

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE INSURANCE LAW (2004
REVISION) TO ENABLE THE PROTECTION OF PROCEEDS TO BE
PAID TO BENEFICIARIES; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

THE INSURANCE (AMENDMENT) BILL, 2006

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the Insurance Law (2004 Revision) to increase the protection of proceeds to be paid to beneficiaries.

Clause 1 provides the short title of the Bill

Clause 2 inserts definitions of “beneficiary” and “proceeds”.

Clause 3 repeals and substitutes section 7 of the principal Law relating to general requirements for licensed insurers.

Clause 4 inserts sections 15A and 15B, which impose certain rules regarding payment of benefits under long term business.

THE INSURANCE (AMENDMENT) BILL, 2006

ARRANGEMENT OF CLAUSES

1. Short title.
2. Amendment of section 2 - definitions.
3. Repeal and substitution of section 7 - general requirement for licensed insurers.
4. Insertion of sections 15A and 15B - accrual of benefits.

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**A BILL FOR A LAW TO AMEND THE INSURANCE LAW (2004
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ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Insurance (Amendment) Law, 2006. Short title
2. Section 2 of the principal Law is amended by inserting in the appropriate alphabetical placing the following- Amendment of section 2-definitions

“ “beneficiary” means a person who is designated by the policy holder under a contract of insurance as a person to whom the whole or part of the proceeds are payable or on the maturity or surrender of the contract of insurance or the happening of an event;

“proceeds” means monies, benefits in kind and cash values payable under a contract of insurance and includes any assets acquired with the same.”.
3. The principal Law is amended by the repeal of section 7 and substituting the following- Repeal and substitution of section 7 -general requirements for licensed insurers

“General requirements
for licensed insurers

7. (1) Except as otherwise approved by the Authority, a licensed approved external insurer that carries out domestic business shall, at all times-

- (a) in respect of its general business, place and maintain upon trust, with a person approved by the Authority, in a segregated account at a retail bank in the Islands which holds an “A” licence issued under the Banks and Trust Companies Law (2003 Revision) funds approved by the Authority, the total value of which shall at least equal the total of its-
 - (i) unearned premium reserve;
 - (ii) outstanding claims reserve;
 - (iii) reserve for claims incurred but not reported; and
- (b) in respect of its long term business, place and maintain upon trust, with a person approved by the Authority, in a segregated account at a bank in the Islands which holds an “A” licence issued under the Banks and Trust Companies Law (2003 Revision) funds approved by the Authority, the total value of which shall, unless otherwise permitted by the Authority, at least equal its total actuarially determined policyholder liabilities in respect of its life and annuity business

and such trust funds shall be held pursuant to a trust deed approved by the Authority, which shall provide that-

- (i) such funds are exclusively to be used to discharge the approved external insurer’s domestic business obligations, and for no other purpose; and
- (ii) such funds are not to be made the subject of any charge, security interest, mortgage, trust, assignment, lien or other dealing

and except with the prior written consent of the Authority, any distribution, dealing or undertaking

entered into in contravention of subparagraphs (i) or (ii) shall be void.

(2) In relation only to approved external insurers existing at the time that the Insurance (Amendment) Law, 2006, comes into force, subsection (1) shall enter into force 12 months after the commencement of that Law.

(3) An approved external insurer shall-

- (i) provide, within three months of its financial year end, a report to the Authority in the prescribed form confirming the placement or maintenance of the funds approved by the Authority pursuant to subsection (1); and
- (ii) should the funds held in trust pursuant to subsection (1) fall below the required level, notify the Authority of same within seven working days together with its proposed remedial actions, for the approval of the Authority.

(4) Every contract of domestic business shall be subject to the jurisdiction of the courts of the Islands, notwithstanding any provision to the contrary contained in such contract or in any agreement related to such contract. Every licensed insurer shall nominate at least one person resident in the Islands approved by the Authority who is authorised to accept on its behalf service of process in any legal proceedings on behalf of such insurer, and any notices required to be served on it.

(5) Licensed insurers may only carry on insurance business in accordance with the information given in their licence applications. Any proposed change in the nature of such business requires the prior approval of the Authority. Such insurers shall furnish annually to the Authority a certificate of compliance with this provision, in the prescribed form, signed by an independent auditor approved by the Authority, by a licensed insurance manager or by such other person as the Authority may approve.

(6) Except as otherwise approved by the Authority in writing, every licensed insurer shall prepare annual accounts in accordance with generally accepted accounting principles, audited by an independent auditor approved by the Authority.

(7) Every insurer licensed under Class 'A' who is carrying on general business shall, in addition, to the requirement in subsection (6), prepare annually a financial statement in the prescribed form, certified by an independent auditor approved by the Authority, to enable the Authority to be satisfied as to its solvency.

(8) Every insurer licensed under Class 'A' and Class 'B' who is carrying on long term business shall, in addition to subsection (4), prepare annually an actuarial valuation of its assets and liabilities, certified by an actuary approved by the Authority, so as to enable the Authority to be satisfied as to its solvency. Furthermore-

- (a) every such insurer carrying on both long term business and general business shall keep separate accounts in respect of its long term business;
- (b) (i) all receipts, by any such insurer of funds in respect of its long term business shall be placed in a separate long term business fund; and
(ii) payments from the said long term business fund shall not be made directly or indirectly for any purpose other than those of the insurer's long term business, except insofar as such payments can be made out of any surplus disclosed on an actuarial valuation and certified by an actuary approved by the Authority to be distributable otherwise than to policyholders; and
- (c) every such insurer carrying on long term business may establish any number of separate accounts in respect of respective premiums paid to it to provide-
 - (i) annuities on human life; and
 - (ii) contracts of insurance on human life,

and such respective premiums shall be kept segregated from the other and independent of all other funds of the insurer and, notwithstanding any other written law to the contrary, are not chargeable with any liability arising from any other business of the insurer.

(9) In respect of any insurer other than an approved external insurer or an insurer who, with the approval of the Authority, maintains permanently in the Islands a principal office and staff,-

- (a) each such insurer shall appoint an insurance manager resident in the Islands and maintain permanently at a designated principal office normally in the Islands (unless some other location is approved by the Authority) full and proper records of its business activities;
- (b) each such insurer carrying on besides insurance any other business shall keep separate accounts in respect of its insurance business and shall segregate the assets and liabilities of its insurance business from those of its other business;
- (c) the Authority may prescribe that any such insurer shall not without the specific approval of the Authority make investments of a specified class and may in that case require such insurer to realise investments of that class within such period as may be prescribed; and
- (d) no such insurer shall without the sanction of the Authority-
 - (i) amalgamate with any one or more insurers; or
 - (ii) other than in the normal course of insurance business, transfer its insurance operations or a part thereof or accept transfer of the insurance operations or a part thereof from another insurer.

(10) Except with the prior written approval of the Authority, an insurer licensed under Class 'B' may not carry

on domestic business except to the extent that such business forms a minor part of the international risk of a policyholder whose main activities are in territories outside the Islands.

(11) A licensed insurance broker may obtain a special dispensation from the Authority to place a policy or contract of domestic business with one or more unlicensed insurers where-

- (a) the said insurers have not been refused a licence under this Law;
- (b) the said insurers are approved by the Authority as being of sound reputation;
- (c) the Authority is satisfied that the proposed volume of domestic business to be placed with such unlicensed insurers is inadequate to support the payment of Class 'A' licence fees or that some other good and sufficient reason exists; and
- (d) the said insurance broker can demonstrate to the satisfaction of the Authority an evident need (in terms of additional capacity or policy coverage, or otherwise) that the business be so placed.

Such dispensation, if granted, shall be subject to review at such intervals, if any, as the Authority may specify when granting the dispensation and there shall be no appeal against the refusal of any such dispensation or renewal thereof and the final sentence of subsection (4) shall apply to a policy placed under this subsection.

Insertion of sections
15A and 15B

4. The principal Law is amended by the insertion of the following sections-

“How benefits of
insurance policies should
inure

15A. (1) Subject to subsection (2), all proceeds paid or payable to a policy holder or a beneficiary under a contract of insurance in respect of long term business issued by any insurer shall inure exclusively for the benefit of the policy holder or the beneficiary in accordance with the terms of the contract of insurance and-

- (a) shall not be subject to or be otherwise available to meet the claim of any creditor of a person, whether that person be the policy holder or a beneficiary, or whether such claim arose before or after payment under the contract of insurance, unless such contract of insurance, was effected for the benefit of such creditor;
- (b) shall be protected from the claim of any creditor in bankruptcy, insolvency, administration or similar proceedings relating to any person, whether that person is the policy holder or a beneficiary, whether such claim arose before or after payment under the contract of insurance, unless such contract of insurance was effected for the benefit of such creditor.

(2) Where premiums are paid by any person to an insurer with “intent to defraud” a creditor (within the meaning of section 2 of the Fraudulent Dispositions Law (1996 Revision), then nothing contained in that Law shall operate to set aside a payment made under this section and any “creditor” (within the meaning of the Fraudulent Dispositions Law) of such person shall be entitled only to receive out of the proceeds a sum equal to the premiums so paid, together with such interest as the court may order, for the period between payment of the premium and the date of such receipt.

(3) For the purposes of the application of the Fraudulent Dispositions Law (1996 Revision)-

- (a) the premium or premiums paid under subsection (2) shall be deemed to be dispositions at undervalue;
 - (b) the six-year limitation period in section 4 (3) of that Law shall apply to the claim of the creditor but the enforcement of any judgment resulting from such claim shall be permitted against the proceeds outside of any limitation period; and
 - (c) at no time shall the creditor have any right of action or claim against the insurer.
- (4) This section applies notwithstanding that-
- (a) the policy holder reserves a power to nominate or remove one or more other beneficiaries; or
 - (b) the policy holder or the estate of the policy holder is an actual or contingent beneficiary under the contract of insurance.

Effect of payment of
proceeds

15B. Any payment of proceeds made to a policy holder or beneficiary by the insurer in accordance with this Law and the contract of insurance shall discharge the insurer from any further liability under the relevant contract of insurance and the insurer shall not thereafter be responsible for, or be required to see to, the application of such payment.”.

Passed by the Legislative Assembly the day of , 2006.

Speaker.

Clerk of the Legislative Assembly.