
- (c) specify the address at which communications concerning the plan shall be received (hereinafter referred to as “the address of the plan”);
- (d) be accompanied by—
 - (i) two copies of the trust deed and of the Rules of the plan;
 - (ii) a copy of the actuarial report on which the plan is based;
 - (iii) a list of the names and addresses of the trustees of the plan;

- (iv) in the case of an insured plan a copy of the policy of insurance related to benefits provided by the plan; and
- (v) such other documents or further information as may be prescribed.

(2) Where an application is made in accordance with the provisions of this Part for the registration of a plan the Central Bank shall register the plan and the Rules thereof where it is satisfied that the plan has qualified for registration.

(3) The Central Bank shall on registering a plan under this Part enter in the register the address of the plan and the names and addresses of the trustees.

(4) Where—

- (a) the trust deed or the Rules, or both, of a plan registered under this Part (hereinafter referred to as “a registered plan”) are amended; or
- (b) there is any change in the address of the plan or in the names or addresses of the trustees thereof,

the trustees shall, within fifteen days of the amendment or the change, apply for the registration of the amendment or for the correction of the register in respect of the change.

(5) An application for an amendment or for the correction of the register in respect of a change shall be addressed to the Central Bank and shall—

- (a) be in the form prescribed;
- (b) be signed by one of the trustees of the plan; and
- (c) be accompanied—
 - (i) in the case of an amendment, by two copies thereof signed by one of the trustees; or

- (ii) in the case of a change, by such particulars as may be necessary for the correction of the register.

246. (1) An amendment to a trust deed or Rules, or both, of a registered plan shall not be valid unless the amendment is registered. Amendment not valid until registered

(2) Where an application for the registration of an amendment is made in accordance with section 245 (5), the Central Bank shall register the amendment, where it is satisfied—

(a) that the trust deed or the Rules, or both, as amended would not have disqualified the plan from registration under this Part; or

(b) in the case of a plan which should be harmonised with the system of National Insurance established under the National Insurance Act, that the plan otherwise complies with the requirements of any Regulations made under that Act for the purpose of harmonization. Chap 32:01

247. (1) The Central Bank shall on registering any plan or any amendment to the trust deed or the Rules, or both, of a registered plan under this Part, issue to the applicant a certificate of registration. Certificate of registration

(2) Any document purporting to be a certificate of registration issued by the Central Bank under subsection (1), shall be received in evidence and be deemed to be so issued without further proof unless the contrary is shown, and shall be conclusive evidence of the fact certified.

248. (1) The registration of a registered plan shall not be cancelled unless the plan has been wound-up. Cancellation of registration

(2) The decision to wind up a pension plan shall be recorded by board resolution.

(3) The Central Bank, trustees and management committee shall be informed of a person's intention to wind up a plan, in writing, within twenty days of the

board resolution and such notification to the Central Bank, trustees and the management committee shall be done simultaneously and accompanied by a copy of the relevant board resolution.

(4) The written notice shall specify the wind-up date and the reasons for the wind-up.

(5) Notwithstanding subsections (1), (2) or (3), the registration of a registered pension plan shall not be cancelled unless the plan has been wound-up.

(6) The trustees of a registered plan shall, within ten days of the completion of the winding-up of the plan, notify the Central Bank in writing that the winding-up has been completed.

(7) On receiving notice in writing that a registered plan has been wound-up, the Central Bank shall cancel the registration of the plan where it is satisfied that—

(a) the plan has been wound-up; and

(b) the assets of the plan have been applied in accordance with the Rules of the plan.

(8) The trustees of a registered plan shall, within ten days of the completion of the winding-up of the plan, notify the Central Bank in writing that the winding-up has been completed.

Fees to be prescribed **249.** (1) The fees payable in respect of—

(a) the registration of a plan;

(b) the registration of any amendment to the trust deed or the Rules, or both of the registered plan;

(c) the correction of the register occasioned by a change in the name or address of a trustee or a change in the address of a registered plan,

shall be such as may be prescribed in the Regulations.

(2) Notwithstanding the provisions of subsection (1), no fees shall be payable in respect of the registration of any amendment to the Rules of a registered plan where

the amendment is solely for the purpose of complying with the requirements of any Regulations made under the National Insurance Act, for the purpose of harmonisation.

250. (1) Where an application is made under this Part for the registration of a plan, the Rules of which were made before the commencement of this Act, and the Central Bank is satisfied that the Rules of the plan contain provisions which were embodied only for the purpose of avoiding the application to the trusts of the plan of the rule of law relating to perpetuities, the Central Bank may, at the request of the trustees who made the application—

Power to delete provisions for avoiding the rule against perpetuities

- (a) amend the Rules by deleting those provisions; and
- (b) make any further amendments which are, in the opinion of the Bank, necessary as a result of the deletion.

(2) Where the Rules of a plan are amended by the Central Bank pursuant to subsection (1), the Rules shall, when registered, have effect subject to the amendments.

251. (1) The Central Bank may require any person who is an employer, an insurer, a trustee or an officer of a plan for the registration of which application has been made under this Part, or of any registered plan to furnish either by statutory declaration or otherwise, any information or explanation which may be necessary for the proper exercise and performance of the powers and duties of the Central Bank under this Part.

Supplementary provisions as to powers of Central Bank

(2) Where the trustees of a registered plan commit a breach of trust by making an unauthorized investment or by violating any rule of the plan, which is necessary for registration under this Part, the Central Bank shall have the same remedies in all respects for the breach of trust as if it were a person beneficially interested in the plan.

(3) The Central Bank or any person authorized by the Central Bank in writing may at any reasonable time inspect or examine any books, records or other documents relating to a registered plan or any plan in

respect of which an application for registration is made under this Part, or any securities or obligations in which pension fund monies of any such plan are invested.

Penalties for default

252.(1) Every trustee and the secretary of a registered plan commit an offence where in respect of that plan, there is default in complying with any of the requirements of this Part relating to—

- (a) accounts and reports;
- (b) the making of applications for the registration of any amendment to the trust deed or to the Rules, or both, of the plan or, the correction of the register in respect of a change in the address of the plan or in the names and addresses of the trustees thereof; or
- (c) the giving of notice to the Central Bank of the winding-up of the plan.

(2) It is a defence to any proceedings instituted under subsection (1) against the trustees and the secretary of a registered plan to prove that the default occurred without their consent or connivance and was not facilitated by any neglect on their part.

(3) A person who is lawfully required under this Part by the Central Bank to furnish any information or explanation which could with reasonable diligence be furnished by him and who fails to comply with any such requirement within ten days after written notice thereof has been delivered to him, commits an offence.

(4) A person who commits an offence under this Part is liable on summary conviction to a fine of five thousand dollars and in the case of a continuing offence to a fine of one hundred dollars for every day during which the offence is committed after conviction therefore.

Annual accounts and balance sheet to be submitted

253.(1) The trustees of each plan registered under this Part shall—

- (a) submit annually to the Central Bank a balance sheet and statement of accounts for each accounting year within six months of the expiration of that accounting year; and

(b) file with the Central Bank annually or at such periods and in such form as may be prescribed any information or return relating to such plan.

(2) The balance sheet and statement of accounts referred to in subsection (1) shall—

(a) before they are submitted to the Central Bank, be audited by an auditor approved by the Central Bank; and

(b) be prepared in accordance with the forms set out as Forms A and B respectively, of Part II of Schedule 4.

254.(1) The trustees of each registered plan shall appoint an actuary or a consulting actuary to make an investigation into the financial condition of the plan and to report on his findings.

(2) An investigation under subsection (1) shall be made every three years or at such shorter intervals as the Central Bank may specify.

(3) A copy of the report prepared in accordance with Part III of Schedule 4 and signed by the actuary shall be furnished to the Central Bank within nine months after the date of the investigation.

(4) The provisions of subsections (1) and (3) shall not apply to a plan insured with an insurer, but the trustees of such a plan shall obtain from the insurer a certificate to the effect that the plan has been valued by an actuary.

(5) The certificate required by subsection (4) together with the Tables set out in Part III of Schedule 4 shall be deposited by the trustees with the Central Bank.

255.(1) The trustees of a registered plan shall not invest the assets of the plan except—

(a) in such securities as may be allowed in Schedule 8; and

(b) in any other manner as prescribed by the Regulations.

(2) No trustee may invest the assets of a pension fund in the equity, debentures or other evidence of indebtedness of the employer or any subsidiary or associate of the employer or of any company of which the employer is a subsidiary or an associate.

(3) The Minister may, on the recommendation of the Central Bank, prescribe by Order, subject to negative resolution of Parliament, the percentage which a plan's assets originating in Trinidad and Tobago shall bear to the total of its assets.

Rules of law against
perpetuities not to
apply

256. The rule of law relating to perpetuities shall not apply and shall be deemed never to have applied to the trusts of a registered plan.

PART X

ASSOCIATIONS OF UNDERWRITERS

Registration of
association of
underwriters

257. (1) No association of underwriters may carry on insurance business in Trinidad and Tobago unless it is registered under this Part.

(2) An application for registration of an association of underwriters shall be accompanied by—

- (a) a copy of its statute or deed of association;
- (b) a certificate stating, in the case of an association of underwriters established outside of Trinidad and Tobago that—
 - (i) the association of underwriters has been established for at least five years;
 - (ii) the law of the country in which it was established provides for the regulation of associations of underwriters; and
 - (iii) the association of underwriters is operating in accordance with that law;
- (c) a list of the names and addresses of its members operating in Trinidad and Tobago and persons appointed as its agents or brokers in Trinidad and Tobago;

- (d) evidence of payment to the Central Bank of the application fee prescribed in Schedule 2; and
- (e) any further information the Central Bank may require.

(3) The Central Bank may register an association of underwriters where it is satisfied that the association of underwriters complies with the provisions of this Part.

(4) An association of underwriters may be registered to carry on any class of general insurance business listed in Schedule 1 and the accident and sickness class of insurance business.

(5) An association of underwriters constituted outside of Trinidad and Tobago shall authorize a person resident in Trinidad and Tobago as its principal representative, to accept on behalf of the members of the association of underwriters, service of process in any legal proceedings and any notices or other correspondence from the Central Bank.

(6) Upon the commencement of this Act, the Central Bank shall, issue to every association of underwriters carrying on insurance business in Trinidad and Tobago immediately before the commencement of this Act a certificate of registration specifying the classes of insurance business for which it is registered.

(7) An association of underwriters that contravenes subsection (1), it commits an offence and is liable on summary conviction to a fine of five million dollars.

258. (1) The Central Bank shall upon approval of an application made under section 257 notify the applicant in writing of its approval and the requirement to make the deposit under section 260.

Applicant to be informed of Central Bank's decision with respect to application

(2) Upon receipt of evidence by the applicant that the deposit has been made in accordance with section 260 and that the application fee has been paid, the Central Bank shall issue a certificate of registration to the association of underwriters signed by the Governor

which shall specify the classes of general insurance business and the accident and sickness class of insurance business in respect of which the association of underwriters is registered and which shall be *prima facie* evidence of its registration.

(3) Where the decision is made to reject an application, the Central Bank shall notify the applicant in writing of its rejection and shall give reasons to the applicant within ten days of the date of rejection.

Restriction on registration

259. An association of underwriters may carry on its insurance business through brokerages registered under this Act.

Deposit by association of underwriters

260.(1) An association of underwriters shall not be registered under this Part to carry on any class of general insurance business unless it has deposited with the Central Bank the greater of an amount equal to—

- (a) twenty per cent of the stated capital that would be required of a local company that is carrying on the class or classes of business it intends to carry on, plus an amount equivalent to cover all policyholder liabilities; or
- (b) forty per cent of the premium income of its members, with respect to Trinidad and Tobago insurance business during the financial year last preceding the date of the deposit.

(2) Where an association of underwriters has made a deposit as required by subsection (1), it shall at the end of each financial year, deposit an amount equal to the difference between the last preceding deposit and the amount required by subsection (1).

(3) A deposit made in pursuance of this section may be either in the form of cash or in the form of approved securities or partly in the form of cash and partly in the form of approved securities.

(4) The provisions of sections 42 to 51 shall apply to a deposit made in pursuance of this section, and in applying sections 42 to 51 the words “association of underwriters” shall be substituted for the word “insurer”.

(5) An association of underwriters shall at all times maintain the deposit required under this section and shall fund the deposit as follows:

(a) annually, based on its audited financial returns; and

(b) quarterly, based on its quarterly return,

within five days after the submission of its returns.

(6) An association of underwriters that contravenes subsection (5) commits an offence and is liable on summary conviction to a fine of five million dollars.

261. (1) An association of underwriters established in Trinidad and Tobago and registered under this Part, shall within six months of the end of its financial year furnish to the Inspector such documents and information as he may require. Documents and information relating to insurance business to be furnished to Inspector

(2) An association of underwriters established outside of Trinidad and Tobago and registered under this Part shall within six months of the end of each financial year, furnish to the Inspector—

(a) a certified copy of such returns relating to the insurance business of its members during the preceding year as are required to be made to the supervisory authority or other public authority in the country in which the association of underwriters is established;

(b) a certificate, signed by the Chairman or other presiding officer of the association of underwriters and signed by or on behalf of

the supervisory authority or other public authority stating whether the association of underwriters has complied with the requirements of the law governing the regulation of associations of underwriters in the country in which it is established;

- (c) the latest annual list of the names of its members and the names of the members of its committee or other governing body;
- (d) a list of the names and addresses of its members operating in Trinidad and Tobago and persons appointed as its agents and brokers in Trinidad and Tobago;
- (e) a statement of receipt and expenditure by its members in Trinidad and Tobago during the preceding year; and
- (f) any other documents and information as required by the Inspector.

(3) In addition to the annual submission under subsection (1) and (2) an association of underwriters shall submit—

- (a) a statement of receipt and expenditure by its members in Trinidad and Tobago during the preceding quarter; and
- (b) a calculation of its assets and liabilities in respect of its Trinidad and Tobago business,

within twenty days after the end of each quarter.

(4) Every association of underwriters shall within six months of the end of its financial year publish in at least two daily newspapers circulated in Trinidad and Tobago the statement referred to in subsection (2)(e).

Additional powers of
the Inspector

262. (1) The Inspector may make or cause to be made an examination and inquiry into the affairs or business of each association of underwriters for the purpose of satisfying itself that the provisions of this Act are being observed and that the association of underwriters is in a sound financial condition.

(2) The Inspector may impose any reporting requirement on associations of underwriters that it considers necessary for the purpose of satisfying itself that the provisions of this Act are being observed and that the association of underwriters is in a sound financial condition, and the Inspector shall specify the frequency, form and content of any such reporting requirement.

(3) The Inspector may require an association of underwriters to cause an actuary to make an investigation into its financial conditions, including a valuation of its liabilities in respect of every class of insurance business and to furnish the Inspector with a report of the result of the investigation.

(4) The Inspector may, by notice, require any association of underwriters registered under this Part—

- (a) to furnish him at such time and in such manner as he may determine with such information in connection with association of underwriters' insurance business as he may specify;
- (b) to produce at such time and place as he may determine such books or papers in connection with the association of underwriters' insurance business as he may specify; or
- (c) to produce forthwith to any person authorized in writing by the Central Bank or Inspector such books or papers as the Central Bank or Inspector may specify.

(5) The Inspector may issue compliance directions to an association of underwriters and section 182 shall apply, *mutatis mutandis* to this Part.

263. (1) The Central Bank shall prohibit a registered association of underwriters from writing new policies in any class of insurance business where the Central Bank is satisfied that it is in the interest of the policyholders or prospective policyholders to do so.

Registered association of underwriters may be prohibited from writing business

(2) Where the Central Bank exercises its power under subsection (1), it shall notify the registered association of underwriters in writing of its decision and shall state the reasons therefore.

Product approval

264. An association of underwriters shall not offer a new or amended product to policyholders or potential policyholders in Trinidad and Tobago without first furnishing the Inspector with the information required under section 33 or 192 and the provisions of those sections shall apply *mutatis mutandis* to this Part.

Revocation of registration

265. (1) The Board may revoke the registration of an association of underwriters, if at any time it is satisfied that the circumstances specified in subsection (2) so warrant and shall give written notice to the registered association of underwriters stating that it has revoked the registration of the association of underwriters giving reasons for doing so.

(2) The circumstances referred to in subsection (1) are that the Board 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 of underwriters or any of its members is insolvent;
- (c) the association of underwriters has committed, is committing, or is about to commit an act, or is pursuing, or is about to pursue any course of conduct, that is an unsafe and unsound practice;
- (d) the association of underwriters has contravened any of the provisions of this Act or of the Regulations or any condition, direction or requirement imposed under this Act;

- (e) the association of underwriters has unreasonably delayed the payment or settlement of any claim arising under any policy issued in Trinidad and Tobago by it or on its behalf;
- (f) the persons who manage the association of underwriters are not fit and proper persons to manage the association of underwriters; or
- (g) the employees of the association of underwriters are incapable of carrying on the relevant class of insurance business in an efficient manner.

(3) Notwithstanding subsection (1), the Central Bank shall at any time revoke the registration under this Part of a registered association of underwriters if requested to do so by the association of underwriters or if it is satisfied that the members of the association of underwriters have not commenced business within one year of registration or have ceased to carry on business in Trinidad and Tobago.

(4) Where the Central Bank revokes the registration of an association of underwriters, it shall state in writing its reasons.

266. An association of underwriters, the application for registration of which has been rejected or the registration of which has been revoked, shall continue to carry on business relating to policies issued by it before the date on which it was notified of the rejection or revocation unless the Central Bank is satisfied that it has made suitable arrangements for its obligations under such policies.

PART XI

JURISDICTION OF COURTS, APPEALS AND OFFENCES

267. Every policy issued in Trinidad and Tobago through a person or an office in Trinidad and Tobago shall, notwithstanding any agreement to the contrary, be governed by the laws of Trinidad and Tobago and shall be subject to the jurisdiction of the courts of Trinidad and Tobago.

Jurisdiction and
limitation

268. Notwithstanding anything in any other law to the contrary, any complaint relating to an offence under this Act which is triable by a Magistrate's Court in Trinidad and Tobago may be so tried if it is laid at any time within ten years after the commission of the offence.

Documents to be
received in evidence

269. In any proceedings where a certificate signed by the Governor, a true copy of or extract from a document certified as such by the Governor or a Deputy Governor or a copy of the *Gazette* or daily newspaper purporting to contain the document certifies—

- (a) that a particular person is or is not a registrant or was or was not registered at a particular time;
- (b) the date on which a particular registrant became or ceased to be registered;
- (c) whether or not a particular registrant's registration is or was restricted; or
- (d) the date on which a restricted registration expires or expired,

such certificate or document shall be admissible in evidence.

Appeals

270. (1) Except where otherwise provided by this Act or the Regulations, an appeal shall lie to a Judge of the High Court from any decision, direction, refusal, ruling or order of the Minister, the Central Bank, the Board or the Inspector given or made under this Act.

(2) An appellant may, within fifteen days of the receipt of the notification of the decision, direction, refusal, ruling or order of the Minister, the Central Bank, the Board or the Inspector, file with the Registrar of the Supreme Court, an appeal against such decision, direction, refusal, ruling or order, setting forth the ground of appeal.

(3) Notwithstanding that an appeal lies under this Act or under the Regulations from any decision, direction, refusal, ruling or order of the Minister, the Central Bank, the Board or the Inspector, such decision,

direction, refusal, ruling or order shall be binding upon the appellant unless, on an *inter partes* application made to the High Court for the grant of an injunction before the determination of the appeal, the High Court is satisfied that circumstances exist that warrant the stay of the particular decision, direction, refusal, ruling, order or any further action by the Minister, the Central Bank, the Board or the Inspector and grants an injunction to the appellant on such terms and conditions as the High Court may direct.

(4) Where a Judge grants an injunction under subsection (3)—

(a) no further action may be taken by the Minister, the Central Bank, the Board or the Inspector in respect of any decision, direction, refusal, ruling or order to which the injunction relates; and

(b) the injunction shall have effect—

(i) unless otherwise revoked, varied or suspended by the High Court, before any proceedings to which the appeal relates, are concluded; or

(ii) until the High Court determines the appeal,

whichever is earlier.

(5) On an appeal, the appellant and the Minister, the Central Bank, the Board or the Inspector as respondent may appear personally or be represented by an Attorney-at-law or any other person.

(6) An appeal from the determination by a Judge shall be to the Court of Appeal, the decision of which shall be final.

(7) On an appeal, a Judge or the Court of Appeal, as the case may be, may confirm, reverse or vary any decision, direction, refusal, ruling or order made or given by the Minister, the Central Bank, the Board or the Inspector.

(8) Subject to this Part, the procedure for determining appeals shall be in accordance with the Civil Proceeding Rules of the Supreme Court of Judicature.

Offences

271.(1) Any person who, in purported compliance with any requirement under this Act or the Regulations, furnishes any information, provides any explanation or makes any statement which he knows or has reasonable cause to believe to be false or misleading commits an offence.

(2) A person who contravenes—

(a) any provision of this Act or any Regulations or Order made hereunder;

(b) any direction, requirement or measure given or made by the Central Bank, the Board or the Inspector,

commits an offence and the offence shall be deemed to be continued so long as the default continues.

(3) Any contravention against this Act or the Regulations for which no other penalty is expressly provided, is punishable by a fine not exceeding six hundred thousand dollars and to imprisonment for two years and in the case of a continuous offence, to fine of sixty thousand dollars for each day the offence continues.

(4) Where a person is convicted of an offence under this Act, the court may, in addition to any punishment it may impose, order that person to comply with the provisions of this Act or any Regulations or Order made hereunder or any direction, requirement or measure given or made by the Central Bank, Board or Inspector, in respect of which the person was convicted.

(5) In any proceedings for an offence under this Act or the Regulations, it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by any person under his control.

(6) In any proceedings for an offence under this Act or the Regulations, where it is proved that the person charged intended to deceive, defraud or profit from the offence, the penalty shall be a fine ten times the amount stipulated for that offence and to imprisonment for twenty years.

(7) The court may, in addition to any other punishment it may otherwise impose under subsection (6)—

(a) order the person to comply with the requirement in respect of which the person was convicted;

(b) where it is satisfied that as a result of the commission of the offence the convicted person acquired any monetary benefits or that monetary benefits accrued to the convicted person's spouse or other dependant, order the convicted person to pay restitution to the party deceived or defrauded, in an amount equal to the court's estimation of those monetary benefits.

(8) Where a person commits an offence under this Act and such offence is proved to have been—

Fraud on
policyholders

(a) committed with the knowledge, consent or connivance of—

(i) any director or officer of the company;

(ii) any person purporting to act in a capacity referred to in paragraph (a); or

(iii) an actuary or auditor of the insurer or financial holding company,

272. (1) A person who perpetrates a fraud on policyholders commits an offence.

(2) Any director or officer of an insurer, financial holding company, brokerage or agency who—

(a) falsifies the accounts of the insurer, brokerage

or agency which leads to a loss of policyholders' funds;

- (b) uses policyholders' funds for his own benefit or for the benefit of his relatives and persons connected with him which leads to a loss of policyholders' funds; and
- (c) provides to the Central Bank or Inspector false or misleading financial data or other relevant information with the intent to conceal the true financial position of an insurer,

perpetrates a fraud on policyholders.

(3) Any sales representative who uses policyholders' funds for his own benefit or for the benefit of persons connected with him which leads to a loss of policyholders' funds perpetrates a fraud on policyholders.

(4) Any person who commits an offence under this section is liable on summary conviction—

- (a) where the person is an individual, to a fine of ten million dollars and to imprisonment for ten years;
- (b) where the person is an entity—
 - (i) every director or officer of such entity is liable to a fine of ten million dollars and to imprisonment for ten years; and
 - (ii) the entity is liable to a fine in an amount of twenty million dollars.

Offence to induce person to enter into contract of insurance by means of a false statement

273. A person who by—

- (a) knowingly making a false, misleading or deceptive statement;
- (b) recklessly making, dishonestly or otherwise, any statement which is false, misleading or deceptive; or
- (c) dishonestly concealing material facts,

induces or attempts to induce another person to enter into or cancel or offer to enter into or cancel any contract

of insurance commits an offence and is liable on summary conviction to fine of five million dollars and to imprisonment for five years.

274.(1) A person other than a registrant shall not issue or cause to be issued any advertisement inviting the public to enter into contracts of insurance with that person or with some other person. Restriction on issuing insurance advertisement

(2) For the purpose of this section—

- (a) an advertisement issued by a registrant by way of display or exhibition in a public place shall be treated as issued by the registrant on every day on which it causes or permits the advertisement to be displayed or exhibited;
- (b) an advertisement issued by any person on behalf of or to the order of a registrant shall be treated as an advertisement issued by that registrant; and
- (c) an advertisement inviting the entering into of contracts of insurance with an insurer specified in the advertisement shall be presumed, unless the contrary is proved, to have been issued by the insurer.

(3) In any proceedings for an offence under this section it shall be a defence for the person charged to prove that he is a person whose business it is to publish or to arrange for the publication of advertisements and that he received the advertisement in the ordinary course of business and did not know and had no reason to suspect that the publication would constitute such an offence.

275.(1) Where a person alleges that or where in the opinion of the Inspector, a registrant has issued or caused to be issued any advertisement which is misleading or objectionable, the Inspector may require the correction or withdrawal of the advertisement or any part thereof. Advertisement

(2) A registrant that does not correct or withdraw the advertisement or any part thereof as required by the Inspector, commits an offence.

Information not to be disclosed

276.(1) No registrant, financial holding company, controlling shareholder, significant shareholder or affiliate of a registrant, and no director, officer, employee or agent of a registrant, financial holding company or other controlling shareholder or affiliate who receives information in the course of his duties relating to the business or other affairs of a policyholder, consumer of the insurer or of any other person shall disclose the information unless—

- (a) the disclosure is required under compulsion of law; or
- (b) the policyholder, consumer or other person concerned expressly consents to the disclosure.

(2) No person who obtains information referred to in subsection (1) shall disclose the information without the consent of the person to whom it relates and the person from whom it was received.

(3) Notwithstanding subsection (1), a registrant or a person authorized by the registrant may, with the consent of the policyholder, consumer or other person concerned, exchange information with another registrant.

(4) This section does not apply to—

- (a) information disclosed in good faith in the course of the performance of duties or responsibilities imposed by this Act or in the implementation of measures countering money laundering and terrorist financing; and
- (b) the provision of information necessary to combat fraud against insurers.

Administrative fines

Schedule 6

277.(1) The Central Bank may issue to any person who, there is reasonable cause to believe, has committed an offence referred to in Schedule 6, a notice offering the person the opportunity to dispense with any liability to conviction in respect of that offence by payment of the administrative fine specified for the offence in Schedule 6.

(2) Where a person is given a notice under this section, criminal proceedings shall not be taken against him for the offence specified in the notice until the expiration of fifteen days commencing from the day after which the notice was served.

(3) Where a person fails to pay the administrative fine referred to in subsection (1), or where he pays the administrative fine but continues to commit the offence after the expiration of fifteen days following the date of receipt of the notice referred to in subsection (1), that person is liable on summary conviction for the offence committed.

(4) Where a person paid an administrative fine under subsection (1), but continues to commit the offence and is convicted under subsection (3), he is liable to the criminal penalty prescribed in Schedule 6 from the date after which he made the payment.

(5) Payment of an administrative fine under this section shall be made to the Central Bank and a certificate that payment of the penalty was made to the Central Bank by the specified date shall, if the certificate purports to be signed by an authorized officer of the Central Bank be admissible as evidence of the facts stated therein.

(6) All monies received under this section shall be paid into the Central Bank and credited to the Consolidated Fund.

(7) A notice under subsection (1) shall—

- (a) specify the offence alleged;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation; and
- (c) state—

- (i) that criminal proceedings shall not be laid until the expiration of fifteen days from the date of receipt of the notice where payment of the administrative fine is made and the commission of the offence is discontinued;

- (ii) the amount of the administrative fine and the fact that it is to be paid to the Central Bank; and
- (iii) that the Central Bank shall not accept any payments in respect of a notice under subsection (1) after the expiration of the fifteen days.

(8) In any proceedings for an offence to which this section applies, no reference shall be made to the giving of any notice under this section or to the payment or non-payment of a administrative fine thereunder unless in the course of the proceedings or in some document which is before the court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of such a notice, or, as the case may be, to such payment.

(9) Administrative fines under this section in respect of insurers shall be calculated with reference to the insurer's proportion of the industry's new gross annualized premium income.

(10) Where an insurer's proportion of the industry's new gross annualized premium income is two and a half per cent or less, it shall pay fifty per cent of the administrative fine prescribed in Schedule 6.

(11) The Minister after consultation with the Central Bank may by Order, vary the percentage of the insurer's proportion of the industry's new gross annualized premium income stated in respect of subsection (10).

Offence to suppress
information

278.(1) A person who without reasonable excuse alters, suppresses, conceals or destroys or refuses to produce any document which he is liable to produce or has been required to produce in accordance with this Act or the Regulations or which he is liable to be so required to produce commits an offence.

(2) A person shall not, with intent to defeat the purposes of this Act or with intent to delay or obstruct the carrying out of an investigation under this Act send, cause to be sent, or conspire with another person to send

out of Trinidad and Tobago a book, other document or any money or property belonging to or under the control of an insurer or a financial holding company.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of ten million dollars and to imprisonment for ten years.

279. An insurer shall, no later than sixty days after this Act comes into force, enrol in an alternate dispute resolution scheme approved by the Central Bank.

PART XII MISCELLANEOUS

280. (1) An insurer shall fully settle all judgment claims within forty days of a judgment order, unless there is a stay of execution.

(2) It is an offence for an insurer to enter into an agreement for the settlement of a judgment obtained against the insurer and in relation to which there is a stay of execution.

281. (1) In the case of an individual life policy, upon acceptance of the risk, an insurer shall issue a policy within twenty days of receipt of all relevant documentation pertaining to the risk.

(2) In the case of a group policy, the insurer shall issue a certificate to the insured within twenty days of acceptance of the risk.

(3) In the case of a general insurance policy, upon first acceptance of the risk, the insurer shall issue a policy to the insured and upon each renewal date thereafter the insurer shall issue a certificate to the insured, within twenty days of receipt of all relevant documentation pertaining to the risk.

282. (1) A person shall not publish in respect of an insurer or in respect of a company proposed to be formed to carry on insurance business a prospectus, notice, circular, advertisement or other invitation offering to the public for subscription any shares in the insurer or

proposed company unless the prospectus, notice, circular, advertisement or other invitation is first approved by the regulatory authority under the Securities Act and copies of the approved documents are submitted to the Central Bank.

(2) A person who is acting as the promoter of any such proposed company 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.

Register to be kept

283. (1) An insurer shall keep in accordance with this section at its registered office in Trinidad and Tobago, a register of policies.

(2) An insurer shall appoint an employee in charge of the register.

(3) The Inspector shall be notified in writing of the name of the employee in charge of the register and of any change in the identity of the employee in charge of the register within five days of such appointment.

(4) Upon request by a person having a beneficial interest in a policy, an insurer shall search its register of policies for evidence of the existence of a policy.

(5) Upon completion of the search referred to in subsection (4), an officer designated by the insurer shall issue a report to the person making the request.

(6) Where it is subsequently discovered that a policy existed at the date of the request and the person was not so informed, the insurer shall compensate any person having a beneficial interest in that policy at the weighted average of the prime rates of interest on the principal amount calculated from the date on which the person would have been entitled to payment under the policy until full payment is made.

Registration of policy

284. (1) Every policy in Trinidad and Tobago existing at the date of the commencement of this Act shall as at that date be registered by the insurer in the register required to be kept under section 283.

(2) An insurer shall specify the address of its registered office in Trinidad and Tobago on every policy issued by it.

(3) Every policy issued by an insurer shall immediately after issue be registered by the insurer in the register.

(4) All money payable in respect of a policy shall, unless the insurer and the policyholder otherwise agree, be payable at the registered office.

(5) A policy or foreign policy may, at the written request of the policyholder or a foreign policyholder and with the consent of the insurer, be transferred from a register outside of Trinidad and Tobago to a register in Trinidad and Tobago, or from a register in Trinidad and Tobago to a register outside of Trinidad and Tobago.

(6) All expenses incurred in connection with the transfer of a policy or foreign policy pursuant to subsection (5) shall be borne by the policyholder or foreign policyholder.

285. (1) Where a notice is required or permitted by Serving of notice this Act to be given to or served upon a person, the notice shall be in writing and may be given or served—

(a) where the notice is addressed to a person other than a company, by serving it upon him personally or by sending it by registered post addressed to him at his usual or last known place of abode or business; and

(b) where the notice is addressed to a company, by serving it personally upon the person last known to the Central Bank or the Inspector as being a director or the principal representative or an officer of the company or by sending it by registered post addressed to such person at his address last known to the Central Bank or the Inspector.

(2) Where a notice is sent by registered post, it shall be deemed to have been given or served on the date on which it would have been delivered in the ordinary course of post.

(3) In this section “company” includes a body corporate which has ceased carrying on insurance business in Trinidad and Tobago.

Authority to sign documents

286. Any document required by or under this Act to be signed by a director or the principal representative of a company may be signed by any other officer of the company where—

(a) the officer is authorized to do so by the board of directors; and

(b) the board of directors has notified the Central Bank or the Inspector in writing of the authorization.

Printing of documents

287. Where a document is by this Act required to be printed, the Central Bank may permit it to be typewritten or to be reproduced by such means as the Central Bank may approve.

Policy not invalidated in certain cases

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

Currency

289. Notwithstanding any other written law, for the purpose of this Act, insurance business may be carried on in any currency.

Consultations

290. (1) Before making or amending Regulations under this Act the Minister may consult with the registrants and other persons who may be affected by the draft regulations or amendment.

(2) Before making or amending Guidelines referred to in section 291, the Central Bank shall issue draft Guidelines or draft amendments thereof and shall consult with the registrants who may be affected by the draft Guidelines or amendments.

(3) Where, in the opinion of the Minister, any matter to be dealt with in Regulations has become urgent, the Minister may proceed to make such Regulations without the consultation referred to in subsection (1), and may subsequently consult with the registrants and other persons who may have been affected by the Regulation or amendment.

(4) Where, in the opinion of the Governor after consultation with the Inspector, any matter proposed to be dealt with in Guidelines or by an amendment thereof has become urgent, the Central Bank shall proceed to issue the Guidelines or amendments thereof without following the process referred to in subsection (2), and shall subsequently consult with the registrants who may have been affected by the Guidelines or amendments.

291. (1) The Central Bank may issue Guidelines to— Guidelines

(a) facilitate compliance with this Act;

(b) enable the Central Bank to meet its objectives; or

(c) aid compliance with the Proceeds of Crime Act, the Anti-Terrorism Act, or any other written law in relation to the prevention of money laundering and combating the financing of terrorism which may be in force from time to time; and Chap. 11:27
Chap. 12:08

(d) regulate the market conduct of registrants.

(2) Guidelines issued under this section shall not be regarded as a statutory instrument.

(3) Contravention of a Guideline although not an offence, shall not prevent the Central Bank or the Inspector from taking action under section 182.

292. (1) The Minister may, upon recommendation by the Central Bank, make Regulations for generally giving effect to the provisions of this Act. Regulations and amendment of Schedules

(2) Regulations made under this Act shall be subject to negative resolution of Parliament.

(3) The Minister may, by Order, upon recommendation by the Central Bank, amend the Schedules.

(4) Any amendment to Schedule 6 shall be subject to negative resolution of Parliament.

293. The Proceeds of Crime Act and the Financial Institutions Act are amended to the extent as specified in Schedule 9. Consequential amendments
Chap. 11:27
Chap. 79:09
Schedule 9

294. The Insurance Act is repealed.**SCHEDULE 1**

(Sections 4, 23 and 257)

TYPES AND CLASSES OF INSURANCE BUSINESS

For the purposes of this Act, insurance business shall be categorized according to types of insurance business and each type of insurance business will be subdivided into classes as follows:

TYPE A—GENERAL INSURANCE BUSINESS

- (1) “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 out of, or in connection with the use of, vessels or aircraft or risks incidental to the construction, repair or docking of vessels or aircraft, or policies insuring employers against liability to pay compensation or damages to workers in their employment.
- (2) “Marine, Aviation and Transport Business” means the business of effecting and carrying out contract of insurance—
 - (a) upon vessels or aircraft or upon the machinery, tackle, furniture or equipment of vessels or aircraft;
 - (b) upon goods, merchandise or property of any description whatever on board of 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;

excludes risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reductions of the scope of business so carried on.

- (5) “Personal Accident Short-Term Insurance Business” means the business of effecting and carrying out contracts of insurance that would otherwise be Accident and Sickness Insurance Business under Type B except as follows:
- (a) that are attached as riders or additional benefits to other General Insurance contracts and meet all of the following criteria:
 - (i) have a policy period no longer than one year;
 - (ii) have a period for which benefits may be payable following a sickness or accident of no longer than five years;
 - (iii) have no provision for guaranteed renewability or guaranteed extension of cover;
 - (iv) provide indemnity only if an event indemnified by the General Insurance contract to which it is attached occurs prior to or simultaneous with accident or sickness; and
 - (v) have a premium no more than twenty-five per cent of the premium of the General Insurance contract to which they are attached; or
 - (b) that are standalone contracts of insurance and meet all of the following criteria:
 - (i) have a policy period no longer than one year plus odd days;
 - (ii) have a period for which benefits may be payable following a sickness or accident of no longer than five years;
 - (iii) have no provision for guaranteed renewability or guaranteed extension of cover;

- (iv) to the extent that the policy provides benefits on death, that this component of the policy is a minor component and the benefits relate only to specific causes of death; and
 - (v) to the extent that the policy provides cover for medical and/or hospital expenses, that this cover is incidental to other coverage under the policy and is not the main component of the policy.
- (6) “Property Insurance Business” means the business of effecting and carrying out contracts of insurance against risks of loss of or damage to, real or personal property, not being risks of a kind such that the business of effecting and carrying out contracts of insurance against them constitutes marine, aviation and transport insurance business or motor vehicle insurance business and includes risks of loss to the persons insured attributable to interruption of the carrying on of business carried on by them or to reduction of the scope of business so carried on.
- (7) “Workers Compensation Insurance Business” means the business of effecting and carrying out contracts of insurance against the liability of an employer to pay compensation to workers, whether under statute or negligence, for accident or injury related to the employment.

Incidental Business

If a single policy covers risks that would fall into more than one class, the insurer may classify it into the class that represents the predominant risk. All other risks on the policy would be included in the dominant class and may be referred to as incidental business.

For example, a Home policy may include a legal liability cover, but the entire policy can be classified as Property.

This provision does not prohibit an insurer from allocating a policy to more than one Class if it wishes to do so. An insurer should consider allocating a policy to more than one class if each of the components is significant in its own right, the insurer determines the premium separately for each component and the insurer is able to separate claims into the relevant Classes.

Market Practice

In determining the appropriate Class for any policy, the insurer may consider normal market practice in making such determinations, in addition to the definitions in this schedule. For example major risks in the petroleum industry or insurance of certain construction projects may conventionally be regarded as Marine business, even though the definitions in this Schedule may classify the policy as Property.

If an insurer uses market practice in determining the appropriate Class it must do so on a consistent basis.

TYPE B—LONG-TERM INSURANCE BUSINESS

(1) “Accident and Sickness Insurance Business” means the business of effecting and carrying out contracts of insurance—

(a) in the case of accident—

- (i) insurance against loss resulting from bodily injury to, or the death of, a person caused by an accident; or
- (ii) insurance whereby an insurer undertakes to pay a certain sum or sums of insurance monies in the event of bodily injury to, or the death of, a person caused by an accident; and

(b) in the case of sickness—

- (i) insurance against loss resulting from the sickness or disability of a person other than loss resulting from an accident or death;
- (ii) insurance whereby an insurer undertakes to pay a certain sum or sums of insurance monies in the event of the sickness or disability of a person other than as a result of an accident; or
- (iii) insurance whereby an insurer undertakes to pay a certain sum or sums of insurance monies to reimburse expenses incurred for the health care, including the preventive care of a person other than as a result of an accident.

- (2) “disability income insurance” means insurance whereby an insurer undertakes to pay a certain sum monies in the event of—
- (i) bodily injury to a person caused by an accident; or
 - (ii) sickness or disability of a person other than as a result of an accident.
- (3) “Group Life Insurance Business” means the business of insuring the lives of a group of persons where it is written on a yearly renewable term basis and where the contract can be terminated by either the insured or the insurer.
- (4) “Industrial Life Insurance Business” means the business of effecting and carrying out contracts of insurance upon human life, premiums in respect of which are contracted to be paid at intervals of less than forty days and which are usually received by means of collectors.
- (5) “Ordinary Long-term Insurance Business” means the business of effecting and carrying out contracts of insurance that are payable—
- (a) on the death of a person;
 - (b) on the happening of an event or contingency dependent on human life;
 - (c) at a fixed or determinable future time;
 - (d) for a term dependent on human life,

and without restricting the generality of the foregoing includes—

- (i) insurance whereby an insurer, as part of a contract of life insurance undertakes to pay an additional amount of insurance monies in the event of the death by accident of the person whose life is insured;
- (ii) insurance whereby an insurer as part of a contract of life insurance undertakes to pay insurance monies or to provide other benefits in the event that the person whose life is insured becomes disabled as a result of bodily injury or disease; or
- (iii) an undertaking to provide an annuity contract.

SCHEDULE 2

(Sections 17, 23, 27, 138 and 257)

APPLICATION AND ANNUAL FEES

PART A

The following fees shall be payable by insurance companies in accordance with the provisions of this Act:

	MATTERS IN RESPECT OF WHICH FEE IS PAYABLE	APPLICATION FEE PAYABLE IN TRINIDAD AND TOBAGO DOLLARS \$	ANNUAL FEE PAYABLE IN TRINIDAD AND TOBAGO DOLLARS
23	Application by a company to the Central Bank for registration under this Act to carry on insurance business	10,000	100,000 payable no later than the thirty-first day of January in each year or such later date as may be specified by the Central Bank
25	Application for registration by a foreign insurance company to carry on business in Trinidad and Tobago	10,000	100,000 payable no later than the thirty-first day of January in each year or such later date as may be specified by the Central Bank
26 (1) (a)	Application by a foreign insurance company for the approval in writing of the Central Bank to establish, acquire or open a representative office in Trinidad and Tobago	10,000	25,000 payable no later than the thirty-first day of January in each year or such later date as may be specified by the Central Bank

SCHEDULE 2—Continued
Application and Annual Fees

PART A

	MATTERS IN RESPECT OF WHICH FEE IS PAYABLE	APPLICATION FEE PAYABLE IN TRINIDAD AND TOBAGO DOLLARS \$	ANNUAL FEE PAYABLE IN TRINIDAD AND TOBAGO DOLLARS
27 (1)	Application by a local insurer for the prior approval of the Central Bank to establish, close or relocate a branch outside Trinidad and Tobago	10,000	Nil
68	Application for a permit to carry on the business of a financial holding company	10,000	100,000 payable no later than the thirty-first day of January in each year or such later date as may be specified by the Central Bank
257	Application to be registered as an association of underwriters	10,000	100,000 payable no later than the thirty-first day of January in each year or such later date as may be specified by the Central Bank

PART B**INTERMEDIARIES**

The following fees shall be payable by intermediaries in accordance with the provisions of this Act:

	MATTERS IN RESPECT OF WHICH FEE IS PAYABLE	APPLICATION FEE PAYABLE IN TRINIDAD AND TOBAGO DOLLARS \$
138	Application to be registered as a sales representative	1,000
138	Application to be registered as an agent	1,000
138	Application to be registered as a broker	3,500
138	Application to be registered as an adjuster (individual)	3,500
138	Application to be registered as an agency	3,500
138	Application to be registered as an brokerage	6,500
138	Application to be registered as an adjuster (company)	6,500

SCHEDULE 3

(Sections 198 and 202)

FORM A

ABSOLUTE ASSIGNMENT

Policy Number..... on the life of

.....

Policy Owner (if not the above)

Assignee: (Name)

(Address)

In consideration of

The undersigned hereby assigns and transfers all rights, title, and interest in and to the above-mentioned policy, issued by..... unto the above-named assignee, his executors, administrators, successors and assigns including the right to surrender the same for the surrender value and to receive any dividends and other amounts payable thereunder, whose receipt or acquittance for all amounts payable shall be a full discharge of all claims thereunder.

Dated at this day of, 20....

Signed in the presence of:

.....
Witness

.....
Policy Owner

.....

.....

NOTE: Additional lines are provided for signature of persons with beneficial interests.

FORM B

(Section 198)

ASSIGNMENT AS SECURITY

Policy Number on the life of

Policy Owner (if not the above)

Assignee: (Name)

(Address)

In consideration of

the undersigned, hereby assigns and transfers as security all rights, title and interest in

and to the above-mentioned policy issued by

.....
unto the above-named assignee, his executors, administrators, successors and assigns whose receipt or acquittance for all the amounts payable under the said policy shall be a full discharge of all claims thereunder.

This assignment does not confer on the assignee the right to surrender the policy for the surrender value.

Dated atthis day of, 20

Signed in the presence of:

.....

Witness

.....

Policy Owner

.....

.....

NOTE: Additional lines are provided for signature of persons with beneficial interests.

FORM C

(Section 202)

MEMORANDUM OF DISCHARGE

Policy Number Life Assured

Policy Owner (if not above)

In consideration of

all the rights, title and interest in and to the above-mentioned policy assigned to the undersigned on as security.....for securing.....

are hereby relinquished and the policy discharged.

Dated at this day of 20

.....
Witness

.....
Signature of Assignee

SCHEDULE 4

(Sections 244, 253 and 254)

PART I**Requirements as to the Trust Deed and Rules of
Registered Pension Fund Plans**

1. The Trust Deed and Rules of a plan qualified for registration under this Act shall make provision for the following matters:
 - (a) the whole of the objects for which the plan is established;
 - (b) the appointment and removal of trustees;
 - (c) the vesting in the trustees of all property belonging to the plan;
 - (d) the investment in the names of the trustees of all capital money belonging to the plan and for authorizing the investments, if any, in addition to those authorized by law, in which the trustees may invest such moneys; but the Rules of a plan may provide for the deposit of such moneys with an institution licensed under the Financial Institutions Act;
 - (e) the making of contributions to the plan by the employers of persons employed in the undertaking or combination of undertakings in connection with which the plan is established;
 - (f) the contributions payable to and the rates of benefits payable from the fund or the method of calculating benefits so payable;
 - (g) the conditions on which persons may become and may cease to be contributors to and entitled to benefits from the fund;
 - (h) the protection of the vested rights of contributors to the plan;
 - (i) the preparation of all statements of accounts, balance sheets and reports required by this Act to be prepared;
 - (j) the supply (on demand) to every person having any rights in the plan, being a person who is or has been employed in the undertaking in connection with which

the plan is established, of a copy of the Rules of the plan and of all amendments thereof, and of the latest statements of accounts, balance sheets and report prepared in accordance with the requirements of this Act;

- (k) the circumstances in which the plan may be wound up and in the event of winding-up the use of the plan to purchase immediate annuities for contingent pensioners; and
- (l) the method by which the Rules may be amended.

2. The second part of the report shall contain the following information:

- (a) general observations regarding mortality, withdrawal and retirement from service and progression of salary during intervaluation period and general observations on any other factors entering into the valuation;
- (b) a description of the mortality and all other rates used (specimen rates to be shown in an appendix to the report);
- (c) average rates of interest realized by the assets of the fund whether invested or not during each year in the intervaluation period;
- (d) the rate of interest assumed in the calculations for purpose of the valuation; and
- (e) a statement indicating—
 - (i) whether and how it has been secured that the estimated net liability in respect of any employer is not negative; and
 - (ii) the amount of and the reason for any special reserves which have been set up.

3. The final part of the report shall contain information about the results of the valuation, an analysis of the surplus or deficiency shown and a recommendation as to how much of the surplus can be regarded as disposable, or, if a deficiency, the manner in which the deficiency can be liquidated.

4. The report shall close with any further observations the actuary may wish to offer on the valuation.

PART II

(Section 253)

FORMS

Form A

Revenue Account for the period
to

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

*May be omitted for an insured pension fund plan.

Form B

(Note to be completed for an insured pension fund plan)

Balance Sheet as at 20.... for

Pension Fund Plan

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

Details of Mortgages

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

Details of Stock Exchange Securities

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

SCHEDULE 5

(Sections 10, 23, 25, 28, 29, 34, 36, 40, 54, 68, 69, 70, 71, 78, 90, 103, 118, 140 and 148)

MINIMUM CRITERIA FOR REGISTRATION

Where the provisions of the Act require a person to be fit and proper or to meet the criteria of Schedule 5, the following will be considered:

A. INDIVIDUALS TO BE FIT AND PROPER PERSONS

1. Every person who is, or is to be, a director, officer, actuary, controlling shareholder, significant shareholder or acquirer, of a registrant or financial holding company, agent, broker, sales representative or adjuster must be a fit and proper person to hold the particular position.

2. In determining whether an individual is a fit and proper person to hold any particular position, regard shall be had to his good character and probity, competence and soundness of judgment for fulfilling the responsibilities of that position, the diligence with which he is fulfilling or likely to fulfill those responsibilities and whether the interests of policyholders or potential policyholders of the registrant or financial holding company are, or are likely to be, in any way threatened by his holding that position.

3. In addition to the criteria in paragraph 2, regard may be had to the previous conduct and activities in business or financial matters of the individual in question and, in particular, to any evidence that he has—

- (a) been convicted of an offence involving fraud, insider trading, money laundering, terrorist financing or other dishonesty or violence;
- (b) contravened any provision of this Act or any other written law;
- (c) engaged in any business practices that are deceitful, oppressive, unsafe, unsound or otherwise improper, whether unlawful or not, or which otherwise discredit his method of conducting business;
- (d) an employment record which leads the Central Bank to believe that the person carried out an act of impropriety in the handling of his employer's business;

- (e) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment;
- (f) not met the criteria under subhead B, paragraph 3; and
- (g) any other matter which the Central Bank may specify.

B. SHAREHOLDERS TO BE FIT AND PROPER

1. In determining whether a company is a fit and proper person to be a controlling shareholder, significant shareholder or acquirer, regard shall be had to, but not limited by, the following criteria, whether:

- (a) the directors and officers of the company have satisfied the fit and proper criteria set out in subhead A;
- (b) the company has been found guilty of insider trading or fraud involving trading in securities by local or foreign authorities;
- (c) the company has been convicted of an offence;
- (d) the company has contravened any provisions of this Act or any other law;
- (e) in the opinion of the Central Bank the company has not carried on its business in a prudent manner;
- (f) in the opinion of the Central Bank the company is insolvent or is likely to become insolvent;
- (g) the company has suspended, is about to suspend payment, or is unable to meet its obligations as they fall due;
- (h) in the opinion of the Central Bank the affairs of the company or any associated person are being conducted in a manner prejudicial to the soundness of the company in question or the financial system of Trinidad and Tobago;
- (i) the composition of the board of directors meets the requirements of subhead C, paragraph 3; and
- (j) any other matter which the Central Bank may specify.

2. In determining whether a company has carried on its business in a prudent manner under paragraph 1(e), the Central Bank shall take into consideration—

- (a) the capital of the company in relation to the size and nature of the business or proposed business of the insurer or financial holding company;
- (b) credit concentration or proposed credit concentration and risk exposures or proposed risk exposures in the company and the insurer or financial holding company;
- (c) separation of the business or proposed business of the company and the insurer or financial holding company from other business and from other interests of any controlling shareholder or significant shareholder of the company;
- (d) internal controls and accounting systems or proposed internal controls and accounting systems of the company;
- (e) risk management systems and policies or proposed risk management systems and policies of the company and the insurer or financial holding company;
- (f) arrangements for any business, or functions relating to any business, of the company or the insurer or financial holding company to be carried on by any person other than the company or the insurer or financial holding company; and
- (g) such other matters as the Central Bank may specify.

3. The following criteria shall also be considered in determining whether a controlling shareholder is fit and proper under this paragraph—

- (a) the nature and sufficiency of the financial resources of the controlling shareholder as a source of continuing financial support for the insurer or financial holding company;
- (b) the soundness and feasibility of the controlling shareholder for the future conduct and development of the insurer's or financial holding company's business; and
- (c) the business record and experience of the controlling shareholder.

**C. INSURER, FINANCIAL HOLDING COMPANY, AGENCY AND
BROKERAGE TO BE FIT AND PROPER**

1. In determining whether an insurer, financial holding company, agency and brokerage is a fit and proper person, regard shall be had to the criteria listed in subhead B, paragraph 1 and to the criteria listed in this subhead.

2. At least two individuals with sufficient experience and knowledge of the business to direct effectively the business of the registrant or financial holding company.

3. In the case of a local insurer, financial holding company, agency or brokerage—

- (a) such number of directors without executive responsibility for the management of its business as the Central Bank considers appropriate having regard to the circumstances of the company and the nature and scale of its operations; and
- (b) the directors shall be selected from amongst persons drawn from diverse occupations, and the overall composition of the board should reflect a reasonable mix of skills and experience, in matters relating to finance, economics, accountancy, industry, commerce, law or administration.

4. An insurer, financial holding company, agency or brokerage shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain net assets which, together with other financial resources available to the company of such nature and amount as are considered appropriate by the Central Bank, to be—

- (a) commensurate with the nature and scale of the company's operations;
- (b) the classes and types of insurance business in which the company is involved;
- (c) sufficient to safeguard the interests of its policyholders and potential policyholders;
- (d) the risks inherent in its operations and in the operation of any affiliate so far as is capable of affecting the company; and
- (e) any other factors appearing to the Central Bank to be relevant.

5. An insurer, financial holding company, agency or brokerage shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate liquidity.

6. For the purposes of paragraph 5 the Central Bank may, to such extent as it thinks appropriate, take into account as liquid assets, assets of the company and facilities available to it which are capable of providing liquidity within a reasonable period.

7. An insurer, financial holding company, agency or brokerage shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will make adequate provision for depreciation or diminution in the value of its assets.

8. An insurer shall not be considered as having met its obligations to policyholders unless it has made adequate provision in respect of policyholder liabilities and claims reserving.

9. Where payment of principal or interest which is due and payable on any credit exposure granted by an insurer or financial holding company has not been made or effected for a period of sixty days, such credit exposure shall be considered non-performing unless it is fully secured and is in the process of collection.

10. An insurer, financial holding company, agency or brokerage shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate systems of internal control of its business and records.

11. Records and systems shall not be regarded as adequate unless they are such as to enable the business of the insurer, financial holding company, agency or brokerage to be prudently managed and the company to comply with the duties imposed on it by or under this Act.

12. For the purposes of paragraph 4, "net assets", in relation to a company, means stated capital and reserves.

D. TRUSTEE TO BE FIT AND PROPER

In determining whether a trustee is a fit and proper person, the Central Bank shall have regard to matters listed in subhead C where appropriate to the function of trustee.

SCHEDULE 6

(Sections 271, 277 and 292)

ADMINISTRATIVE FINES**PART A****INSURERS**

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
17(2)	Failure to pay annual fees not later than the thirty-first day of January in each year or such later date as may be specified by the Central Bank	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
26(1)	Failure of a foreign insurance company to obtain prior approval of the Central Bank before establishing, acquiring or opening a representative office in Trinidad and Tobago or failure of a foreign insurance company to give notice in writing to the Central Bank before closing or relocating a representative office in Trinidad and Tobago	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
27(1)	Failure of a local insurer to obtain the prior approval of the Central Bank before establishing, acquiring, opening, closing or relocating a branch outside Trinidad and Tobago	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
27(3)	Failure of a local insurer to notify the Inspector before establishing, acquiring, opening, closing or relocating a representative office outside Trinidad and Tobago	\$300,000 plus \$30,000 for each day the offence continues	\$75,000

SCHEDULE 6—CONTINUED
ADMINISTRATIVE FINES

PART A
INSURERS—Continued

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
31	Failure of company to notify Central Bank of any change in particulars specified in the company's application	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
32(1)	Making an alteration to articles of incorporation, continuance, by-laws or other constituent documents without notifying and receiving the approval of the Inspector	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
32(4)	Failure of an insurer to submit to the Inspector copies of altered articles of incorporation, continuance, by-laws or other constituent documents	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
56(1)	Failure of a foreign insurer to furnish particulars of liabilities and assets of statutory fund	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
57(1)	Failure of trustee or foreign insurer to submit information within the time period specified by the Inspector	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
91	Director of an insurer or financial holding company being present or voting at a meeting of the board of directors or a committee of the board of directors of that insurer or financial holding company on a contract which would result in a direct or indirect financial benefit	\$500,000	\$125,000

SCHEDULE 6—CONTINUED
ADMINISTRATIVE FINES

PART A
INSURERS—Continued

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
92(1)	Failure of a director of an insurer or of a financial holding company to notify the Inspector of material risks	\$600,000 plus \$60,000 for each day the offence continues	\$10,000 for each day the offence continues
92(5)	Failure of a director of an insurer to submit to the Central Bank reasons for resignation or departure from office or three reasons why he opposes any proposed action or resolution	\$600,000 plus \$60,000 for each day the offence continues	\$10,000 for each day the offence continues
92(6)	Failure of a director of an insurer or of a financial holding company to establish and maintain procedures for remuneration	\$600,000 plus \$60,000 for each day the offence continues	\$10,000 for each day the offence continues
92(7)	Failure of an insurer or of a financial holding company to submit to its audit committee an annual report	\$600,000 plus \$60,000 for each day the offence continues	\$10,000 for each day the offence continues
92(8)	An insurer awarding or paying any bonus to its directors or officers where its assets are insufficient to meet the requirements under the Regulations or the bonus would reduce the assets of the insurer below such requirements	\$600,000 plus \$60,000 for each day the offence continues	\$10,000

SCHEDULE 6—CONTINUED

ADMINISTRATIVE FINES

PART A

INSURERS—Continued

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
93(1)	Failure of an insurer to appoint an audit committee as constituted under this section	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
93(2)	Failure of an insurer to appoint an independent director as chair of the audit committee	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
94	Failure of an insurer or financial holding company to submit to the Inspector the annual report as described under this section	\$400,000 plus \$40,000 for each day the offence continues	\$8,000 for each day the offence continues
98(2)	Failure of the board of an insurer to provide the Inspector with the policies and procedures when requested, and the results of the compliance reviews within six months after the end of its financial year	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
98(3)	Failure to change policies and procedures within a period specified by the Inspector	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
98(4)	Failure of an insurer to take such action to establish policies and procedures within the period specified by the Inspector	\$500,000 plus \$50,000 for each day the offence continues	\$125,000

SCHEDULE 6—CONTINUED**ADMINISTRATIVE FINES****PART A****INSURERS—Continued**

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
101(5)(a)	Failure of an insurer or financial holding company to serve on the Central Bank a notice of intention to appoint an audit entity to act as auditor	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
101(1)	Failure of a local insurer or financial holding company to give notice or reasons to the Inspector of the removal or replacement of an auditor, or where a person ceases to be an auditor	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
101(2)	Failure of foreign insurer to give notice or reasons to the Inspector of the removal or replacement of an auditor before the expiration of his engagement, and where a person ceases to be an auditor	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
103(1)	Failure to appoint an actuary as specified under this section	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
103(3)	Failure of insurer to notify the Inspector as required under this section	\$300,000 plus \$30,000 for each day the offence continues	\$75,000

SCHEDULE 6—CONTINUED

ADMINISTRATIVE FINES

PART A

INSURERS—Continued

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
104(1)	Failure of an insurer to give notice to the Inspector of the removal or replacement of an actuary, and where a person ceases to be an actuary, and failure to give reasons to the Inspector for such removal or replacement	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
104(2)	Failure of the actuary to give notice to the Inspector and insurer if he resigns or does not seek reappointment and failure to give reasons to the Inspector for such resignation or decision	\$300,000 plus \$30,000 for each day the offence continues	\$5,000 for each day the offence continues
104(4)	Failure of the actuary to submit a written statement to the Inspector and the insurer setting out the nature of any disagreement	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
112(6)	Failure of a local insurer to notify the Inspector of shares held in a company providing necessary support service and shares and ownership interests held in excess of any limit imposed by this section	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
113	Failure of a local insurer to obtain the necessary approvals of the Central Bank under this section	\$500,000 plus \$50,000 for each day the offence continues	\$125,000

SCHEDULE 6—CONTINUED

ADMINISTRATIVE FINES

PART A

INSURERS—Continued

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
114(1)	Incurring of a credit exposure by an insurer to a person in an aggregate amount that exceeds twenty-five per cent of its capital base except as prescribed by this section	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
114(2)	Incurring by an insurer of any large exposure where the aggregate principal amount of all large exposures will exceed eight hundred per cent of the capital base of the insurer	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
114(4)	Failure of an insurer to reduce credit exposure, increase capital, or make adequate provision for potential losses as prescribed by this section	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
114(5)	Failure of an insurer to notify the Inspector of all credit exposures to persons which are in excess of the fixed limits, and of the measures that shall be taken to reduce the credit exposures that are in excess of the fixed limits or to increase capital	\$500,000 plus \$50,000 for each day the offence continues	\$125,000

SCHEDULE 6—CONTINUED

ADMINISTRATIVE FINES

PART A

INSURERS—Continued

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
115(1)	Failure of an insurer to comply with the general limit on credit exposures to connected parties	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
115(4)	Incurring of a credit exposure by an insurer to a director or officer or their relatives in an amount greater than the limit specified in this section	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
115(5)	Incurring of a credit exposure by an insurer to a director or officer on terms and conditions under this section	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
115(6)	Incurring a credit exposure by an insurer to a connected party or connected party group on terms and conditions not similar to the terms and conditions on which such credit exposure is offered to the public, or without the approval of the board of directors	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
115(7)	Failure of an insurer to notify the Inspector of all credit exposures to connected parties and connected party groups which are in excess of the limits prescribed under this section	\$500,000 plus \$50,000 for each day the offence continues	\$125,000

SCHEDULE 6—CONTINUED

ADMINISTRATIVE FINES

PART A

INSURERS—Continued

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
115(10)	Failure of an insurer to comply with the requirement of the Inspector to set aside, change or reduce a credit exposure to a connected party	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
117(1)(a)	A direct or indirect acquisition by an insurer of its own shares or the shares of a holding company or financial holding company	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
155(1)	Failure of an insurer to submit to the Central Bank a listing of its agencies or sales representatives	\$300,000 plus \$30,000 for each day the offence continues	\$6,000 for each day the offence continues
171(1)	Failure of a local insurer or financial holding company to submit to the Inspector financial statements in accordance with this section	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
171(3)	Failure of a foreign insurer to submit financial statements to the Inspector within the prescribed time	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues

SCHEDULE 6—CONTINUED

ADMINISTRATIVE FINES

PART A

INSURERS—Continued

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
171(4)	Failure of a local insurer or a financial holding company to submit to the Inspector upon request audited financial statements of a subsidiary, a company in which the insurer or financial holding company is a significant shareholder or any other member of the financial group	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
171(5)	Failure of a local insurer or financial holding company to submit financial statements signed by two directors of the relevant company	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
172(1)	Failure of an insurer or financial holding company to submit returns to the Inspector	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
172(2)	Failure of an insurer to submit to the Inspector a balance sheet with a certificate signed by the actuary	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
172(3)	Failure of an insurer or financial holding company to submit quarterly returns to the Inspector	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues

SCHEDULE 6—CONTINUED

ADMINISTRATIVE FINES

PART A

INSURERS—Continued

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
179(1)	Failure of an insurer or financial holding company to publish audited financial statements	\$400,000 plus \$40,000 for each day the offence continues	\$8,000 for each day the offence continues
179(2)	Failure of an insurer to keep at its offices and to make available for inspection certain information	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
185(1)	Failure of an insurer to submit actuarial reports within the prescribed time to the Inspector	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
185(3)	Failure of insurer to submit a copy of any actuarial reports, the results of which are made public, within the prescribed time to the Inspector	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
189(1)	Failure of an insurer to obtain approval of the pricing of its policy by an actuary	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
189(2)	Failure of an insurer to furnish the Inspector with a report on the appropriateness of the pricing of a class of policy	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
190	Failure of an insurer to obtain approval of an actuary to amend commission or premium	\$500,000 plus \$50,000 for each day the offence continues	\$125,000

SCHEDULE 6—CONTINUED

ADMINISTRATIVE FINES

PART A

INSURERS—Continued

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
225(1)	Failure of an insurer to publish a statement of unclaimed money and to submit the statement to the Central Bank	\$400,000 plus \$40,000 for each day the offence continues	\$8,000 for each day the offence continues
225(4)	Failure of an insurer to pay into the Central Bank such unclaimed money within the prescribed time period under this section	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
225(5)	Failure of an insurer to submit listing as required under this section	\$300,000 plus \$30,000 for each day the offence continues	\$6,000 for each day the offence continues
240(1)	Failure of an insurer to include in its financial statements a reserve for unexpired risk and outstanding claims	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
240(2)	Failure of an insurer to submit details of the methods and assumptions used in calculating the reserve for outstanding unexpired risk and outstanding claims	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
261(1)	Failure of an association of underwriters to submit documents and information relating to its insurance business to the Inspector	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues

SCHEDULE 6—CONTINUED

ADMINISTRATIVE FINES

PART A

INSURERS—Continued

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
261(2)	Failure of an association of underwriters established outside of Trinidad and Tobago to submit documents and information as required by this section	\$500,000	\$10,000 for each day the offence continues
261(3)	Failure of an association of underwriters to submit documents and information relating to its insurance business as required under this section	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
261(4)	Failure of an association of underwriters to publish a statement of receipt and expenditure	\$400,000 plus \$40,000 for each day the offence continues	\$8,000 for each day the offence continues
262(4)	Failure of an association of underwriters to submit to the Inspector information as prescribed in this section	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
275(2)	Failure of a registrant to correct or withdraw a misleading or objectionable advertisement	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
282(1)	Failure by an insurer to submit to the Central Bank copies of the approval documents as required under this subsection	\$300,000 plus \$30,000 for each day the offence continues	\$75,000

SCHEDULE 6—CONTINUED

ADMINISTRATIVE FINES

PART A

INSURERS—Continued

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
282(2)	Acceptance by a promoter of any office or profit which is not approved under subsection (1)	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
283(1)	Failure of an insurer to maintain a register of policies	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
283(3)	Failure to notify the Inspector of the identity or change in identity of the person in charge of the register	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
283(4)	Failure of an insurer to search its register of policies within the time prescribed in this section	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
283(5)	Failure of the officer designated by the insurer to submit reports as required under this section	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
284(1)	Failure of an insurer to register a policy	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
284(2)	Failure of an insurer to enter the address of its registered office on every policy	\$300,000 plus \$30,000 for each day the offence continues	\$75,000

SCHEDULE 6—CONTINUED

ADMINISTRATIVE FINES

PART A

INSURERS—Continued

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
284(3)	Failure of an insurer to register a policy immediately after its issue	\$300,000 plus \$30,000 for each day the offence continues	\$75,000

PART B

AGENCIES AND BROKERAGES

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine (Registrant)
142(2)	Failure to disclose information to the consumer	\$17,000 plus \$1,700 for each day the offence continues	\$4,250
142(3)	Failure to comply with reporting requirements as may be specified by the Central Bank	\$17,000 plus \$1,700 for each day the offence continues	\$4,250
143(4)	Failure to submit a plan for the increase of its minimum stated capital within six months following commencement of the Act	\$17,000 plus \$1,700 for each day the offence continues Directors and Officers \$8,500 plus \$850 for each day the offence continues	\$4,250

PART B—CONTINUED
AGENCIES AND BROKERAGES

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine (Registrant)
144(4)	Failure to prominently display a certificate of registration or a copy of a certificate of registration	\$10,000 plus \$1,000 for each day the offence continues	\$2,500
147	Failure to produce a certificate upon request	\$10,000 plus \$1,000 for each day the offence continues	\$2,500
150(1)	Failure to give notice within five days to the Central Bank where a contract has been terminated	\$10,000 plus \$1,000 for each day the offence continues	\$2,500
155(2)	Failure of an agency or brokerage to make return to the Central Bank on its agents, brokers and sales representatives	\$10,000 plus \$1,000 for each day the offence continues	\$2,500
159(2)	Failure to issue a receipt to a consumer	\$17,000 plus \$1,700 for each day the offence continues	\$4,250
160(6)	Failure to submit reports to the Central Bank on the consumer trust account within the specified time	\$17,000 plus \$1,700 for each day the offence continues	\$4,250
163	Failure of brokerage or agency to submit financial statements within the time prescribed in this section	\$17,000 plus \$1,700 for each day the offence continues	\$4,250

PART C**BROKERS, AGENTS, ADJUSTERS, SALES REPRESENTATIVES**

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
147	Failure to produce certificate upon request	\$5,000 plus \$500 for each day the offence continues	\$1,250
159(2)	Failure to issue a receipt to a consumer	\$8,500 plus \$850 for each day the offence continues	\$2,125

SCHEDULE 7

(Section 158)

LIFE INSURANCE DISCLOSURE FORM

If you are replacing a current insurance policy, you should be given this form before you fill out an application for the new insurance. This form requires you to consider certain questions as you make the decision whether to replace your current life insurance policy.

Replacing a life insurance policy means a transaction whereby life insurance is purchased in a single policy or in several related policies by a person from an insurer and as a consequence of the transaction one or more life insurance policies are—

- (a) rescinded, lapsed or surrendered;
- (b) changed to paid-up insurance or continued as extended term insurance or under automatic premium loan;
- (c) changed in any manner so as to effect a reduction in benefits;
- (d) changed so that cash values in excess of fifty per cent of the tabular cash value of the contract of insurance are released;
- (e) subjected to borrowing of any policy loan values whether in a single loan or under a schedule of borrowing over a period of time whereby an amount in excess of fifty per cent of the tabular cash value is borrowed on one or more life insurance policies; or
- (f) cancelled within one year after a new policy has been issued but does not include a transaction where—
 - (i) a new life insurance policy is made with an insurer with whom the person has an existing life insurance policy in furtherance of a contractual conversion privilege exercised by the person;
 - (ii) a life insurance policy is replaced by an annuity; or
 - (iii) a life insurance policy is replaced by group insurance.

The new insurer must give you a copy of your policy once it has been approved. You have twenty days from the time you receive a copy of this disclosure form to withdraw the new application and receive a full refund of any premiums paid.

Ask yourself the following questions as you consider replacing your current life insurance policy:

- (1) Is the new policy enough of an improvement to justify any new costs? All new policies have some new costs, such as those for underwriting, administration and commissions.
- (2) Do premiums under the new policy increase as you age? The premiums on some policies go up as you get older or if you get sick.
- (3) Are there circumstances where your new policy does not pay benefits? Your policy should specify whether the insurer will not pay because of suicide or because you provided incomplete information.
- (4) Does the new policy pay you as much as the current one? Make sure you look over the details of death benefits, cash value, and dividends carefully.
- (5) Does the new policy guarantee to insure you, or allow you to increase your insurance coverage, no matter what your future medical condition? Your current policy may do this.
- (6) Does your new policy let you borrow money at attractive interest rates? Your current policy may do this.
- (7) Are you losing tax advantages or creating a tax liability? Many current insurance policies provide valuable income tax benefits. These are not available in some new policies. Cancellation of your current policy may increase your income tax this year. Make sure that you fully understand the tax consequences of changing policies.

LIFE INSURANCE DISCLOSURE FORM

Please Print	Your Current Policy	Proposed Replacement Policy
PART A—General Information		
Policy number		<i>Not applicable</i>
Insurance Company		
Date of Issue		<i>Not applicable</i>
Name of the person whose life is insured		
Name of the person who owns the policy (if not owned by the person who is insured)		
Type of policy (whole life, term, universal, etc.)		
Will you have to pay extra premiums or will your coverage be reduced if you smoke, have health problems, or work at a risky occupation?		
Most policies will not pay if the person insured commits suicide within two years of the policy's issue date. When does the suicide period on the policy expire?		
A policy may not pay if information on the application was incomplete (for example, if the insured person did not disclose a previous illness to the insurance company). If this information is not discovered within a certain period (usually two years), however, the policy will pay, in the absence of fraud. On what date does this period expire?		
Does the policy give the right to buy additional insurance, whatever the insured person's health? If yes, when and how much?		
Does the policy have any other benefits, e.g., waiver of premium or accidental death and dismemberment?		

LIFE INSURANCE DISCLOSURE FORM—CONTINUED

Please Print	Your Current Policy	Proposed Replacement Policy
PART B—Premiums		
A premium is the amount of money you pay the insurance company to be insured. Some policies guarantee that the premium amount will stay the same for the length of the policy. Will this policy's premium stay the same?		Not applicable
What is the annual premium? What is the annual premium per \$1,000 of insurance? If Universal Life, what premium is being paid currently? Is there a minimum premium? Is there a maximum premium?		
If Universal Life, is the formula by which expenses are calculated guaranteed?		
Does any of the coverage, including riders, change over time?		
If yes, which coverage changes? By how much?		
PART C—Guaranteed Death Benefits		
What does the policy pay if the insured person dies today?		
Will this amount change or expire at any time?		
If so, how?		
If Universal Life, is the charge for the death benefit guaranteed? (A maximum cost of insurance rate)		
What is the maximum cost of insurance at: Age 50? Age 55? Age 60? Age 65? Age 70?		

LIFE INSURANCE DISCLOSURE FORM—CONTINUED

Please Print	Your Current Policy	Proposed Replacement Policy
PART D—Cash Value, Dividends and Loans		
Some policies have a cash value, which means that some of the insurance premium goes into a reserve that grows in value. The owner of the policy has the option of taking out this cash value, which may end the policy or reduce the death benefit. Does this policy have a cash value?		
If yes, what is the total cash value at the last anniversary?		
What will the guaranteed cash value be at: Age 50? Age 55? Age 60? Age 65? Age 70?		
Can loans be taken out on this policy? If yes, at what interest rate may money be borrowed, and on what terms (for example, a set maximum or a variable rate)		
If there is a loan currently outstanding on the policy		Not applicable
Can withdrawals be made on this policy (Universal Life)? If so, what is the charge for a withdrawal? Can this charge change?		
Some policies pay dividends based on the performance of the insurance company. Is this policy eligible for dividends?		
If so, what dividends option was selected? (For example, increased insurance coverage, reduced premiums, cash payments, accumulation)		

LIFE INSURANCE DISCLOSURE FORM—CONTINUED

Please Print	Your Current Policy	Proposed Replacement Policy
PART D—Cash Value, Dividends and Loans		
How much was the most recent dividend? (If applicable)		
If Universal Life, is there a minimum investment guarantee or a minimum interest rate?		
<p>NOTE: Because there are many costs associated with issuing a new policy, it may be in your financial interest to amend the current policy rather than replacing it. In considering your replacement decision, you may wish to seek the advice of the company that issued your current policy.</p>		

	Consumer's Name (Please Print)
	Consumer's Signature
	Date

	Agent's Name (Please Print)	Agent's Statement I have completed this form fully and accurately, and have explained the significance of all of the information contained on the form to the consumer.
	Agent's Statement	
	Licence Number	

IMPORTANT:

DO NOT SIGN THIS FORM UNLESS YOU HAVE DISCUSSED ALL THE IMPLICATIONS OF REPLACING YOUR CURRENT INSURANCE POLICY WITH YOUR AGENT, BROKER OR SALES REPRESENTATIVE.

I have read this form completely, and my agent, broker or sales representative has explained the significance of the information contained in the form and discussed the implications with me.

Consumer's signature:

Witnessed by Broker, Agent or Sales Representative

Date:

SCHEDULE 8

(Section 255)

ASSETS IN WHICH PENSION FUND PLANS MAY BE INVESTED

A pension fund plan may invest its statutory funds in assets of the following classes:

1. (a) the bonds, debentures, stocks, or other evidences of indebtedness of or guaranteed by the Government of—
 - (i) Trinidad and Tobago;
 - (ii) any Commonwealth country or dependency or the Republic of Ireland;
 - (iii) any member country of the Organisation of Economic Co-operation and Development;
 - (iv) the United States of America or a state thereof approved by the Supervisor of Insurance;
 - (v) the country in which the head office of the company is situated or a province or state thereof; or
 - (vi) any country approved by the Central Bank;
- (b) the bonds, debentures or other evidence of indebtedness of a corporation incorporated in Trinidad and Tobago which are fully secured by a statutory charge upon real estate or upon the plant or equipment or other tangible assets of the corporation used in the transaction of its business;
- (c) the bonds, debentures or other evidence of indebtedness issued by an authority or other body without share capital established and empowered pursuant to a statute of Trinidad and Tobago to administer, regulate the administration of, provide or operate port, harbour, airport, bridge, highway, tunnel, transportation, communication, sanitation, water, electricity, or gas services or facilities and for any of these purposes to levy, impose or make taxes, rates, fees or other charges which may be used only in carrying out the objects of the authority or other body and are sufficient to meet its operation, maintenance and debt service charges;

- (d) the bonds, debentures or other securities of, or those guaranteed by international financial institution approved by the Minister;
- (e) guaranteed investment certificates issued by a trust company incorporated in any country listed in subparagraph (a) which at the date of vesting thereof in trust, complied with the requirements set out in subparagraph (f) in respect of the payment of dividends;
- (f) the fully paid ordinary shares, preferred shares, bonds, debentures or other evidence of indebtedness of a company incorporated in any country listed in subparagraph (a) which during a period of five years ending less than one year before the date of purchase thereof has either paid a dividend in each such year upon its ordinary shares or had earnings in each such year available for the payment of a dividend upon such shares, of at least four per cent of the average value at which the shares were carried in the capital stock account of the company during the year in which the dividend was paid or in which the company had earnings available for the payment of dividends, as the case may be;
- (g) ordinary shares, preferred shares, bonds or debentures of a company incorporated in Trinidad and Tobago and approved by the Minister;
- (h) the units, certificates or other evidence of participation in a scheme for indebtedness of the Unit Trust Corporation of Trinidad and Tobago;
- (i) unit certificates, shares or other evidence of participation in financial assets not exceeding ten per cent of the Statutory Fund Requirement and whose portfolio is regulated either by authorities in Trinidad and Tobago or in any—
 - (i) member country of the Organisation of Economic Co-operation and Development;
 - (ii) Commonwealth country; or
 - (iii) other country,

that the Minister may by Order declare an approved country; or

- (j) the shares of a venture capital company registered under the Venture Capital Act.

Chap. 81:08

2. Mortgages and other titles for repayment of loan secured by—

- (a) real estate or leaseholds for a term of years or other estate or interest in real estate in Trinidad and Tobago where the amount of the loan together with the amount of indebtedness under any mortgage or other charge on the real estate or interest therein ranking equally with or superior to the loan does not exceed eighty per cent of the value of the real estate or interest therein, subject to the exception that a company—
- (i) may upon the sale of real estate in which its funds are invested, accept a mortgage or other title for repayment on such real estate, as part payment and secured thereon for more than eighty per cent of the sale price of such real estate; or
 - (ii) may invest in a mortgage or other title for repayment on real estate where the amount of indebtedness under any mortgage or other charge on such real estate or interest therein ranking equally with or superior to the loan does not exceed ninety per cent of the value of the real estate as long as that portion of the indebtedness in excess of seventy-five per cent of the value of the real estate is guaranteed by the Housing Development Corporation by a company registered under this Act to carry on that class of insurance business;
- (b) real estate or leaseholds in Trinidad and Tobago notwithstanding that the loan exceeded the amount which the company may otherwise invest in, if the excess is guaranteed or insured by the Government or through an agency of the Government of Trinidad and Tobago; or

- (c) ground rents, mortgages or hypothecs on real estate or leaseholds in Trinidad and Tobago or in the country in which the head office of the company is situated, where the amount of the mortgage or hypothec together with the amount of indebtedness under any mortgage or hypothec on the real estate or leasehold ranking equally with or superior to the mortgage or hypothec which is invested in does not exceed eighty per cent of the value of the real estate or leasehold covered thereby.

3. Real estate or leaseholds in Trinidad and Tobago for the production of income either alone or jointly with any other company transacting insurance business in Trinidad and Tobago or with any other company incorporated in Trinidad and Tobago where—

- (a) a lease of the real estate or leasehold is made to or guaranteed by the Government of Trinidad and Tobago or an agency of the Government or a municipality in Trinidad and Tobago and the lease provides for a net revenue sufficient to yield a reasonable interest return during the period of the lease and to repay at least eighty-five per cent of the amount invested in the real estate or leasehold within the period of the lease but not exceeding thirty years from the date of investment; or
- (b) the real estate or leasehold has produced in each of the three years immediately preceding the date of investing therein net revenue in an amount which if received in each year following the date of investment, would be sufficient to yield a reasonable interest return on the amount invested in the real estate or leasehold and to repay at least eighty-five per cent of that amount within the portion of the economic lifetime of the improvements to the real estate or leasehold which remain at the date of investment but not exceeding forty years from that date.

4. Cash balances deposited with—

- (a) any bank or other financial institution licensed under the Financial Institutions Act; or
- (b) any building society which may be approved by the Central Bank.

5. (1) The total accepted value of the pension fund assets invested in ordinary shares shall not at any time exceed fifty per cent of the accepted value of the total of such assets in Trinidad and Tobago of the company.

(2) Notwithstanding paragraph 5(1) and subject to any requirements as specified by the Central Bank by notice published in the *Gazette*, a registered pension fund plan which has a total accepted value of assets in excess of one hundred and fifty per cent of its total liabilities may invest in ordinary shares up to a limit of—

- (a) fifty per cent in respect of that portion of the total accepted value of assets equivalent to one hundred and fifty per cent of the total liabilities; and
- (b) one hundred per cent in respect of that portion of the total accepted value of assets in excess of one hundred and fifty per cent of the total liabilities in such manner that the aggregate value of the investment under this subparagraph and subparagraph (a) shall not exceed seventy per cent of the total accepted value of the assets of the plan.

(3) For the purposes of paragraph 5(2), total liabilities shall be determined based on the assumptions used in the latest actuarial investigation conducted pursuant to section 254 of the Act and details of the plan's membership used for the purpose of determining these liabilities shall comply with such requirements as specified by the Central Bank.

6. No single mortgage included as an asset in the pension fund of a company may exceed ten per cent of the total assets of the company.

7. A pension fund shall not invest in trust bonds, debentures or other evidence of indebtedness on which payment of principal or interest is in default.

8. A pension fund shall not purchase more than thirty per cent of the ordinary shares of any corporation.

SCHEDULE 9

(Section 293)

FIRST COLUMN	SECOND COLUMN
<i>Enactment</i>	<i>Extent of Amendment</i>
The Proceeds of Crime Act, Chap. 11:27	A. In section 2(1), in the definition of the term “financial institution”, delete paragraph (e) and substitute the following: “(e) an insurance company and intermediary registered under the Insurance Act, 2013;”
The Financial Institutions Act, Chap. 79:09	A. In section 2(1), insert before the definition of “acquirer”, the following : “ “abridged financial statements” means a summary of financial statements, the format and contents of which are agreed to in writing between the Central Bank and the Institute of Chartered Accountants of Trinidad and Tobago.” B. In section 5 (3)— (a) in paragraph (b), delete the word “and”; (b) in paragraph (c), delete the full stop and substitute the words “; and” ; and (c) insert after paragraph (c), the following: “(d) ensure compliance of licensees with legislation to combat money laundering and terrorist financing.” C. In section 8— (a) in subsection (2)(a), delete the words “for purposes related to that regulation” and substitute the words “for regulatory purposes”; (b) in subsection (2)(c), delete the words “the designated authority under the Proceeds of Crime Act” and substitute the words “the Financial Intelligence Unit established under the Financial Intelligence Unit of Trinidad and Tobago Act”;

SCHEDULE 9—CONTINUED

FIRST COLUMN	SECOND COLUMN
<i>Enactment</i>	<i>Extent of Amendment</i>
	<p>(c) in subsection (3),</p> <p>(a) delete the words “the designated authority” and substitute the words “the Financial Intelligence Unit”;</p> <p>(b) delete the words “regulatory authority” and substitute the word “person”.</p> <p>D. In section 23—</p> <p>(a) in subsection (1)(b), insert after the word “Act”, the words “or any other written law”;</p> <p>(b) in subsection (1)(1), delete the full-stop and substitute the words “; and”;</p> <p>(c) after subsection (1)(1), insert the following paragraph—</p> <p>“(m) the licensee has failed to comply with any obligation imposed on it by any written law for the prevention of money laundering or terrorist financing including the Proceeds of Crime Act, the Anti-Terrorism Act, the Financial Intelligence Unit of Trinidad and Tobago Act and any Regulations made thereunder, respectively.”</p> <p>E. Insert after section 51(4), the following—</p> <p>“51(4A) Notwithstanding that a licensee has offered a new or materially different product or service in accordance with subsection (4), the Inspector may subsequently prohibit the licensee from continuing to offer the new or materially different product or service, if in the opinion of the Inspector the continued use of the new or materially different product or service will be fraudulent, unjust,</p>

SCHEDULE 9—CONTINUED

FIRST COLUMN	SECOND COLUMN
<i>Enactment</i>	<i>Extent of Amendment</i>
	<p>imprudent, or not in the public interest and the Inspector shall give written reasons for the prohibition.”</p> <p>F. In section 62, insert after subsection (18), the following paragraph—</p> <p>“(19) Where the provisions of this Act require anything to be done within a specified period of time and the person who is required to comply with the time limit prescribed is unable to do so because of circumstances beyond his control, including but not limited to the occurrence of any hurricane, storm, fire, flood or any similar natural disaster or events such as industrial unrest, riot, public disorder or the like, the Inspector shall grant such extension of time as may be reasonably sufficient for the doing of the act or thing.”</p> <p>G. In section 72, delete subsection (11) and substitute the following—</p> <p>“(11) Where the circumstances so warrant, the Central Bank may apply to the High Court for the disposal of shares on such terms and conditions as the High Court deems appropriate”.</p> <p>H. In section 78, delete the words “, by notice,” wherever they occur.</p> <p>I. Insert after section 80(1), the following—</p> <p>(a) “(80)(1A) The Central Bank may consult with licensees to create abridged financial statements for the purpose of publication.”;</p> <p>(b) “(80)(1B) Every licensee and financial holding company may publish abridged financial statements instead of its financial statements in accordance with the requirement under section (80)(1).”</p>

No. 2 of 2013

THIRD SESSION
TENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN Act to repeal and replace the Insurance Act, Chap. 84:01; to reform the law relating to insurance companies; to regulate insurance businesses and privately administered pension fund plans and for other related purposes

Received and read the

First time

Second time

Third time
