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INSURANCE LAW

(2008 Revision)

Law 24 of 1979 consolidated with Laws 31 of 1979, 8 of 1980, 9 of 1980, 38 of 1983, 32 of 1985, 25 of 1987, 19 of 1993, 16 of 1996 (part), 4 of 1997 (part), 27 of 1997, 3 of 2001, 43 of 2001, 37 of 2002, 30 of 2003, 28 of 2006 and 16 of 2007 and with the Insurance (Reduction of Fees) Regulations, 1981, the Insurance (Variation of Fees) Regulations, 2001, the Insurance (Further Variation of Fees) Regulations, 2001, the Insurance (Reduction of Fees) Regulations, 2002 and the Insurance (Variation of Fees) Regulations, 2006 and as amended by the Cayman Islands (Constitution) (Amendment) Order 2003 (U.K.S.I. 2003 No. 1515).

Revised under the authority of the Law Revision Law (1999 Revision).

Originally enacted-

Law 24 of 1979-6th September, 1979
Law 31 of 1979-13th November, 1979
Law 8 of 1980-17th March, 1980
Law 9 of 1980-17th March, 1980
Law 38 of 1983-2nd December, 1983
Law 32 of 1985-19th December, 1985
Law 25 of 1987-17th November, 1987
Law 19 of 1993-24th September, 1993
Law 16 of 1996-20th September, 1996
Law 4 of 1997-24th March, 1997.
Law 27 of 1997-15th December, 1997
Law 3 of 2001- 20th April, 2001
Law 43 of 2001-10th January, 2002 (sic)
Law 37 of 2002-19th December, 2002
Law 30 of 2003-4th December, 2003
Law 28 of 2006-29th September, 2006
Law 16 of 2007-17th September, 2007.

Originally made-

Regulations, 1981-2nd June, 1981
Regulations, 2001-24th May, 2001
Regulations (No. 2), 2001-27th December, 2001
Regulations, 2002-24th December, 2002
Regulations, 2006-30th May, 2006
U.K. Order, 2003-12th June, 2003.

Consolidated and revised this 13th day of May, 2008.

Note (not forming part of the Law): This revision replaces the 2007 Revision which should now be discarded.

INSURANCE LAW

(2008 Revision)

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INSURANCE LAW

(2008 Revision)

1. This Law may be cited as the Insurance Law (2008 Revision). Short title

2. In this Law- Definitions
 - “actuary” means a person who has qualified as an actuary by examination of the Institute of Actuaries in England or the Faculty of Actuaries in Scotland or the Society of Actuaries in the United States of America or Canada, and who is a current member of good standing of one of the above professional associations or a person of good standing with some other actuarial qualification who is recognised by the Authority as such for the purpose of this Law;
 - “approved external insurer” means an insurer licensed as such under section 4(7);
 - “auditor” means a person who has qualified as an accountant by examination of one of the Institutes of Chartered Accountants in England and Wales, Ireland and Scotland, or the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants, and who is a current member of good standing of one of the above Institutes or a person of good standing with some other accountancy qualification who is recognised by the Authority as such for the purpose of this Law;
 - “Authority” means the Cayman Islands Monetary Authority established under section 3(1) of the Monetary Authority Law (2004 Revision) and includes any employee of the Authority acting under the Authority’s authorisation; 2004 Revision
 - “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;
 - “contract” includes policy;
 - “domestic business” means insurance business where the contract is in respect of the life, safety, fidelity or insurable interest (other than in respect of property) of a person who at the time of effecting the contract is ordinarily resident in the Islands, or property that at the time of effecting the contract is in the Islands or, in the case of a vehicle, vessel or aircraft, or other movable property is ordinarily based in the Islands (but does not include re-insurance business);
 - “exempted company” has the meaning ascribed to it in the Companies Law (2007 Revision); 2007 Revision
 - “exempted insurer” means an insurer which is-
 - (a) incorporated as an exempted company;

2007 Revision

- (b) a non-resident company which is either incorporated under the Companies Law (2007 Revision); or a foreign company registered under Part IX thereof; or
- (c) constituted through partnership, shareholding or other acceptable mutual association by one or more members having a common trade, profession, affinity or other special interest;

“external insurer” means an insurer who is neither a local nor an exempted insurer;

“financial year” in relation to a licensee means the period not exceeding fifty-three weeks at the end of which the balance of the licensee’s accounts is struck or, if no such balance is struck or if a period in excess of fifty-three weeks is employed, then a calendar year;

“general business” means insurance business other than long term business;

“Governor” means the Governor in Cabinet;

“insurance agent” means a person (not being an insurer) who solicits directly, or through representatives, advertising or other means, domestic business on behalf of not more than one insurer;

“insurance broker” means a person (not being an insurer) who negotiates directly, or through representatives or other means, contracts of insurance or of re-insurance on behalf of more than one insurer, or for placement with insurers or re-insurers;

“insurance business” means the business of effecting and carrying out contracts-

- (a) protecting persons against loss or liability to loss in respect of risks to which such persons may be exposed; or
- (b) to pay a sum of money or other thing of value upon the happening of an event,

and includes re-insurance business and running-off business including the settlement of claims;

“insurance manager” means a company operating in or from within the Islands which provides insurance expertise to or for insurers and which has in its *bona fide* employment a person who-

- (a) is qualified by examination as a fellow or associate of the Chartered Insurance Institute of London, or who is a member of either the Society of Chartered Property and Casualty Underwriters or the American Society of Chartered Life Underwriters both of the United States of America; and who is either a current member of good standing of the applicable professional body or of some other professional insurance

association recognised by the Authority for the purpose of this Law; or

- (b) is a person of good standing with such insurance expertise as has been approved by the Authority.

“insurance sub-agent” means a person (not being an insurer, insurance agent or insurance broker) who solicits directly or through advertising or other means, domestic business on behalf of an insurance agent or on behalf of an insurance broker;

“insurer” means a person carrying on insurance business who is-

- (a) a local insurer, an exempted insurer or an external insurer; or
- (b) an association of individual underwriters including Lloyd’s of London and other associations of underwriters recognised by the Authority and which comply with such laws as are enacted in their principal place of residence for their regulation and supervision;

“licence” and its cognates means a licence granted under this Law;

“local insurer” means an insurer, other than an exempted insurer, incorporated or constituted in and having its head office in the Islands;

“long term business” means insurance business involving the making of contracts of insurance-

- (a) on human life or contracts to pay annuities on human life; but excluding contracts for credit life insurance and term life insurance other than convertible and renewable term life contracts;
- (b) against risks of the persons insured sustaining injury as the result of an accident or of an accident of a specified class or dying as the result of an accident or of an accident of a specified class or becoming incapacitated in consequence of disease or diseases of a specified class, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either not expressed to be terminable by the insurer before the expiration of five years from the taking effect thereof or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned; and
- (c) whether by bonds, endowment certificates or otherwise whereby in return for one or more premiums paid to the insurer a sum or series of sums is to become payable to the person insured in the future, not being contracts falling within paragraphs (a) or (b);

“net worth” means excess of assets (including any contingent or reserve fund secured to the satisfaction of the Authority) over liabilities other than liabilities to partners or shareholders;

2007 Revision “non-resident company” bears the meaning ascribed to that term in section 2(1) of the Local Companies (Control) Law (2007 Revision);

“policy holder” means the person with whom an insurer has effected a contract of insurance;

“prescribed” means prescribed by this Law or any regulations;

“principal representative (insurance)” means a person operating in or from within the Islands who, not being a *bona fide* employee, maintains for an insurer full and proper records of the business activities of that insurer; and

“proceeds” means monies, benefits in kind and cash values payable under a contract of insurance and includes any assets acquired with the same.

Insurance businesses to be licensed

3. (1) Whoever not being licensed in that behalf carries on insurance business is guilty of an offence.

(2) Whoever, not being licensed in that behalf, acts as-

- (a) an insurance manager;
- (b) an insurance broker;
- (c) an insurance agent;
- (d) an insurance sub-agent; or
- (e) a principal representative (insurance),

is guilty of an offence.

Applications for licences

4. (1) Persons desiring to carry on insurance business in or from within the Islands may make application in writing to the Authority for the grant of a licence under one or more of the following categories-

- (a) Class ‘A’ Insurer’s Licence;
- (b) Unrestricted Class ‘B’ Insurer’s Licence;
- (c) Restricted Class ‘B’ Insurer’s Licence;
- (d) Insurance Agent’s Licence;
- (e) Insurance Broker’s Licence;
- (f) Insurance Sub-Agent’s Licence;
- (g) Insurance Manager’s Licence; and
- (h) Principal Representative (Insurance)’s Licence.

(2) Applications shall be in the form prescribed, sent to the Authority and accompanied by the prescribed fee (to be forwarded by the Authority to the Financial Secretary for the benefit of the revenue, returnable if the licence is not granted) and the Authority, if satisfied that it will not be against the public interest, may grant a licence subject to such conditions as to the Authority appear necessary or desirable. Any decision to refuse to grant a licence is final and conclusive and not subject to any appeal to or review by, any court.

(3) It is a condition of every licence that the licensee shall notify the Authority forthwith of any change in the information supplied in the application.

(4) A Class 'A' Insurer's Licence permits a local or an external insurer to carry on insurance business generally in or from within the Islands.

(5) An Unrestricted Class 'B' Insurer's License permits an exempted insurer to carry on insurance business other than domestic business from within the Islands.

(6) A Restricted Class 'B' Insurer's Licence permits an exempted insurer only to accept insurance business other than domestic business from its member or members or such other persons as may be specifically approved by the Authority.

(7) An external insurer having its principal or registered office in a place outside the Islands where the legislation for the regulation and supervision of insurers is acceptable to the Authority may be licensed as an approved external insurer under Class 'A'.

(8) The Authority shall refuse to grant a licence if the Authority is of the opinion that the business to which the application relates would be carried on by persons who are not fit and proper persons to be directors or, as the case may be, managers or officers in their respective positions.

(9) No insurer's licence other than a Restricted Class 'B' Licence shall be granted to any person whose net worth-

- (a) in the case of an insurer effecting general business but not long term business, is less than one hundred thousand dollars;
- (b) in the case of an insurer effecting long term business but not general business, is less than two hundred thousand dollars; and
- (c) in the case of an insurer effecting long term business and general business, is less than three hundred thousand dollars.

(10) It is a condition of every insurer's licence that the licensee shall maintain his net worth at an amount not less than that prescribed by subsection (9).

(11) The Authority may revoke any licence-

- (a) if the licensee ceases to carry on insurance business;
- (b) if the direction and management of the licensee's insurance business has not been conducted in a fit and proper manner;

- (c) if a person holding a position as a director, manager or officer of the licensee's insurance business is not a fit and proper person to hold the respective position;
- (d) if the licensee becomes bankrupt or goes into liquidation or is wound up or otherwise dissolved; or
- (e) in the circumstances provided for in section 13.

(12) Every holder of a current licence shall on or before every 15th day of January during the currency of the licence pay to the Financial Secretary for the benefit of the revenue the annual fee prescribed in the Schedule in respect of each class of licence held.

(13) Without prejudice to subsections (1) to (12), if the annual fee referred to in subsection (12) is not paid by the holder of a current licence on or before every 15th day of January during the currency of the licence, the unpaid annual fee may be sued for by the Crown by action as a civil debt and the Crown may require, and the court may order, the payment of any penalties accrued in respect of the late payment of the fee.

(14) The Authority shall cause the granting of licences under this section to be gazetted.

(15) In determining for the purposes of this section whether a person is a fit and proper person, regard shall be had to all circumstances, including that person's-

- (a) honesty, integrity and reputation;
- (b) competence and capability; and
- (c) financial soundness.

(16) In subsection (13)-

“court” means the Grand Court or a court of summary jurisdiction, as the case may be.

The Authority

5. (1) It is the duty of the Authority-
- (a) to maintain a general review of insurance practice in the Islands;
 - (b) on its own motion to examine the affairs or business of any licensee or other person carrying on, or who has at any time carried on insurance business since the 17th June, 1980 for the purpose of satisfying itself that this Law has been or is being complied with, and the licensee is in a sound financial position and is carrying on his business in a satisfactory manner;
 - (c) to examine and report on the annual returns delivered to the Authority under sections 10 and 11; and
 - (d) to examine and make determinations with respect to-

- (i) applications for approval, and the use of words or representations which require approval, under section 6(1);
- (ii) proposals for the revocation of licences under section 6(3);
- (iii) prescription of investments under section 7(1);
- (iv) cases of suspected insolvency, and the exercise of powers under section 13;
- (v) proposals for regulations to be made under section 20.

(2) The Authority may-

- (a) examine and make determinations with respect to applications for licences under section 4; and
- (b) take all necessary action to ensure the proper and just implementation of this Law.

(3) The Authority may authorise in writing any other person to assist it in the performance of its functions.

(4) For the purpose of performing its duties under subsection (1)(b), the Authority may in writing authorise any person, including an actuary approved by the Authority, at the expense of the licensee, to examine the affairs or business of any licensee or other person carrying on insurance business for the purpose of satisfying the Authority that this Law has been or is being complied with, and the licensee is in a sound financial position and is carrying on his business in a satisfactory manner, and to report to the Authority the results of every such examination.

6. (1) Whoever, not having the approval of the Authority or being a licensee-

Use of the word
"insurance", etc.

- (a) uses or continues to use the words "insurance", "assurance", "indemnity", "guarantee", "underwriting", "reinsurance", "surety", "casualty" or any other word which in the opinion of the Authority connotes insurance business or any of their derivatives in English or in any other language in the description or title under which he carries on business in or from within the Islands; or
- (b) makes or continues to make any representation in any billhead, letter, letterhead, circular, paper, notice, advertisement or in any manner whatsoever that he is carrying on insurance business,

is guilty of an offence.

(2) Before giving its approval under subsection (1), the Authority may require of any person such references and such information and particulars as may be prescribed.

(3) The Authority may revoke the licence of any person who carries on insurance business, or acts as an insurance manager, an insurance broker, an insurance agent, an insurance sub-agent or a principal representative (insurance) under a name which-

- (a) is identical with that of any other person, company, firm or business house whether within the Islands or not, or which so nearly resembles that name as to be calculated to deceive;
- (b) is calculated falsely to suggest the patronage of or connection with some person of authority whether within the Islands or not;
- (c) is calculated falsely to suggest that such person has a special status in relation to or derived from the Government of the Islands, or has the official backing of or acts on behalf of the said Government or of any department or official thereof or is recognised in the Islands as a national insurer, insurance broker, insurance agent or insurance manager; or
- (d) is calculated falsely to suggest that the licensee is carrying on insurance business in a different category from that in respect of which he is licensed.

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-

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- (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 bank in the Islands which holds an “A” licence issued under the Banks and Trust Companies Law (2007 Revision) funds approved by the Authority, the total value of which shall, unless otherwise permitted by the Authority, at least equal the total of its-
 - (i) unearned premium reserve;
 - (ii) outstanding claims reserve;
 - (iii) reserve for claims incurred but not reported; and
 - (iv) unexpired risk reserve; 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 (2007 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 under 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 to policyholders, 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 14th November, 2006, subsection (1) shall enter into force on the 31st May, 2008.

(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 under subsection (1); and
- (ii) should the funds held in trust under 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 (6), 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 contracts to pay annuities on human life and contracts of insurance on human life, the assets relating to which shall be kept segregated one from the other and independent of all other assets of the insurer, and, notwithstanding any other law to the contrary-
 - (i) separate accounts shall not be chargeable with any liability arising from any other business (including other types of long term business) of the insurer and no liabilities shall be satisfied out of the assets standing to the credit of the relevant separate account apart from those liabilities arising from the contract for which the separate account was established or liabilities relating specifically to the operation of the separate account;
 - (ii) the assets of a separate account shall include all premiums paid with respect to the contract for which the separate account was established and all interest, earnings and assets derived therefrom; and

- (iii) any claim of the insurer under a contract of reinsurance taken out by the insurer in respect of a contract for which a separate account has been established shall be deemed to be an asset of the relevant separate account to the extent only that the insurer fails to meet its obligations under the relevant contract and upon payment of any amount due under such contract of reinsurance shall be immediately credited to the relevant separate account, whether the insurer is solvent or not.

(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.

Shares not to be issued or transferred without approval of Authority

8. (1) No shares totalling more than five per cent of the issued share capital of a company which is a licensee under this Law shall be issued, and no issued shares totalling more than five per cent of the issued share capital of a company which is a licensee under this Law shall be transferred or disposed of in any manner, without the prior approval of the Authority.

(2) The Authority may exempt from subsection (1) a licensee whose shares or the shares of whose parent body, if any, are publicly traded on a stock exchange recognised by the Authority, and any such exemption-

- (a) shall be subject to a condition that the licensee shall, as soon as reasonably practicable, notify the Authority of -
 - (i) any change in control of the licensee;
 - (ii) the acquisition by any person or group of persons of shares representing more than ten per cent of the licensee's issued share capital or total voting rights; or
 - (iii) the acquisition by any person or group of persons of shares representing more than ten per cent of the issued share capital or total voting rights of the licensee's parent company;
- (b) shall be subject to a condition that the licensee shall, as soon as reasonably practicable, provide such information to the Authority, and within such period of time, as the Authority may require for the purpose of enabling an assessment as to whether persons acquiring control or ownership of the licensee in the circumstances set out in paragraph (a) are fit and proper persons to have such control or ownership; and
- (c) shall be subject to such terms and other conditions as the Authority may deem necessary.

(3) In subsection (1), the reference to shares being transferred or disposed of includes not only the transfer or disposal of the legal interest in the shares but also the transfer or disposal of any beneficial interest in the shares.

9. (1) An insurance agent who acts on behalf of more than one insurer, is deemed for the purpose of this Law to be acting as an insurance broker.

General requirements for
other licensees

(2) A licensed insurance broker shall maintain in force professional indemnity insurance in respect of his insurance broking activities, placed with an insurer licensed to carry on domestic business and for an indemnity of not less than one hundred thousand dollars for any one loss, or such other figure as may be prescribed by the Authority. Such professional indemnity insurance shall extend to include the activities on behalf of the broker or of his sub-agents, if any. In the event that such professional indemnity insurance be withdrawn, or cancelled, or the said insurance be not renewed, the said broker shall immediately notify the Authority and shall forthwith cease to solicit further insurance business until such professional indemnity insurance has been reinstated or replaced.

(3) A licensed insurance agent shall provide evidence satisfactory to the Authority of a power of attorney, agency agreement or guarantee satisfactory to the Authority, between the agent and the insurer for whom such agent acts. Such power of attorney, agency agreement or guarantee shall extend to include the activities on behalf of the insurer and the agent or his sub-agents, if any. In the event that such power of attorney, agency agreement or guarantee is withdrawn or such agreement is determined the said agent shall immediately notify the Authority and shall forthwith cease to solicit further insurance business until such power of attorney or guarantee has been reinstated.

(4) A licensed insurance agent may, as an alternative to meeting the requirement laid down in subsection (3), maintain in force professional indemnity insurance in like manner and for a like amount as if he had been a licensed insurance broker as in subsection (2).

(5) A licensed insurance sub-agent may not solicit or carry on insurance business on behalf of more than one insurance agent, or on behalf of more than one insurance broker. If the professional indemnity insurance or power of attorney, agency agreement or guarantee, as the case may be, referred to in subsections (2), (3) and (4), is for any reason withdrawn from the said sub-agent, then the licence of the said sub-agent is *ipso facto* suspended until such time as such professional indemnity insurance, power of attorney, agency agreement or guarantee, as the case may be, is reinstated.

(6) A licensed insurance manager or a licensed principal representative (insurance) shall use his best endeavours to carry on insurance and re-insurance

business only with insurers of sound reputation. In the event that such insurance manager or a licensed principal representative (insurance) feels cause for concern regarding the probity or soundness of any insurer or re-insurer for whom or with whom he is carrying on business, he shall report the same forthwith to the Authority. In the event that either party to an agreement relating to representation between a Class 'B' insurer and an insurance manager or principal representative (insurance) intends to terminate the same, sixty days written notice of such proposed termination shall be given to the Authority by such insurance manager or principal representative (insurance).

(7) A licensed insurance manager or a licensed principal representative (insurance) who also carries on insurance business as an insurance broker or as an insurance agent is required to be licensed in respect of each such activity.

Annual returns by
licensed insurers

10. (1) Each licensed approved external insurer who is carrying on domestic business shall furnish to the Authority within six months of the end of its financial year the following returns-

- (a) a certificate of solvency or of compliance with insurance legislation specifically enacted in the country or place where the said external insurer is constituted for its supervision and regulation, or some equivalent document acceptable to the Authority;
- (b) written confirmation that such certificate or equivalent document referred to in paragraph (a) embraces the said insurer's liabilities in respect of its domestic business;
- (c) if the said insurer has a branch or other subsidiary activity in the Islands, written confirmation that the said insurer accepts responsibility for all contracts issued by such branch or subsidiary activity and also for all acts, omissions and liabilities of such branch or subsidiary activity;
- (d) in respect of the said insurer's general domestic business, such information as the Authority may require concerning the availability of funds for prompt settlement of claims under such business;
- (e) in respect of the said insurer's long term domestic business, such information as the Authority may require concerning the investment of premium income received by the said insurer from such business in prescribed investments within the Islands;
- (f) if the said insurer is licensed under Class 'A' for long term business, an actuarial valuation of its assets and liabilities certified by an actuary approved by the Authority, in accordance with section 7(6);
- (g) a list of insurance agents and insurance brokers who have the said insurer's authority to effect domestic business on its behalf; and

- (h) written confirmation that the information set out in the application for the said insurer's licence, as modified by subsequent notifications of changes in accordance with section 4(3), remains correct, and gives a full and fair picture of the said insurer's business.

(2) Every insurer licensed under Class 'A' other than an approved external insurer shall furnish to the Authority within six months of the end of its financial year the following annual returns-

- (a) written confirmation from an independent auditor approved by the Authority that annual accounts have been prepared as required under section 7(4) and whether or not the auditor's certificate for such accounts is unqualified;
- (b) a certificate of compliance as required by section 7(3);
- (c) if the said insurer is licensed under Class 'A' for general business, a financial statement in the prescribed form, certified by an independent auditor approved by the Authority, in accordance with section 7(5);
- (d) if the said insurer is licensed under Class 'A' for long term business, an actuarial valuation of its assets and liabilities, certified by an actuary, approved by the Authority, in accordance with section 7(6);
- (e) if the said insurer is an external insurer which has a branch or other subsidiary activity in the Islands which is constituted as a separate legal entity, written confirmation that the said insurer accepts responsibility for all contracts issued by such branch or subsidiary activity and also for all acts, omissions and liabilities of such branch or subsidiary activity;
- (f) if the said insurer is licensed for general business, such information as the Authority may require concerning the availability of funds for prompt settlement of claims under general domestic business;
- (g) if the said insurer is licensed for long term business such information as the Authority may require concerning the investment of premium income received from such domestic long term business in prescribed investments within the Islands; and
- (h) a list of insurance agents and insurance brokers who have the said insurer's authority to effect domestic business on its behalf.

(3) Every insurer licensed under Class 'B' shall furnish to the Authority within six months of the end of its financial year the following annual returns-

- (a) written confirmation from an independent auditor approved by the Authority that annual accounts have been prepared as required

under section 7(4) and whether or not the auditor's certificate for such accounts is unqualified; and

(b) a certificate of compliance as required by section 7(3).

(4) The Authority may prescribe additions, deletions or modifications to the returns required to be made by licensees under this section.

(5) When a licensee changes its auditor, the Authority may require the former auditor to explain the circumstances responsible for such change.

Annual returns by other licensees

11. (1) Every licensed insurance agent shall furnish to the Authority within six months of the end of each calendar year the following returns in respect of his domestic business-

- (a) confirmation in writing that the said agent is acting for one insurer only and the name of that insurer;
- (b) evidence of the existence of a power of attorney, agency agreement or guarantee or professional indemnity insurance as required under section 9(3) or (4);
- (c) a list of the sub-agents, if any, authorised by the said agent to solicit domestic business on his behalf and on behalf of the insurer whom he represents; and
- (d) confirmation in writing that the information set out in the application for the said agent's licence, as modified by subsequent notifications of changes in accordance with section 4(3), remains correct and gives a full and fair picture of the said agent's business.

(2) Every licensed insurance broker shall furnish to the Authority within six months of the end of his financial year the following information in respect of his domestic business-

- (a) a list of all insurers for whom the said insurance broker is authorised to act, and the premium income to each such insurer during the last financial year;
- (b) evidence of the existence of professional indemnity insurance in respect of his activities as an insurance broker as required under section 9(2);
- (c) a list of the sub-agents, if any, authorised by the said insurance broker to solicit domestic business on his behalf and on behalf of the insurers whom he represents; and
- (d) confirmation in writing that the information set out in the application for the said insurance broker's licence, as modified by subsequent notifications of changes in accordance with section 4(3), remains correct and gives a full and fair picture of the said insurance broker's business.

(3) Every licensed insurance sub-agent shall furnish to the Authority before the renewal of his licence-

- (a) confirmation in writing that the said sub-agent is acting for one insurance agent only, or for one insurance broker only, and the name of such insurance agent or insurance broker; and
- (b) confirmation in writing that the information set out in the application for the said sub-agent's licence, as modified by subsequent notifications of changes in accordance with section 4(3), remains correct and gives a full and fair picture of the said sub-agent's insurance activities.

(4) Every licensed insurance manager shall furnish to the Authority within six months of the end of his financial year the following information-

- (a) a list of all insurers for whom the said insurance manager acts; and
- (b) confirmation in writing that the information set out in the application for the said insurance manager's licence, as modified by subsequent notifications of changes in accordance with section 4(3), remains correct and gives a full and fair picture of the said insurance manager's activities.

(5) The Authority may prescribe additions, deletions or modifications to the returns required to be made by licensees under this section.

12. (1) Where the Authority is of the opinion that a licensee-

Cease and desist orders

- (a) is committing, or is about to commit, an act that is an unsafe or unsound practice in conducting the business of the licensee; or
- (b) is pursuing, or is about to pursue, a course of conduct that is an unsafe or unsound practice in conducting the business of the licensee,

the Authority may direct the licensee-

- (i) to cease or refrain from committing the act or pursuing the course of conduct; and
- (ii) to perform such acts as in the opinion of the Authority are necessary to remedy or ameliorate the situation.

(2) Whoever, without reasonable cause, fails to comply with a direction given by the Authority under subsection (1) is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars and on conviction on indictment to a fine of one hundred thousand dollars, and if the offence of which he is convicted is continued after conviction he commits a further offence and is liable to a fine of ten thousand dollars for every day on which the offence is so committed.

- Powers of Authority
13. (1) Whenever the Authority is of the opinion that-
- (a) a licensee is or appears likely to become unable to meet its obligations as they fall due;
 - (b) a licensee is carrying on business in a manner detrimental to the public interest or to the interest of its creditors or policy holders;
 - (c) a licensee has contravened this Law;
 - (d) a licensee has failed to comply with a condition of its licence;
 - (e) the direction and management of a licensee's business has not been conducted in a fit and proper manner;
 - (f) a person holding a position as a director, manager or officer of a licensee's business is not a fit and proper person to hold the respective position; or
 - (g) a person acquiring control or ownership of a licensee is not a fit and proper person to have such control or ownership,

the Authority may forthwith do any of the following-

- (i) require the licensee forthwith to take steps to rectify the matter;
 - (ii) suspend the licence of the licensee pending a full enquiry into the licensee's affairs made under section 5(1)(b);
 - (iii) revoke the licence;
 - (iv) impose conditions, or further conditions, as the case may be, upon the licence and amend or revoke any such condition;
 - (v) require the substitution of any director, manager or officer of the licensee;
 - (vi) at the expense of the licensee, appoint a person to advise the licensee on the proper conduct of its affairs and to report to the Authority thereon within three months of the date of his appointment;
 - (vii) at the expense of the licensee, appoint a person to assume control of the licensee's affairs who shall, with necessary changes, have all the powers of a person appointed as a receiver or manager of a business appointed under section 18 of the Bankruptcy Law (1997 Revision); and
 - (viii) require such action to be taken by the licensee as the Authority considers necessary.
- 1997 Revision

(2) Notwithstanding section 16(1), a licensee may, within seven days of the decision, apply to the Authority for a reconsideration of its decision to revoke a licence under subsection (1)(iii).

(3) A person appointed under subsection (1)(vi) or (vii) or whose appointment has been extended under subsection (4)(b) shall, from time to time at his discretion and in any case within three months of the date of his appointment or of the extension of his appointment (as the case may be), prepare and furnish a

report to the Authority of the affairs of the licensee and of his recommendations thereon.

- (4) On receipt of a report under subsection (3), the Authority may-
- (a) revoke the appointment of the person appointed under subsection (1)(vi) or (vii);
 - (b) extend the period of his appointment;
 - (c) subject to such conditions as the Authority may impose, allow the licensee to reorganise its affairs in a manner approved by the Authority; or
 - (d) revoke the licence and apply to the Grand Court for an order that the licensee be forthwith wound up by that Court in which case the provisions of the Companies Law (2007 Revision) relating to the winding up of a company by that Court shall, with necessary changes, apply.

2007 Revision

(5) Notwithstanding any provisions herein, the Authority may revoke a licence if the licensee-

- (a) has ceased to carry on insurance business; or
- (b) goes into liquidation or is wound up or otherwise dissolved.

(6) Whenever the Authority suspends a licence under subsection (1)(ii) or revokes a licence under subsection (1)(iii), subsection (4)(d) or subsection (5), the Authority shall cause notice of such suspension or revocation to be gazetted, and may also cause such notice to be published (whether within the Islands or elsewhere) in such newspaper or other publication as the Authority may consider necessary in the circumstances.

14. A licensee may apply to the Authority to surrender its licence if it-

Surrender of licence

- (a) has ceased to carry on the business in respect of which the licence was granted; or
- (b) is being wound up voluntarily and produces evidence that it is solvent and able forthwith to repay all its creditors,

and the Authority may thereupon approve the surrender and cancel the licence.

15. (1) In any case where the Authority has suspended a licence under section 13(1), the Authority may apply *ex parte* to the Grand Court for an order that the assets, books or papers of the licensee be preserved, not moved or otherwise disposed of and the Grand Court may, if it is satisfied that such assets, books or papers are liable to be moved, destroyed or otherwise disposed of make an order that they shall be preserved, and not be moved or otherwise disposed of until a further order of that Court.

Preservation of assets, etc.

(2) Where an order has been made by the Grand Court under subsection (1), the licensee may apply to the Grand Court at any time for the discharge of such order and the Grand Court may thereupon discharge, vary or confirm the order.

How benefits of insurance policies should inure

16. (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.

1996 Revision

(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 (1996 Revision)) 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.
17. 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. Effect of payment of proceeds
18. (1) An appeal shall lie to the Grand Court against any order of the Authority to suspend or revoke a licence under section 13(1). Appeals
- (2) An appeal under this section shall not operate as a stay of any decision appealed against.
- (3) The Rules Committee of the Grand Court may make Rules of Procedure governing the conduct of appeals under this section.
19. (1) Nothing in this Law derogates from any provision of the Immigration Law (2007 Revision) relating to gainful occupation licences. Application, etc.
2007 Revision
- (2) No company which is licensed under this Law is required to be licensed under the Local Companies (Control) Law (2007 Revision) or the Trade and Business Licensing Law (2007 Revision). 2007 Revisions
- (3) This Law has no application to or effect upon-
- (a) governmental pension arrangements;
 - (b) the validity of policies of insurance in existence at the date of coming into effect of this Law;
 - (c) the Friendly Societies Law (1998 Revision); or
 - (d) pecuniary loss insurance provided by banks licensed under the Banks and Trust Companies Law (2007 Revision). 1998 Revision
2007 Revision
20. The Governor may make regulations- Regulations
- (a) prescribing anything by this Law required to be prescribed;
 - (b) exempting any person or class of persons or business or class of business from any provision of this Law;
 - (c) prescribing forms to be used;
 - (d) prescribing the format for any returns to be made under this Law;
 - (e) prescribing capital and liquidity margins and ratios to be maintained by licensees under this Law; and

- (f) amending the Schedule save that any amendment increasing the scale of fees prescribed in the Schedule shall require the confirmation of the Legislative Assembly.
- (g) providing for such matters as may be necessary or convenient for carrying out or giving effect to this Law and its administration.

Offences

21. (1) Whoever, for any purpose of this Law, makes any representation in the truth of which he does not believe (the onus of proof of his belief being upon him) is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars and to imprisonment for two years.

(2) Whoever, by any act or omission, contravenes any requirement of this Law for which no specific penalty is provided, whether such contravention is or is not specifically stated to be an offence, is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to imprisonment for one year.

2004 Revision

22. The collection of annual insurance licence fees purportedly done between 16th June, 2006 and the 13th November, 2007 in exercise of the powers conferred by the Insurance Law (2004 Revision) is validated and is to be taken to have been lawfully collected.

SCHEDULE

SCALE OF ANNUAL LICENCE FEES

	Section 4 (12)
Class 'A' (Locally incorporated)	\$30,000
Class 'A' (Approved external insurer)	\$40,000
Class 'B' (Unrestricted)	\$7,500
Class 'B' (Restricted)	\$7,500
Insurance agent	\$400
Insurance broker	\$4,500
Insurance sub-agent	\$120
Insurance manager-	
acting for not more than 10 licensed insurers	\$15,000
acting for 11 to 50 licensed insurers	\$20,000
acting for 51 to 100 licensed insurers	\$25,000
acting for more than 100 licensed insurers	\$30,000
Principal representative (insurance) - for each insurer represented (but subject to a maximum of \$25,000):	\$1,500

Provided that-

- (a) the amount of any licence fee hereinbefore prescribed to be paid by the holder of a Class 'A' or Class 'B' licence shall be reduced by one-half if the Authority is satisfied that such holder has, prior to the date on which such fee becomes payable, ceased carrying on any insurance business other than that necessary to enable the performance of obligations of such holder under contracts of insurance in force at such date; and
- (b) the amount by which any annual fee is reduced under paragraph (a) shall immediately become due and payable if the holder of the relevant licence effects any new contracts of insurance during the year to which such fee relates; and
- (c) where a person applies for the grant of a Class 'B' licence and the licence is granted in the month of December, the licence fee payable shall be one-twelfth of the annual licence fee hereinbefore prescribed:

And provided further that the Governor may, from time to time, waive or reduce any or all of the said licence fees in relation to any person or group of persons in Cayman Brac or Little Cayman.

Publication in consolidated and revised form authorised by the Governor in Cabinet this 13th day of May, 2008.

Carmena Watler
Clerk of Cabinet

(Price \$ 5.60)