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No. 7 of 2009

Second Session Ninth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Insurance Act, Chap. 84:01

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[, 2009]

WHEREAS it is enacted *inter alia* by section 13(1) of ^{Preamble} the Constitution that an Act 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 such Act does so declare, it shall have effect accordingly:

And whereas it is provided by section 13(2) of the Constitution that an Act 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 the 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 (Amendment) Act, 2009.

Interpretation
Chap. 84:01 **2.** In this Act, “the Act” means the Insurance Act.

Section 3
amended **3.** The Act is amended in section 3—
 (*a*) in the definition of the term “Inspector” by deleting the words “section 30” and substituting the words “section 7 of the Financial Institutions Act, 2008”; and

Act No. 28 of 2008 (*b*) by inserting in the correct alphabetical order, the following terms:

 “ “annuity contract” includes a contract for an annuity at the accumulation stage or the payout stage which is sold or issued to individuals only;

 “registrant” means a company registered pursuant to section 16 of this Act;”;

 (*c*) in the definition of the term “policy”, by inserting after the word “documents” the words “and includes annuity contracts”.

4. The Act is amended by inserting after section 6, the following section: New section 6A inserted

“Information sharing 6A (1) Notwithstanding any other written law, the Central Bank or a person authorized in writing by the Central Bank may disclose—

(a) any information regarding the business or affairs of a registrant or any of its affiliates; or

(b) any information regarding a policy holder or other person dealing with a registrant,

that is obtained in the official course of duties, to any local or foreign regulatory agency or body that regulates financial entities, for purposes related to that regulation.”.

5. The Act is amended in section 37, by inserting after subsection (6), the following subsection: Section 37 amended

“ (7) In addition to the requirements set out in subsection (6), every company registered to carry on long term insurance business or motor vehicle insurance business, or both, shall place in trust in Trinidad and Tobago assets in the statutory fund—

(a) where the company carries on long term insurance business, assets equal to its liability and contingency reserves; and

(b) where the company carries on motor vehicle insurance business, assets equal to its liability and reserves less the amount deposited on account of such business,

with respect to its Trinidad and Tobago policy holders as established by the quarterly returns required to be submitted under section 61A, within seven days after the submission of such quarterly returns.”.

New section 50A
inserted

6. The Act is amended by inserting after section 50, the following section:

“Powers of
Inspector

50A. (1) The Inspector or any person authorized in writing by the Central Bank or any designated member of staff of the Central Bank may enter into the premises of any registrant to—

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

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

- (a) prevented from exercising the powers given to him under subsection (1);
- (b) required to exercise the powers outside of normal working hours; or
- (c) required to exercise the powers urgently,

he may apply for an *ex parte* Order of a Judge of the High Court, which shall constitute the warrant for the Inspector or any person authorized in writing by the Central Bank or any designated member of staff to enter into the premises of the registrant.”.

7. The Act is amended by inserting after section 61, New section 61A inserted the following section:

“Quarterly returns 61A. Every insurer shall submit to the Central Bank quarterly returns in a form as specified by the Central Bank, within twenty working days after the end of each quarter.”.

8. The Act is amended by deleting sections 65 to 67 Sections 65 to 67 deleted and by substituting the following:

“Compliance directions 65 (1) Notwithstanding any other action or remedy available under this Act, if the Inspector reasonably believes, a registrant, or any controller, officer, other employee or agent of a registrant, 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 or is about to violate any of the provisions of any law or Regulations made hereunder;

(d) has breached any requirement or failed to comply with any measure imposed by the Central Bank in accordance with the Act or Regulations made hereunder;

(e) is unlikely to meet the demands of 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 insurer, and any such controller, officer, other employee or agent, or principal representative 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 practices” 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 or policyholders.

(3) Subject to subsection (6), before a direction is issued, 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 attend at the time and place stipulated by the said notice, the Inspector may proceed to issue directions in his absence.

(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 make an interim direction with respect to the matters referred to in subsection (1) having effect for a period of not more than twenty working days.

(7) A direction made under subsection (6), shall not be final until the period of twenty working days expires and—

(a) no representations are made to the Inspector; or

(b) upon representations being made, the Inspector is not satisfied that there are sufficient grounds for revoking the direction.

(8) If a person fails to comply with a direction issued or made under subsection (5), (6) or (7) 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 Order the Court deems fit.

(9) A person who fails to comply with a direction issued under subsection (5), (6) or (7) commits an offence and is liable on summary conviction—

(a) in the case of a registrant, 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; and

(b) in the case of a controller or officer, other employee or agent, or principal representative of a registrant, to a fine of five million dollars and to imprisonment for five years.

Injunctive
relief

66. Where the Central Bank reasonably believes that a person is in violation of the Act, or is engaged in any activity or course of conduct described under section 65(1)(a) to (e), 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 to 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.” .

9. The Act is amended by deleting the heading Heading amended entitled “Judicial Management and Winding Up” appearing immediately before section 68 and by substituting the heading “Suspension and Winding Up”.

10. The Act is amended by deleting sections 68 to 75 Sections 68 to 75 deleted and by substituting the following:

“Suspension 68. (1) Where the Inspector is satisfied after an on-site or off-site examination of the affairs of an insurer that it is insolvent or unable to meet the minimum capital adequacy requirements or is unlikely to meet the demands of the policyholders, of the insurer or that its continuation in business is likely to involve a loss to the policyholders, of the insurer or to the creditors of the insurer, 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 including matters presented by the insurer, order the insurer to suspend business forthwith for a period of sixty days and may direct the Inspector to take charge of all the books, records, other documents, including electronically stored information, and assets of the insurer and to take all such measures as may be necessary to prevent the continuation in business by that insurer during the period of suspension and preserve the assets of the insurer and all costs incurred shall be a first charge on the assets of the insurer.

(3) An order made under subsection (2) shall cease to have effect—

(a) if the Board makes a further order permitting the insurer 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

(b) upon the expiration of the period of sixty days from the day on which it is made, unless—

(i) the Board extends the order for a period not exceeding a further sixty days;

(ii) in the case of an insurer, an application is made to the Court for the appointment of a receiver or manager on behalf of the policyholders; or

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three fifths of all members of the House, that is to say, by the votes of _____ members of the House.

Clerk of the House

Passed in the Senate this _____ day of _____, 2009.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three fifths of all members of the Senate, that is to say, by the votes of _____ members of the Senate.

Clerk of the Senate

No. 7 of 2009

SECOND SESSION
NINTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

An Act to amend the Insurance Act,
Chap. 84:01

Received and read the

First time

Second time

Third time