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2008, No. 11

An Act to provide for the licensing, regulation and supervision of insurance business and of insurance managers and intermediaries and for related purposes.

(27 June 2008)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

PART 1
PRELIMINARY

1. Short title and commencement - (1) This Act may be cited as the Insurance Act 2008.

(2) This Act shall come into force on a date to be appointed by the Queen's Representative, by Order in Executive Council.

2. Interpretation – (1) In this Act, unless the context otherwise requires -

“accounting records” includes books, vouchers, invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and such working papers and other documents as are necessary to explain the methods and calculations by which financial statements are made up and such other documents as may be prescribed;

“actuary” means a person qualified under the Code to act as an actuary;

“approved external insurer” means an external insurer approved by the Commission as an external insurer in accordance with section 11;

“approved form” means a form approved by the Commission under section 97;

“capital”, in relation to a company, means its fully paid-up share capital;

“class of business” or “class” means the class of insurance business specified in the regulations;

“Code” means the Insurance Code issued by the Commission under section 96;

“commencement date” means the date upon which this Act comes into force;

“Commission” means the Financial Supervisory Commission established under the Financial Supervisory Commission Act, 2003;

“Companies Act” means the Companies Act 1955 of New Zealand as applied to the Cook Islands by the Companies Act 1970-71;

“company” means a body corporate, wherever incorporated or formed;

“connected person” has the meaning specified in the Code;

“Cook Islands company” means a company incorporated under the Companies Act or an international company incorporated and registered under the International Companies Act;

“Court” means the High Court of the Cook Islands;

“director” has the meaning specified in section 4;

“document” means a document in any form and includes –

- (a) any writing or printing on any material;
- (b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form;
- (c) any storage medium, including discs and tapes;
- (d) books and drawings; and
- (e) a photograph, film, tape, negative or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced;

and without limiting the generality of paragraphs (a) to (d), includes any application to or order of a court or tribunal, any other legal process and any notice;

“domestic business” means insurance business, excluding reinsurance business, the principal objective of which is to insure –

- (a) a person who is resident in the Cook Islands at the time the insurance contract is effected against any kind of risks, except risks in relation to property; or
- (b) a person against risks of any kind in relation to –

- (i) real property situated in the Cook Islands; or
- (ii) personal property which at the time the insurance contract is effected is held or based in the Cook Islands;

“external insurance intermediary” means an insurance intermediary -

- (a) that, in the case of a body corporate, is incorporated, constituted or formed outside the Cook Islands;
- (b) that, in the case of a partnership has a principal office outside the Cook Islands and does not have a place of business in the Cook Islands; and
- (c) who, in the case of an individual, is resident outside the Cook Islands;

“external insurer” means an insurer incorporated, constituted or formed outside the Cook Islands;

“financial year”, in relation to financial statements, has the meaning specified in the Code;

“general business” means insurance business of a class specified in the regulations as general business;

“general insurer” means a licensed insurer that is not a long-term insurer;

“holding company” has the meaning specified in the Code;

“insurance agent” means a person appointed and authorised by an insurer -

- (a) to solicit applications for insurance or negotiate for insurance business on behalf of the insurer; and
- (b) to perform such other functions as may be assigned to him by the insurer;

but does not include an individual who is an employee of the insurer;

“insurance broker” means a person who acts as an independent contractor or consultant and who, for commission or other compensation, carries out any of the following activities -

- (a) the soliciting or negotiating of insurance business, including the renewal and continuance of such business, on behalf of an insured or a prospective insured other than himself;
- (b) the bringing together, either directly or through the agency of a third party, with a view to the insurance of risks, of persons seeking insurance and insurers, and carries out work preparatory to the conclusion of contracts of insurance; or

- (c) the provision of advice to clients concerning their insurance requirements;

“insurance business” has the meaning specified in section 3(1);

“insurance intermediary” means an insurance broker or an insurance agent;

“insurance intermediary’s licence” means a licence to carry on business as an insurance intermediary issued under section 44;

“insurance manager” means a person who provides insurance expertise to any insurer of which he is not an employee or who exercises such other functions with respect to insurers as may be specified in the regulations;

“insurance manager’s licence” means a licence to carry on business as an insurance manager issued under section 44;

“insurer” means a person, including an association of underwriters, who carries on, or holds himself out as carrying on, insurance business;

“insurer’s licence” means a licence issued under section 10;

“international business” means insurance business that is not domestic business;

“International Companies Act” means the International Companies Act 1981-82;

“key functionary” has the meaning specified in the Code;

“licensed insurance intermediary” means a person holding a licence issued under section 44;

“licensed insurance manager” means a person holding a licence issued under section 44;

“licensed insurer” means a person holding a licence issued under section 10;

“long-term business” means insurance business of a class specified in the regulations as long-term business;

“long-term insurer” means a licensed insurer authorised by its licence to carry on any class or classes of long-term business;

“Minister” means the Minister responsible for Finance;

“person” includes a partnership and, for the purposes of section 5(1), includes an association of underwriters;

“prescribed” means prescribed by the Code;

“Prudential Guidelines” means the Prudential Guidelines issued by the Commission under section 98;

“registers” means the registers required to be maintained by the Commission under section 91;

“Registrar of Companies” means the Registrar of Companies within the meaning of the Companies Act;

“Registrar of International Companies” means the Registrar of International and Foreign Companies appointed under the International Companies Act;

“regulations” means the regulations made under section 95;

“significant interest”, in respect of a company, means a holding or interest in the company or in any holding company of the company held or owned by a person, either alone or with any other person and whether legally or equitably, that entitles or enables the person, directly or indirectly –

- (a) to control 10 per cent or more of the voting rights of that company at a meeting of the company, or its members;
- (b) to a share of 10 per cent or more in dividends declared and paid by the licensee;
- (c) to a share of 10 per cent or more in any distribution of the surplus assets of the company; or
- (d) to appoint or remove one or more directors of the company;

“solvency margin” has the meaning specified in the Code;

“unauthorised business has the meaning specified in subsection (4);

“unlicensed insurer” means a person who carries on insurance business without a licence or without the benefit of an exemption with respect to that business, and includes a licensed insurer that is carrying on insurance business that it is not permitted by its licence to carry on.

(2) Unless the context otherwise requires, a reference to “this Act” includes a reference to the regulations.

(3) The regulations shall make provision for determining whether a person is resident in the Cook Islands for the purposes of this Act.

(4) For the purposes of this Act, a person carries on unauthorised business if he carries on a business for which a licence is required under this Act without –

- (a) a licence or approval permitting him to carry on that business;
or
- (b) the benefit of an exemption with respect to that business.

3. Meaning and classification of insurance business - (1) Insurance business means the business of undertaking liability under a contract of insurance to indemnify or compensate a person in respect of any loss or damage, including the liability to pay damages or compensation contingent upon the happening of a specified event, and includes life insurance business and reinsurance business.

(2) For the purposes of this Act, insurance business is divided into two types –

- (a) long-term business; and
- (b) general business.

(3) If the Commission is satisfied that any part of a licensed insurer's business ought to be treated as belonging to a different type or a different class of insurance business than is provided for in the regulations, it may direct that, in that insurer's case, that part of the insurer's business will be so treated for the purposes of this Act.

4. Meaning of "director" – (1) For the purposes of this Act, "director", in relation to a company means –

- (a) a person occupying or acting in the position of director by whatever name called and any person held out by the company to be a director; and
- (b) a person in accordance with whose directions or instructions a director or the board of directors of a company may be required or is accustomed to act.

(2) Notwithstanding subsection (1) -

- (a) a person is not to be regarded as a director of a company by reason only that a director or the board of directors act on advice given by him in a professional capacity; and
- (b) a person acting as receiver or liquidator in relation to a company is not to be regarded as a director of the company by virtue of his acting in that capacity.

PART 2

REGULATION AND SUPERVISION OF INSURANCE BUSINESS

Unlicensed Insurance Business

5. Prohibition on unlicensed insurance business - (1) Subject to subsection (4), no person may carry on, or hold himself out as carrying on, insurance business of any kind in or from the Cook Islands unless -

- (a) he holds a licence issued under section 10 authorising him to carry on that kind of insurance business; or
- (b) he is an approved external insurer with respect to that kind of business.

(2) For the purposes of subsection (1), but without limiting that subsection -

- (a) a person carries on insurance business in the Cook Islands if -
 - (i) by way of business as an insurer, he occupies premises in the Cook Islands; or

- (ii) he invites a person resident in the Cook Islands, or causes a person resident in the Cook Islands to be invited, through the publication of advertisements or otherwise, to enter into, renew or vary or to offer to enter into, renew or vary a contract of insurance with him as insurer; and
 - (b) a Cook Islands company that carries on, or holds itself out as carrying on, insurance business outside the Cook Islands is deemed to carry on, or hold itself out as carrying on, insurance business from the Cook Islands.
- (3) The regulations may exempt categories or descriptions of persons or activities from subsection (1).
- (4) Subsection (1) does not apply –
 - (a) to an external insurer that enters into a reinsurance contract, as reinsurer, with a licensed insurer;
 - (b) to any person exempted from that subsection by virtue of regulations made under subsection (3); or
 - (c) where the Commission has granted an exemption with respect to that insurer under section 7 and the insurer is carrying on insurance business in accordance with the terms of the exemption.
- (5) A person who carries on insurance business contrary to subsection (1) commits an offence and is liable on conviction –
 - (a) if the person is an individual, to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 2 years, or both; or
 - (b) in any other case, to a fine not exceeding \$250,000.
- 6. Prohibition on dealings with unlicensed insurer - (1) A licensed insurance agent shall not solicit applications for insurance, or negotiate for insurance business, on behalf of an unlicensed insurer.
- (2) Subject to section 7, a licensed insurance broker shall not –
 - (a) on behalf of a client resident in the Cook Islands, solicit or negotiate insurance business, including the renewal and continuance of such business, with an unlicensed insurer; or
 - (b) introduce a client resident in the Cook Islands to, or bring such a client together with, an unlicensed insurer with a view to the insurance of risks.
- (3) For the purposes of subsections (1) and (2), an insurer shall not be regarded as an unlicensed insurer if –
 - (a) the insurer is carrying on insurance business in accordance with an exemption granted by virtue of regulations made under section 5(3); or
 - (b) the Commission has granted an exemption with respect to that insurer under section 7 and the insurer is carrying on insurance business in accordance with the terms of the exemption.
- (4) A licensed insurance agent who contravenes subsection (1), a licensed insurance broker who contravenes subsection (2)(a) or a person who contravenes subsection (2)(b) commits an offence and is liable on conviction –
 - (a) if the person is an individual, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 1 year, or both; or

- (b) in any other case, to a fine not exceeding \$50,000.

7. Exemption where insufficient market capacity - (1) Application may be made to the Commission for an exemption in accordance with this section by –

- (a) an unlicensed insurer that wishes to carry on insurance business in the Cook Islands that it would otherwise be prohibited from carrying on under section 5;
- (b) a licensed insurance broker who wishes to –
 - (i) on behalf of a person resident in the Cook Islands, solicit or negotiate insurance business, including the renewal and continuance of such business, with an unlicensed insurer; or
 - (ii) introduce a client resident in the Cook Islands to, or bring such a client together with, an unlicensed insurer with a view to the insurance of risks; or
- (c) a person who wishes to enter into an contract for insurance with an unlicensed insurer that the insurer would otherwise be prohibited from entering under section 5.

(2) On receiving an application under subsection (1), the Commission may grant an exemption to the applicant, subject to such conditions as it considers appropriate, where it is of the opinion that the principal objective of the insurance business to which the application relates is to insure a risk or risks –

- (a) that no licensed insurer is willing or able to insure;
- (b) that licensed insurers have insufficient capacity to insure; or
- (c) where the terms proposed by local insurers willing and able to insure the risk are significantly less advantageous than the terms available from the unlicensed insurer with respect to which the application relates.

Licensing of Insurers and Approval of External Insurers

8. Categories of, and restrictions on, licences - (1) An insurance licence shall be issued in one of the following categories -

- (a) category A, which –
 - (i) may only be issued to a company incorporated under the Companies Act; and
 - (ii) entitles the holder to carry on insurance business, including domestic business;
- (b) category B, which –
 - (i) may only be issued to an external insurer that carries on insurance business in the Cook Islands from a branch office in the Cook Islands; and
 - (ii) entitles the holder to carry on domestic insurance business in the Cook Islands; or
- (c) category C, which –
 - (i) may only be issued to a company incorporated under the International Companies Act; and

- (ii) which entitles the holder to carry on international business only.

(2) An insurance licence shall state –

- (a) the category of licence issued to the holder and the class or classes of business that the holder is authorised to carry on; and
- (b) either that the holder is, or is not, authorised to carry on reinsurance business.

(3) The Commission shall not issue an insurance licence that authorises the holder to carry on both long-term and general business.

(4) The provisions of this Act specified in Schedule 3 are disapplied or modified with respect to an external insurer holding a category B licence to the extent specified in the Schedule.

9. Application for licence - (1) Application may be made to the Commission –

- (a) in the case of an application for a licence in category A, by a company incorporated under the Companies Act that is limited by shares;
- (b) in the case of an application for a licence in category B, by an external insurer;
- (c) in the case of an application for a licence in category C, by a company incorporated under the International Companies Act that is limited by shares.

(2) An application under subsection (1) shall be in the approved form and shall

- (a) state the category of licence for which application is made and the class or classes of business for which authorisation is sought;
- (b) state whether the applicant seeks authorisation to carry on reinsurance business; and
- (c) be accompanied by such documentation and information as may be prescribed.

(3) An application for a category C licence shall be made through a licensed insurance manager.

10. Issuance of licence - (1) Subject to subsection (2), the Commission may issue a licence to an applicant under section 9 if it is satisfied that –

- (a) the applicant intends, if issued with a licence, to carry on the relevant insurance business;
- (b) the applicant satisfies the requirements of this Act and the Code with respect to the application;
- (c) the applicant will, on the issuance of the licence, be in compliance with this Act and the Code, including the capitalisation requirement specified in section 16;
- (d) the applicant, its directors and key functionaries and any persons having a significant interest in the applicant satisfy the Commission's fit and proper criteria;
- (e) the organisation, management and financial resources of the applicant are adequate for the carrying of the relevant insurance business;

- (f) the relevant insurance business will be conducted in accordance with sound insurance principles; and
- (g) issuing the licence is not against the public interest.

(2) Without limiting the discretion given to the Commission under subsection (1), the Commission may refuse to issue a licence to an applicant if it is of the opinion that any person having a share or other interest in the applicant, whether legal or equitable, does not satisfy the Commission's fit and proper criteria.

(3) For the purposes of subsection (1) -

“relevant insurance business” means the insurance business that the applicant will be authorised to carry on if a licence is issued to it; and
“the public interest” includes the interests of policyholders and potential policyholders of the applicant.

11. Approval of external insurer – (1) In this section –

- (a) “specified jurisdiction” means a jurisdiction that is specified by the Commission as having a legal and regulatory framework for the regulation and supervision of insurance business that is substantially in compliance with the international standards for the supervision of insurance business that, for the time being, are promulgated by the International Association of Insurance Supervisors or any successor body;
- (b) the “home jurisdiction” of an external insurer is the jurisdiction in which it is incorporated, registered or formed or, in the case of an association of underwriters, from which its business is carried on;
- (c) the “home supervisor” of an external insurer is the supervisory authority in its home jurisdiction that is responsible for the supervision of the insurance business of the external insurer;
- (d) an insurer is a qualifying insurer if its home jurisdiction is a specified jurisdiction.

(2) Application may be made to the Commission by a qualifying external insurer for the approval of the Commission to carry on domestic business of certain specified classes, types or descriptions without a licence.

(3) The Commission may issue an approval to an external insurer if it is satisfied that –

- (a) the applicant is authorised by or under the law of its home jurisdiction to carry on insurance business of the classes, types or descriptions specified in the application and such insurance business would be lawfully carried on if it were carried on in its home jurisdiction;
- (b) the insurance business to be carried on in the Cook Islands will be subject to the supervision of its home supervisor;
- (c) the applicant's home supervisor consents to the approval of the applicant by the Commission under this section;
- (d) issuing the approval is not contrary to the public interest and, for this purpose, “the public interest” includes the interests of policyholders and potential policyholders of the applicant.

(4) The provisions of this Act specified in Schedule 3 are disapplied or modified with respect to an approved external insurer to the extent specified in the Schedule.

(5) Except as provided in Schedule 3 -

- (a) a reference in this Act to a "licensed insurer" includes a reference to an approved external insurer and a reference to the licence of a licensed insurer includes a reference to the approval of an approved external insurer;
- (b) an approved external insurer shall not be regarded as an unlicensed insurer or as carrying on unauthorised business to the extent that it is carrying on insurance business in accordance with its approval.

12. Form of licence and approval - An insurer's licence and an approval issued under section 11 -

- (a) shall be in writing and in the approved form and, in the case of an insurer's licence, shall comply with section 8;
- (b) is valid until it is revoked by the Commission under section 72; and
- (c) remains, at all times, the property of the Commission.

13. Refusal to issue licence or approval - If the Commission -

- (a) refuses to issue an insurer's licence or to approve an external insurer under section 11; or
- (b) issues an insurance licence, or an approval under section 11, but refuses to authorise or approve all the classes of insurance business specified in the application;

it shall notify the applicant in writing of its refusal stating the reasons for the refusal.

14. Determination of application - The Commission shall determine an application made under section 9 or section 11 within ninety days of receiving an application that complies with this Act.

Financial Resource Requirements

15. Maintenance of financially sound condition - (1) A licensed insurer shall, at all times, maintain its business in a financially sound condition by -

- (a) having assets;
- (b) providing for its liabilities; and
- (c) generally conducting its business;

so as to be in a position to meet its liabilities at all times.

(2) If a licensed insurer forms the opinion that it does not comply with subsection (1), it shall forthwith notify the Commission in writing.

(3) A licensed insurer that contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding \$100,000.

(4) Sections 16, 18, 19 and 20 do not limit the generality of this section.

16. Maintenance of capital and shareholders' funds - (1) A licensed insurer shall ensure that its capital and shareholders' funds are maintained in an amount not less than the higher of -

- (a) the prescribed minimum applicable to it; or
- (b) such amount as the Commission may direct under subsection (2).

(2) If, having regard to the nature and extent of the insurance business carried on by a licensed insurer, it considers it appropriate, the Commission may direct the insurer to increase its capital to an amount higher than the prescribed minimum capital applicable to the insurer.

(3) A direction issued under subsection (2) shall specify a reasonable time period for compliance with the direction.

(4) If the capital of a licensed insurer falls below the amount that it is required to maintain under subsection (1), it shall forthwith notify the Commission in writing.

(5) A licensed insurer that contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding \$100,000.

17. Shares to be fully paid for in cash - (1) Subject to subsection (2), every share of a licensed insurer issued on or after the commencement date shall be fully paid for in cash.

(2) A share in a licensed insurer may be issued for a consideration other than cash –

- (a) where permitted by the Code; or
- (b) where authorised by the Commission on the application of the licensed insurer.

(3) A licensed insurer that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

18. Solvency margin - (1) A licensed insurer shall ensure that at all times it maintains a solvency margin in accordance with this section.

(2) The solvency margin to be maintained by a licensed insurer shall be –

- (a) the solvency margin calculated in accordance with the Code; or
- (b) such increased solvency margin as the Commission may direct under subsection (3).

(3) If, having regard to the nature and extent of the insurance business carried on by a licensed insurer, it considers it appropriate, the Commission may direct the insurer to maintain a solvency margin that is higher than that calculated in accordance with the Code.

(4) A direction issued under subsection (4) shall specify a reasonable time period for compliance with the direction.

(5) The regulations may provide for circumstances in which the Commission may permit a licensed insurer to maintain a solvency margin that is less than that calculated in accordance with the Code.

(6) If the solvency margin of a licensed insurer falls below the amount that it is required to maintain under subsection (2), it shall forthwith notify the Commission in writing.

(7) A licensed insurer that contravenes subsection (6) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

19. Reserves - (1) A licensed insurer shall ensure that it maintains reserves in an amount equal to or higher than those prescribed in the Code in respect of the insurance business which it is authorised to carry on.

(2) If the amount of reserves maintained by a licensed insurer falls below the amount that it is required to maintain under subsection (1), it shall forthwith notify the Commission in writing.

(3) A licensed insurer that contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

20. Maintenance of assets in Cook Islands - (1) The Commission may, by written notice, direct a licensed insurer to maintain assets of such value and such description as may be specified in the notice in the Cook Islands.

(2) A notice issued under subsection (1) shall specify the manner in which the specified assets are to be maintained in the Cook Islands.

(3) Assets required to be maintained in the Cook Islands under subsection (1) shall not, without the prior written authority of the Commission, be made subject to any mortgage, charge or lien.

(4) If a licensed insurer fails to maintain assets in the Cook Islands in accordance with a notice issued by the Commission under subsection (1), it shall forthwith notify the Commission in writing.

(5) A licensed insurer that contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

21. Distributions - (1) For the purposes of this section, "distribution", in relation to a distribution by a licensed insurer to a shareholder means –

(a) the direct or indirect transfer of money or property, other than the insurer's own shares, to or for the benefit of the shareholder; or

(b) the incurring of a debt to or for the benefit of a shareholder; in relation to shares held by that shareholder and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness or by some other means, and includes a dividend.

(2) A licensed insurer shall not make a distribution to a shareholder unless, after the distribution –

(a) its capital equals or exceeds the capital that it is required to maintain under section 16;

(b) its solvency margin equals or exceeds the solvency margin that it is required to maintain under section 18;

(c) its reserves equal or exceed the reserves that it is required to maintain under section 19.

(3) A licensed insurer that contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

22. Prohibitions relating to advances and loans - (1) A licensed insurer shall not after the commencement date, without the prior written approval of the Commission –

(a) acquire or deal in its own shares or lend money or make advances on the security of its own shares;

(b) lend any of its funds to a connected person

(c) grant unsecured credit to any person except, in the case of a general insurer, for temporary cover not exceeding the prescribed period;

(d) enter into any guarantee or provide any security in connection with a loan by any other person to a connected person.

(2) Subsection (1) does not apply to a distribution permitted under section 21.

(3) A licensed insurer that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

23. Reinsurance - (1) A licensed insurer shall have such arrangements as it considers appropriate for the reinsurance of liabilities in respect of risks insured by the licensee in the course of its business as an insurer.

(2) Without limiting subsection (1), a licensed insurer shall comply with the requirements of the Code with respect to the reinsurance of its risks and with respect to the filing with the Commission of returns setting out its reinsurance arrangements and copies of its reinsurance contracts.

(3) A licensed insurer that contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

24. Derivatives - (1) A licensed insurer shall not invest or trade in a derivative without the prior written approval of the Commission, unless the derivative concerned -

(a) is prescribed by the Code as an admissible asset; or

(b) is a derivative that the Code otherwise permits insurers to invest or trade in.

(2) A licensed insurer that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

Obligations of and Restrictions on Licensed Insurers

25. Limitations on business to be carried on by licensed insurer - (1) Subject to subsection (2), a licensed insurer shall not carry on any business or activities, whether in the Cook Islands or elsewhere, otherwise than in connection with or for the purposes of the insurance business that it is authorised by its licence to carry on.

(2) Subsection (1) does not apply to any business or activities prescribed as a business or as activities deemed to be carried on in connection with or for the purposes of the insurance business of a licensed insurer.

(3) A licensed insurer shall carry on its business substantially in accordance with the most recent business plan submitted to the Commission.

(4) A licensed insurer may, at any time, submit an amended business plan with the Commission.

26. Appointment and termination of directors and key functionaries - (1) A licensed insurer shall not appoint a director or key functionary without the prior written approval of the Commission.

(2) The Commission shall not grant an approval under subsection (1) unless it is satisfied that the person concerned satisfies its fit and proper criteria.

(3) Where a licensed insurer terminates the appointment of a director or key functionary or a director or key functionary ceases to hold office, or be employed by, the insurer, the licensed insurer shall, within 14 days of thereof, submit written notification to the Commission.

(4) A licensed insurer that contravenes subsection (1) or subsection (3) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

27. Authorisation to open branch or representative office (1) A licensed insurer shall not open, maintain or carry on business through a branch or a representative or contact office outside the Cook Islands unless it has obtained the prior written approval of the Commission.

(2) A licensed insurer that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

28. Disposing of or acquiring significant interest in licensed insurer - (1) A person owning or holding a significant interest in a licensed insurer shall not sell, transfer, charge or otherwise dispose of his interest in the insurer, or any part of his interest, unless the prior written approval of the Commission has been obtained.

(2) A person shall not, whether directly or indirectly, acquire a significant interest in a licensed insurer unless the prior written approval of the Commission has been obtained.

(3) A licensed insurer shall not, unless the prior written approval of the Commission has been obtained –

- (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition referred to in subsection (1);
- (b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation of its share capital that results in –
 - (i) a person acquiring a significant interest in the insurer; or
 - (ii) a person who already owns or holds a significant interest in the insurer, increasing or decreasing the size of his interest.

(4) An application to the Commission for approval under subsection (1), (2) or (3) shall be made by the licensed insurer.

(5) The Commission shall not grant approval under subsection (1), (2) or (3) unless it is satisfied that following the acquisition of disposal –

- (a) the licensed insurer will continue to meet the criteria for licensing specified in section 10(1); and
- (b) any person who will acquire a significant interest satisfies the Commission's fit and proper criteria.

(6) A person who knowingly contravenes subsection (1) or (2) or a licensed insurer that contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding \$50,000.

29. Prohibition on payment of commission to unlicensed insurance intermediary - (1) A licensed insurer shall not pay any commission with respect to domestic business to an insurance intermediary that does not hold an insurance intermediary's licence.

(2) A licensed insurer that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Corporate Governance

30. Appointment of insurance manager – (1) A licensed insurer holding a category C licence shall appoint and at all times have an insurance manager who shall be a person licensed to carry on business as an insurance manager under Part 4.

(2) A licensed insurer to which subsection (1) applies shall not terminate the appointment of its insurance manager, and an insurance manager shall not terminate its agreement to act as insurance manager for such a licensed insurer unless the insurer or the insurance manager, as the case may be, has given not less than thirty days' notice of its intention to do so to the Commission.

(3) The Commission may, on the application of the insurer or insurance manager, agree to accept a shorter period of notice than that specified in subsection (2).

(4) A licensed insurer to which subsection (1) applies shall within fourteen days after –

- (a) it appoints an insurance manager, or
- (b) the appointment of its insurance manager is, for whatever reason, terminated,

provide written notice of that fact to the Commission.

(5) Where, for whatever reason, a person ceases to be the insurance manager of a licensed insurer to which subsection (1) applies, the insurer does not commit an offence under subsection (6) if it appoints another insurance manager in accordance with this section within fourteen days of the date that the previously appointed insurance manager ceases to hold that appointment.

(6) Subject to subsection (5), a licensed insurer that contravenes subsection (1), (2) or (4) or an insurance manager that contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

31. Directors of licensed insurer - (1) A licensed insurer holding a category A or C licence shall at all times have at least three directors.

(2) In the case of a licensed insurer holding a category A licence, the directors shall be natural persons.

(3) The Code may provide for the duties and responsibilities of the directors of a licensed insurer.

Actuaries and Actuarial Investigations and Reports

32. Appointment of actuary - (1) A long-term insurer shall appoint and at all times have an actuary approved by the Commission in writing.

(2) The Code shall prescribe –

- (a) the procedures to be followed by long-term insurers to which the requirement applies with respect to –
 - (i) the appointment of the actuary; and
 - (ii) the provision of notices and actuarial reports to the Commission;
- (b) the investigations to be undertaken by an actuary; and
- (c) the powers of an actuary.

(3) The Commission shall not approve the appointment of an actuary under subsection (1) unless it is satisfied that the individual concerned has sufficient experience and is competent to act as actuary of the licensee.

(4) The requirements of subsections (1) and (2) are disapplied or modified with respect to a long-term insurer –

- (a) in such circumstances as may be specified in the Code; or
- (b) where, in the case of a particular long-term insurer, the Commission so determines on the application of that insurer.

(5) Subject to subsection (6), a licensed insurer required to appoint and have an actuary commits an offence if, at any time, it does not have an actuary and is liable on conviction to a fine not exceeding \$20,000.

(6) Where, for whatever reason, a person ceases to be the actuary of a licensed insurer, the insurer does not commit an offence under subsection (5) if it appoints another actuary in accordance with the Code within six weeks of the date that person who was previously appointed actuary ceases to hold that appointment.

33. Obligations of actuary - (1) The actuary of a long-term insurer shall report immediately to the Commission if he considers that –

- (a) there are reasonable grounds for believing that the insurer or a director or key functionary of the insurer may have contravened this Act or the Code or any other enactment; and
- (b) that the contravention is of such a nature that it may significantly affect the interests of policyholders of the insurer.

(2) The actuary of a long-term insurer shall report to the insurer any matter relating to the business of the insurer that he has obtained in the course of acting as its actuary that, in his opinion, requires action to be taken by the company, or its directors –

- (a) to avoid a contravention of this Act or the Code; or
- (b) to avoid prejudice to the interests of policyholders of the insurer.

(3) Where the actuary of a long-term insurer reports to the insurer under subsection (2) and the insurer does not, within such time as the actuary considers reasonable, take the action required, he shall report the matter to the Commission.

(4) Where the appointment of an actuary of a long-term insurer appointed pursuant to section 32 is terminated, the former actuary shall –

- (a) forthwith inform the Commission of the termination of his appointment and disclose to the Commission the circumstances that gave rise to such termination; and
- (b) if, but for the termination of his appointment, he would have reported any matter to the Commission under subsection (1) or (3), he shall report the information concerned to the Commission, as if his appointment had not been terminated.

(5) Where, in good faith, an actuary or former actuary provides a report or information to the Commission under subsection (1), (3) or (4), he is deemed not to be in contravention of any enactment, rule of law or professional code of conduct to which he is subject and no civil, criminal or disciplinary proceedings shall lie against him in respect thereof.

(6) The failure, in good faith, of an actuary or former actuary to provide a report or information to the Commission under subsections (1), (3) or (4) does not confer upon any other person a right of action against the actuary which, but for that failure, he would not have had.

(7) An actuary or former actuary who contravenes subsection (1), (2), (3) or (4) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

34. Actuary to comply with prescribed standards – The actuary of a licensed insurer, whether or not appointed pursuant to a requirement of this Act, shall, in the performance of his duties and the exercise of his powers, comply with such actuarial standards as may be prescribed.

35. Actuarial investigation and report at direction of Commission - (1) The Commission may at any time, by notice in writing, direct a licensed insurer, whether or not a long-term insurer, to cause an actuary to investigate such aspects of its financial condition as the Commission may specify in the notice and to provide the Commission with a report prepared by the actuary.

(2) A report prepared under subsection (1) shall be at the cost of the insurer.

(3) The Commission may direct that the actuarial investigation is carried out by the actuary appointed by the insurer, if any, or by such other actuary as the Commission shall specify.

36. Powers of Commission re appointment of actuary - (1) Where the Commission is satisfied that the actuary of a long-term insurer appointed in accordance with section 32 has failed to fulfil his obligations under this Act or the Code, it may, by written notice to the insurer, revoke the approval of the appointment of the actuary and the insurer shall appoint a new actuary in accordance with the Code.

(2) A notice revoking the appointment of an actuary under subsection (1) shall be sent to the actuary.

(3) If, a long-term insurer required under section 32 to appoint an actuary fails to appoint an actuary, the Commission may appoint a qualified person to act as the actuary of the insurer.

(4) An actuary appointed under subsection (3) is deemed for the purposes of this Act to have been appointed by the insurer.

37. Code to provide for segregation and control of funds of long-term insurer - (1) The Code shall provide for the segregation, control, allocation and application of the funds of a long-term insurer.

(2) A long-term insurer that breaches a provision of the Code referred to in subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$20,000.

Transfers and Mergers

38. Transfers and mergers (1) Subject to section 40, no part of the business of a licensed insurer may be -

- (a) transferred to another person; or
- (b) merged with the business of another person;

except under a scheme of transfer or merger complying with the Code that is approved -

- (i) in the case of a long term insurer, by the Court;
or
- (ii) in the case of a general insurer, by the Court or the Commission.

(2) Application to the Court or the Commission for the approval of a scheme shall be made jointly by or on behalf of the licensed insurer and each other person who is a party to the scheme and shall -

- (a) be in the approved form; and
- (b) contain such information and be accompanied by such documentation as may be prescribed.

(3) Before determining an application under this section -

- (a) where the application is made to the Court, the Court may require an investigation to be undertaken into the desirability or otherwise of the scheme; or
- (b) where the application is made to the Commission, the Commission may undertake an investigation into the desirability or otherwise of the scheme.

(4) An investigation under subsection (3) -

- (a) shall be at the cost of the insurer; and
- (b) where to be carried out by the Commission, may be carried out by the Commission or by one or more persons appointed by the Commission to act on its behalf.

(5) Any transaction to which a licensed insurer is a party which has the effect of transferring any part of the business of the insurer to another person or merging any part of the business of the insurer with the business of another person is void and of no legal effect unless effected under a scheme of transfer or merger approved by the Court or the Commission, as the case may be.

39. Further provisions may be provided for – (1) The Code may provide for notices to be given with respect to, and the advertisement of, schemes of transfer and merger.

(2) The regulations may make provision for applications for the approval of schemes of transfer and merger and their determination by the Court or the Commission, as the case may be.

40. Application of Part VII of the International Companies Act to licensed insurers - (1) A licensed insurer shall not propose a compromise or arrangement under Part VII of the International Companies Act unless the Commission has given its consent in writing to the compromise or arrangement.

(2) The Commission is entitled to appear and be heard at every hearing of the court in respect of an arrangement or compromise under the International Companies Act and the court shall not make an order under Part VII of the International Companies Act unless the Commission has been given notice of the hearing at which the order is made.

(3) A licensed insurer that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$20,000.

(4) In this section “licensed insurer” includes a former licensed insurer.

PART 3 **REGULATION AND SUPERVISION OF** **INSURANCE MANAGERS AND INSURANCE INTERMEDIARIES**

Unlicensed Business

41. Prohibition on unlicensed business as insurance manager or insurance intermediary - (1) Subject to subsection (3), no person may carry on, or hold himself out as carrying on business as an insurance manager or an insurance intermediary in or from the Cook Islands unless he holds a licence issued under section 44 in the appropriate category.

(2) For the purposes of subsection (1), but without limiting that subsection –

- (a) a person carries on business as an insurance manager or an insurance intermediary in the Cook Islands if –
 - (i) by way of business as an insurance manager or intermediary, he occupies premises in the Cook Islands; or
 - (ii) from within the Cook Islands, he invites a person resident in the Cook Islands, or causes such a person to be invited, whether through the publication of advertisements or otherwise, to become a client of his; and

- (b) a Cook Islands company that carries on, or holds itself out as carrying on, business as an insurance manager or intermediary outside the Cook Islands is deemed to carry on, or hold itself out as carrying on, business as an insurance manager or an insurance intermediary from the Cook Islands.

(3) The regulations may exempt categories or descriptions of persons or activities from this section.

(4) A person who carries on or purports to carry on business as an insurance manager or an insurance intermediary contrary to subsection (1) commits an offence and is liable on conviction –

- (a) if the person is an individual, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 1 year, or both; or
- (b) in any other case, to a fine not exceeding \$50,000.

42. Categories of, and restrictions on, insurance intermediary's licences - (1) An insurance intermediary's licence shall be issued in one of the following categories –

- (a) insurance broker; or
- (b) insurance agent.

(2) An insurance intermediary's licence shall state the category of insurance intermediary in respect of which it is issued and –

- (a) where the category of the licence is insurance broker, the class or classes of insurance business in respect of which the licensee is authorised as an insurance intermediary; and
- (b) where the category of the licence is insurance agent, the insurer by which the licensee is or will be appointed.

43. Application for licence – (1) Application may be made to the Commission for an insurance manager's licence or an insurance intermediary's licence –

- (a) in the case of an insurance manager's licence, by a company incorporated under the Companies Act;
- (b) in the case of an insurance intermediary's licence in the category of insurance broker by –
 - (i) a company incorporated under the Companies Act; or
 - (ii) an external insurance intermediary; or
- (c) in the case of an insurance intermediary's licence in the category of insurance agent by –
 - (i) a company incorporated under the Companies Act;
 - (ii) an individual; or
 - (iii) an external insurance intermediary..

(2) An application under subsection (1) shall be in the approved form and shall

- (a) state the category of licence for which application is made;
- (b) where the application is for a licence to act as an insurance broker, state the type and the class or classes of business in respect of which the applicant wishes to be authorised; and
- (c) be accompanied by such documentation and information as may be prescribed or as may be specified in Prudential Guidelines.

44. Issuance of licence - (1) Subject to subsection (2), the Commission may issue an insurance manager's licence or an insurance intermediary's licence to an applicant if it is satisfied that –

- (a) the applicant intends, if issued with a licence, to carry on business as an insurance manager or an insurance intermediary, as the case may be;
- (b) the applicant satisfies the requirements of this Act with respect to the application;
- (c) the applicant will, on the issuance of the licence, be in compliance with this Act;
- (d) the applicant and its key functionaries and –
 - (i) in the case of a company, its directors and any persons having a significant interest in the applicant, and
 - (ii) in the case of a partnership, the partners, satisfy the Commission's fit and proper criteria;
- (e) the organisation, management and financial resources of the applicant are adequate for the carrying on of the relevant business; and
- (f) issuing the licence is not against the public interest.

(2) Without limiting the discretion given to the Commission under subsection (1), the Commission may refuse to issue a licence to an applicant if it is of the opinion that any person having a share or other interest in the applicant, whether legal or equitable, does not satisfy the Commission's fit and proper criteria.

(3) A licence issued under subsection (1) –

- (a) shall be in writing and in the approved form and shall comply with section 42;
- (b) is valid until it is revoked by the Commission under section 72; and
- (c) remains, at all times, the property of the Commission.

(4) The provisions of this Act are disapplied or modified with respect to an external insurance intermediary to the extent specified in the regulations.

45. Refusal to issue licence - If the Commission refuses to issue an insurance manager's or intermediary's licence, it shall notify the applicant in writing of its refusal and the reasons for the refusal.

46. Determination of application - The Commission shall determine an application made under section 43 within ninety days of receiving an application complying with this Act.

Obligations Of and Restrictions On Insurance Intermediaries

47. Maintenance of financially sound condition - (1) A licensed insurance manager and a licensed insurance intermediary shall, at all times, maintain its business in a financially sound condition by –

- (a) having assets,
- (b) providing for its liabilities, and

(c) generally conducting its business,
so as to be in a position to meet its liabilities at all times.

(2) If a licensed insurance manager or a licensed insurance intermediary forms the opinion that it does not comply with subsection (1), it shall forthwith notify the Commission in writing.

(3) A licensee that contravenes subsection (2) commits an offence and is liable on conviction –

- (a) if the person is an individual, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 1 year, or both; or
- (b) in any other case, to a fine not exceeding \$50,000.

48. Maintenance of capital and shareholders' funds - (1) A licensed insurance manager and a licensed insurance broker shall ensure that its capital and shareholders' funds are maintained in an amount not less than the higher of –

- (a) the prescribed minimum applicable to it, if any; or
- (b) such amount as the Commission may direct under subsection (2).

(2) If, having regard to the nature and extent of the business carried on by a licensed insurance manager or a licensed insurance broker, it considers it appropriate, the Commission may direct the insurance manager or broker to increase its capital to an amount higher than the prescribed minimum capital applicable to it.

(3) A direction issued under subsection (2) shall specify a reasonable time period for compliance with the direction.

(4) If the capital of a licensed insurance manager or a licensed insurance broker falls below the amount that it is required to maintain under subsection (1), it shall forthwith notify the Commission in writing.

(5) A licensed insurance manager or a licensed insurance broker that contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding \$20,000.

49. Receipt of and dealing with premiums by intermediaries - An insurance intermediary shall not receive, hold or in any way deal with a premium payable under an insurance policy entered into or to be entered into with an insurer –

- (a) unless he is authorised by the insurer concerned to receive, hold or deal with the premium; and
- (b) he receives, holds or deals with the premium in accordance with the provisions of the Code.

50. Unlicensed insurers – An insurance intermediary shall not act in relation to a policy of insurance to be effected by or with an insurer that does not hold an insurer's licence or that is not an approved external insurer.

51. Professional indemnity insurance – (1) A licensed insurance intermediary and a licensed insurance manager shall at all times maintain such professional indemnity insurance as may be prescribed in the Code.

(2) A licensed insurance intermediary or a licensed insurance manager that contravenes subsection (1) commits an offence and is liable on conviction –

- (a) if the person is an individual, to a fine not exceeding \$10,000;
or

- (b) in any other case, to a fine not exceeding \$50,000.

PART 4
PROVISIONS APPLICABLE TO INSURERS, INSURANCE
MANAGERS AND INSURANCE INTERMEDIARIES

52. Interpretation for, and application of, this Part – (1) In this Part, unless the context otherwise requires, “licence” means an insurer’s licence, an insurance manager’s licence or an insurance intermediary’s licence, as the case may be, and “licensee” shall be construed accordingly.

(2) The Code may modify the provisions of this Part with respect to its application to licensed external insurance intermediaries.

Records, Accounts and Audit

53. Requirements with respect to records – (1) A licensee shall keep in its Cook Islands office, or in the case of an insurer required to appoint an insurance manager, at the office of its insurance manager, records that are sufficient –

- (a) to show and explain its transactions;
- (b) at any time, to enable its financial position to be determined with reasonable accuracy;
- (c) to enable it to prepare such financial statements and make such returns as it is required to prepare and make under this Act; and
- (d) if applicable, to enable its financial statements to be audited in accordance with this Act.

(2) The records required to be maintained under subsection (1) shall be retained by a licensee for a period of at least six years after the completion of the transaction to which they relate and this obligation continues notwithstanding that that a person ceases to be a licensee.

(3) A licensee, or former licensee, that contravenes this section commits an offence and is liable on conviction –

- (a) if the person is an individual, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 1 year, or both; or
- (b) in any other case, to a fine not exceeding \$50,000.

54. Application of sections 55 to 60 – Sections 55 to 60 apply to –

- (a) a licensed insurer, and
- (b) a licensed insurance manager and a licensed insurance broker, to the extent specified in the Code,

and in these sections, “licensee” means a person specified in paragraph (a) or (b).

55. Preparation of financial statements - (1) A licensee shall comply with the requirements of the Code applicable to him with respect to the preparation and submission to the Commission of financial statements.

(2) A licensee that contravenes this section commits an offence and is liable on conviction to a fine not exceeding \$50,000.

56. Licensee to appoint auditor - (1) A licensee shall appoint and at all times have an auditor for the purposes of auditing its financial statements.

(2) An auditor shall not be appointed under subsection (1) unless –

- (a) he is qualified under the Code to act as the auditor of a licensee; and
- (b) the Commission has given its approval in writing to his appointment.

(3) The Commission shall not approve the appointment of an auditor under subsection (2) unless it is satisfied that he has sufficient experience and is competent to audit the financial statements of the licensee.

(4) A licensee shall, within 14 days of the appointment of its auditor, submit a notice of appointment in the approved form to the Commission.

(5) A licensee shall make such arrangements as are necessary to enable his auditor to audit his financial statements in accordance with this Act and the Code, including –

- (a) by giving the auditor a right of access at all reasonable times to its accounting records and to all other documents and records; and
- (b) by providing the auditor with such information and explanations;

as, in either case, the auditor reasonably requires for the purposes of the audit.

(6) The approval of the Commission is not required where the auditor appointed in respect of a financial year acted as the auditor of the relevant licensee in accordance with this section in the previous financial year.

(7) A relevant licensee that –

- (a) subject to subsection (6), does not have an auditor; or
- (b) contravenes subsection (2);

commits an offence and is liable on conviction to a fine not exceeding \$50,000.

(8) Where, for whatever reason, a person ceases to be the auditor of a licensee, the licensee does not commit an offence under subsection (6) if it appoints another auditor in accordance with this section within twenty eight days of the date that person who was previously appointed auditor ceases to hold that appointment.

57. Audit and audit report - (1) An auditor shall carry out sufficient investigation to enable him to form an opinion on the financial statements, and prepare an audit report, in compliance with the Code.

(2) Upon completion of his audit of the financial statements of a relevant licensee, the auditor shall provide an audit report to the licensee complying with the Code.

(3) The Commission may at any time, by notice in writing, direct a licensee to supply the Commission with a report, prepared by its auditor or such other person as may be nominated by the Commission, on such matters as the Commission may determine which may include an opinion on the adequacy of the accounting and control systems of the licensee and, in the case of a licensed insurer, on asset quality and the adequacy of provisions for losses.

(4) A report prepared under subsection (2) shall be at the cost of the licensee.

58. Obligations of auditors - (1) Notwithstanding anything to the contrary in any other enactment, the auditor of a licensee shall report immediately to the Commission any information relating to the affairs of the licensee that he has obtained in the course of acting as its auditor that, in his opinion, suggests –

- (a) that the licensee is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations;

- (b) that a criminal offence has been or is being committed by the licensee or in connection with its business;
- (c) that, in the case of a licensed insurer, the licensee is in breach of section 15, 16, 18, 19 or 20; or
- (d) that serious breaches of this Act or the Code or such enactments, Guidelines or Codes relating to money laundering or the financing of terrorism as may be prescribed have occurred in respect of the licensee or its business.

(2) Where the appointment of an auditor of a licensee is terminated, the auditor whose appointment has been terminated shall –

- (a) forthwith inform the Commission of the termination of his appointment and disclose to the Commission the circumstances that gave rise to such termination; and
- (b) if, but for the termination of his appointment, he would have reported information to the Commission under subsection (1), he shall report the information concerned to the Commission, as if his appointment had not been terminated.

(3) The Commission may require an auditor of a licensee to discuss any audit he has conducted or commenced with, or provide additional information regarding the audit to, the Commission.

(4) Where, in good faith, an auditor or former auditor provides any information to the Commission under subsection (1), (2) or (3), he is deemed not to be in contravention of any enactment, rule of law, agreement or professional code of conduct to which he is subject and no civil, criminal or disciplinary proceedings shall lie against him in respect thereof.

(5) The failure, in good faith, of an auditor or former auditor to provide a report or any information to the Commission under subsection (1), (2) or (3) does not confer upon any other person a right of action against the auditor which, but for that failure, he would not have had.

(6) An auditor or former auditor who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding \$20,000.

(7) For the purposes of subsection (1)(a), a licensed insurer is deemed to be insolvent if the total value of its assets does not exceed the total amount of its liabilities by at least the minimum margin of solvency that it is required to maintain under section 18.

59. Powers of Commission re appointment of auditor - (1) Where the Commission is satisfied that the auditor of a licensee has failed to fulfil his obligations under this Act or is otherwise not a fit and proper person to act as the auditor of an insurer, it may, by written notice to the licensee, revoke the approval of the appointment of the auditor and the licensee shall appoint a new auditor in accordance with section 56.

(2) A notice revoking the appointment of an auditor under subsection (1) shall be given to the auditor.

(3) If a licensee fails to appoint an auditor, the Commission may appoint a qualified person to act as the auditor of the licensee.

(4) An auditor appointed under subsection (3) is deemed for the purposes of this Act to have been appointed by the licensee.

60. Group accounts - (1) Where a licensee is a member of a group of companies, the Commission may require the licensee to submit group accounts.

(2) The Commission may require that the group accounts are audited by the auditor of the licensee or by another auditor approved by the Commission.

(3) The Code may provide for the form and content of group accounts to be submitted under this section.

61. Auditor may rely on actuarial valuations - The auditor of a long-term insurer may accept, for the purposes of an audit under this Act, a valuation by the actuary appointed by the insurer of –

- (a) the policy liabilities of the insurer as at the end of a financial year of the insurer; or
- (b) a change, during a financial year, in the policy liabilities of the insurer in relation to a particular fund.

62. Accounts and audit provisions of the International Companies Act and the Companies Act – Except to the extent that this Act or the regulations provide otherwise, sections 53 to 61 do not limit the application of the provisions of the International Companies Act or the Companies Act relating to accounts and audit to a licensee that is subject to that Act, but in the event of any conflict between the provisions of this Act and either of the other Acts, this Act prevails.

General Supervisory Provisions

63. Conditions - (1) In this section, “condition” means a condition subject to which a licence is issued, or an approval is granted, by the Commission and includes a condition as varied in accordance with this section.

(2) A licence may be issued, or an approval granted, by the Commission subject to such conditions as it considers appropriate.

(3) If a licence is issued, or an approval granted, subject to one or more conditions –

- (a) the Commission shall, together with the licence or approval, issue a written notice specifying the condition or conditions; and
- (b) if, in respect of any conditions, it considers that it is in the public interest to do so, the Commission may state those conditions on the licence or approval.

(4) The Commission may, upon giving reasonable written notice to a licensee, at any time –

- (a) vary or revoke any condition; or
- (b) impose new conditions on the licence or approval.

(5) A licensee may apply to the Commission in writing for a licence condition to be revoked or varied and, if the Commission is satisfied that the licence condition is no longer necessary or should be varied, it may revoke or vary the condition.

(6) Where the Commission revokes or varies a condition or imposes a new licence condition, the licensee shall, if requested to do so by the Commission, deliver its licence or approval to the Commission for re-issue.

(7) Where the Commission imposes a condition on a licence or approval, it may publish the condition in such manner as it considers appropriate.

64. Filing of returns and reporting of information to Commission - (1) A licensee shall report to the Commission such information, or file with the Commission such returns or documents, as may be prescribed by the Code within such time and verified in such form and manner as may be prescribed.

(2) If the Commission considers that any document furnished by a licensee under subsection (1) is inaccurate or incomplete, or is not prepared in accordance with this Act or the Code, it may by written notice require the licensee to amend the document or to submit a replacement document.

(3) A licensee who contravenes subsection (1) or who fails to comply with a notice issued under subsection (2) commits an offence and is liable on conviction to a fine not exceeding \$20,000.

65. Advertisements - (1) A licensee shall not issue, or cause or permit to be issued, any advertisement, statement, brochure or other similar document which is misleading or which contains an incorrect statement of fact.

(2) If the Commission is of the opinion that any advertisement, statement, brochure or other similar document issued, or to be issued, by or on behalf of a licensee is misleading, contains an incorrect statement of fact or is contrary to the public interest, it may

—

- (a) direct the licensee in writing not to issue the document or to withdraw it; or

- (b) authorise the licensee in writing to issue the document with such changes as the Commission may specify.

(3) A licensee that issues or causes or permits to be issued an advertisement, statement, brochure or other similar document intending it to mislead or knowing that it contains an incorrect statement of fact, commits an offence and is liable on conviction —

- (a) if the person is an individual, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 1 year, or both; or

- (b) in any other case, to a fine not exceeding \$50,000.

(4) A licensee that issues or causes or permits to be issued an advertisement, statement, brochure or other similar document —

- (a) contrary to a direction or authorisation of the Commission under subsection (2); or

- (b) contrary to any provision of the Code;

commits an offence and is liable on conviction —

- (i) if the person is an individual, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 1 year, or both; or

- (ii) in any other case, to a fine not exceeding \$50,000.

66. Change of name - (1) A licensee shall not, without the prior written approval of the Commission —

- (a) change the name under which he or it carries on business; or

- (b) in the case of a corporate body, change its name.

(2) A licensee who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

67. Commission may require licensee to change name - (1) The Commission may, by written notice, direct a licensee to change the name under which it carries on business or under which it is incorporated if the Commission is of the opinion that the name is –

- (a) identical to that of any other person, whether within or outside the Cook Islands, or which so nearly resembles that name as to be likely to deceive;
- (b) otherwise misleading or undesirable.

(2) A licensee who fails to comply with a direction of the Commission made under subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

68. Compliance visits - (1) This section applies to –

- (a) a licensee; and
- (b) a subsidiary or holding company of a licensee.

(2) The Commission may, for the purpose of supervising the licensed business carried on by a licensee in or from the Cook Islands –

- (a) inspect the premises and the business, whether in or outside the Cook Islands, including the procedures, systems and controls, of a person to whom this section applies;
- (b) inspect the assets, including cash, belonging to or in the possession or control of a person to whom this section applies;
- (c) examine and make copies of documents belonging to or in the possession or control of a person to whom this section applies being documents that, in the opinion of the Commission, relate to the carrying on of financial services business by that person;
- (d) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;
- (e) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or other output for examination or copying;
- (f) use or cause to be used any copying equipment in the premises to make copies of any record;
- (g) seek information and explanations from the directors, employees, agents and representatives of a person to whom this section applies, whether verbally or in writing, and whether in preparation for, during or after a compliance visit.

(3) A person to whom this section applies shall permit any employee of the Commission or person appointed by the Commission for the purpose to have access during business hours to any of its business premises to enable that person to undertake a compliance visit.

(4) Any person who wilfully obstructs or hinders or fails to co-operate with the Commission or any authorised person in the lawful exercise of the powers under this section commits an offence and is liable on conviction –

- (a) if the person is an individual, to a fine not exceeding \$20,000 or imprisonment for a term not exceeding 2 years, or both; or
- (b) in any other case, to a fine not exceeding \$100,000.

69. Participation of foreign regulatory authority - (1) Subject to subsection (2), the Commission may, upon the request of a foreign regulatory authority, permit that authority to take part in a compliance visit undertaken by the Commission under section 68.

(2) The Commission shall not permit a foreign regulatory authority to take part in a compliance inspection under section 68 unless it is of the opinion that the participation of the foreign regulatory authority is reasonably required –

- (a) for the effective supervision of the licensee; or
- (b) for the purposes of the regulatory or supervisory functions of the foreign regulatory authority.

(3) In deciding whether or not to permit a foreign regulatory authority to take part in a compliance visit under this section, the Commission may take into account, in particular, whether the foreign regulatory authority is subject to adequate legal restrictions on further disclosure and, in particular, whether it is likely, without the written permission of the Commission –

- (a) to disclose information obtained or documents examined or obtained during the compliance inspection to any person other than an officer or employee of the authority engaged in prudential supervision; or
- (b) to take any action on information obtained or documents examined or obtained during the compliance inspection.

(4) For the purposes of this section, “foreign regulatory authority” means an authority in a country or territory outside the Cook Islands which exercises –

- (a) a function corresponding or similar to a function exercised by the Commission; or
- (b) a function that, in the opinion of the Commission, relates to the supervision or regulation of any business or activity required to be licensed under this Act.

PART 5 **ENFORCEMENT**

70. Interpretation for this Part – In this Part, “licensee” means a licensed insurer, a licensed insurance intermediary or a licensed insurance manager.

71. Enforcement action - (1) The Commission may take enforcement action against a licensee if –

- (a) in the opinion of the Commission, the licensee –
 - (i) has contravened or is in contravention of this Act or the Code;
 - (ii) is carrying on, or is likely to carry on, business in a manner detrimental to the public interest or to the interest of any of its policyholders or potential policyholders, customers or potential customers or creditors;
 - (iii) is or is likely to become insolvent;
 - (iv) has failed to comply with a directive given to it by the Commission within the time specified;
 - (v) is in breach of any condition of its licence;

- (vi) has provided the Commission with any false, inaccurate or misleading information, whether on making application for a licence or subsequent to the issue of the licence;
- (vii) does not satisfy the Commission's fit and proper criteria;
- (b) the licensee –
 - (i) is compulsorily wound up;
 - (ii) has passed a resolution for voluntary winding up; or
 - (iii) is dissolved;
- (c) a receiver and/or manager has been appointed in respect of the business carried on by the licensee;
- (d) possession has been taken of any of the licensee's property by or on behalf of the holder of a debenture secured by a registered charge; or
- (e) in the opinion of the Commission, a person –
 - (i) who has a share or interest in the licensee, whether equitable or legal, or
 - (ii) who is a director, officer or key functionary of the licensee;
 does not satisfy the Commission's fit and proper criteria;
- (f) in the opinion of the Commission, the licensee has refused or failed to co-operate with the Commission on a compliance visit conducted by the Commission; or
- (g) the Commission is entitled to take enforcement action under a provision in another Act.

(2) For the purposes of subsection (1)(a)(iv), a licensed insurer is deemed to be insolvent if the total value of its assets does not exceed the total amount of its liabilities by at least the minimum margin of solvency that it is required to maintain under section 18.

(3) If the Commission is entitled to take enforcement action under subsection (1) it may exercise one or more of the following powers –

- (a) revoke the licensee's licence under section 72;
- (b) issue a directive under section 74;
- (c) appoint an examiner to conduct an investigation under section 75;
- (d) appoint a qualified person under section 76;
- (e) apply to the Court for a protection order under section 77;
- (f) petition the Court for the winding up of the licensee under section 219 of the Companies Act or section 158 of the International Companies Act.

72. Revocation of licence - (1) The Commission may at any time revoke a licensee's licence if –

- (a) it is entitled to take enforcement action against the licensee under section 71;
- (b) the licensee has, within a reasonable period, failed to commence or has ceased to carry on the business for which it was licensed; or

- (c) the licensee makes written application to the Commission for its licence to be revoked.
- (2) Subject to subsection (3), before revoking a licence under paragraphs (a) or (b) of subsection (1), the Commission shall give written notice to the licensee stating –
 - (a) the grounds upon which it intends to revoke the licence; and
 - (b) that unless the licensee, by written notice filed with the Commission, shows good reason why its licence should not be revoked, the licence will be revoked on a date not less than twenty one days after the date of the notice.
- (3) A licensee that receives a notice under subsection (2) may, within fourteen days of receiving the notice, submit a written notice to the Commission setting out the reasons why its licence should not be revoked.
- (4) The Commission may revoke the licence of a licensee –
 - (a) if the licensee does not submit a written notice to the Commission under subsection (3); or
 - (b) having taken into account the submission made by the licensee, the Commission is of the opinion that it has failed to show good reason why its licence should not be revoked.
- (5) If, on the application of the Commission, the Court is satisfied that it is in the public interest or in the interests of any of the policyholders or potential policyholders, customers or potential customers or creditors of a licensee that subsections (2) to (4) should not have effect or that the period referred to in paragraph (b) of subsection (2) should be reduced, it may so order.
- (6) An application under subsection (5) may be made on an ex parte basis or upon such notice as the Court may require.

73. Notice and effect of revocation - (1) Where the Commission revokes the licence of a licensee, it shall give written notice of the revocation to the licensee.

- (2) A revocation of a licence takes effect on –
 - (a) the date the notice referred to in subsection (1) is given to the licensee; or
 - (b) such later date as may be specified by the Commission in the notice.
- (3) On the revocation of its licence, the licensee must forthwith return to the Commission the original licence and all copies of the licence in its custody or control.

74. Directives – (1) Where the Commission is entitled to take enforcement action against a licensee, the Commission may issue a directive –

- (a) imposing a prohibition, restriction or limitation on the business that may be undertaken by the licensee, including –
 - (i) that the licensee shall cease to engage in any class or type of business; or
 - (ii) that the licensee shall not enter into any new contracts for any class or type of business;
- (b) requiring that any director, key employee or person having functions in relation to a licensee be removed and replaced by another person acceptable to the Commission;

- (c) requiring the licensee to take such other action as the Commission considers may be necessary –
 - (i) to protect the property of, or in the custody, possession or control of, the licensee;
 - (ii) to protect policyholders or potential policyholders, customers or potential customers or creditors of the licensee;
 - (iii) to enable the licensee to comply with its obligations under this Act or the Code.

(2) A directive issued under subsection (1) may include one or more of the matters set out in paragraphs (a), (b) or (c) of that subsection.

(3) Where it appears to the Commission that a person is carrying on unauthorised business, the Commission may issue a directive to that person –

- (a) requiring him to cease carrying on that business;
- (b) requiring him to take such other action as the Commission considers may be necessary to protect his property, or property in his custody, possession or control, or to protect his policyholders or potential policyholders, customers or potential customers or creditors of him.

75. Appointment of examiner – (1) The Commission may by notice in writing appoint one or more competent persons as examiners to conduct an investigation on its behalf –

- (a) where it appears to the Commission that there are, or may be, grounds for taking enforcement action against the licensee; or
- (b) where it appears to the Commission that any person is carrying on, or has carried on, unauthorised business.

(2) The matters investigated by an examiner appointed under subsection (1) may include one or more of the following –

- (a) the nature, conduct or state of the business of the person under investigation;
- (b) a particular aspect of the business of the person under investigation;
- (c) the ownership or control of the person under investigation;
- (d) in the case of a licensee, whether there are grounds for taking enforcement action against the licensee; and
- (e) in the case of any other person, whether that person is carrying on, or has carried on, unauthorised business.

(3) Subject to subsection (4), an examiner appointed under this section shall have the powers of the Commission under section 20 of the Financial Supervisory Commission Act, excluding subsection (3).

(4) The Commission may give directions to the examiner concerning any one or more of the following –

- (a) the scope of the investigation;
- (b) the period for the conduct of the investigation; and
- (c) the manner in which the examiner shall report to it.

(5) An examiner appointed under subsection (1) may, if he considers it necessary for the purposes of his investigation, also investigate the business of any person who is, or at any relevant time has been –

- (a) a member of the group of which the person under investigation is a part; or
- (b) a partner in a partnership of which the person under investigation is also a partner.

(6) Where a person appointed as an examiner under this section is not a member or officer of the Commission he shall, unless otherwise agreed between him and the Commission, be remunerated on such terms as the Commission may determine.

(7) An examiner shall submit a report of his investigation to the Commission.

(8) The Commission may direct that the cost and expenses of and incidental to an investigation under this section, or any part of them, are paid for by the person to whom the investigation relates.

76. Appointment of qualified person - (1) Where it appears to the Commission that there are, or may be, grounds for taking enforcement action against a licensee, it may, by notice in writing, require the licensee to appoint a qualified person, at the cost of the licensee

- (a) to advise the licensee on the proper conduct of his business and affairs; and
- (b) to provide the Commission with a report on, or on any aspect of, the licensee's business and affairs.

(2) The Commission may require the report provided under subsection (1) to be in such form as may be specified in the notice.

(3) The person appointed under subsection (1) shall be a person –

- (a) nominated or approved by the Commission; and
- (b) appearing to the Commission to have the skills necessary to make a report on the matter concerned.

(4) Any person who is providing, or who at any time has provided, services to a licensee in relation to a matter on which a report is required, shall give the person appointed to prepare the report all such assistance as he may reasonably require.

77. Protection order – (1) The Commission may apply to the Court for a protection order under this section with respect to –

- (a) a licensee where its licence is about to be revoked or where the Commission is entitled to take enforcement action against the licensee under section 71;
- (b) a former licensee; or
- (c) a person carrying on unauthorised business.

(2) On an application made under subsection (1), the Court may make such order as it considers necessary to protect or preserve the business or property of the person with respect to whom the application is made, or the interests of its policyholders or potential policyholders, customers or potential customers, creditors or the public including –

- (a) an order preventing the person concerned or any other person from transferring, disposing of or otherwise dealing with property belonging to him or in his custody or control;
- (b) an order appointing an administrator to take over and manage the business then carried on by the person concerned;
- (c) an order granting the Commission a search warrant and an order for the seizure of specified documents or documents of a specified type or description; and

- (d) where the person concerned is in contravention of this Act or the Code, an order requiring the person concerned to take such action, or to refrain from taking such action, as is necessary to bring him back into compliance with this Act or the Code.

(3) Without limiting subsection (2)(b), an order made under that subsection shall specify the powers of an administrator, which may include the powers of a licensee under this Act or of a liquidator under the Companies Act or the International Companies Act and may –

- (a) require an administrator to provide security to the satisfaction of the Court;
- (b) fix and provide for the remuneration of the administrator;
- (c) require such persons as it considers necessary to appear before the Court for the purposes of giving information or producing records concerning the licensee or the business carried on by the licensee.

(4) An order made under subsection (2)(b) shall make provision for reports to be submitted by the administrator to the Court and to the Commission.

(5) The Court may on its own motion or on the application of the Commission or the administrator –

- (a) give directions to the administrator concerning the exercise of his powers;
- (b) vary the powers of the administrator; or
- (c) terminate the appointment of the administrator.

(6) An application under subsection (1) may be made –

- (a) on an ex parte basis or upon such notice as the Court may require; and
- (b) before the Commission has given notice of intention to revoke a licence under section 72.

78. Public statements - (1) Where the Commission is entitled to take enforcement action against a licensee or a former licensee, the Commission may issue a public statement in such manner as it considers fit setting out the reasons for the enforcement action and the enforcement action that it intends to take, or has taken.

(2) Where it considers it in the public interest to do so, the Commission may issue a public statement in such manner as it considers fit with respect to –

- (a) any person who, in the opinion of the Commission, is carrying on, intends to carry on or is likely to carry on, unauthorised business including as to any action that the Commission intends to take or has taken against that person;
- (b) any person who, not being a licensee, is holding himself out as a licensee;
- (c) any matter relating to licensed business where the Commission considers that the statement is desirable for –
 - (i) the protection of the public, whether within or outside the Cook Islands, against financial loss arising out of the dishonesty, incompetence, malpractice or insolvency of persons engaged in a licensed business in the Cook Islands;

- (ii) the protection and enhancement of the reputation of the Cook Islands as a financial services centre; and
- (iii) the reduction of crime and other unlawful activities relating to licensed business.

(3) Where a public statement is to be issued under this section in relation to a licensee or a former licensee, the Commission shall give that person seven days written notice of its intention to issue the public statement and the reasons for the issue of the statement.

(4) If, on the application of the Commission, the Court is satisfied that it is in the public interest or to the interests of any of the policyholders or potential policyholders, customers or potential customers or creditors of a licensee or former licensee that subsection (3) should not have effect or that the period referred to in that subsection should be reduced, it may so order.

(5) An application under subsection (4) may be made on an ex parte basis or upon such notice as the Court may require.

PART 6

LIQUIDATION AND STRIKE OFF

79. Interpretation for this Part - In this Part –

“company” means a company incorporated under the Companies Act;

“insurer” means a Cook Islands company that is, or at any time has been, a licensed insurer and “general insurer” and “long-term insurer” shall be construed accordingly;

“international company” means an international company incorporated under the International Companies Act;

“relevant insurance intermediary” means a Cook Islands company that is, or that at any time in the previous two years has been, a licensed insurance intermediary;

“relevant insurance manager” means a Cook Islands company that is, or that at any time in the previous three years has been, a licensed insurance manager;

“unlicensed insurer” means a Cook Islands company that has, at no time, held an insurance licence but which is carrying on insurance business.

80. Winding up of insurers, insurance intermediaries and insurance managers - The provisions of –

- (a) the Companies Act relating to the winding up of companies; and
- (b) the International Companies Act relating to the winding up of international companies;

are modified in respect of insurers, relevant insurance intermediaries and relevant insurance managers to the extent specified in this Part.

81. Restrictions on voluntary winding up - (1) A long-term insurer shall not be wound up voluntarily –

- (a) in the case of a company, under Part VI, Division (iii) of the Companies Act; or
- (b) in the case of an international company, under Part IX, Division 3 of the International Companies.

(2) A general insurer, a relevant insurance intermediary and a relevant insurance manager shall not be wound up voluntarily –

- (a) in the case of a company, under Part VI, Division (iii) of the Companies Act; or
- (b) in the case of an international company, under Part IX, Division 3 of the International Companies

unless the Commission has given its prior written consent.

(3) Any resolution for voluntary winding up passed by the members of an insurer, a relevant insurance intermediary or a relevant insurance manager in breach of subsection (1) or (2) is void and of no effect.

(4) Where the members of a general insurer, a relevant insurance intermediary or a relevant insurance manager pass a resolution for voluntary winding up in accordance with subsection (2), the Commission may by notice in writing direct the liquidator to advertise his appointment in such manner as is specified in the notice.

(5) A liquidator who fails to advertise his appointment in accordance with a direction of the Commission issued under subsection (4) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

82. Circumstances in which Commission may present winding up petition - (1) The Commission may present a petition under section 219 of the Companies Act or section 158 of the International Companies Act, as the case may be, for the winding up by the Court –

- (a) of an unlicensed insurer; or
- (b) of an insurer, a relevant insurance intermediary or a relevant insurance manager if it is entitled to take enforcement action against the insurer under Part 6;

(2) On a petition presented under subsection (1), the Court may make an order for the winding up of the company concerned –

- (a) on the grounds that the company is unable to pay its debts; or
- (b) on the grounds that it is in the public interest for the company to be wound up.

(3) For the purposes of subsection (2)(b), the public interest includes the interests of the policyholders of an insurer.

(4) An insurer is deemed to be unable to pay its debts if the total value of its assets does not exceed the total amount of its liabilities by at least the minimum margin of solvency that it is required to maintain under section 18.

83. Service on Commission - A petition for the winding up of an insurer, a relevant insurance intermediary or a relevant insurance manager shall, if presented by a person other than the Commission, be served on the Commission and the Commission is entitled to appear and be heard at the hearing of the petition.

84. Reduction of contracts as alternative to winding up - Where on the hearing of a petition for the winding up of an insurer, the Court is satisfied that the insurer is unable to pay its debts, it may reduce the amount of the insurer's contracts on such conditions as it considers just, instead of making an order for the winding up of the insurer.

85. Continuation of long-term business by liquidator - (1) The liquidator of a long-term insurer shall, unless the Court otherwise orders, carry on the long-term business of the insurer with a view to it being transferred as a going concern to another insurer, whether in existence or to be incorporated for the purpose.

(2) In carrying on the insurer's long-term business under subsection (1), the liquidator may agree to the variation of any contracts of insurance at the commencement of the winding up, but he shall not effect any new contracts of insurance.

(3) On the application of the liquidator of a long-term insurer, the Court may by order reduce the amounts of the contracts made by the insurer in the course of carrying on its long-term business.

(4) An order under subsection (3) may be made subject to such conditions as the Court considers appropriate.

(5) The liquidator of a long-term insurer –

- (a) may appoint an actuary to investigate and report to him on the long-term business of the insurer and, if appropriate, to conduct actuarial valuations of the business; and
- (b) may apply to the court for the appointment of a manager to manage the business of the insurer.

(6) A manager appointed by the Court –

- (a) shall act in accordance with such directions that may be given to him by the Court;
- (b) shall give such security and account in such manner as the court may direct; and
- (c) is entitled to be paid such remuneration as may be fixed by the Court.

86. Protection of segregated funds and assets - (1) Notwithstanding any provision in the Companies Act or the International Companies Act, in the winding up of a long-term insurer under either Act, the assets of the funds maintained by the insurer in respect of its long-term business shall first be applied to meet the insurer's long-term liabilities attributable to such funds.

(2) If the value of the assets referred to in subsection (1) exceeds the amount of the long-term liabilities of the insurer attributable to such funds, the excess is an asset of the insurer available for distribution in accordance with the Companies Act or the International Companies Act, as the case may be.

(3) Where the Court makes a winding up order under the Companies Act or the International Companies Act in respect of a long-term insurer requiring a person to repay, restore or account for money or other assets, to pay compensation to the insurer or to pay interest to the insurer, the Court shall, insofar as the delinquency relates to assets belonging to the insurer's long-term funds, order that the money, assets or contribution is to be treated for the purposes of subsection (1) as assets of those funds.

87. Strike off notices - (1) The Registrar of International Companies shall serve on the Commission a copy of any letter or notice that he sends to an insurer under section 197 of the International Companies Act and the Registrar of Companies shall serve on the Commission a copy of any letter or notice that he sends to an insurer under the Companies Act.

(2) The Registrar of International Companies and the Registrar of Companies shall not strike the name of an insurer from the respective registers of international companies and companies without the prior written consent of the Commission.

PART 7

MISCELLANEOUS PROVISIONS

88. Restriction on use of certain names and terms - (1) Subject to subsections (2) and (3), no person shall, except with the written authority of the Commission or unless authorised by another enactment –

- (a) use, whether in the name under which he is registered or in the description or title under which he carries on business in or from the Cook Islands –
 - (i) the words “insurance”, “assurance” or “underwrite” or any combination or derivative thereof; or
 - (ii) any other word or phrase prescribed as a word or phrase that suggests insurance business or the business of insurance management or of an insurance intermediary; or
- (b) make any representation, whether in a document or in any other manner, that is likely to suggest that he is carrying on, or that he is licensed or otherwise entitled to carry on –
 - (i) insurance business; or
 - (ii) business as an insurance manager or an insurance intermediary.

(2) Subsection (1) does not apply to a licensed insurer, a licensed insurance manager or a licensed insurance intermediary, provided that the name under which it is registered or the name which it uses does not suggest that it carries on any business required to be licensed under this Act other than the business that it is authorised by its licence to carry on.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

89. Incorporation and change of name of companies - The Registrar of International Companies and the Registrar of Companies shall not register a company under, or register a change of name of a Cook Islands company to, a name that, includes –

- (a) the words “insurance”, “assurance” or “underwrite” or any combination or derivative thereof, or
 - (b) any other word or phrase prescribed under section 88(1)(a)(ii),
- unless he is satisfied that the company is a licensee, that the Commission has approved the use of the name by the company or that the company is authorised by some other enactment to use the name.

Administration

90. Applications - (1) Every application made under this Act –
- (a) shall be in writing and, where a form has been approved under section 97, shall be in the approved form; and
 - (b) shall have included with it such documentation or information as may be specified by this Act, the regulations or the Code.
- (2) The Commission may require an applicant to furnish it with such documentation and information, in addition to that specified in subsection (1)(b), as it reasonably requires to determine the application and any such information shall be in such form as the Commission may require.
- (3) If, before the determination by the Commission of an application –
- (a) there is a material change in any information or documentation provided by or on behalf of the applicant to the Commission in connection with the application; or
 - (b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading;
- the applicant shall forthwith give the Commission written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.

91. Registers - (1) The Commission shall maintain –
- (a) a Register of Licensed Insurers;
 - (b) a Register of Licensed Managers;
 - (c) a Register of Licensed Insurance Intermediaries; and
 - (d) such other registers as may be specified in the regulations.
- (2) The registers and the information contained in any document filed with the Commission may be kept in any form the Commission considers fit including, either wholly or partly, by means of a device or facility –
- (a) that records or stores information in magnetic or electronic form; and
 - (b) that permits the information to be inspected and reproduced in legible and useable form.

92. Inspection of registers and information held by Commission - (1) Subject to subsection (2), a person may, on payment of the prescribed fee during normal business hours –
- (a) inspect the registers and any records kept by the Commission that are prescribed as public records; and
 - (b) require the Commission to furnish him with a copy or certified copy of, or extract from, any document that he would be entitled to inspect under paragraph (a).

(2) In respect of documents filed or kept in electronic form, the rights granted under subsection (1) extend only to reproductions of those documents in useable written form produced in such manner as the Commission considers appropriate.

(3) A copy or reproduction of, or extract from, any document or record that is kept by the Commission and certified as such by it is admissible in evidence in all legal proceedings to the same extent as the original document.

93. Electronic filing of documents - (1) In this section, a document in electronic form is a document in a computer processable message format that is capable of being transmitted electronically.

(2) The regulations may provide for a system enabling documents required or permitted to be filed with the Commission under this Act to be filed in electronic form.

(3) A system for the filing of documents in electronic form shall provide for –

- (a) the criteria for authorising persons to file documents in electronic form; and
- (b) the security and authentication of the documents filed.

94. Fees, penalties and charges payable to Commission – (1) The fees and penalties specified in the regulations, excluding any penalties imposed by a court, are payable to the Commission.

(2) The Commission may charge a fee in respect of costs reasonably incurred in the performance of its duties under this Act.

(3) The Commission may refuse to take any action required of it with respect to a licensee under this Act for which a fee is payable until the fee and any other fees, penalties and charges payable by, or in respect of, the licensee have been paid.

(4) Any fee, charge or penalty which is owed to the Commission under this Act may be recovered as a debt due to the Commission.

95. Regulations (1) The Queen's Representative may, by Order in Executive Council, promulgate regulations –

- (a) generally for giving effect to this Act and for its administration by the Commission; and
- (b) specifically in respect of anything required or permitted by this Act to be contained in the regulations.

(2) Regulations made under this section may provide for the imposition by the Commission of administrative penalties on licensees that contravene a provision of this Act or the Code.

(3) The regulations may –

- (a) exempt licensed insurers holding a category C licence, or specified classes or descriptions of such licensed insurers, from a requirement or obligation imposed by or under this Act; or
- (b) provide for the circumstances in which the Commission may exempt licensed insurers holding a category C licence, or specified classes or descriptions of such licensed insurers, from specified requirements or obligations imposed by or under this Act.

(4) The regulations –

- (a) may make different provision in relation to different persons, circumstances or cases; and

- (b) subject to subsection (4), may provide for offences and penalties for any contravention of or failure to comply with specified requirements of the regulations.
- (5) A penalty provided for an offence under the regulations may not exceed -
 - (a) in the case of a fine, the sum of \$50,000; and
 - (b) in the case of a period of imprisonment, the term of 1 year.

96. Insurance Code - (1) The Commission shall issue an Insurance Code with respect to -

- (a) the financial resources to be maintained by licensees;
- (b) the strategies, policies, systems and controls, including internal controls, to be established and maintained, and the procedures to be followed, by licensees;
- (c) the conduct expected of licensees;
- (d) information to be provided and returns to be submitted to the Commission by licensees; and
- (e) such other matters as are required or permitted by this Act or the regulations to be provided for in the Code.

matters - (2) Without limiting subsection (1), the Code may provide for the following

- (a) the policies, systems and controls to be established and maintained by licensees with respect to -
 - (i) the assessment and management of risk; and
 - (ii) the compliance by the licensee with its obligations under this Act, the regulations made under this Act and the Code;
- (b) principles and rules of corporate governance to be adhered to by licenses;
- (c) the running off by an insurer of its business and the exit of insurers from the insurance market;
- (d) prudential requirements, not inconsistent with this Act or the regulations, applicable to licensees, including (with respect to licensed insurers) -
 - (i) the valuation of assets and liabilities;
 - (ii) the evaluation of risks;
 - (iii) the calculation of technical provisions; and
 - (iv) permitted investments;
- (e) principles and rules with respect to the underwriting and rating policies and methodologies to be established by licensed insurers;
- (f) conduct of business; and
- (g) measures to be taken by licensees to prevent, detect and remedy fraud and other financial crime.

(3) The Code may -

- (a) make different provision in relation to different persons, circumstances or cases; and
- (b) include such transitional provisions as the Commission considers necessary or expedient.

(4) The Commission may amend or replace the Code.

(5) Before issuing the Code under subsection (1) or publishing a notice under subsection (4), the Commission shall –

- (a) publish a draft of the Code, or the proposed amendment, addition to or replacement of the Code, in such manner as may be specified in the regulations; and
- (b) consider such written representations as it may receive.

(6) The Code, and any amendment to the Code or replacement of the Code shall be published in the Gazette.

(7) The Code –

- (a) is subordinate legislation and has legislative effect; and
- (b) comes into operation on such date or dates as are specified in the Code.

(8) A licensee shall comply with the Code, as far as it is applicable to the licensee.

97. Approved forms – (1) Where this Act or the Code require a document to be in “the approved form”, the Commission shall, by publication in such manner as may be specified in the regulations, approve a form to be used for the document.

(2) The Commission may, with respect to any other document required or permitted to be filed, issued or produced under this Act or the Code approve a form to be used for the document.

(3) Where, pursuant to subsection (1) or (2), the Commission has published an approved form with respect to the type of document to be filed, issued or produced under this Act –

- (a) the approved form shall be used for the document with such modifications as the circumstances require;
- (b) the document shall contain the information specified in the approved form.

(4) Notwithstanding subsection (3)(a), an approved form shall not be varied so as to omit any information or guidance which the form gives to the intended recipient of the form.

98. Prudential Guidelines - (1) The Commission may issue Prudential Guidelines with respect to the procedures to be followed by and the conduct expected of licensees in the operation of their licensed businesses and with respect to any other matter concerning this Act.

(2) Prudential Guidelines issued under subsection (1) may make different provision in relation to different persons, circumstances or cases.

(3) The Commission shall publish any Prudential Guidelines that it issues under this section in such manner as shall be prescribed.

(4) Failure to follow any Prudential Guidelines issued under this section shall not, of itself, render a person liable to proceedings of any kind, but such failure may be taken into account by the Court or the Commission, as the case may be, in determining whether there has been a contravention of this Act or the Code.

Offence Provisions

99. False or misleading representations, statements, reports or returns - (1) A person who makes or assists in making a representation, statement, report or return, whether oral or written –

- (a) that is required or permitted by this Act to be made to or, in the case of a document, filed with the Commission; and
 - (b) that –
 - (i) contains a false statement of a material fact,
 - (ii) omits to state a material fact required to be provided to the Commission or necessary to avoid the statement or document being materially misleading,
- commits an offence.

(2) A person does not commit an offence under subsection (1) if he did not know and, with the exercise of reasonable diligence, could not have known that the representation or statement contained a false statement or omitted a material fact.

(3) A person who commits an offence under subsection (1) is liable on conviction –

- (a) if the person is an individual, to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 2 years, or both; or
- (b) in any other case, to a fine not exceeding \$100,000.

100. Offence committed by body corporate - Where an offence under this Act is committed by a body corporate, a director of that body corporate who knowingly authorized, permitted or acquiesced in the commission of the offence also commits an offence and is liable on conviction to the same penalty as the body corporate.

101. Order to comply - Where a person is convicted of an offence under this Act or the regulations, the court having jurisdiction to try the offence may, in addition to any punishment it may impose, order that person to comply with the provision of this Act or the regulations for the contravention of which he has been convicted.

102. Civil remedies unaffected - No civil remedy for any act or omission is affected by reason that the act or omission is an offence under this Act.

Final Provisions

103. Transitional provisions - The transitional provisions specified in Schedule 1 shall have effect.

104. Repeals - The following Acts are repealed –

- (a) the Offshore Insurance Act 1981-82; and
- (b) the Insurance Companies Deposits Act 1970-71.

105. Amendments – the enactments set out in the second column of Schedule 2 to this Act are amended to the extent specified in the third column with effect from the date that this Act comes into force.

106. Amendment of Schedules – (1) The Queen's Representative may, by Order in Executive Council, promulgate regulations amending the Schedules to this Act.
(2) Regulations made under this section shall be tabled in Parliament.

This Act is administered by the Financial Supervisory Commission.

SCHEDULE 1**TRANSITIONAL PROVISIONS*****Interpretation***

1. In this Schedule

“commencement date” means the date that this Act comes into force;

“exemption period”, with respect to an existing domestic insurer or an existing insurance intermediary, means the period ending on a day six calendar months from the commencement date;

“existing domestic insurer” means a company that –

- (a) immediately prior to the commencement date, carried on insurance business in the Cook Islands;
- (b) is not a company specified in paragraph 2 of this Schedule; and
- (c) was not required to obtain a licence under the former Act with respect to the insurance business that it carried on in the Cook Islands prior to the commencement date;

“existing insurance intermediary” means a person who, immediately prior to the commencement date, carried on business as an insurance intermediary in the Cook Islands;

“former Act” means the Offshore Insurance Act 1981; and

“transition date” means 1 July 2009.

Licensees under the Former Act

- 2. A company incorporated under the International Companies Act 1981-82 that, immediately prior to the commencement date, held an offshore insurance licence granted under the former Act is deemed to have been granted a category C insurer’s licence under this Act on the commencement date.
- 3. The Commission shall, within three months of the commencement date, issue each company that is deemed to have been granted a licence under paragraph 2 with a replacement licence issued under this Act.
- 4. Where, immediately before the commencement date an insurer is authorised under the former Act to carry on general business and long-term business -
 - (a) section 8(3) shall not apply to the issuance of a licence under paragraph 3 of this Schedule;

- (b) the insurer shall, on or before the transition date, apply to the Commission for an insurance licence to carry on either one or more classes of general business or one or more classes of long-term business; and
 - (c) the insurer shall, unless and to the extent that the Commission otherwise permits, with effect from the transition date, carry on only that type of business [long-term or short term] to which the application made under subparagraph (b) relates and shall, from the transition date, cease to carry on the other type of insurance business.
5. Where a company licensed under the former Act has, prior to the commencement date, established one or more statutory funds under section 17A of the former Act, the provisions of section 17A shall continue to have effect with respect to such statutory funds, notwithstanding the repeal of the former Act.

Insurance managers

6. Where, immediately before the commencement date, a trustee company (within the meaning of the Trustee Companies Act, 1981-82) carries on business as an insurance manager and intends to continue that business after the commencement date, notwithstanding anything to the contrary in the Act –
- (a) the trustee company shall submit an application for an insurance manager's licence within six weeks of the commencement date; and
 - (b) during the period specified in subparagraph (a) and, provided that paragraph (a) is complied with, during the period between the submission of the application and the final determination of that application, the trustee may carry on business as an insurance manager and this Act applies to the trustee company in all respects as if it was a licensed insurance manager.

Existing domestic insurers

7. Section 5 comes into force for, and with respect to, an existing domestic insurer on a date six calendar months plus one day after the commencement date in place of the commencement date.
8. For the purposes of sections 6, 7 and 50, an existing domestic insurer is deemed not to an "unlicensed insurer" during the exemption period.
9. The following provisions of this Act apply to, and with respect to, an existing domestic insurer during the exemption period, as if it was a licensed insurer, with such modifications as may be specified –
- (a) sections 15 and 20;
 - (b) sections 38 and 39, if the existing domestic insurer is a Cook Islands company, or paragraphs 11, 12 and 13 of Schedule 3 if the existing domestic insurer is not a Cook Islands company;

- (c) paragraph 10 of Schedule 3 if the existing domestic insurer is not a Cook Islands company;
- (d) sections 64, 65, 67, 68 and 69; and
- (e) Part 7, to an existing domestic insurer that is a Cook Islands company, section 82(4) being disappplied.

Existing insurance intermediaries

- 10. Section 41 comes into force for, and with respect to, an existing insurance intermediary on 1 January 2009 in place of the commencement date.
- 11. The following provisions of this Act have effect with respect to an existing insurance intermediary during the exemption period, as if it was a licensed insurance intermediary, with such modifications as may be specified -
 - (a) sections 47, 49, 64, 65, 67; and
 - (b) Part 7.

Existing domestic insurers and existing insurance intermediaries

- 12. Section 71 applies to, and with respect to, an existing domestic insurer and an existing insurance intermediary as if, in each case, it was a licensee, with the following modifications -
 - (a) subsection (1)(a)(i) is to be construed as referring to a contravention of a provision of the Act or the Code that applies to the existing domestic insurer or existing insurance intermediary;
 - (b) subsection (1)(a)(v) does not apply;
 - (c) subsection (1)(a)(vi) applies with the deletion of the words “, whether on making application for a licence or subsequent to the issue of the licence”;
 - (d) subsection (2) does not apply; and
 - (e) subsection (3)(a) does not apply;
- 13. Section 74 applies to, and with respect to, an existing domestic insurer and an existing insurance intermediary as if, in each case, it was a licensee.
- 14. Section 75 applies to, and with respect to, an existing domestic insurer and an existing insurance intermediary as if, in each case, it was a licensee, with the following modifications -
 - (a) subsection (1)(b) does not apply; and
 - (b) subsection (2)(e) does not apply;

15. Section 76 applies to, and with respect to, an existing domestic insurer and an existing insurance intermediary as if, in each case, it was a licensee.
16. Section 77 applies to, and with respect to, an existing domestic insurer and an existing insurance intermediary as if, in each case, it was a licensee, with the modifications -
 - (a) in subsection (1)(a), the words “where its licence is about to be revoked” do not apply; and
 - (b) subsection (1), paragraphs (b) and (c) do not apply.
17. Section 78 applies to, and with respect to, an existing domestic insurer and an existing insurance intermediary as if, in each case, it was a licensee.
18. Section 88 applies to, and with respect to, an existing domestic insurer and an existing insurance intermediary as if, in each case, it was a licensee, the proviso being disapplied.
19. The Insurance Code and Prudential Guidelines may make provision for existing domestic insurers and existing insurance intermediaries.

Licence application by existing domestic insurer or existing insurance intermediary

20. Nothing in this Schedule prevents an existing domestic insurer or an existing insurance intermediary applying for a licence under this Act.
21. If the Commission grants a licence to an existing domestic insurer or an existing insurance intermediary during the exemption period, from the date of the licence -
 - (a) the existing domestic insurer or insurance intermediary is for all purposes a licensee under this Act; and
 - (b) the provisions of this Schedule immediately cease to apply to it.

Application of Financial Supervisory Commission Act 2003

22. Sections 20, 21, 22 and 23 of the Financial Supervisory Commission Act 2003 apply to, and with respect to, an existing domestic insurer or an existing insurance intermediary as if, in each case, it was a licensed financial institution.

SCHEDULE 2**AMENDMENTS**

No.	Enactment	Amendment
1.	Financial Supervisory Commission Act 2003	<p>1. In section 2, in the definition of “licensed financial institution”, delete the words from “an Offshore Insurance Company licensed pursuant to the Offshore Insurance Act 1981-82” to the end of the definition and substitute “a person licensed under the Insurance Act, 2008 as a licensed insurer, a licensed insurance manager or a licensed insurance intermediary”.</p> <p>2. By repealing section 14 and substituting the following:</p> <p>“14. <u>Immunity</u> (1) No person to whom this section applies shall be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any function or duty or the exercise or purported exercise of any power under this Act or any other enactment unless it is shown that the act or omission was in bad faith.</p> <p>(2) This section applies to—</p> <p>(a) the Commission;</p> <p>(b) a board member;</p> <p>(c) the Commissioner or any other employee of the Commission; and</p> <p>(d) a person authorised by the Commission to perform any duty or exercise any power on behalf of the Commission.”.</p> <p>3. In section 17, by inserting after subsection (2) the following subsection:</p> <p>“(3) The Commission may, on such conditions as it considers appropriate, exempt a licensee that is not a company incorporated under the Companies Act or</p>

		<p>an international company incorporated and registered under the International Companies Act from this section.”.</p> <p>4. In the First Schedule,</p> <p>(a) delete from the list of enactments administered by the Commission, the “Offshore Insurance Act 1981-82” and the “Insurance Companies’ Deposits Act 1970-71”; and</p> <p>(b) insert in the list in their place the “Insurance Act, 2008”.</p>
2.	Financial Transactions Reporting Act 2004	1. In section 36(e), delete “Off-Shore Insurance Act 1981-82” and substitute “Insurance Act, 2008”.
3.	International Companies Act 1981-82	<p>1. In section 7(2)(b), delete “Off-Shore Insurance Act 1981-82” and substitute “Insurance Act, 2008”.</p> <p>2. In section 18E(1), by deleting paragraph (a).</p>
4.	International Partnership Act 1984	<p>1. In section 5, delete paragraph (a) and substitute the following paragraph:</p> <p>“(a) carry on insurance business within the meaning of section 3 of the Insurance Act, 2008.”</p> <p>2. In section 72(1), delete “Off-Shore Insurance Act 1981-82” and substitute “Insurance Act, 2008”.</p>
5.	International Trusts Act 1984	1. In the Schedule, delete “Off-Shore Insurance Act 1981-82” and substitute “Insurance Act, 2008”.
6.	Trustee Companies Act 1981-82	1. In section 21A(3), in the definition of “entity”, delete “an offshore insurance company licenced under the Offshore Insurance Act” and substitute “an insurer licensed under the Insurance Act, 2008”.

SCHEDULE 3**EXTERNAL INSURERS****PART A – PROVISIONS OF ACT DISAPPLIED OR MODIFIED**

1. This Act is disappplied or modified with respect to an external insurer holding a Category B licence and to an approved external insurer to the extent specified in this Part of the Schedule.
2. In this Schedule -

“Category B external insurer” means an external insurer holding a Category B licence;

“external insurer” means a Category B external insurer or an approved external insurer.

Provisions Disappplied

3. Sections 16, 17, 18, 19, 21, 22, 24, 27, 28, 32, 38, 54, 55, 56, 57, 58, 59, 60, 61 and 66 are disappplied with respect to an external insurer

Modifications

4. Section 25 is modified with respect to an external insurer as follows -
 - (a) Subsection (1) applies to an external insurer with the deletion of “, whether in the Cook Islands or elsewhere,” and the substitution of “in the Cook Islands”.
 - (b) The Commission may exempt an external insurer from the requirement to submit a business plan to the Commission.
5. Section 26 is modified with respect to an external insurer as follows -
 - (a) Subsections (1), (2) and (3) are disappplied with respect to an approved external insurer.
 - (b) Subsections (1) and (2) apply to a Category B external insurer only where the director or key functionary is to be resident in the Cook Islands.
 - (c) Subsection (3) applies to a Category B external insurer only where the director or key functionary was, immediately before his appointment was terminated or he ceased to hold office, resident in the Cook Islands.
6. Section 33 is modified with respect to an external insurer as follows -
 - (a) Subsection (2)(b) is modified by adding after “of the insurer”, the words “resident in the Cook Islands”.
 - (b) Subsection (4) is disappplied.

7. Section 53 is modified with respect to an external insurer as follows -

- (a) Section 53 applies to a Category B external insurer with the substitution of the following for subsection (1) -

“A Category B external insurer shall -

- (a) keep at its office in the Cook Islands records that are sufficient -
- (i) to show and explain all transactions in respect of the business it carries on in the Cook Islands; and
 - (ii) to enable it to prepare such returns as it is required to prepare and make under this Act and the Code; and
- (b) notify the Commission in writing of the place or places, whether in or outside the Cook Islands, where its financial records, other than those specified in paragraph (a) are maintained.”.

- (b) Section 53 applies to an approved external insurer with the substitution of the following for subsection (1) -

An approved external insurer shall -

- (a) keep records that are sufficient -
- (i) to show and explain all transactions in respect of the business it carries on in the Cook Islands; and
 - (ii) to enable it to prepare such returns as it is required to prepare and make under this Act and the Code; and
- (b) notify the Commission in writing of the place or places, whether in or outside the Cook Islands, where the records specified in paragraph (a) and its other financial records are maintained.

8. Section 67 is modified with respect to an external insurer by deleting, in subsection (1), “carries on business or under which it is incorporated” and substituting “carries on business in the Cook Islands”.

PART B – ADDITIONAL PROVISIONS

Notification of termination etc of director or key functionary

9. (a) A relevant external insurer shall, within fourteen days after the appointment of a key functionary who will have particular responsibility for the Cook Islands business of the insurer or of any director provide written notice of the appointment to the Commission.
- (b) A relevant external insurer shall, within fourteen days after -

- (i) it terminates the appointment of a key functionary who had particular responsibility for the Cook Islands business of the insurer or of any director, or
- (ii) a key functionary who had particular responsibility for the Cook Islands business of the insurer or any director ceases to hold office,

provide written notice thereof to the Commission.

- (c) An external insurer that contravenes paragraph (a) or (b) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Disposal etc of significant interest

- 10. (a) Subject to paragraph (b), an external insurer shall provide written notice to the Commission within fourteen days after any change in the persons who own or hold a significant interest in the insurer.
- (b) The Commission may, on the application of an external insurer, exempt it from compliance with paragraph (a).
- (c) An external insurer that contravenes paragraph (a) commits an offence and is liable on conviction to a fine not exceeding \$10,000.

Change of name

- 11. An external insurer shall immediately notify the Commission in writing if it changes its name or the name under which it carries on business.

Transfers and mergers

- 12. (a) For the purposes of paragraphs 12 and 13, -
 - (i) a transfer, with respect to an external insurer, means a transfer by the insurer of any part of its business to another person; and
 - (ii) a merger, with respect to an external insurer, means the merger of any part of an external insurer's business with the business of another person.
- 13. (a) An external insurer shall not effect a transfer or merger where any part of the business to be transferred or merged is domestic business unless it has obtained the prior written consent of the Commission for the transfer or merger.
- (b) Before determining an application for approval under subparagraph (a), the Commission may issue a notice to the external insurer requiring it to transfer or merge the business under a scheme of transfer or merger approved, in the case of a long term insurer by the Court and in the case of a general insurer by the Court or the Commission.
- (c) Where the Commission issues a notice under subparagraph (b), section 38 applies with such modifications as are necessary and appropriate.

14. A category B external insurer shall not effect a transfer or merger that does not fall within paragraph 12 unless it has given the Commission at least 30 days notice of its intention to do so.

Verification of domestic business

15. (a) The Commission may require a category B insurer to appoint, at its cost, a person -
- (a) qualified under the Code to act as the auditor of a licensee; and
 - (b) approved by the Commission;
- to investigate and verify such matters relating to its domestic business as the Commission may specify in the notice.
- (b) Where the Commission requires a category B insurer to appoint a person under subparagraph (a), that person shall carry out the investigation and verification as if it formed part of an audit of the licensee, and sections 58, 59 and 61 apply as if "auditor" referred to the person appointed and with such modifications as are appropriate.
-