

*Legal Supplement Part C to the "Trinidad and Tobago Gazette", Vol. 55,
No. 113, 6th October, 2016*

No. 9 of 2016

First Session Eleventh Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

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

THE INSURANCE BILL, 2016

Explanatory Notes

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

The purpose of the Insurance Bill, 2016 is to provide a new regulatory framework for the insurance industry and to continue to provide for the regulation of privately administered pension fund plans and to repeal the existing Insurance Act, Chap. 84:01.

The Bill contains thirteen Parts and 282 clauses.

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

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

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

PART I—PRELIMINARY

This Part would comprise the preliminary clauses and contain clauses 4 to 6.

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

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

Clause 6 would provide an interpretation of the expression “control”.

PART II—ADMINISTRATION

The Part would contain clauses 7 to 18.

Clause 7 would provide for the Act to be administered by the Central Bank.

Clause 8 would provide for the Central Bank to produce an annual report on the performance of the Central Bank in meeting its objectives under the Act.

Clause 9 would provide for the predominance of the Act over any other written law, except the Central Bank Act, unless otherwise expressly stated in the Act or such other written law.

Clause 10 would prescribe the powers and duties of the Inspector.

Clause 11 would give the Inspector the power to request from various persons, information related to the carrying on of insurance business in Trinidad and Tobago.

Clause 12 would give the Central Bank the power to collect statistics in relation to insurance business and would compel every registrant to comply with such a request.

Clause 13 would give the Board, the Central Bank, the Governor and the Inspector the power to delegate any of its powers, functions and duties to certain persons.

Clause 14 would provide for the Central Bank to maintain registers as prescribed under the Act or the Regulations.

Clause 15 would provide for and prescribe the time frame within which the Central Bank shall publish or make available upon request and the payment of a fee, a list of insurers, agents, agencies, brokers, brokerages, sales representatives and adjusters, registered to carry on insurance business in Trinidad and Tobago. It would also provide for the publication of those insurers, agencies and brokerages which no longer hold a registration certificate.

Clause 16 would prohibit the disclosure of any information regarding the business or affairs of a registrant or any of its affiliates or information regarding a policyholder, consumer or other person dealing with a registrant, which is obtained in the course of official duties, except in specified circumstances.

Clause 17 would provide for supervisory information to be the property of the Central Bank and for the prohibition from disclosure of such information by a registrant or any other person to whom the information is made available, without the prior written consent of the Central Bank.

Clause 18 would provide for the payment of application and annual fees in accordance with Schedule 2, by each applicant, registrant or representative office situated in Trinidad and Tobago, and shall prescribe the date by which such payment shall be made to the Central Bank.

PART III—INSURERS

This Part would contain nine sub-divisions and includes clauses 19 to 109.

A. REGISTRATION OF INSURERS

Clause 19 would state the non-application of this Part to a privately administered pension fund plan, an association of underwriters or an intermediary.

Clause 20 would provide an interpretation of the expression “carrying on insurance business”.

Clause 21 would prohibit a person from carrying on any class or type of insurance or reinsurance business in, or from Trinidad and Tobago unless that person is a company registered under the Companies Act and under this Part. It would also provide for the imposition of other restrictions on the carrying on of insurance business in Trinidad and Tobago.

Clause 22 would provide that a company carrying on insurance business maintain a stated capital or, uncommitted assets as in the case of a mutual company, of at least fifteen million dollars. It would also prescribe a scheme which would allow insurers carrying on long-term and general insurance business at the commencement of the Act, to increase its stated capital or uncommitted assets to the prescribed fifteen million dollars, within five years of such commencement.

Clause 23 would provide for an insurer registered under the former Act to be deemed to be registered under the Act and for the Central Bank to issue a new certificate of registration, specifying the classes and types of insurance business for which the insurer is registered. Such registration shall be *prima facie* evidence of the registration under the Act of an insurer registered under the former Act.

Clause 24 would detail the procedure for registration of a company to carry on insurance business in respect of any type or class prescribed in Schedule 1.

Clause 25 would empower the Central Bank, after consultation with the Minister, to accept or refuse an application for registration.

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

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

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

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

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

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

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

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

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

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

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

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

Clause 38 would give the Board the power to issue directions in certain circumstances.

Clause 39 would detail the particulars of the directions issued under section 38.

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

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

B. SEPARATE ACCOUNTS

Clause 42 would provide for every insurer to establish and maintain separate accounts for its Trinidad and Tobago policies, its foreign policies, and to maintain a separate policyholder account.

Clause 43 would provide for an insurer to maintain accounts in respect of participating policies, and would prescribe that the accounts shall be maintained separately from accounts in respect of other policies.

C. CATASTROPHE RESERVE FUND REQUIREMENTS

Clause 44 would provide for an insurer registered to carry on property insurance business to establish and to maintain at all times, a Catastrophe Reserve Fund, in respect of catastrophe risks, in the form and subject to such conditions or restrictions as may be prescribed in Regulations or by the Inspector in writing.

Clause 45 would provide for the insurer referred to in section 44 to submit statements to the Inspector showing details or appropriations and reductions, within thirty business days after the end of each quarter, and at any other time as requested by the Inspector.

Clause 46 would give the Inspector the power to request further information submitted pursuant to section 45.

D. OWNERSHIP OF INSURERS

Clause 47 would give the Central Bank the power, where a local insurer is a member of a related group of two or more financial entities, to direct the controlling shareholder to restructure and form a financial holding company, such that the local insurer is directly controlled by the financial holding company and the resulting structure allows for consolidated supervision.

Clause 48 would give the Central Bank the power to direct a restructuring of a related group comprising two or more financial entities where one such entity is a local insurer and the group is engaged in both financial and non-financial activities, to separate the financial and non-financial activities of that group.

Clause 49 would detail the circumstances under which the Central Bank may not require a restructuring.

Clause 50 would prescribe the restrictions on the activities of a financial holding company.

Clause 51 would detail the requirements for a holding company to obtain a permit to carry on business as a financial holding company.

Clause 52 would prescribe the conditions on which a person may be a controlling shareholder of an insurer.

Clause 53 would prescribe the conditions on which a person may be a significant shareholder of an insurer.

Clause 54 would prescribe the conditions on which a financial entity or a controlling or a significant shareholder or a financial entity may be an acquirer of an insurer.

Clause 55 would give the Central Bank the power, where a permit has been granted to a significant shareholder to become a controlling shareholder, or a controlling shareholder to become a financial holding company, under this Part, to revoke the significant shareholder permit prior to issuing the controlling shareholder permit, or the controlling shareholder permit prior to issuing the financial holding company permit. It would also give the Central Bank the power to revoke a permit where a person's shareholding has decreased, or to revoke the permit of a financial holding company.

Clause 56 would give the Central Bank the power to obtain from any shareholder of an insurer, information in respect of the capacity within which he holds voting shares in that insurer.

E. TRANSFER AND AMALGAMATION

Clause 57 would prescribe the form of the application to be made to the Central Bank, for the transfer or amalgamation of companies.

Clause 58 would provide for a scheme, setting out the terms of the agreement or deed under which it is proposed to effect the transfer or amalgamation to be submitted to the Central Bank. It would also provide for any expenses incurred by the Central Bank in obtaining an actuarial report on such scheme, to be defrayed by the companies seeking the transfer or amalgamation.

Clause 59 would detail the procedure to be followed by the Central Bank prior to its confirmation or refusal of a scheme, where the percentage of any market share in Trinidad and Tobago of the proposed transferee or amalgamated company and any financial entity with which such company will be affiliated, would not exceed forty per cent.

Clause 60 would provide for the Central Bank to issue written notification of its decision on the scheme of transfer or amalgamation. It would also provide for a scheme confirmed by the Central Bank, to be binding on all persons, and to have effect notwithstanding anything in the articles of incorporation or continuance, by-laws or other constituent document of the companies.

Clause 61 would detail the factors to be considered by the Central Bank in determining whether or not to approve a proposed transfer or amalgamation.

Clause 62 would provide for the Central Bank to forward for the approval of the Minister, any request for transfer or amalgamation that will result in the percentage of any combined market share in Trinidad and Tobago of the proposed transferee or amalgamated company and any financial entity with which such company will be affiliated, to exceed forty per cent.

Clause 63 would provide for matters connected with the proposed transfer or amalgamation, including empowering the decision-maker to provide reasons for the refusal of the proposed transfer or amalgamation. It would also provide for the Minister to make an Order exempting transfers below a specified threshold.

Clause 64 would prescribe the documents to be submitted to the Central Bank, by an insurer to which insurance business is transferred or, the insurer carrying on the amalgamated insurance business, within twenty business days of a transfer or amalgamation.

F. CORPORATE GOVERNANCE

Clause 65 would prescribe the persons debarred from acting as a director or officer of an insurer or a financial holding company or in the management of an insurer or of a financial holding company, and for the Central Bank to provide reasons for its decision.

Clause 66 would prohibit a director of an insurer or of a financial holding company from being present at, or voting at, a meeting of the board of directors or a committee of the board of directors, when a contract which would result in a financial benefit to him, other than a benefit under the director's contract of employment, is being considered.

Clause 67 would prescribe the duties of a director of an insurer or a financial holding company, and would provide an interpretation of the expressions "remuneration" and "bonus".

Clause 68 would provide for the appointment of an audit committee from among those on the board of directors of an insurer.

Clause 69 would prescribe the form of the report to be submitted to the Inspector by each insurer and each financial holding company, either within sixty business days after the end of its financial year, or when the Inspector so requires.

Clause 70 would provide for the board of directors of an insurer to establish, maintain and review written procedures in respect of all transactions between the insurer, and connected parties, connected party groups and employees.

Clause 71 would provide for the board of directors of an insurer to establish and maintain documented information systems, to identify and monitor credit exposures.

Clause 72 would provide for the board of directors of an insurer to establish, document and maintain adequate risk management systems and internal controls.

Clause 73 would provide for the board of directors of an insurer to undertake an annual review of its procedures required under sections 94, 95 and 96, and to furnish the Inspector with such information. It would also give the Inspector the power to require the board of directors of the insurer to change its procedures or, within a specified period, to take such action to ensure compliance with its procedures.

Clause 74 would give the Central Bank the power, where it is of the opinion that an insurer or financial holding company is in contravention of the Act, to direct the board of directors to convene a special meeting and to prepare a report on the failure of the insurer to comply with the requirements of the Act, and to fill any vacancy, where the minimum number of directors of an insurer or financial holding company falls below that required by the Act.

Clause 75 would provide for an insurer or a financial holding company to annually appoint an audit entity satisfactory to the Central Bank to be its auditor. It would also provide for such an audit entity to alternate the partner having primary responsibility for conducting the audit, every five years.

Clause 76 would provide for an insurer or a financial holding company to notify the Inspector of the removal, replacement or cessation of an auditor, and to give reasons for such a decision. It would also provide for an auditor of an insurer or a financial holding company to notify the Inspector, the insurer and the financial holding company of his resignation or decision not to seek re-appointment.

Clause 77 would provide for the duty of an auditor of an insurer or a financial holding company to report to the chief executive officer, the board of directors and the Inspector, irregular transactions or conditions. It would also provide for an auditor to inform the Inspector of the contravention or likely contravention of the Act, the Regulations or any applicable financial standards, by an insurer or a financial holding company.

Clause 78 would provide for an insurer carrying on long-term insurance business or general insurance business on the accident and sickness class of insurance business, and every other insurer who is required to submit actuarial reports to the Inspector, to appoint an actuary.

Clause 79 would provide for an insurer or a financial holding company to notify the Inspector of the removal, replacement or cessation of an actuary, and to give reasons for such a decision. It would also provide for the actuary to provide reasons for his opposition of the removal or replacement.

Clause 80 would provide for communication given to the Central Bank in good faith not to be considered a violation of any contract of service between the relevant parties.

Clause 81 would provide for the Inspector to provide a report to an insurer, a financial holding company or appropriate professional association, where the Inspector believes that an auditor or actuary has failed to comply with the provisions of the Act, and for the Inspector to be indemnified against any action, claim or demand by, or any liability, to any person in respect of such report.

G. PRUDENTIAL REQUIREMENTS, RESTRICTIONS AND PROHIBITIONS

Clause 82 would provide for an insurer or a financial holding company to maintain adequate capital and appropriate forms of liquidity, in accordance with the Regulations.

Clause 83 would provide for an insurer which carries on business through overseas branches to maintain and hold adequate assets to support its liabilities to its foreign policyholders.

Clause 84 would prescribe the circumstances under which a local insurer or a financial holding company shall not declare or pay a dividend.

Clause 85 would provide that an insurer shall invest in assets in Trinidad and Tobago an amount equal to at least seventy-five per cent of its policy benefit liabilities, other insurance and contract liabilities and the surplus which is derived from participating policies. It would also empower the board of directors of an insurer to establish and maintain policies and procedures in relation to such investments, and for the Inspector to give directions to effect such compliance.

Clause 86 would provide for an insurer to make all investments and deposits in its corporate name and to keep a written record of such transactions at its principal office in Trinidad and Tobago.

Clause 87 would impose restrictions on an insurer in respect of the number of shares or ownership interests that it can hold, in certain entities.

Clause 88 would prescribe the transactions for which a local insurer shall obtain prior approval of the Central Bank or of the Inspector.

Clause 89 would impose restrictions on an insurer in respect of the credit exposures that it can incur, whether directly or indirectly.

Clause 90 would impose restrictions on an insurer in respect of the credit exposures that it can directly or indirectly incur, to any connected party or any connected party group.

Clause 91 would provide for an insurer to report any contravention of the limitations on credit exposure to the Inspector and for the Inspector to require the insurer to reduce such credit exposure within a specified period.

Clause 92 would impose restrictions on an insurer in respect of the direct or indirect acquisition of shares, or borrowing or lending of funds.

H. JUDICIAL MANAGEMENT, SUSPENSION AND WINDING UP

Clause 93 would provide for the judicial management of an insurer or a financial holding company by an order of the High Court upon an application made by the Inspector.

Clause 94 would provide for the imposition of an order for judicial management on an insurer or a financial holding company in accordance with sections 93, and 95 to 100.

Clause 95 would provide for the judicial manager to file a report with the High Court stating the course that is in his opinion most advantageous to the general interests of the policyholders of the insurer, and to apply to the High Court for an order to give effect to such course.

Clause 96 would give the High Court the power to make an order giving effect to the course recommended under clause 95, which the Court considers to be most advantageous to the general interests of the policyholders of the insurer. It would also provide for such an order to be binding on all persons and to have effect notwithstanding anything contained in the articles of incorporation, by-laws or other constituent documents, of the insurer or the financial holding company.

Clause 97 would provide for the preparation of a scheme of transfer by the judicial manager, for confirmation by the Central Bank and subsequently the High Court, where an order is made by the High Court for the transfer of the business of an insurer or a financial holding company to some other company.

Clause 98 would give the High Court the power to cancel or vary any contract or agreement, other than a policy between the insurer or the financial holding company and any other person, which the Court is satisfied is detrimental to the interests of the policyholders, either of its own motion or on the application of the judicial manager, at any time, while an order for judicial management is in force.

Clause 99 would indemnify the judicial manager against any action, claim or demand by, or liability to, any person in respect of any act done or omitted to be done in good faith, in the exercise or connected with the exercise of the powers conferred on him under this Part.

Clause 100 would give the High Court the power to cancel an order for judicial management, upon an application by the Central Bank or any other interested person, and for the management to vest subsequently, in the board of directors, other governing body of the company, or the liquidator or receiver appointed by the High Court.

Clause 101 would give the Inspector the power to direct an insurer to comply with section 82 where that insurer's regulatory capital is seventy per cent or less.

Clause 102 would provide for the Board to suspend the operations of an insurer where the Inspector informs the Board that there are grounds upon which the registration of the insurer can be revoked.

Clause 103 would give the High Court the power to order the winding up of a local insurer or a financial holding company, on an application, which may be made *ex parte*, to the High Court, and for the court to appoint a liquidator in accordance with the Companies Act with modifications.

Clause 104 would detail the procedure to be followed upon the issuance of an order of the High Court, for the winding up of an insurer or a financial holding company.

Clause 105 would provide for a liquidator of an insurer to ascertain the value of the liability of the insurer, to every person who is entitled to, or is interested in a policy issued by the insurer,

in such manner as the High Court may approve, and to notify such person of the value so ascertained. It would also provide for such person to be bound by the value ascertained unless he disputes the valuation, or the High Court, by order, directs otherwise.

Clause 106 would provide for a scheme to be prepared by the liquidator, receiver or receiver-manager where the High Court makes an order for the winding up of part of the business of an insurer.

Clause 107 would provide that where on the winding up of the insurer the assets of the statutory fund are insufficient to meet its liabilities, the claimants on Trinidad and Tobago and foreign policies shall take precedence over those of other unsecured creditors.

Clause 108 would provide for the voluntary winding up of an insurer or a financial holding company.

Clause 109 would indemnify the receiver, receiver-manager, or liquidator against any action, claim or demand, or liability to, any person, in respect of any act done or omitted to be done in good faith, in the exercise or connected with the exercise of the powers conferred on him under this Part.

PART IV—INTERMEDIARIES

This Part would contain clauses 110 to 141.

Clause 110 would provide for a person to be registered to carry on business as an intermediary.

Clause 111 would prescribe the form of the application for registration as an intermediary.

Clause 112 would provide restrictions on the registration of an intermediary.

Clause 113 would provide for the Central Bank to register an intermediary either unconditionally or subject to certain conditions.

Clause 114 would provide for a sales representative to be given a provisional certificate where he does not meet the educational requirements but is otherwise considered to be fit and proper.

Clause 115 would provide for an intermediary to be personally liable to a policyholder on all contracts of insurance made under certain circumstances.

Clause 116 would provide for each brokerage to maintain professional indemnity insurance of at least ten million dollars with a maximum deductible of fifty thousand dollars or ten per cent of stated capital, whichever is greater.

Clause 117 would provide for the Central Bank to issue a certification of registration to every person registered under this Part and in accordance with this section.

Clause 118 would provide for an intermediary issued with a certificate of registration under this Part to continuously meet all registration requirements and to comply with all terms and conditions of its registration.

Clause 119 would prescribe that a certificate of registration issued under this Part shall not be renewed if a registration fails to comply with the continuous education requirements prescribed in Schedule 11.

Clause 120 would provide for a person registered under this Part to produce his certificate or registration when requested to do so by a person authorized in writing by the Central Bank, an insurer or a person in respect of which he is registered to carry on business as a sales representative, or an actual or prospective customer.

Clause 121 would prescribe the circumstances under which a certificate of registration issued under this Part may be revoked.

Clause 122 would provide the circumstances under which the Central Bank will mandatorily revoke the registration of an intermediary registered under this Part.

Clause 123 would prescribe the circumstances under which the Central Bank is to be informed in writing of the termination of an intermediary.

Clause 124 would provide for a person aggrieved by the Central Bank's refusal to register him, or the revocation of his registration as an intermediary, may invoke the process of appeal in the Act.

Clause 125 would prevent the payment of compensation to any person who at the time of placing or negotiating insurance, was not registered as an agency, brokerage or sales representative.

Clause 126 would prohibit a registrant, or officer or employee of a registrant, from making or attempting to make an agreement as to the premium to be paid for a policy other than as specified in the policy, or from providing the policyholder with a rebate of premium.

Clause 127 would prevent clauses 125 and 126 from being prejudicial to the payment of any dividend, bonus, profit or savings,

which is provided for by the policy. It would also provide that nothing in this Part shall be construed to prevent a registrant from offering a policy at a special rate to a *bona fide* salaried employee, or to the spouse or child of such an employee.

Clause 128 would provide that every insurer, agency, or brokerage make a return to the Central Bank in such form and at such times as the Central Bank requires.

Clause 129 would prescribe the powers of an agency.

Clause 130 would provide for a brokerage to disclose to a consumer in writing that it has entered into an agreement under which the brokerage can commit an insurer to provide coverage to a consumer in accordance with such criteria as may be established by the insurer.

Clause 131 would make it an offence for an agent, broker, brokerage or sales representative to procure the payment of premiums by fraudulent representation. The penalty for the offence would be a fine of one hundred and fifty thousand dollars (\$150,000.00) and imprisonment for ten (10) years.

Clause 132 would provide that receipts of premiums which have been received by an agency, a brokerage or a sales representative on behalf of an insurer shall be deemed to be received by the insurer.

Clause 133 would impose a duty on an agency registered to carry on general insurance business or brokerage to establish and maintain a consumer trust account for the receipt and payment of consumer funds.

Clause 134 would provide for an agency, brokerage or sales representative that receives monies from a consumer for the account of an insurer registered to carry on general insurance business or the accident and sickness class of insurance business to pay such monies over to the insurer within ten business days after the end of the month in which the monies were received.

Clause 135 would provide for an agency, brokerage or sales representative that receives a cheque in the name of a consumer from an insurer to deliver or make reasonable efforts to deliver the cheque to the consumer within five business days from the date on which the cheque was received.

Clause 136 would provide for every agency and brokerage to submit to the Inspector audited financial statements prepared in accordance with the reporting standards within sixty business days after the end of the financial year, or as requested by the Inspector.

Clause 137 would provide for a brokerage to keep monthly accounts showing all receipts and expenses in respect of each class or insurance business placed with it, and for such accounts to be completed no later than fifteen business days after the end of the month in respect of the month in which they are prepared.

Clause 138 would provide for an agency to keep monthly records in respect of policies issued or renewed by it, and for such records to be completed no later than fifteen business days after the end of the month in respect of the month in which they are prepared.

Clause 139 would provide for the auditor of an agency or a brokerage to include in its opinion to the financial statements whether or not the agency or brokerage has satisfied the requirements of sections 133, 134 and 135.

Clause 140 would provide for a brokerage or adjuster to retain the services of a foreign adjuster in the event of a catastrophe of an insurer. It would also provide a definition of the expression “foreign adjuster”.

Clause 141 would create offences for intermediaries who contravene the provisions of this Part. In the case of an agency or brokerage, the penalty would be twenty thousand dollars (\$20,000.00) and two thousand dollars (\$2,000.00) per day for each day the offence continues, and in the case of an agent, broker, sales representative or adjuster, the penalty would be ten thousand dollars (\$10,000.00) and one thousand dollars (\$1,000.00) per day for each day the offence continues.

PART V—FINANCIAL STATEMENTS AND RETURNS

This Part would contain clauses 142 to 154.

Clause 142 would impose a duty on every insurer and financial holding company to keep at its head office, its books, vouchers, records, receipts, schedules and other documents as may be necessary to enable it to prepare the financial statements and returns required under the Act.

Clause 143 would provide for the valuation of the assets of each insurer or financial holding company in accordance with financial reporting standards, and for the values to be used for the financial statements, reports and returns required to be prepared under the Act.

Clause 144 would require every local insurer and financial holding company to submit to the Inspector its financial statements of all its operations both domestic and foreign, within sixty business days after the end of its financial year.

Clause 145 would provide for an insurer and a financial holding company to submit to the Inspector audited returns within sixty business days of the end of its financial year. These returns must contain statements of its assets and liabilities, statements of its earnings and expenses, the auditor's reports and any other information required by the Inspector.

Clause 146 would provide a transitional period for the submission of financial statements and returns following the commencement of the Act.

Clause 147 would require the auditor of an insurer or financial holding company to audit the annual returns filed by the insurer or financial holding company. The auditor must submit the report to the Inspector.

Clause 148 would empower the Inspector to require explanations from an insurer or financial holding company, where the financial statements or returns are unsatisfactory, incomplete, incorrect or misleading. The Inspector may issue compliance directions as he thinks necessary.

Clause 149 would impose liability on an insurer or financial holding company which fails to submit its financial statements or returns as required under the Act.

Clause 150 would prohibit the commingling of funds between insurance business and any other business.

Clause 151 would permit an insurer to apportion receipts and payments between various classes of insurance business in an equitable manner.

Clause 152 would require the publication of audited financial statements in at least two daily newspapers. The Central Bank may consult with insurers to create abridged financial statements for publication.

Clause 153 would empower the Inspector to appoint an independent actuary to review the work of an insurer's actuary, the cost of which would be payable by the insurer.

Clause 154 would allow the Inspector to prohibit an insurer from recognizing in its financial statements or return, its reinsurance arrangements. This clause would impose a duty on the insurer to ensure that its reinsurance arrangements do not lapse and evidence of renewal must be provided to the Inspector.

PART VI—COMPLIANCE DIRECTIONS AND INJUNCTIVE RELIEF

This Part would contain clauses 155 and 156.

Clause 155 would empower the Inspector to issue compliance directions in certain circumstances. Failure to comply with such directions can result in fines as high as five million dollars (\$5,000,000.00).

Clause 156 would empower the Central Bank to seek injunctive relief where it reasonably believes that a person is in violation of the Act.

PART VII—LONG-TERM INSURANCE BUSINESS

This Part contains seven sub-divisions from clauses 157 to 210.

A. Actuarial Investigations

Clause 157 would make this Part applicable to insurers in respect of their long-term insurance business in Trinidad and Tobago.

Clause 158 would provide for insurers carrying on long-term insurance business to annually submit actuarial reports to the Inspector within sixty business days after the end of its financial year.

Clause 159 would require the submission of annual financial condition reports which set out the prospective ability of an insurer as at a particular date to meet its future obligations to policyholders and to those to whom it owes benefits.

Clause 160 would provide for the distribution of surplus assets in the participating account.

B. Issue of Policies

Clause 161 would prevent an insurer from issuing a policy unless the pricing of policy has been approved by the actuary as being suitable to that class of policy.

Clause 162 would impose certain restrictions on the commission to be paid or the reduction of premium which may be allowed.

Clause 163 would prevent an employer from entering into an annuity contract for the benefit of an employee without obtaining the prior written consent of the employee.

Clause 164 would prevent an insurer from issuing, accepting or amending any form of proposal, policy, endorsement or application unless the standard form has been approved by the Inspector.

Clause 165 would provide for an insurer to issue a notice stating that proof of age may be required before payment of the sum insured.

Clause 166 would set out the procedure where the insurer declines to accept the proof of age that has been tendered.

Clause 167 would provide that a policy may not be voided by reason only of the misstatement of the age of the life insured or other incorrect statement.

Clause 168 would enable a minor between the ages of ten and sixteen years to effect a policy or assign a policy with the written consent of his parent or a person standing in *loco parentis* to the minor.

Clause 169 would provide for the categories of persons who are deemed to have an insurable interest.

C. Assignments and Mortgages of Policies

Clause 170 would provide for the assignment of policies.

Clause 171 would provide for the effect of any notice in writing to an insurer of any trust, right, equity or any person under a policy.

Clause 172 would prevent the assignment of a policy from extinguishing the rights and liabilities arising under that policy.

Clause 173 would provide for policies that are held by trustees.

Clause 174 would provide for a Memorandum of Discharge and Deed of Release to be issued upon the payment or discharge of money or other obligation secured by the assignment of a policy.

Clause 175 would provide for existing assignments to continue to have effect.

D. Paid-up Policies, Surrender Values and Non-forfeiture

Clause 176 would provide for the application of this sub-division to a particular class of policies.

Clause 177 would provide for the circumstances in which a policyholder may be issued a paid-up policy.

Clause 178 would provide for the surrender of policies.

Clause 179 would enable the Inspector to suspend or vary the obligation to pay the surrender values where the payment of those surrender values would be prejudicial to the financial stability of the insurer or to the interests of its policyholders.

Clause 180 would prevent the non-forfeiture of ordinary policies by reason only of non-payment of a premium in certain cases.

Clause 181 would provide for the treatment of debts owing to the insurer where the insurer is required to issue a paid-up policy.

E. Payment of Policy Monies

Clause 182 would protect the interest of the life insured in certain cases.

Clause 183 would provide for a policyholder to designate his legal representative, trustee or beneficiary as the person to receive the proceeds of the insurance policy.

Clause 184 would provide for the irrevocable designation of beneficiaries.

Clause 185 would provide for the alteration or revocation of designation upon the cessation of marriage, otherwise than by death.

Clause 186 would provide for the policyholder to be entitled to dividends, notwithstanding the irrevocable designation of a beneficiary, unless the contract otherwise provides.

Clause 187 would provide for the circumstances in which the insurance proceeds would not form part of the policyholder's estate.

Clause 188 would provide that there shall be no presumption of a trust in a contract of insurance, except in cases where the policyholder expressly provides for the creation of such a trust.

Clause 189 would provide for the appointment of a trustee for a beneficiary by a policyholder, in a contract of insurance or by declaration.

Clause 190 would provide for the manner of payment of the policy proceeds where the beneficiary predeceases the life insured.

Clause 191 would enable a beneficiary or a trustee to enforce payment of the proceeds of a policy, in their respective capacities.

Clause 192 would empower a life insured under a group policy, to enforce a right given to him under the group policy, in his own name.

Clause 193 would enable an insurer to make payments to the legal personal representative of a deceased without requiring the production of a grant of probate or letters of administration in certain circumstances.

Clause 194 would provide that the insurer be discharged from further liability in certain cases.

Clause 195 would provide the procedure to be followed where the policyholder, who is not the life insured, pre-deceases the life insured.

Clause 196 would provide for an insurer to pay to the Central Bank money payable under a policy where no sufficient discharge can be obtained.

Clause 197 would set out the procedure to treat with unclaimed money.

F. Provisions relating to Industrial Life Insurance Business

Clause 198 would provide for a policyholder to object to an industrial policy within twenty business days of its delivery by the insurer.

Clause 199 would provide for the return of an industrial policy and premium receipt book after inspection.

Clause 200 would prohibit the falsification of entries made in a premium receipt book, making it an offence to do so.

Clause 201 would prevent an industrial policy from being voided by reason only of an incorrect or untrue statement contained in the proposal.

Clause 202 would provide for the particulars that must be specified in every industrial policy.

Clause 203 would require an insurer, in respect of each industrial policy issued by it, to issue to the policyholder a premium receipt book.

Clause 204 would provide for the premium receipt book to indicate the date to which premiums have been paid under an industrial policy.

Clause 205 would provide that any provision in an agreement making the guarantor of an agent liable to refund any commissions repayable on lapsed industrial policies is void.

Clause 206 would provide that a certificate as to the agent's or guarantor's indebtedness shall not be conclusive evidence of such indebtedness.

Clause 207 would provide for the non-forfeiture of an industrial policy in certain cases for non-payment of premiums.

G. Miscellaneous

Clause 208 would provide for the issuance of a special policy in substitution of a lost, defaced or destroyed policy.

Clause 209 would provide for a policy not to be voided merely on the ground that the person's whose life is insured suffered capital punishment or died by his own hand or act.

Clause 210 would provide that terms or conditions of a policy which limit the amount payable under a policy in the event of the death of the life insured as a result of war, shall have no force or effect unless the person who effected the policy agreed in writing to the insertion of said term or condition.

PART VIII—GENERAL INSURANCE

This Part would contain clauses 211 to 215.

Clause 211 would provide for the application of this Part to all insurers carrying on general insurance business.

Clause 212 would provide for the computation of insurance liability in respect of insurers carrying on general insurance business.

Clause 213 would provide for an insurer not to rely on an average provision included in a general insurance contract in respect of property unless, before the contract was entered into the insurer clearly informed the insured in writing of the nature and effect of the provision including whether the provision is based on indemnity or on replacement value of the property.

Clause 214 would provide for an appointed actuary to submit a financial condition report in accordance with clause 186, and where an actuary has not yet been appointed, the chief financial officer.

Clause 215 would require the appointed actuary to provide the Inspector with an annual report on the valuation of the insurer's liabilities in respect of accident and sickness class of insurance business.

PART IX—PENSION FUND PLANS

This Part would contain clauses 216 to 229.

Clause 216 would require the registration of pension fund plans under that Part in order for the pension plan to operate in Trinidad and Tobago.

Clause 217 would provide the qualifications required to be registered under this Part.

Clause 218 would prescribe the procedure as required by the Central Bank for registration.

Clause 219 would provide for the registration of any amendment to a trust deed or Rules of a registered plan in order for said amendment to be valid.

Clause 220 would provide for the Central Bank to issue a certificate of registration to an applicant pursuant to the registration of a plan or an amendment to said plan.

Clause 221 would provide that a registered plan shall not be cancelled unless the plan has been wound-up.

Clause 222 would provide for certain fees to be prescribed in Regulations.

Clause 223 would permit the Central Bank to delete provisions in the Rules of a registered plan which seek to avoid the rule against perpetuities.

Clause 224 would provide for supplementary powers of the Central Bank in relation to the supervision of registered plans.

Clause 225 would impose liability on a trustee and secretary of the registered plan for non-compliance with any of the requirements of this Part, the penalty being a fine of five thousand dollars (\$5,000.00) and a further fine of one hundred dollars (\$100.00) per day in the case of a continuing breach.

Clause 226 would require the trustees of each plan to submit annually a balance sheet and a statement of accounts to the Central Bank.

Clause 227 would provide for the appointment of an actuary who shall submit a financial condition report of the plan to the Central Bank.

Clause 228 would provide for the investment of assets of the plan in those securities as allowed in Schedule 8 and in a manner as prescribed by the Regulations.

Clause 229 would provide for the non-application of the rule of law relating to perpetuities in relation to the trusts of a registered plan.

PART X—ASSOCIATIONS OF UNDERWRITERS

This Part would contain clauses 230 to 249.

Clause 230 would provide for the registration of an association of underwriters by the Central Bank before it may carry on insurance business in Trinidad and Tobago. Pursuant to such

registration, an association of underwriters may then carry on any class of general insurance business listed in Schedule 1 and the accident and sickness class of insurance business.

Clause 231 would provide for the Central Bank to inform an applicant of its decision with respect to the application for registration. Where an application has been approved, the Central Bank shall notify the applicant in writing and also inform said applicant of the requirement to make the deposit under section 233. Where an application has been rejected, the Central Bank would be required to notify the applicant accordingly and provide reasons for the decision within ten business days of the date of rejection.

Clause 232 would permit an association of underwriters to carry on its insurance business through brokerages registered under the Act.

Clause 233 would provide for the amount required to be deposited with the Central Bank by an association of underwriters before it can be registered under this Part to carry on any class of general insurance business.

Clause 234 would provide for deposits made by an association of underwriters to form part of the assets of the association of underwriters.

Clause 235 would provide for an association of underwriters to inform the Inspector of the maturity of an asset held in the statutory deposit at least ten business days prior to the date of the maturity of the asset.

Clause 236 would provide for an association of underwriters whose registration has been revoked and who is not under liability to policyholders to apply to the Central Bank in writing for the release of its statutory deposit.

Clause 237 would provide for an association of underwriters to apply to the Central Bank in writing for a partial release of assets in its statutory deposit where the statutory deposit is in excess of the requirements of the Act.

Clause 238 would give the Central Bank the power to pay to the liquidator all monies and securities held as a statutory deposit in respect of that association of underwriters, where that association of underwriters is in liquidation.

Clause 239 would provide for the Inspector to furnish an association of underwriters with a certificate detailing the nature and extent of any statutory deposit held by the Central Bank, where the association of underwriters so requests.

Clause 240 would empower the Inspector to direct an association of underwriters, where depreciation in the value of securities has caused the value of the statutory fund to fall short of that required by the Act, to deposit additional monies or approved securities to the statutory deposit to maintain compliance with the Act.

Clause 241 would provide for the Central Bank to remedy any shortfall in the statutory deposit of an association of underwriters as a result of the statutory deposit being lost, stolen, destroyed or damaged while being retained by the Central Bank.

Clause 242 would provide for an association of underwriters to substitute monies or approved securities retained by the Central Bank as part of the statutory deposit of the association of underwriters, provided that the amount of the statutory deposit does not fall below that required under the Act.

Clause 243 would provide for an association of underwriters to maintain the statutory deposit in accordance with the Act at all times, and to fund the deposit annually based on its audited financial returns, and quarterly based on its quarterly return.

Clause 244 would require an association of underwriters to furnish the Inspector with such information and documents as he may require within six months of the end of the financial year.

Clause 245 provides for the additional powers of the Inspector, among them being the power to conduct an examination and inquiry into the affairs or business of each association of underwriters including reporting requirements and production of books or papers, as well as the power to issue compliance directions to an association of underwriters.

Clause 246 would allow the Central Bank to prohibit a registered association of underwriters from writing new policies in any class of insurance business where it is satisfied that it is in the interest of policyholders to do so.

Clause 247 would prevent an association of underwriters from offering any new or amended products to policyholders without first notifying the Inspector.

Clause 248 would provide for the grounds upon which the Central Bank may revoke the registration of an association of underwriters.

Clause 249 would provide for the continuation of business relating to policies issued before the date on which an association of underwriters would have been notified of the rejection of its application for registration or revocation of its registration.

PART XI—JURISDICTION OF COURTS, APPEALS AND OFFENCES

This Part would contain clauses 250 to 261.

Clause 250 would establish the jurisdiction of the courts of Trinidad and Tobago in respect of every policy issued in Trinidad and Tobago.

Clause 251 would provide for the limitation period in respect of offences under the Bill which are triable by a Magistrate's Court, said limitation period being seven years after a person has been charged for the offence.

Clause 252 would provide for documents certified by the Governor to be received in evidence in any proceedings under the Act.

Clause 253 would provide the procedure for appeals to decisions made under the Act.

Clause 254 would provide a penalty of a fine not exceeding six hundred thousand dollars (\$600,000.00) and imprisonment of two (2) years for those offences committed under the Act, to which no other penalty is expressly provided. However, where it is proved that the person charged intended to deceive or defraud, the penalty attached shall be a fine ten times the amount stipulated for that offence and to imprisonment for twenty years.

Clause 255 would prohibit the perpetration of a fraud on policyholders. The penalty for this offence would be a fine of ten million dollars (\$10,000,000.00) and imprisonment for ten (10) years in the case of a director or officer of an entity or any other individual; and a fine of twenty million dollars (\$20,000,000.00) in the case of an entity.

Clause 256 would prohibit the inducing of a person to enter into or cancel a contract of insurance by means of a false statement.

Clause 257 would restrict any advertisement inviting the public to enter into a contract of insurance with a person who is not a registrant.

Clause 258 would permit the Inspector to require the correction or withdrawal of a misleading or objectionable advertisement.

Clause 259 would prohibit the disclosure of information except in certain circumstances.

Clause 260 would empower the Central Bank, where there is reasonable cause to believe that a person has committed an offence referred to in Schedule 6, to issue a Notice offering that person the opportunity to discharge any liability to conviction in respect of that offence by the payment of an administrative fine specified in Schedule 6.

Clause 261 would prohibit the suppression of information which is required to be produced under the Act, without reasonable excuse.

PART XII—FACILITATION OF TRANSFERS AND UNDERTAKINGS

This Part would contain clauses 262 to 265.

Clause 262 would provide a definition of terms used in this Part.

Clause 263 would prescribe the circumstances under which the Minister may make an order called a “Vesting Order”.

Clause 264 would provide supplemental information in relation to transfers effected by a Vesting Order.

Clause 265 would provide for a transfer of and vesting in, the transferee of an undertaking by a Vesting Order to be subject to the provisions of the Stamp Duty Act, Chap. 76:01, unless it is exempted either generally or in some particular case.

PART XIII—MISCELLANEOUS

This Part would contain clauses 266 to 282.

Clause 266 would provide for registrants and insurance consultants to adhere to market conduct as prescribed in Schedule 12.

Clause 267 would impose a duty on an insurer to fully settle all judgement claims within forty business days of a judgement order unless there is a stay of execution. This clause would also prohibit an insurer from entering into an agreement to settle a judgement claim.

Clause 268 would require an insurer to issue a policy within twenty business days of the acceptance of the risk.

Clause 269 would prohibit the publication of a prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription of any shares in an insurer, without prior approval being granted in accordance with the Securities Act and the approved documents are submitted to the Central Bank.

Clause 270 would provide for a register of policies to be kept by an insurer. This clause would also enable a person who has a beneficial interest in a policy to request a search to be conducted by an insurer for evidence of the existence of a policy, within twenty business days of receiving such request, and provides for compensation to be given to any person having a beneficial interest in a policy who was not informed that a policy existed at the date of the request.

Clause 271 would provide for the registration of all policies in the register that is required to be kept by an insurer under section 270 of the Act.

Clause 272 would provide the method for service of notice under the Act.

Clause 273 would provide for certain authorized persons to sign documents on behalf of a company.

Clause 274 would provide for a document to be typewritten or otherwise reproduced by such means as the Central Bank may approve, where the document is required to be printed.

Clause 275 would provide that policies shall not be invalidated for failure on the part of an insurer to comply with the Act.

Clause 276 would permit insurance business to be carried on in any currency.

Clause 277 would provide for the Minister to consult with the registrants and other persons before making or amending the Regulations.

Clause 278 would give the Central Bank the power to issue guidelines in order to facilitate compliance with the Act. Guidelines issued under this section will not be regarded as a statutory instrument, but the contravention of a Guideline will not preclude the Inspector from taking action under section 155.

Clause 279 would enable the Minister to make Regulations, subject to negative resolution of Parliament and further empower the Minister to amend the Schedules and the amounts specified in sections 4(2) and 193(1) and (3) by Order, upon recommendation by the Central Bank.

Clause 280 would repeal the Insurance Act, Chap. 84:01.

Clause 281 would provide a transitional period within which a foreign insurer will be given eighteen months following the commencement of the Act within which to comply with specified provisions of the Act. The provisions of the former Act will therefore continue to apply to the foreign insurer during that eighteen month period.

Clause 282 would provide for the consequential amendments to be made to the Proceeds of Crime Act, Chap. 11:27, the Central Bank Act, Chap. 79:02, the Married Persons Act and the Financial Institutions Act, Chap. 79:09, to the extent specified in Schedule 13.

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

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

Schedule 3 would contain a model of the form to be used for an absolute assignment of a policy.

Schedule 4 would detail the requirements as to the trust deed and rules of registered pension fund plans, and would contain models of the relevant forms.

Schedule 5 would prescribe the minimum criteria for registration.

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

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

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

Schedule 9 would prescribe the transitional capital ratios.

Schedule 10 would provide details on the establishment of separate accounts.

Schedule 11 would prescribe criteria for the determination of credit exposure.

Schedule 12 would contain standards of market conduct.

Schedule 13 would provide details of the amendments made to the Proceeds of Crime Act, Chap. 11:27, the Central Bank Act, Chap. 79:02, the Married Persons Act and the Financial Institutions Act, Chap. 79:09.

BILL

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

[, 2016]

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

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

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

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:

PART I

PRELIMINARY

Short title **1.** This Act may be cited as the Insurance Act, 2016 and shall come into operation on such day as is fixed by the President by Proclamation.

Application **2.** This Act applies to—

- (a) all persons, whether or not established or resident in Trinidad and Tobago, that carry on insurance business in Trinidad and Tobago;
- (b) all persons that carry on business in, or from Trinidad and Tobago as an intermediary or insurance consultant; and
- (c) privately administered pension fund plans registered under Part IX, whether administered by individual trustees or by trust corporations.

Act inconsistent with sections 4 and 5 of the Constitution **3.** This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

4. (1) In this Act, unless the context otherwise ^{Interpretation} requires—

“abridged financial statements” means a summary of financial statements, the format and contents of which are agreed to in writing between the Central Bank and the Institute of Chartered Accountants of Trinidad and Tobago;

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

“actuary” means a person who is a Fellow of an actuarial accreditation body that is a full member of the International Actuarial Association and who possesses such other qualifications as may from time to time be specified by the Inspector;

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

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

(b) an agent of an insurer;

“advertisement” includes every form of advertising whether in a publication, or by display or notices, or by means of circulars or other documents, or by an exhibition of photographs or cinematographic films, or by way of sound broadcasting, television, or telephonic, digital or electronic communication, but does not include a prospectus issued by a company;

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

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

- (i) a holding company of C;
- (ii) a holding company of a holding company referred to in subparagraph (i);
- (iii) a subsidiary of a holding company referred to in subparagraph (i) or (ii);
- (iv) a subsidiary of C;
- (v) a subsidiary of a subsidiary referred to in subparagraph (iv); and

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

and the word “affiliation” shall be construed accordingly;

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

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

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

“annuity contract” means a contract under which a person—

(a) in consideration of payment by an individual of any periodic or other amount as consideration under the contract, agrees to pay to such individual or the insured, commencing at maturity, an annuity for life with or without a period certain; or

(b) in consideration of payment by a company of any periodic or other amount as consideration under the contract on behalf of a director, officer or employee, agrees to pay to the director, officer or employee, commencing at maturity, an annuity for life with or without a period certain;

“appointed actuary” means an actuary appointed by an insurer pursuant to section 78;

“approved educational institution” means a statutory body or company incorporated under the Companies Act and appointed by the Minister under section 119;

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

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

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

“associate” means has the meaning assigned to it in the Companies Act;

“association of underwriters” means—

(a) the association of underwriters known as “Lloyd’s”; or

(b) an association of individual or corporate underwriters, in which every underwriting member of a syndicate becomes liable for a separate part of the sum insured by each policy subscribed to by that syndicate, limited or proportionate to the whole sum so insured;

“beneficiary” means a person, other than the insured person or his legal personal representative, except where the legal personal representative is also a beneficiary, to whom or for whose benefit insurance money is made payable in a contract or by a declaration;

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

“borrower group” includes—

(a) a family group comprising an individual and his spouse, a cohabitant, parents, children, brothers or sisters where

each member of the group is substantially dependent upon the same income sources;

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

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

“brokerage” means any company registered under Part IV to carry on the business of an insurance brokerage;

“business day” means any day on which institutions licensed under the Financial Institutions Act are open for the conduct of business in Trinidad and Tobago;

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

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

“capital base” means regulatory capital available as calculated in accordance with the Regulations;

“carrying on insurance business” has the meaning assigned to it in section 20;

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

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

“class of insurance business” or “class” means any class of insurance business specified in Schedule 1 and “subclass” shall be construed accordingly;

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

“commission” includes sales remuneration whether first year or deferred including volume-based payments, financing costs, overrides, bonuses and indirect incentives such as conference attendance;

“company” means an incorporated body wherever or however incorporated;

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

“continuing professional development” or “CPD” means further education or training intended for the systematic maintenance, continuous improvement and updating of professional knowledge, expertise, competence and attitude, necessary for the proper carrying out of the business of an agent, broker, sales representative and adjuster;

“continuing professional development requirements” means the requirements in relation to CPD referred to in section 119 and the Regulations;

“consumer” means a person who—

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

“contract of insurance” means a contract including a reinsurance agreement or an annuity contract, whereby one party agrees in return for a consideration from another party to undertake liabilities to—

- (a) make good or indemnify the insured against any loss or damage including liability to pay damages or compensation contingent upon the happening of a specified event; or
- (b) pay moneys on death or survival of an insured or annuitant, including extensions of cover for personal accident, injury, disease, sickness or disability;

“control” has the meaning assigned to it under section 6 and the terms “controlling interest” and “controlling shareholder” shall be construed accordingly;

“counterparty”, for the purpose of measuring a credit exposure, means the borrower, the person guaranteed, the issuer of a security in the case of an investment in a security, or the party with whom the contract is made in the case of a derivative contract;

“CPD activities” means the activities in relation to CPD as defined in the Regulations;

“CPD Return” means a declaration of an intermediary that he has met continuing professional development requirements required to be filed with the Central Bank in accordance with the Regulations;

“credit exposure” means the exposure to risk to a counterparty arising through the making of investments, giving of guarantees, making of commitments, securitization or the extension of credit or funds and includes, without limitation—

(a) investments including equity, bonds and other debt instruments, participations, guarantees, acceptances including bankers acceptances and credit facilities excluding policy loans;

(b) other claims on a counterparty including actual and potential claims excluding reinsurance;

(c) contingent liabilities arising in the normal course of business; and

(d) deposits,

and the provisions of Schedule 11 shall apply;

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

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

“exempted incidental insurance” means insurance business provided for under a contract satisfying all of the following conditions:

(a) the insurance provided is not the primary purpose of the contract but is—

- (i) complementary to the supply of goods and covers the risk of breakdown, theft, loss of, or damage to those goods; or
- (ii) in relation to the provision of travel and covers damage to, or loss of baggage and other risks linked to such travel, even if the insurance also covers life assurance or liability insurance, so long as the last-mentioned cover is ancillary to the main cover for the risks linked to the travel;

- (b) none of the annual premiums payable in respect of an insured party exceeds one thousand dollars;
- (c) the policy period is no longer than one year plus odd days; and
- (d) there is no provision for guaranteed renewability or guaranteed extension of cover;

“financial entity” means an insurer, a person licensed under the Financial Institutions Act, and any other entity that carries on a business that includes the provision of any financial service and includes the holding company of any such financial entity;

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

- (a) the business of banking;
- (b) business of a financial nature;
- (c) insurance business;
- (d) the business of brokering and dealing in securities;
- (e) the business of establishment, distribution or sale of collective investment schemes;
- (f) the business of holding, managing or otherwise dealing in real estate;
- (g) business of an insurance agency; and
- (h) subject to the approval of the Central Bank, the provision of necessary services in support of the activities of the group and includes a financial holding company and a holding company of any of the businesses as set out in subparagraphs (a) to (f);

“financial holding company” means a company referred to in section 47;

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

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

“financial statements” means—

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

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

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

“foreign policy” means a policy that is not a Trinidad and Tobago policy and includes—

(a) any policy issued or effected or ordinarily situated outside of Trinidad and Tobago at the time the policy is issued; and

(b) any policy issued and effected by overseas branches of insurers, for life of an individual ordinarily resident in Trinidad and Tobago or property situated in Trinidad and Tobago or risks ordinarily situated in Trinidad and Tobago, at the time the policy was issued, and the term “foreign policyholder” shall be construed accordingly;

“former Act” means the Insurance Act, repealed by this Act;

Chap. 84:01

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

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

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

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

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

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

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

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

“insurance business” means the business in relation to the—

- (a) issue of a contract of insurance; or
- (b) undertaking of liability under a contract of insurance,

but does not include self-insurance or exempted incidental insurance;

“insurance consultant” means an independent person who provides advice on some aspect of insurance for a fee, but does not include advice given by an Attorney-at-law, accountant or other registered professional in his professional capacity;

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

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

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

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

“liquidator” has the meaning assigned to it in the Companies Act;

Chap. 81:01

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

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

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

“look through method” means a method of determining credit exposure in respect of asset backed securities or other investments where underlying securities or guarantees are treated as directly held or given;

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

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

“officer” means—

- (a) in relation to a company or unincorporated body—
 - (i) a chief executive officer, chief operating officer, president, vice-president, corporate secretary, treasurer, chief financial officer, chief accountant, chief actuary, appointed actuary, chief auditor, chief claims officer, chief compliance officer, chief underwriting officer, chief investment officer or chief risk officer and principal representative;
 - (ii) any other individual designated as an officer by its articles of incorporation or continuance, by-laws or other constituent document or resolution of the directors or members and also perform functions similar to those referred to in subparagraph (i); or
- (b) any other individual who performs functions for a company or unincorporated body similar to those performed by a person referred to in paragraph (a), whether or not the individual is formally designated as an officer, and includes a principal representative;

(c) in the case of an agency, any person referred to in paragraph (a) and (b) where applicable and an agent; and

(d) in the case of a brokerage, any person referred to in paragraph (a)(i) where applicable and a broker;

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

“participating account” means an account maintained under section 43(1)(a);

“participating policy” means a policy that is issued by an insurer that entitles its holder to participate in the profits derived from participating policies of the insurer;

“participating policyholder” means the holder of a participating policy;

“participating surplus account” means the undistributed accumulated profits derived from participating policies and maintained in accordance with section 43(2);

“permissible real estate entity” means a real estate entity that is a subsidiary or other entity controlled by an insurer or a real estate joint venture approved by the Central Bank;

“policy” means any written contract of insurance;

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

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

“principal representative” means a person appointed by a foreign insurance company pursuant to sections 26 and 230(5);

“privately administered pension fund plan” means a pension plan offered by employers in the private sector and approved in accordance with the Income Tax Act;

“qualified valuer” means a person who—

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

(b) is approved by the Central Bank;

“real estate entity” means an entity that is solely engaged in the business of holding, managing or otherwise dealing with real estate;

“real estate joint venture” means a real estate entity—

(a) that was formed by an insurer and one or more other persons for the purpose of holding, managing or otherwise dealing in real estate;

(b) in which the insurer is permitted to invest by virtue of the exception created by section 87(4)(c); and

(c) in respect of which the persons who formed it have agreed on joint control, regardless of the distribution of their equity;

“receiver” has the meaning assigned to it under the Companies Act;

“receiver manager” has the meaning assigned to it under the Companies Act;

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

“Regulations” means regulations made under this Act;

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

“reinsurer” means an insurer which underwrites reinsurance business;

“related group” means—

(a) companies, entities or a combination thereof, with the same controlling shareholder or holding company;

(b) a company or entity in which any of the companies or entities referred to in paragraph (a) has a significant shareholding or ownership interest;

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

- (d) a company in which any of the companies or entities referred to in paragraph (c) has a significant shareholding; and
- (e) the controlling shareholder or holding company referred to in paragraph (a);

“relative” includes—

- (a) a spouse or cohabitant;
- (b) a parent;
- (c) a brother or sister, whether or not connected by—
 - (i) consanguinity;
 - (ii) affinity;
 - (iii) reason of a cohabitational relationship;
 - (iv) adoption; or
 - (v) reason of being declared a child of the family under the Matrimonial Proceedings and Property Act; or
- (d) a son or daughter, whether or not connected by—
 - (i) consanguinity;
 - (ii) affinity;
 - (iii) reason of a cohabitational relationship;
 - (iv) adoption; or
 - (v) reason of being declared a child of the family under the Matrimonial Proceedings and Property Act;

“representative office” means—

- (a) an office established in Trinidad and Tobago by a foreign company through which no insurance business or other business activity is carried on other than—
 - (i) promoting the insurance services of the foreign company or an affiliate of the foreign company that carries on activities permitted to a member of a financial group, other than an affiliate incorporated in Trinidad and Tobago; or
 - (ii) acting as a liaison between consumers of the foreign company and other offices of the foreign company or its affiliates that carry on activities permitted to a member of a financial group, other than affiliates incorporated, or an office located, in Trinidad and Tobago; or
- (b) an office established outside Trinidad and Tobago by a local insurer through which no insurance business or other business activity is carried on other than—
 - (i) promoting the services of the insurer or an affiliate of the insurer that carries on activities permitted to a member of a financial group; or

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

“sales representative” means an individual who is contracted by an insurer, an agency or a brokerage to solicit applications for insurance or to negotiate insurance on behalf of that insurer, agency or brokerage;

“security interest” means an interest in, or charge on property by way of mortgage, lien, pledge or otherwise taken by a creditor or taken by a guarantor;

“self-insurance” means the practice of an entity to—

- (a) assume responsibility for its losses or losses of; and
- (b) provide benefits for,

its employees, members or their dependents by setting up a fund against which claims or benefits are paid or administered by the entity or by an external service provider which does not bear the risk for the plan;

“separate account” means an account maintained under section 42;

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

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

“stated capital” means the aggregate of all stated capital accounts as defined in the Companies Act;

“standards of accepted actuarial practice” means the actuarial standards as may be specified by the Inspector in respect of actuarial work required under this Act;

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

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

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

“Trinidad and Tobago policy” means any policy issued or effected in Trinidad and Tobago, and the term “Trinidad and Tobago policyholder” shall be construed accordingly;

“Trinidad and Tobago policy account” means the separate account maintained pursuant to section 42(1)(a)(i) in respect of Trinidad and Tobago policies;

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

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

(2) For the purposes of this Act, an entity is insolvent where it resides, carries on business or has property in Trinidad and Tobago, and its liabilities to creditors provable as claims under the Bankruptcy and Insolvency Act amount to not less than four thousand dollars or such other amount as may be prescribed pursuant to section 279(4) and—

- (a) it is for any reason unable to meet its obligations as they generally become due;
- (b) it has ceased paying its current obligations in the ordinary course of business as they generally become due; or
- (c) the aggregate of its property is not, at a fair valuation, sufficient or if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its obligations, due and accruing,

whether or not the entity has been adjudged bankrupt, and “insolvency” shall be construed accordingly.

Meaning of
“connected party”
and “connected party
group”

5. (1) For the purposes of this Act, a person or entity (“A”) is a connected party of another person or entity (“B”) where A is—

- (a) a financial holding company, holding company, controlling shareholder or significant shareholder of B;

- (b) a person or entity who holds ten per cent or more of any class of shares of B or of a person or entity referred to in paragraph (a);
- (c) an affiliate of B;
- (d) an affiliate of a person or entity referred to in paragraph (a);
- (e) a director or officer of B or of a person or entity referred to in paragraph (a);
- (f) a relative of a director or officer of—
 - (i) B;
 - (ii) a financial holding company of B;
 - (iii) a holding company of B;
 - (iv) a controlling shareholder of B; or
 - (v) a significant shareholder of B;
- (g) a relative of a controlling shareholder or significant shareholder of B where such controlling shareholder or significant shareholder is an individual; or
- (h) an entity that is controlled by a person referred to in paragraphs (e), (f) and (g).

(2) For the purposes of this Act, “connected party group” of a person or entity (“B”) means—

- (a) in the case where B is connected to a person referred to in subsection (1)(a), a group consisting of any combination of—
 - (i) B;
 - (ii) the persons referred to in subsection (1)(a), (f) and (g);
 - (iii) an affiliate of B; or
 - (iv) an entity controlled by any person referred to subparagraphs (i) and (ii);

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

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

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

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

Meaning of “control”

6. (1) For the purposes of this Act, “control” means the power of a person to—

- (a) exercise more than fifty per cent of the voting rights at any general meeting of an entity;
- (b) elect a majority of the directors of an entity;
or
- (c) exercise direct or indirect influence that, if exercised, would result in control in fact of the entity.

(2) For the purposes of this Act, where two or more persons being connected parties, affiliates or relatives, have the power together to exercise-

(a) more than fifty per cent of the voting power at a general meeting of an entity; or

(b) direct or indirect influence that, if exercised, would result in control in fact of the entity,

those persons are deemed to be a single person.

(3) A person who controls an entity is deemed to control any entity that is controlled, or deemed to be controlled, by the entity.

(4) A person is deemed to control an entity if the aggregate of—

(a) any securities of the entity that are beneficially owned by that person; and

(b) any securities of the entity that are beneficially owned by any entity controlled by that person,

is such that, if such person and all of the entities referred to in paragraph (b) that beneficially own securities of the entity were one person, that person would control the entity.

PART II

ADMINISTRATION

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

Central Bank to administer Act

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

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

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

(4) The Governor shall keep the Minister informed, at least once in every six months or more frequently if the need arises, of all developments and activities which affect the insurance industry in Trinidad and Tobago.

Annual reports and returns to be furnished

8. The Central Bank shall provide a written report annually to the Minister with respect to the performance of the Central Bank in meeting its objectives under this Act.

Act to prevail

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

Duties and powers of the Inspector

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

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

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

- (a) registrant;

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

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

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

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

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

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

(8) A registrant or financial holding company that fails to take measures required by the Inspector pursuant to subsection (7), commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and in the case of a continuing offence to a fine of sixty thousand dollars for each day that the offence continues.

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

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

(11) The Inspector or any person authorized in writing by the Central Bank or any designated member of staff of the Central Bank may enter the place of business of any registrant or financial holding company during normal business hours—

(a) to examine and make copies of, or remove from the premises, all books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including documents stored in electronic form, of the registrant or financial holding company; and

(b) to inquire,

to determine whether the registrant or financial holding company is complying with this Act or any Regulations made thereunder.

(12) The Inspector or any other person authorized in writing by the Central Bank or any designated member of staff of the Central Bank shall have access to all books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including documents stored in electronic form, of the registrant or financial holding company, even where in the possession of another person, save that where the person who is in possession claims a lien on the books or papers the production thereof shall be without prejudice to the lien.

(13) Notwithstanding subsection (11), the Inspector may apply to a Judge of the High Court for an *ex parte* order authorizing him, any person authorized in writing by the Central Bank or any designated member of staff of the Central Bank, to enter into the premises of the registrant or financial holding company or to conduct an examination under subsection (11), where the Inspector, any person authorized by the Central Bank or any designated member of staff of the Central Bank is—

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

powers given to him under subsection (11).

(14) The Inspector may audit or caused to be audited the records of approved educational institutions and intermediaries in order to verify that the information contained in CPD Returns is valid and that there has been compliance with the Act and Regulations.

(15) Where an intermediary is the subject of an audit referred to in subsection (1), he shall produce supporting documentation confirming attendance or completion for each CPD activity referred to in the CPD Return filed pursuant to the Regulations.

(16) The audit referred to under subsection (1) may be conducted during the processing of applications for renewal of a certificate of registration in accordance with the Regulations or at any other time as the Inspector sees fit.

Power of Inspector to request information

11. (1) The Inspector may require a—

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

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

(2) The Inspector may from time to time require—

- (a) verification from the auditor or appointed actuary of an insurer, financial holding company or any other entity referred to in subsection (1) with respect to the accuracy of information submitted pursuant to that subsection and may himself verify the accuracy of such information by inspecting such insurer, financial holding company or other entity; or

(b) an officer or any other person in charge of an insurer, a financial holding company, agency or brokerage to supply, within such time as may be specified, any information relating to the insurer, financial holding company, agency or brokerage, or any connected party or connected party group, or any person over which the insurer, financial holding company, agency, brokerage, or the directors or officers of the insurer, financial holding company, agency or brokerage have control.

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

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

(5) A person whom the insurer, financial holding company, agency or brokerage proposes to elect as a director or appoint as an officer shall be entitled to refuse to supply the documents requested by the Inspector pursuant to subsection (4) if he no longer intends to stand for election or take up the appointment and has so advised the Inspector.

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

(7) Where a person fails to comply with a request under subsection (1), the Inspector may restrict any further transactions among the registrant, the financial

holding company, controlling shareholder, significant shareholder or affiliate and take such other measures as he thinks fit against the registrant, financial holding company, controlling shareholder, significant shareholder or affiliate, if he considers that the transactions or relationship among the registrant, financial holding company, controlling shareholder, significant shareholder or affiliate may expose the registrant to undue risk or could prejudice the interests of policyholders or potential policyholders of the registrant.

Power of Central Bank to collect statistics

12. (1) The Central Bank shall collect statistics in relation to insurance business.

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

Appointment and delegation

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

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

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

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

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

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

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

(2) The Central Bank may establish and maintain an online registry of intermediaries and insurance consultants registered under this Act and the online registry shall be updated quarterly.

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

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

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

Prohibition against disclosure

16. (1) No director, officer or employee of the Central Bank or person acting under the direction of the Central Bank shall disclose any information regarding the business or affairs of a registrant or any of its affiliates or information regarding a policyholder, consumer or other person dealing with a registrant that is obtained in the course of official duties.

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

- (a) any local or foreign regulatory agency or body that regulates financial entities, for regulatory purposes;
- (b) any entity providing compensation or insurance for policyholders and consumers of financial services in Trinidad and Tobago for purposes related to its operations;
- (c) the Financial Intelligence Unit established under the Financial Intelligence Unit of Trinidad and Tobago Act;
- (d) any person designated under any other written law authorizing the disclosure of such information; or
- (e) ICATT, the Caribbean Actuarial Association or other professional association pursuant to sections 81 and 139(2),

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

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

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

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

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

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

- (a) the financial system of Trinidad and Tobago; or

(b) the policyholders, consumers, other customers, creditors or shareholders of such registrant or non-registrant as the case may be,

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

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

(8) Notwithstanding any provision in this section, the Central Bank may publish information relating to the insurance industry including statistics collected under section 12, so long as the publication does not disclose details regarding any particular registrant or policyholder.

(9) Notwithstanding any provision in this section, the Central Bank shall publish or make available to any person on request and on payment of such fee as specified by the Central Bank, documents submitted pursuant to section 145(1)(a) and (b).

(10) Notwithstanding any provision in this section, the Central Bank shall notify the public where action has been taken by the Inspector pursuant to section 101(4).

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

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

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

PART III INSURERS

A. Registration of Insurers

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

20. (1) Subject to subsection (2), for the purposes of this Act, “carrying on insurance business in, or from Trinidad and Tobago” includes but is not limited to any or all of the following:

- (a) making of, or proposing to make, a contract of insurance;
- (b) making of, or proposing to make, as guarantor or surety, any contract of guarantee or suretyship as a business and not merely incidental to any other of the guarantor’s or surety’s legitimate business or activity;

- (c) taking or receiving an application for insurance;
- (d) the collection or receipt of any premium or other consideration for insurance or any part thereof;
- (e) issue of contracts of insurance to persons resident in Trinidad and Tobago or authorized to do business in Trinidad and Tobago; and
- (f) the solicitation, negotiation, procurement or effecting of insurance or renewals thereof,

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

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

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

Restrictions on
carrying on insurance
business

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

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

- (3) A person other than an insurer shall not—
 - (a) describe himself as an insurer; or

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

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

(5) Notwithstanding subsection (1), a foreign company which does not have an established place of business in Trinidad and Tobago may, without being registered under this Part, carry on insurance business in Trinidad and Tobago if its activities relate only to the acceptance of reinsurance ceded by an insurer.

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

(a) require information from, inquire into, and examine the affairs of that person, and it may take any action that the Central Bank sees fit to ensure that the person discontinue the activity; and

(b) apply for an *ex parte* order of a Judge of the High Court, authorizing the Inspector or any person authorized in writing by the Central Bank or any designated member of staff of the Central Bank to enter into the premises where it is suspected that such insurance business is being carried on, to determine whether there is compliance with this Act.

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

(8) Where an examination has been conducted under subsection (7) and the Central Bank is satisfied that the provisions of this Act are being contravened, the Central Bank may seek injunctive relief under section 156.

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

Stated capital
necessary for
registration

22. (1) Subject to subsections (2) and (3), no company shall be registered as an insurer to carry on long-term insurance business or general insurance business unless it has a minimum stated capital of fifteen million dollars.

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

(a) an insurer registered to carry on only long-term insurance business shall have a minimum stated capital of—

(i) five million dollars at the end of the first year;

- (ii) eight million dollars at the end of the second year;
- (iii) eleven million dollars at the end of the third year;
- (iv) thirteen million dollars at the end of the fourth year; and
- (v) fifteen million dollars at all times at the end of the fifth year,

following commencement of this Act;

(b) an insurer registered to carry on only general insurance business shall have a minimum stated capital of—

- (i) three million dollars at the end of the first year;
- (ii) six million dollars at the end of the second year;
- (iii) nine million dollars at the end of the third year;
- (iv) twelve million dollars at the end of the fourth year; and
- (v) fifteen million dollars at all times at the end of the fifth year,

following commencement of this Act.

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

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

- (a) six million dollars by the end of the first year;

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

following commencement of this Act.

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

(6) If an insurer fails to submit a plan when required to do so or fails to implement an accepted plan, the Central Bank may impose any conditions on the registration of the insurer that it considers to be necessary.

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

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

(9) An insurer shall at all times maintain the minimum stated capital required under this section.

23. (1) An insurer which at the commencement of this ^{Companies} Act is registered as an insurer under the former Act ^{registered under} ^{former Act} shall be deemed to have been registered under section 25 and the Central Bank shall, upon receipt of the insurer's certificate of registration issued under the former Act, issue a new certificate of registration duly signed by the Governor, which shall specify the classes and types of insurance business in respect of which the insurer is registered and shall be *prima facie* evidence that the insurer named in the certificate has been registered under this Act.

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

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

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

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

Application for
registration

Schedule 1

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

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

- (a) a statement of the applicant's name and the address of its registered office and head office in Trinidad and Tobago;
- (b) the name, address, nationality, experience, and other relevant information, including the information prescribed in Schedule 5 pertaining to—
 - (i) each director and officer or proposed director and officer and all existing and proposed shareholders holding five per cent or more of any class of shares; or
 - (ii) the principal representative or proposed principal representative of a foreign insurance company under section 26 and any other officers who will be resident in Trinidad and Tobago in the case of an application by a foreign company;
- (c) the name, address, nationality, experience, and other relevant information, including the information prescribed in Schedule 5 pertaining to the appointed actuary and auditor or proposed appointed actuary and auditor;

- (d) a certified statement or where this cannot be produced, such proof as the Central Bank may require of the applicant's ability to meet the requirement of a minimum stated capital of not less than such amounts as may be required pursuant to section 22;
- (e) a certified copy of the articles of incorporation or continuance, by-laws or other constituent document and the certificate of incorporation or certificate of continuance under which the applicant is incorporated, continued or constituted;
- (f) in the case of an application by, or on behalf of a company that has been carrying on business other than that of insurance business prior to the application, a copy of its audited financial statements for the three consecutive years immediately preceding the application, except that where the local company has been functioning for less than three years, a copy of audited financial statements for each year it has been in operation shall be sufficient;
- (g) in the case of an application by, or on behalf of a foreign company that has been carrying on long-term insurance business prior to the application, a copy of the actuarial reports for the three consecutive years immediately preceding the application, except that where the foreign company has been functioning for less than three years, actuarial reports for each year it has been in operation shall be sufficient;
- (h) a business plan for the three consecutive years immediately following the approved commencement date of carrying on insurance business, details of which are prescribed by Regulations made under this Act;

- (i) statement showing its stated capital;
- (j) evidence of payment of the prescribed application fee in Schedule 2;
- (k) details of any refusal from a regulatory authority to carry on any class of insurance business in any other jurisdiction;
- (l) approval, if applicable, from any relevant foreign regulatory authority in respect of the controller of the company; and
- (m) such further information as the Central Bank may require.

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

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

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

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

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

Registration of
company

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

(2) Where the decision is made to refuse an application, the Central Bank shall notify the applicant in writing of its rejection and shall give reasons to the applicant.

(3) The Central Bank shall, upon approval of an application issue a certificate of registration to the applicant duly signed by the Governor, which shall specify the classes and types of insurance business in respect of which the insurer is registered and shall be *prima facie* evidence that the insurer named in the certificate has been registered under this Act.

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

(5) Where the Central Bank imposes terms and conditions on registration under subsection (4), it shall inform the applicant in writing of the reasons for doing so.

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

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

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

(a) may require the insurer to increase its stated capital and to satisfy such additional prudential criteria and any other requirements as the Central Bank considers necessary; and

(b) shall amend the certificate of registration issued under subsection (3) or section 23.

(9) It shall be a condition of every registration that the insurer shall –

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

(b) within five business days of any change in its officers, notify the Central Bank in writing of such change.

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

(11) The accident and sickness class of insurance business of a company described in subsection (10) shall be subject to the same requirements under the Act as those applicable to long-term insurance business.

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

Representative offices
of foreign insurance
company

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

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

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

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

- (a) appoint a person who is ordinarily resident in Trinidad and Tobago to be its principal representative for the purposes of this Act and who shall be responsible for the day to day management of the representative office;
- (b) give the principal representative a registered power of attorney expressly authorizing the principal representative to receive all notices from the Central Bank and shall submit that registered power of attorney to the Central Bank; and
- (c) where a vacancy occurs in the position of the principal representative, fill the vacancy and submit the new registered power of attorney to the Central Bank.

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

- (a) the principal representative is a fit and proper person in accordance with Schedule 5; and
- (b) the foreign insurance company has paid the application fee set out in Schedule 2.

27. (1) An insurer shall not—

- (a) establish a branch outside Trinidad and Tobago unless it has—
 - (i) made an application in writing to the Central Bank;
 - (ii) paid the fee prescribed in Schedule 2; and

Branches and
representative offices

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

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

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

Refusal to register
company

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

- (a) the company has made arrangements for the management of risks, including internal control systems and information technology systems, policies and procedures that will be adequate for the nature and scale of that class or type of insurance business;
- (b) the company has reinsurance arrangements that are adequate for the nature and scale of the insurance risks that it undertakes or plans to undertake;
- (c) the acquirers, controlling shareholders, significant shareholders, directors, officers and appointed actuary, where the company

is required to appoint an actuary under this Act, the company, and those who occupy such other positions as may be designated by the Central Bank, are fit and proper persons in accordance with Schedule 5 to perform their respective roles;

- (d) the acquirers, controlling shareholders and significant shareholders of the company have complied with sections 52 to 54;
- (e) subject to section 30(7), in the case of a company which is carrying on or proposes to carry on some other form of business in addition to insurance business, the carrying on of such other form of business is not or would not be contrary to the interest of policyholders;
- (f) having regard to the knowledge and competence of its officers, the company is, in relation to that class of insurance business, capable of carrying on such business efficiently;
- (g) that the policy and practice of the company in dealing with claims are conducive to the fair, efficient and speedy settlement thereof;
- (h) the business plan for the future conduct and development of the business is sound and feasible; and
- (i) the company is not part of a larger organizational or group structure that would hinder its effective supervision.

(2) A company shall not be registered to carry on insurance business unless, in addition to complying with the requirements of subsection (1), it satisfies the Central Bank that it meets the capital adequacy and liquidity requirements established in accordance with section 82.

(3) The Central Bank shall not register a company to carry on both long-term and general insurance business except as provided in section 23.

Continuous
registration
requirement

29. (1) Where the Central Bank is satisfied that a company meets the requirements under sections 22, 24, 25 and 28 and has approved an application and issued a certificate of registration under this Part, the insurer shall continuously meet all registration requirements under this Part and comply with all terms and conditions of its registration and the requirements of Schedule 5.

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

Restrictions on
activities of insurer

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

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

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

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

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

(5) Subject to subsection (6), an insurer shall not carry on any business other than insurance business.

(6) Notwithstanding subsection (5), an insurance company may carry on—

- (a) the establishment, distribution and sale of collective investment schemes;
- (b) the business of a Mortgage Institution or Trust company set out in the First Schedule of the Financial Institutions Act;
- (c) the business of holding, managing or otherwise dealing in real estate; or
- (d) such other form of business associated with the insurance business for which it is registered.

(7) Where an insurer proposes to carry on any activity under subsection (6)(c), it shall seek the prior approval of the Central Bank.

(8) Where the Central Bank is of the opinion that an insurer registered under the former Act is carrying on a form of business which is not listed in subsection (6) or is contrary to the interest of policyholders, the Central Bank shall direct the insurer to discontinue such form of business or take such other action as it deems fit, within such period as the Central Bank may determine.

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

(10) Notwithstanding subsection (9), an insurer which immediately before the commencement of this Act was also registered as an agent, shall be allowed to carry on both its insurance business and its business as an insurance agency for a period of five years after the commencement of this Act.

(11) An insurer which is allowed to carry on both insurance business and business of an insurance agency pursuant to subsection (10), shall within five years of the commencement of this Act, separate its insurance business from its business of an insurance agency by incorporating a separate entity to carry on its business of an insurance agency and the provisions of section 87 shall apply.

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

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

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

- (a) in the particulars specified in the application of the company; or
- (b) in any information and in the particulars in any documents which the company is required to furnish under section 24,

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

Amendment of articles of incorporation and other constituent documents

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

- (a) has, in writing, approved the proposed alteration; or

(b) has not within twenty business days of receipt of the notification, indicated in writing to the insurer any disapproval of the proposed alteration.

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

(a) the terms and conditions of the insurer's registration; or

(b) the provisions of this Act or any Regulations.

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

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

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

(a) the standard form of proposal;

(b) the standard form of policy;

(c) the standard form of endorsement;

(d) the standard form of application; and

(e) such other information as the Inspector may specify.

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

(2) The Inspector may, within twenty business days of receiving a standard form and any other information pursuant to subsection (1), prohibit an insurer from issuing a new or amended standard form under this section if—

(a) the Inspector requests further information;
or

(b) such issue, in the opinion of the Inspector, is fraudulent, unjust, imprudent, or not in the public interest,

and the Inspector shall give written reasons for the prohibition.

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

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

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

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

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

- (a) any of the criteria specified in Schedule 5, is not or has not been fulfilled or is unlikely to be, or may not have been fulfilled in respect of the insurer;
- (b) the insurer has failed to comply with any obligation imposed on it under this Act or its Regulations, or any other written law;
- (c) it has failed to comply with any obligation imposed on it by any written law for the prevention of money laundering or terrorist financing including the Proceeds of Crime Act, the Anti-Terrorism Act, the Financial Intelligence Unit of Trinidad and Tobago Act and any Regulations made thereunder;
- (d) the insurer has provided the Central Bank with false, misleading or inaccurate information;
- (e) the Central Bank has subsequently discovered that any information provided under section 24 which led to the registration of the insurer is false, misleading or inaccurate;
- (f) the interests of policyholders or potential policyholders of the insurer are in any way threatened, whether by the manner in which the insurer is conducting or proposes to conduct its affairs;
- (g) the insurer has not carried on insurance business in Trinidad and Tobago within the period of twelve months from the day on which the certificate of registration was issued or having carried on insurance business in Trinidad and Tobago, has subsequently not done so for any period of more than six months;

- (h) a receiver or manager of the insurer has been appointed;
 - (i) the insurer fails to comply with any requirement, prohibition, compliance direction, or any other direction issued by the Central Bank, the Inspector or the Board under this Act;
 - (j) the insurer becomes illiquid and is unable to meet its obligations;
 - (k) the holder of any debenture secured by a charge has taken possession of any property of the insurer comprised in, or subject to, the charge;
 - (l) the insurer has merged or has been amalgamated with another company;
 - (m) the business of the insurer is no longer the business for which it was registered;
 - (n) the Board is satisfied that the policy and practice of the insurer in dealing with claims are unfair or that there is unreasonable delay in the settlement of claims payable under policies issued by it;
 - (o) the insurer is in breach of section 82;
 - (p) the reinsurance arrangements of the insurer are not adequate;
 - (q) a final judgment obtained against the insurer in any court and in relation to which there is no stay of execution and the judgment remains unsatisfied for at least forty business days;
 - (r) an insurer has an affiliate located outside Trinidad and Tobago and the relevant supervisory authority in that country has withdrawn from the affiliate an authorization or registration corresponding to any which may be conferred by this Act;
- or

(s) in the case of an affiliate, wherever incorporated, of an insurer—

- (i) a winding up order has been made;
- (ii) a resolution for its voluntary winding up has been passed; or
- (iii) an order for the appointment of a receiver has been made.

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

- (a) the grounds upon which the Board intends to revoke the registration;
- (b) the date on which such proposed revocation is to take effect; and
- (c) the place and period of time during which the insurer may make written representations to the Board.

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

- (a) revoke the registration; or
- (b) restrict the registration pursuant to section 35.

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

(5) Where the Board decides to revoke the registration, the notice of revocation shall include the date on which the revocation takes effect, a statement of the grounds for the decision and the right of appeal of the insurer under subsection (9) and section 253.

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

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

- (a) utilities;
- (b) rent; and
- (c) administrative expenses of maintaining the business of the insurer but not including policyholder liabilities,

and any such costs shall be paid by the insurer.

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

(9) Where an insurer is aggrieved by a decision of the Board to revoke its registration pursuant to subsection (5), that insurer may appeal that decision in accordance with section 253.

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

(11) When a decision is made to revoke a registration of all classes of insurance business for which an insurer is registered, the Central Bank shall

apply to the High Court for an order for the winding up of the insurer if the local insurer is under liability to its policyholders.

35. (1) Subject to section 101, where it appears to the Board that there are grounds on which its power to ^{Restriction of registration} revoke the registration of an insurer under section 34 is exercisable, the Board may consider the circumstances and restrict the registration of the insurer instead of revoking it.

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

(3) Directions issued under this section may—

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

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

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

- (a) in the case of an insurer, to a fine of six hundred thousand dollars; or

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

Notice of restriction
or variation of
restriction

36. (1) Where the Board proposes to—

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

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

(2) A notice of intention to restrict or to vary a restriction shall specify the proposed restriction or the proposed variation, as the case may be, and shall state the grounds on which the Board proposes to act and particulars of the insurer's representations under subsection (4).

(3) Where—

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

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

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

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

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

(6) The Board shall serve on the insurer and on any such person served with notice in subsection (3), written notice of its decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision and shall give particulars of the appeal process under section 253.

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

38. (1) The Board may give an insurer directions— Directions to insurers

- (a) when giving a notice of intention to revoke the registration of an insurer under section 34;
- (b) at any time after such notice of intention to revoke its registration has been given to the insurer; or
- (c) when giving a notice of revocation of its registration under section 40 and in the case of the voluntary winding up of the insurer as referred to in section 108.

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

- (a) require the insurer to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;

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

(3) An insurer who fails to comply with any requirement or contravenes any prohibition imposed by direction under this section commits an offence and is liable on summary conviction to a fine of five million dollars.

Notification and
confirmation of
directions

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

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

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

(4) Where the Board decides to confirm, vary or cancel a direction it shall serve written notice of its decision on the insurer and such notice shall state particulars of the appeal process under section 253.

40. (1) The Board shall revoke the registration of an insurer if— Mandatory revocation and restriction in cases of emergency

- (a) a winding up order has been made against it;
- (b) all its assets have passed into the ownership of another person; or
- (c) a resolution for its voluntary winding up has been passed in accordance with section 108.

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

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

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

(4) A notice under subsection (3) shall state the reasons for which the Board has acted and, in the case of a notice imposing or varying a restriction, give particulars of the insurer's right to appeal under section 253.

(5) Where—

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

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

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

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

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

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

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

41. (1) An insurer may make an application to the Central Bank to have its registration voluntarily revoked at any time after it has been issued a certificate of registration under section 23 or 25. ^{Voluntary revocation and restriction}

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

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

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

- (a) informing the public of its application to have its registration voluntarily revoked and the reasons thereof;
- (b) requiring persons or their legal personal representative to submit a claim to the insurer within sixty business days from the date of publication in the *Gazette* or daily newspapers, whichever is published later; and

(c) containing any other information required by the Central Bank.

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

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

(7) Where the Central Bank is satisfied that the insurer has made all reasonable efforts to discharge its liabilities to policyholders and no sufficient discharge can otherwise be obtained, the Central Bank shall apply to the High Court for an order—

- (a) to revoke the registration of the insurer;
- (b) to apply the assets to any outstanding policyholders' liabilities;
- (c) to receive payment of any money from the insurer in respect of outstanding policyholder liabilities of the insurer; and
- (d) for directions on any other matter.

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

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

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

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

B. *Separate Accounts*

Separate accounts

42. (1) Subject to section 43 and the Regulations, every insurer shall establish and maintain—

(a) separate accounts for—

(i) its Trinidad and Tobago policies;
and

(ii) its foreign policies,

for each type of insurance business; and

(b) a separate shareholder account,

in such form and subject to such conditions or restrictions as may be specified by the Inspector in writing.

(2) Subject to subsection (1), the Inspector may require an insurer to maintain subaccounts for a class or subclass of its insurance business.

(3) An insurer shall maintain adequate assets in its Trinidad and Tobago policy account to support its liabilities to its Trinidad and Tobago policyholders.

(4) Notwithstanding subsection (3), the Inspector may direct the insurer to maintain and hold such additional assets in its Trinidad and Tobago policy account as may be specified for the purpose of safeguarding the interests of Trinidad and Tobago policyholders.

(5) Without prejudice to the generality of subsection (3), an insurer shall comply with the requirements of Schedule 10.

Participating account **43.** (1) An insurer shall maintain accounts in respect of participating policies, which shall be maintained separately from accounts in respect of other policies.

(2) A participating account shall include a participating surplus account, in such form and subject to such conditions or restrictions as may be specified by the Inspector in writing.

C. *Catastrophe Reserve Fund Requirements*

Catastrophe Reserve Fund **44.** (1) Every insurer carrying on property insurance business shall establish and maintain at all times in respect of catastrophe risks a Catastrophe Reserve Fund, in such form and subject to such conditions or restrictions specified by the Inspector in writing.

(2) Every insurer under subsection (1) shall, at the end of each financial year, make an appropriation from its retained earnings to the Catastrophe Reserve Fund in an amount not less than twenty per cent of its net written premium income on its property insurance business for that year.

(3) Subsection (2) shall not apply where the Catastrophe Reserve Fund is equal to, or exceeds the net written premium income on the insurer's property insurance business for that year.

(4) For the purposes of this Part—

(a) “recoveries” includes reinsurance recoveries; and

(b) “ultimate net loss” means the liability of an insurer arising out of a catastrophe loss after deducting an amount for salvages and recoveries, but before the deduction of any catastrophe excess of loss reinsurance cover.

(5) An insurer shall not reduce the value of the Catastrophe Reserve Fund, unless—

- (a) catastrophe losses in excess of two million dollars have occurred and the ultimate net loss of the insurer is estimated to exceed seven point five per cent of its capital;
- (b) the insurer ceases to write property insurance business and either a winding up order has been made against the insurer or the insurer is no longer under liability for policies relating to property insurance business relating to catastrophe risks; or
- (c) the value of the Catastrophe Reserve Fund at the end of a financial year, after any reduction pursuant to paragraph (a) or (b), is more than one hundred and twenty per cent of the net written premium income on property insurance business for that year, in which case the maximum reduction by the insurer shall be twenty per cent of the net written premium income on the insurer's property insurance business at the end of that financial year.

(6) An insurer who contravenes this section commits an offence and is liable on summary conviction to a fine of five million dollars.

45. (1) The insurer shall submit to the Inspector Insurer to submit statements relating to Catastrophe Reserve Fund statements relating to its Catastrophe Reserve Fund, in such form as specified by the Inspector in writing, showing details of appropriations pursuant to section 44(2) and reductions pursuant to section 44(5) within thirty business days after the end of each financial year and at any other time as required by the Inspector.

(2) An insurer who contravenes the provisions of subsection (1) commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars.

Inspector may
request further
information

46. Where it appears to the Inspector that a statement furnished to the Central Bank under section 45(1) is in any respect unsatisfactory, incomplete, inaccurate, misleading or otherwise fails to comply with the requirement of that section, the Inspector may require information from the insurer within a period as specified by the Inspector.

D. Ownership of Insurers

Restructuring of
ownership may be
required

47. (1) Where an insurer is a member of a related group in which there are two or more financial entities, the Central Bank shall, in writing, direct the controlling shareholder to engage in a restructuring to form a financial holding company, such that the local insurer is directly controlled by the financial holding company and the resulting structure allows for consolidated supervision.

(2) In lieu of, or in addition to, a restructuring under subsection (1), the Central Bank may direct the controlling shareholder of the insurer to undertake any other measures that are necessary or appropriate to identify, assess and manage—

- (a) the relationship among the insurer and other members of the related group; and
- (b) the risks resulting from such relationship.

(3) In directing a restructuring under subsection (1), the Central Bank shall require that the financial holding company be the direct subsidiary of the ultimate parent company of the related group.

(4) A restructuring directed under subsection (1) shall be carried out within twelve months of the date of the direction, however, the Central Bank may, in its discretion, extend this period by notice in writing to the local insurer to a maximum of two years from the date of such direction.

(5) Where a restructuring is completed under this section and the Central Bank is satisfied that the requirements for a permit under section 51 have been met, the Central Bank shall grant a permit and the provisions of section 51 shall apply *mutatis mutandis* to the grant of a permit under this section.

48. (1) Where a related group comprises entities that engage in both non-financial activities and financial activities and such group contains at least two financial entities, one of which is an insurer, the Central Bank shall require a restructuring in accordance with section 47, to separate the financial activities from the non-financial activities.

Restructuring of group where entities are engaged in both financial and non-financial activities

(2) Where a financial holding company is formed under subsection (1), the other financial entities in the related group shall be either directly or indirectly controlled by the financial holding company, an insurer registered under this Act or a licensee under the Financial Institutions Act.

49. The Central Bank shall not require restructuring under section 47—

a Restructuring not required in certain cases

(a) where an insurer is directly controlled by a foreign company that provides financial services and—

(i) is subject to regulation by a foreign regulatory authority acceptable to the Central Bank and there are no obstacles to obtaining information from that regulatory authority; or

- (ii) does not directly or indirectly control an entity that engages in non-financial activities; or
- (b) where the insurer is a member of a related group which comprises only financial entities and all the insurers in the related group—
 - (i) are controlled by a holding company that only performs the activities stated in section 51(1); or
 - (ii) are controlled by a licensee under the Financial Institutions Act or an insurer registered under this Act.

Restrictions on
activities of financial
holding company

50. (1) A financial holding company shall not carry on any activity other than the activities stated in section 51(1).

(2) A financial holding company shall not guarantee on behalf of any person the payment or repayment of any sum of money, except where the person is a member of the financial group.

(3) Subject to and in accordance with the limits permitted under sections 87, 89 and 90 on a consolidated basis, a financial holding company may invest its funds in the shares of, or ownership interests in any entity or make any other investment that its directors consider necessary or advisable to manage the financial holding company's liquidity.

(4) A financial holding company which contravenes this section commits an offence and is liable on summary conviction—

- (a) to a fine of five million dollars; and
- (b) in the case of a continuing offence, to a fine of fifty thousand dollars for each day that there is non-compliance.

51. (1) A holding company that does not carry on any activity other than— Requirement for a permit

(a) acquiring of financial entities and administering the holdings of the financial group; or

(b) providing management, advisory, financing, accounting, information processing services to entities in the financial group as well as such other services approved by the Central Bank,

and only controls, whether directly or indirectly, financial entities and is not itself an insurer, shall apply for a permit under this section.

(2) Where a holding company is a foreign company but is excluded from a restructuring under section 49(a), the foreign company shall not be required to apply for a permit under this section.

(3) Notwithstanding section 49(b)(i), a holding company in a related group of financial entities that only performs the activities stated in subsection (1) shall apply for a permit under this section.

(4) An application for a permit to carry on the business of a financial holding company shall be accompanied by the following information:

(a) capital resources and capital structure, including the identity of its controlling shareholder and significant shareholders;

(b) organizational, managerial and legal structures;

(c) composition of the board of directors;

(d) fitness and propriety of directors, officers, controlling shareholder and significant shareholders in accordance with the criteria in Schedule 5;

- (e) audited financial statements for the past three years, if applicable;
- (f) strategic and operational business plans;
- (g) financial plans, including projections for the next three years;
- (h) sources of funds for initial and ongoing costs;
- (i) evidence of payment of fees under Schedule 2; and
- (j) any other information that the Central Bank may require.

(5) In determining whether to grant a permit, the Central Bank shall—

- (a) take into account the information referred to in subsection (4), and in particular, whether the applicant has satisfied the criteria in Schedule 5, or may be as such to prejudice the interests of the policyholders of the insurer; and
- (b) determine whether ownership of shares by the applicant, given the corporate affiliations or structure of the applicant, will hinder effective supervision under this Act or would be likely to prejudice the interests of policyholders of the insurer.

(6) The Central Bank may attach conditions to a permit under this section, including, without limitation, conditions to ensure that—

- (a) the capital available to the financial group is adequate or will not jeopardize the financial position of the insurer or insurers, and any licensee under the Financial Institutions Act within the financial group;
- (b) no double or multiple gearing or excessive leveraging of capital exists or will take place;

- (c) the financial group is structured and managed in such a manner that it may be supervised by the Central Bank;
- (d) each member of the financial group maintains adequate internal control mechanisms enabling it to provide any data or information relevant to its supervision; and
- (e) activities or operations of subsidiaries or affiliates that may be injurious to the insurer or insurers and any licensee under the Financial Institutions Act that are members of the financial group are prevented,

and may, at any time, vary or remove such conditions, or add further conditions to such permit.

(7) Where a financial holding company fails to comply with any condition of its permit, the Central Bank shall issue directions to the financial holding company and section 155 shall apply *mutatis mutandis* to this section.

(8) A financial holding company that fails to comply with any condition of its permit commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and in the case of a continuing offence to a fine of sixty thousand dollars for each day that the offence continues.

(9) When a financial holding company is required to restructure under section 47 or 48, the Central Bank will take into consideration the members of the related group in determining whether this Act or the Financial Institutions Act shall take precedence for purposes of requiring a restructuring based on the relative size of activities of the group in the banking sector and in the insurance sector.

Requirements for
controlling
shareholder

52. (1) Notwithstanding any other law but subject to section 54, a person or a person on whose behalf shares are held either in trust or by a nominee, shall not become a controlling shareholder of an insurer without first obtaining a written permit from the Central Bank.

(2) Where a person becomes beneficially entitled after probate of a will or a grant of letters of administration to shares such as to make him a controlling shareholder, he shall apply for a permit within one month of this fact coming to his knowledge.

(3) The Central Bank may, by notice in writing, require any shareholder of an insurer to transmit to it written information—

(a) as to whether that shareholder holds any voting shares in the insurer as beneficial owner or as trustee; and

(b) if he holds them as trustee, the person for whom he holds them either by name or by such other particulars sufficient to enable those persons to be identified, and the nature of their interest, and the shareholder shall comply with the requirement within such time as may be specified in the notice.

(4) A person who contravenes subsection (3) commits an offence.

(5) A person who holds shares that entitle him to exercise or control more than fifty per cent of the voting power at any general meeting of an insurer prior to the commencement of this Act, is deemed to hold a permit under this section.

(6) In determining whether a permit should be granted, the Central Bank shall take into account, without limitation the criteria in Schedule 5 as to

whether the proposed shareholder is a fit and proper person or may be such as to prejudice the interests of the policyholders of the insurer and whether ownership by a controlling shareholder who is—

- (a) part of a group of relatives each of whom is substantially dependent upon the same source of income; or
- (b) in the case of a company, an affiliate of another company,

would be likely to prejudice the interests of policyholders of the insurer.

(7) Where a permit is granted or deemed to be granted under this section, the controlling shareholder shall—

- (a) provide the Central Bank with such relevant information as the Central Bank may require from time to time; and
- (b) comply with such terms and conditions as may be specified in the permit.

(8) Where—

- (a) a controlling shareholder is no longer a fit and proper person;
- (b) a person under subsection (2) is not granted a permit;
- (c) after commencement of this Act, a person who, without being granted a permit under this section, obtains shares such as to make him a controlling shareholder,

that person shall be notified in writing by the Central Bank of this fact and he shall be required to take such steps to reduce his shareholding in such manner and in such time as may be specified by the Central Bank.

- (9) Where the Central Bank gives a notice—
- (a) under subsection (8)(a) and (b), the person is entitled to receive dividends and to exercise voting rights until such time as the shares are disposed of in accordance with subsection (8) or an order of the High Court is made under this section; and
 - (b) under subsection (8)(c), a person shall not be entitled to receive any dividends or to exercise any voting rights.

(10) Where a controlling shareholder is notified that he is no longer fit and proper he may, within the period of ten business days commencing the day after which the notice is received, make written representations to the Central Bank which shall take such representations into account in determining whether to withdraw or vary the notice.

(11) Where a person fails to comply with the Central Bank's requirements under subsection (8), his shares shall be subject to disposal in accordance with subsections (12) and (13), without prejudice to any other penalty which may be incurred by any party pursuant to this Act.

(12) Where the circumstances so warrant, the Central Bank may apply to the High Court for an order for the disposal of shares on such terms and conditions as the High Court deems appropriate.

(13) Where shares referred to in subsection (10) are sold in pursuance of an order of the High Court the proceeds of sale, less the costs of the sale, shall be paid into the High Court or into such fund as the High Court may specify for the benefit of the persons beneficially interested in the disposed shares, or to such person as the High Court may direct.

(14) Where a controlling shareholder fails to comply with any condition of its permit, the Central Bank shall issue directions to the controlling shareholder and section 155 shall apply *mutatis mutandis* to this section.

(15) A person who—

- (a) knowingly or wilfully supplies false information to the Central Bank under this section commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and to imprisonment for two years; or
- (b) contravenes any other provision of this section commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and to imprisonment for two years and in the case of a continuing offence, to a fine of sixty thousand dollars for each day that the offence continues.

53. (1) Notwithstanding any other law but subject to Requirements of significant shareholder section 54, a person or a person on whose behalf shares are held either in trust or by a nominee, shall not become a significant shareholder of an insurer without first obtaining a written permit from the Central Bank.

(2) Where a person becomes beneficially entitled to shares, after probate of a will or a grant of letters of administration, such as to make him a significant shareholder, he shall apply for a permit within one month of this fact coming to his knowledge.

(3) A person who, on the coming into force of this Act, holds shares that entitle him to exercise twenty per cent or more of the voting power at any general meeting of an insurer is deemed to hold a permit under this section for such shares.

(4) In determining whether a permit should be granted, the Central Bank shall take into account, without limitation the criteria contained in Schedule 5 as to whether the proposed shareholder is a fit and proper person or may be such as to prejudice the interests of the policyholders of the insurer and whether ownership by a significant shareholder who is—

- (a) part of a group of relatives each of whom is substantially dependent upon the same source of income; or
- (b) in the case of a company, an affiliate of another company,

would be likely to prejudice the interests of policyholders of the insurer.

(5) Where a permit is granted or deemed to be granted under this section the significant shareholder shall—

- (a) provide the Central Bank with such relevant information as the Central Bank may require from time to time; and
- (b) comply with such terms and conditions as may be specified in the permit.

(6) Where—

- (a) a significant shareholder is no longer a fit and proper person;
- (b) a person under subsection (2) is not granted a permit; or
- (c) after the commencement of this Act, a person who, without being granted a permit under this section, obtains shares such as to make him a significant shareholder,

that person shall be notified in writing by the Central Bank of this fact and he shall be required to take such steps to reduce his shareholding in such manner and in such time as may be specified by the Central Bank.

(7) Where the Central Bank gives a notice—

(a) under subsection (6)(a) and (b), the person shall be entitled to receive dividends and to exercise his voting rights until such time as the shares are disposed of in accordance with subsection (6) or an order of the High Court is made under this section; and

(b) under subsection (6)(c), a person shall not be entitled to receive any dividends or to exercise any voting rights.

(8) Where a significant shareholder is notified that he is no longer fit and proper he may, within the period of ten business days commencing the day after which the notice is given, make written representations to the Central Bank which shall take such representations into account in determining whether to withdraw or vary the notice.

(9) Where a person fails to comply with the Central Bank requirements under subsection (6), his shares shall be subject to disposal in accordance with subsections (10) and (11), without prejudice to any other penalty which may be incurred by any party pursuant to this Act.

(10) Where the circumstances so warrant, the Central Bank may apply to the High Court for the disposal of shares on such terms and conditions as the High Court deems appropriate.

(11) Where shares referred to in subsection (10) are sold in accordance with an order of the High Court, the proceeds of sale, less the costs of the sale, shall be paid into the High Court or into such fund as the High Court may specify for the benefit of the persons beneficially interested in the disposed shares or to such person as the High Court may direct.

(12) Where a significant shareholder fails to comply with any condition of its permit, the Central Bank shall issue directions to the significant shareholder and section 155 shall apply *mutatis mutandis* to this section.

(13) A person who—

(a) knowingly or wilfully supplies false information to the Central Bank under this section; or

(b) contravenes any other provision of this section,

commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars or to imprisonment for two years and in the case of a continuing offence to a fine of sixty thousand dollars for each day that the offence continues.

Requirements of
acquirer

54. (1) A financial entity or a significant or controlling shareholder of a financial entity shall not become an acquirer of an insurer or of the financial holding company of an insurer without obtaining a permit issued by the Central Bank under this section.

(2) Where a financial entity or a significant or controlling shareholder of a financial entity has been issued a permit to become an acquirer under this section, such acquirer shall not become a significant or controlling shareholder of the insurer without applying for a permit under section 52 or 53 as appropriate.

(3) In considering an application for an acquirer to become a significant or controlling shareholder the Central Bank shall take into account the matters listed in subsection (5) and the provisions of this section shall apply *mutatis mutandis* to section 52 or 53.

(4) An application for a permit under subsection (1), shall be made in writing by the proposed acquirer and submitted to the Central Bank together with such information as the Central Bank may require.

(5) In determining whether to issue a permit to the proposed acquirer, the Central Bank shall take into account such relevant matters including, without limitation—

- (a) the criteria set out in Schedule 5;
- (b) the size and concentration of economic power in the combination of the proposed acquirer and the insurer, holding company or the financial holding company of the insurer; and
- (c) whether the business or a part of the business of the proposed acquirer, insurer, holding company or financial holding company of the insurer has failed or is being conducted in an unlawful or unsound manner or is otherwise in an unsound condition.

(6) In considering the criteria referred to in subsection (5)(b), the Central Bank shall take into account, without limitation—

- (a) the combined market share in Trinidad and Tobago of the insurer and any financial entity affiliated with the insurer, the proposed acquirer and any financial entity that is affiliated with the proposed acquirer; and
- (b) whether the size of, and concentration of economic power in, the combination of the proposed acquirer and the insurer will prevent or lessen substantially, or is likely to prevent or lessen substantially, competition in the financial services industry in Trinidad and Tobago.

(7) Subject to subsection (8), after due consideration of the matters referred to in subsection (5), the Central Bank may—

- (a) issue a permit to the proposed acquirer;

- (b) refuse to issue a permit to the proposed acquirer; or
- (c) issue a permit to the proposed acquirer subject to such conditions, requirements or restrictions as the Central Bank deems appropriate.

(8) Where the combined market share in Trinidad and Tobago of the insurer and any financial entity affiliated with the insurer, the proposed acquirer and any financial entity that is affiliated with the proposed acquirer would exceed forty per cent, the Central Bank shall forward to the Minister for his approval, the application referred to in subsection (4), together with its recommendation and any other relevant information.

(9) In determining whether or not to approve the issue of a permit to the proposed acquirer, the Minister shall consult with the Central Bank and shall take into account the public interest, which shall include, without limitation—

- (a) the interests of the financial services industry in Trinidad and Tobago; and
- (b) the interests of consumers of financial services in Trinidad and Tobago.

(10) After due consideration of the matters referred to in subsection (9), the Minister may—

- (a) approve the issuance of a permit to the proposed acquirer;
- (b) refuse approval of the issuance of a permit to the proposed acquirer; or
- (c) approve the issuance of a permit to the proposed acquirer subject to such conditions, requirements or restrictions as the Minister thinks appropriate,

and the Central Bank shall act accordingly.

(11) Where the issuance of a permit is refused, pursuant to subsection (7)(b) or (10)(b), the reasons for the refusal shall be sent to the applicant.

(12) The provisions of section 52(2) and (4) to (13) shall apply *mutatis mutandis* to this section.

(13) Where an acquirer fails to comply with any condition of its permit, the Central Bank shall issue directions to the acquirer and section 155 shall apply *mutatis mutandis* to this section.

(14) A person who contravenes any provisions of this section commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars or to imprisonment for two years and in the case of a continuing offence, to a fine of sixty thousand dollars for each day that the offence continues.

55. (1) Where a permit has been granted to a person who is a significant shareholder to become a controlling shareholder under this Part, the Central Bank shall revoke the significant shareholder permit prior to issuing the controlling shareholder permit. ^{Revocation of permits}

(2) Where a permit has been granted to a person who is a controlling shareholder to become a financial holding company under this Part, the Central Bank shall revoke the controlling shareholder permit prior to issuing the financial holding company permit.

(3) Where the Central Bank is satisfied that a permit which has been granted under this Part is no longer required as a result of a decrease in a person's shareholding, the Central Bank shall revoke the permit.

(4) The Central Bank may revoke the permit of a financial holding company in accordance with section 34, 40 or 41 and the provisions of such sections shall apply *mutatis mutandis* to this section.

Information required
from shareholders

56. The Central Bank may, by notice in writing, require any shareholder of an insurer to submit written information—

- (a) as to whether that shareholder holds any voting shares in the insurer as beneficial owner or as trustee or nominee; and
- (b) if he holds those voting shares as trustee or nominee, the person for whom he holds them either by name or by such other particulars sufficient to enable those persons to be identified, and the nature of their interest,

and the shareholder shall comply with the requirement within such time as may be specified in the notice.

E. Transfer and Amalgamation

Application for
transfer or
amalgamation

57. (1) Notwithstanding any other law, a transfer or an amalgamation shall not take place where one of the transferring or amalgamating companies is an insurer or the financial holding company of an insurer, without the prior approval in writing of—

- (a) the Central Bank pursuant to section 61(2);
or
- (b) the Minister pursuant to section 62(3).

(2) An application for approval under subsection (1) shall be made in writing, jointly, by all the companies proposing to transfer or amalgamate, and the following documents shall be submitted to the Central Bank along with the application:

- (a) in the case of an amalgamation, the proposed amalgamation agreement referred to in section 221 of the Companies Act, the scheme of amalgamation and the resolution of the board of directors approving the amalgamation; and

- (b) in the case of a transfer, the proposed transfer agreement, the scheme of transfer and the resolution of the board of directors approving the transfer,

and such further information as the Central Bank may require.

58. (1) A scheme shall set out the terms of the agreement or deed under which it is proposed to effect the transfer or amalgamation and shall contain such further provisions as are necessary to give effect thereto. Submission of scheme of transfer or amalgamation

(2) The following documents shall be submitted to the Central Bank together with the scheme of transfer or amalgamation:

- (a) audited financial statements as at a date to be specified by the Central Bank, of the companies engaged in the transfer or amalgamation;
- (b) audited returns as at a date to be specified by the Central Bank, of the companies engaged in the transfer or amalgamation;
- (c) projected financial statements showing the financial position after amalgamation or transfer;
- (d) a detailed list of outstanding claims as at a date to be specified by the Central Bank, of the companies engaged in the transfer or amalgamation;
- (e) a copy of the actuarial and other reports, if any, upon which the scheme was founded;
- (f) a copy of the proposed notice to be published in the *Gazette* and draft letter to policyholders;
- (g) a draft copy of the statutory declarations as required under the Companies Act;

- (h) reinsurance arrangements for policies to be transferred; and
- (i) any other documents as may be required by the Central Bank.

(3) The Central Bank may cause a report on the scheme to be made by an independent actuary and shall cause a copy of the report to be sent to each of the companies engaged in the transfer or amalgamation.

(4) All expenses incurred by the Central Bank in obtaining the report of any actuary on the scheme shall be defrayed by the companies engaged in the transfer or amalgamation, and any sum due in respect of those expenses may be recovered summarily as a civil debt by the Central Bank from the companies either jointly or severally.

Procedure prior to
confirmation of
scheme

59. (1) Where the percentage of any market share in Trinidad and Tobago of the transferee or amalgamated company and any financial entity which will be affiliated with it would not exceed forty per cent, the Central Bank shall give directions concerning—

- (a) the publication of advertisements of the scheme;
- (b) the giving of notices to shareholders, policyholders or creditors of the companies; and
- (c) the holding of meetings of any insurer or financial holding company affected,

and such directions shall be complied with by the person to whom they are given.

(2) Where the Central Bank is satisfied that the scheme of transfer or amalgamation is ready for inspection, the Central Bank shall direct the companies to publish in the *Gazette* and in at least two daily newspapers circulated in Trinidad and Tobago as may be approved by the Central Bank, a notice of intention to transfer or amalgamate within twenty business days of the date of such direction.

(3) The scheme shall be open for inspection by any policyholder or shareholder affected by it, for a period of fifteen business days after the publication of the notice referred to in subsection (2), at the office of each company engaged in the transfer or amalgamation.

(4) Any person who objects or is aggrieved by the proposed transfer or amalgamation shall inform the Central Bank and the companies of his objection either during the period of inspection or within twenty business days after the expiration of such period of inspection.

(5) After the period of objection under subsection (4), the Central Bank shall notify the companies and any person who objects to, or is aggrieved by the transfer or amalgamation of the date for the hearing of the confirmation of the scheme.

(6) At the hearing, the companies are entitled to appear and to be heard either through one of its officers or through an Attorney-at-law.

(7) The Central Bank may hear such other evidence as the Central Bank considers necessary and any person who, in the opinion of the Central Bank, is likely to be affected by the scheme is entitled to be heard.

60. (1) The Central Bank shall inform the companies of its decision at the hearing and shall give notification in writing of such decision within five business days of the date of the hearing. Confirmation of scheme of transfer or amalgamation

(2) Where the Central Bank confirms the scheme, it shall be binding on all persons and shall have effect notwithstanding anything in the articles of incorporation or continuance, by-laws or other constituent document of the companies.

(3) Where the Central Bank refuses to confirm a scheme, it shall include reasons for its refusal in the notification under subsection (1).

Approval of transfer
or amalgamation by
Central Bank

61. (1) In determining whether to approve a proposed transfer or amalgamation, the Central Bank shall consider the following:

- (a) the terms of the proposed transfer or amalgamation agreement and any amendments thereto;
- (b) the proposed changes to the articles of incorporation or continuance of the companies;
- (c) the criteria set out in Schedule 5 as it applies to all companies proposing to transfer or amalgamate;
- (d) the size and concentration of economic power in the companies engaged in the transfer or amalgamation including—
 - (i) the size of the proposed transferee or amalgamated company in terms of any combined market share that will be serviced or controlled by the proposed transferee or amalgamated company in Trinidad and Tobago;
 - (ii) the size of any of the affiliates of the proposed transferee or amalgamated company; and
 - (iii) whether such size and concentration will prevent or lessen substantially, or is likely to prevent or lessen substantially, competition in the financial services industry in Trinidad and Tobago;
- (e) whether the business or a part of the business of the—
 - (i) companies engaged in the transfer or amalgamation; or

(ii) holding companies of the transferee or any of the amalgamating companies,

has failed or is being conducted in an unlawful or unsound manner or is otherwise in an unsound condition; and

(f) any other relevant matters as determined by the Central Bank.

(2) After due consideration of the matters referred to in subsection (1) and after the scheme of transfer or amalgamation has been confirmed pursuant to section 60(2), the Central Bank may—

(a) approve the proposed transfer or amalgamation and may impose conditions, restrictions or requirements including publishing requirements; or

(b) refuse the proposed transfer or amalgamation.

62. (1) Where the Central Bank has received an application for a transfer or amalgamation under section 57(2) and all the documents required under section 58, if the Central Bank determines that the percentage of any combined market share in Trinidad and Tobago of the proposed transferee or amalgamated company and any financial entity that will be affiliated with it would exceed forty per cent, the Central Bank shall forward to the Minister the application for his approval, the proposed transfer or amalgamation agreement and any other relevant information together with its recommendation.

(2) In determining whether to approve the proposed transfer or amalgamation, the Minister shall consult with the Central Bank and shall take into account the public interest and the matters prescribed in sections 54(9) and 61(1).

- (3) After due consideration, the Minister may—
- (a) approve the proposed transfer or amalgamation subject to the confirmation of the scheme of transfer or amalgamation and on such conditions, requirements or restrictions as he deems appropriate; or
 - (b) refuse the proposed transfer or amalgamation.

(4) Where the Minister has given approval subject to the confirmation of the scheme of transfer, sections 59 and 60 shall then apply *mutatis mutandis* to this section.

Miscellaneous
transfer or
amalgamation

63. (1) Where the Central Bank or the Minister refuses the proposed transfer or amalgamation, the Central Bank or the Minister shall give notice in writing of its decision and reasons for so doing.

(2) The companies shall submit copies of any approval of the proposed amalgamation by the Central Bank or the Minister and the confirmation of the scheme of amalgamation by the Central Bank to the Registrar of Companies and the Registrar of Companies shall not issue a certificate of amalgamation under the Companies Act unless the Registrar of Companies receives these documents.

(3) A person who contravenes section 57(1) or who breaches any condition, requirement or restriction attached to an approval commits an offence and is liable on summary conviction to a fine of six hundred thousand dollars and in the case of a continuing offence to a fine of sixty thousand dollars for each day that the offence continues.

(4) A purported transfer or amalgamation done in contravention of sections 57 to 63 shall be null and void, but shall be without prejudice to the accrued rights of any *bona fide* party without notice.

(5) The Minister may by Order exempt transfers below a specified threshold from the requirements of sections 57 to 63.

(6) Where the Central Bank or the Minister has approved a transfer or amalgamation, the transfer or amalgamation agreement shall not be amended without prior written approval of the Central Bank or the Minister.

64. Where any class of insurance business carried on by an insurer is transferred to, or amalgamated with the insurance business of another insurer, the insurer to which the insurance business is transferred or the insurer carrying on the amalgamated insurance business shall, within twenty business days after the transfer or the amalgamation, submit to the Central Bank—

Return to be made in case of transfer or amalgamation

- (a) a certified copy of the agreement or deed under which the transfer or the amalgamation was effected;
- (b) a statutory declaration made by the Chairman of the board of directors of the insurer—
 - (i) specifying every payment made or to be made to any person in respect of the transfer or amalgamation; and
 - (ii) stating that to the best of his knowledge and belief no other payment, other than those specified has been or is to be made in monies, policies, bonds, valuable securities, property of any description or any other valuable consideration, by or with the knowledge of any parties to the transfer or amalgamation;

- (c) a copy of the registered scheme of transfer;
and
- (d) a copy of a notarized declaration form.

F. Corporate Governance

Persons debarred
from management

- 65. (1)** A person who has been—
- (a) adjudged bankrupt;
 - (b) a director or officer of a company in the ten years immediately preceding—
 - (i) a winding up order made by a court; or
 - (ii) the date that the company had been placed in receivership;
 - (c) a director or officer during the ten years prior to the revocation of the registration or licence of a former insurer or former licensee under the Financial Institutions Act, unless such revocation was due to—
 - (i) its amalgamation with a nother company, pursuant to section 34(1)(l);
 - (ii) its voluntary winding up, pursuant to section 40(1)(c); or
 - (iii) the company not carrying on business, pursuant to section 34(1)(g); or
 - (d) a director or officer during the ten years prior to the revocation of the registration or licence of a foreign company carrying on insurance business, business of a financial nature or business of banking, by a foreign regulatory agency or body that regulates financial entities, unless such revocation was due to—
 - (i) its amalgamation with another company, pursuant to section 34(1)(l);

- (ii) its voluntary winding up, pursuant to section 40(1)(c); or
- (iii) the company not carrying on business, pursuant section 34(1)(g),

shall not, without the express approval of the Central Bank, act or continue to act as a director or officer or, be concerned in any way in the management of an insurer or financial holding company.

(2) A person who—

- (a) has been convicted by a court for an offence involving fraud, a contravention of the Proceeds of Crime Act and the Anti-Terrorism Act or any Regulations made thereunder or such other written law in relation to the prevention of money laundering and the combating of terrorist financing as may be in force from time to time;
- (b) is or was convicted of an offence under this Act; or
- (c) is not a fit and proper person in accordance with the criteria prescribed in Part A of Schedule 5,

shall not act or continue to act as a director or officer of, or be concerned in any way in the management of an insurer or financial holding company.

(3) A director or officer of a local insurer within a financial group—

- (a) shall apply to the Central Bank for its prior approval within twenty business days of the proposed appointment, if he proposes to be appointed as a director or officer of a financial entity outside the financial group; or

(b) may be appointed as a director or officer of another company within the financial group without obtaining the Central Bank's approval.

(4) Where for the purpose of subsection (2)(c) a person is not regarded or is no longer regarded, as fit and proper by the Central Bank, the Central Bank shall serve a notice on the insurer or financial holding company and on the person concerned informing them that the Central Bank proposes to disqualify the person from being a director or officer, stating the reasons for its intention to disqualify and giving particulars of the appeal process under section 253.

(5) Within the period of ten business days, commencing from the day after which the notice under subsection (4) is served—

- (a) the insurer or financial holding company; or
- (b) the person concerned,

may make written representations to the Central Bank which shall take such representations into account in deciding whether or not to disqualify the person from acting as a director or officer.

(6) The Central Bank shall inform—

- (a) the insurer or financial holding company;
and
- (b) the person concerned,

in writing of its decision and shall give reasons for its decision.

(7) Where the decision of the Central Bank referred to in subsection (6) is to disqualify the person, that person shall forthwith cease to be a director or officer of the insurer or financial holding company.

(8) Where—

- (a) the Central Bank places a restriction on the registration of an insurer;

- (b) it appears to the Central Bank that an insurer's capital or liquidity is inadequate and the Central Bank has so notified the insurer; or
- (c) the Central Bank has exercised any of its powers in relation to the insurer under the special emergency powers under the Central Bank Act,

the insurer or any financial holding company shall notify the Central Bank of the nomination of a person for election or appointment as a director or as an officer at least twenty business days before the effective date of election or appointment as the case may be.

(9) An insurer referred to in subsection (8), shall not elect a person as a director or appoint a person as an officer if within twenty business days of the election or appointment the Central Bank disapproves of the election or appointment as the case may be.

(10) A person who has been a director or officer of an insurer in the ten years immediately preceding the Central Bank's exercise of its special emergency powers under the Central Bank Act shall not, without the express approval of the Central Bank act as director or officer or, be concerned in any way in the management of an insurer, financial holding company or a licensee under the Financial Institutions Act.

(11) Notwithstanding the liability of a person under subsection (13), it shall be the duty of every insurer and financial holding company to ensure that its directors and officers do not act or continue to act in contravention of this section.

(12) Any—

- (a) person who contravenes subsection (1), (2)(a) or (b) or (3); or

(b) financial holding company or insurer upon which notice has been served under subsection (5) and which permits a person who contravenes subsection (1) or (2) to act or continue to act as a director of, or be concerned in any way in the management of the insurer or financial holding company, commits an offence and is liable on summary conviction in the case of an individual to a fine of five million dollars and to imprisonment for five years and to a fine of five hundred thousand dollars for each day that the offence continues, and in the case of an insurer or a financial holding company to a fine of five million dollars and to a fine of five hundred thousand dollars for each day that the offence continues.

(13) A person referred to in subsection (2)(c) who contravenes subsection (8) commits an offence and is liable on summary conviction to a fine of five million dollars and imprisonment for five years and to a fine of five hundred thousand dollars for each day that the offence continues.

Restriction on voting
power of director

66. A director of an insurer or of a financial holding company shall not be present, or vote at a meeting of the board of directors or a committee of the board of directors when a contract which would result in a direct or indirect financial benefit, other than a benefit under the director's contracts of employment, accruing to—

- (a) the director or a relative of the director;
- (b) a company of which the director or a relative of the director is an officer; or
- (c) a company in which the director or a relative of the director holds a beneficial interest,

is being considered.

67. (1) For the purpose of discharging his duty to act Duties of directors honestly and in good faith with a view to the best interests of an insurer or a financial holding company, a director or officer thereof shall take into account the interests of the insurer's policyholders.

(2) A director or officer of an insurer or financial holding company commits an offence if, in exercising his powers and discharging his duties under subsection (1) he knew or reasonably ought to have known that his conduct was not in the best interests of the policyholders, and is liable on summary conviction to a fine not exceeding six hundred thousand dollars and to imprisonment for two years.

(3) The directors of an insurer or of a financial holding company shall notify the Inspector of any developments that they had knowledge of, that pose material risks to the insurer or financial holding company.

(4) A director of an insurer or of a financial holding company who—

- (a) resigns;
- (b) receives a notice, or otherwise learns, of a meeting of shareholders called for the purpose of removing him from office; or
- (c) receives a notice, or otherwise learns, of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office upon his resignation or removal from office or because his term of office has expired or is about to expire,

shall submit within five business days to the Inspector a written statement giving the reasons for his resignation, removal or departure from office, or, where applicable, the reasons that he opposes his removal or departure from office or any proposed action or resolution and he may submit a copy of such statement to the insurer or financial holding company.

(5) The directors of an insurer or of a financial holding company shall establish and maintain procedures for the determination of remuneration for themselves and officers of the insurer or financial holding company.

(6) An insurer or a financial holding company shall submit to its audit committee an annual report containing complete and accurate information regarding the total remuneration paid to directors and officers, within twenty business days after the end of its financial year and such report shall be made available for review by the Central Bank.

(7) An insurer shall not award or pay any bonus to its directors and officers where—

- (a) the assets of the insurer are insufficient to meet the requirements under this Act and Regulations; or
- (b) the bonus would reduce the assets of the insurer below the amount referred to in paragraph (a).

(8) For the purposes of this section—

- (a) “remuneration” means all cash and non-cash pay elements and includes base salary, allowances and bonuses, whether fixed or variable, and any other benefit that would accrue to a director or officer which may be quantifiable; and
- (b) “bonus” means any special payment made in accordance with some formula dependent on profits of the insurer or volume of business written by the insurer or some combination of both.

Audit committee

68. (1) The board of directors of an insurer shall appoint from among their number an audit committee, which shall consist of at least three directors—

- (a) a majority of whom shall be independent directors;

(b) at least one of whom shall be a financial expert; and

(c) at least one of the independent directors shall not be a director of a connected party of the insurer.

(2) The chair of the audit committee shall be an independent director and a financial expert.

(3) Subsection (1)(a) shall not apply in respect of an insurer to which section 23 applies until six months after the commencement of this Act.

(4) The duties of the audit committee shall include, without limitation—

(a) the review of, and report to the board of directors on, the annual financial statements and other returns prior to approval by the board;

(b) the review of such returns of the insurer as the Inspector may specify; and

(c) ensuring that an appropriate framework for internal control procedures is in place.

(5) For the purposes of this section—

(a) a “financial expert” means a person who has the necessary financial education from an accredited educational institute, a sound understanding of generally accepted accounting principles, financial statements and the way in which financial statements are prepared and audited and substantive experience as—

(i) a qualified accountant;

(ii) an auditor;

(iii) a chief financial officer;

(iv) a comptroller; or

(v) an actuary;

- (b) a “qualified accountant” means a person who is a member of the ICATT or such other professional association as may be approved by the Central Bank; and
- (c) an “independent director” means a director who—
- (i) is not the holder of five per cent or more of the shares of the insurer or of a connected party of the insurer;
 - (ii) is not a current officer of the insurer or of a connected party of the insurer;
 - (iii) is not a relative of a current officer or director, or of a person who was, within two years prior to his appointment, an officer or director of the insurer or a connected party of the insurer;
 - (iv) is not the auditor, nor has been employed by the auditor of an insurer nor the auditor of any of the connected parties of the insurer within three years prior to his appointment;
 - (v) has not been employed by the insurer or any of its connected parties within three years prior to his appointment;
 - (vi) is not an incorporator of the insurer or of a connected party of the insurer;
 - (vii) is not a professional adviser of the insurer or of a connected party of the insurer;

- (viii) is not a significant supplier to the insurer or of a connected party of the insurer; and
- (ix) is not indebted to the insurer or any of its affiliates, other than by virtue of a fully collateralized loan.

69. Each insurer and each financial holding company shall submit to the Inspector, within sixty business days after the end of its financial year and at such other times as may be required by the Inspector, a report which contains—

- (a) a statement signed by its chief executive officer and chief financial officer which acknowledges the board of directors' and management's responsibility for—
 - (i) preparing financial statements;
 - (ii) establishing and maintaining an adequate internal control structure and procedures for financial reporting and maintenance of separate accounts;
 - (iii) establishing and maintaining adequate procedures for the settlement of claims; and
 - (iv) complying with this Act and any Regulations made hereunder and Guidelines issued by the Central Bank;
- (b) a statement signed on behalf of its board of directors that it has received the financial condition report of the appointed actuary or chief financial officer pursuant to section 159 or 214;
- (c) a statement signed on behalf of its board of directors that it is satisfied that the risk management systems and internal controls are adequate for managing its risks and are being properly applied;

- (d) a statement signed on behalf of its board of directors certifying that claims are settled in accordance with the established procedures; and
- (e) a statement signed on behalf of its board of directors certifying compliance with section 56 of the Companies Act.

Policies and procedures for transactions with connected parties and employees

70. The board of directors of an insurer shall—

- (a) establish and maintain written policies for all transactions between the insurer and—
 - (i) connected parties;
 - (ii) connected party groups; and
 - (iii) employees; and
- (b) review annually transactions referred to in paragraph (a) to ensure compliance with its policies.

Information systems or credit exposures

71. The board of directors of an insurer shall establish and maintain document information systems that identify and monitor the credit exposures referred to in sections 89 and 90.

Internal controls and risk management systems

72. The board of directors of an insurer shall—

- (a) establish, document and maintain adequate risk management systems and internal controls; and
- (b) appoint an internal auditor, who shall report to its audit committee.

Maintenance of policies and procedures

73. (1) The board of directors of an insurer shall review annually the policies and documentation required under sections 70, 71 and 72(a).

(2) The board of directors shall provide to the Inspector—

- (a) upon request, the policies and documentation required under sections 70, 71 and 72; and

(b) within sixty business days after the end of its financial year, the results of the compliance reviews referred to in subsection (1).

(3) Where the policies and documentation referred to are inadequate, the Inspector may require the board of directors to change the policies and documentation, within sixty business days.

(4) Where the board of directors of an insurer fails to comply with subsection (2) and sections 70, 71 and 72, the Inspector may direct the board of directors to take within a specified period as he thinks fit, such action to effect compliance.

74. (1) Where the Central Bank is of the opinion that an insurer or financial holding company has contravened this Act or any provision made by or under an enactment appearing to the Central Bank to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts, the Central Bank shall by notice in writing—

- (a) require the board of directors of an insurer or financial holding company to convene a special meeting of the board of directors; or
- (b) require the board of directors of the insurer or financial holding company to convene a special meeting of the shareholders to report on the failure of the insurer or financial holding company to implement measures required to be taken by the Central Bank,

and the Central Bank shall be invited to attend and be heard at such meetings.

(2) Where an insurer or financial holding company is in contravention of the minimum number of directors required under the Companies Act, the Central Bank shall have the power to convene a special meeting of shareholders to fill the vacancies and the Central Bank shall be heard at such meeting.

Appointment of
auditor

75. (1) An insurer and a financial holding company shall appoint annually an audit entity satisfactory to the Central Bank to be its auditor.

(2) An audit entity is qualified to be the auditor of an insurer or financial holding company if—

(a) each member is independent of the insurer or the financial holding company, within the meaning of subsection (3);

(b) at least one member—

(i) is a practising member in good standing with ICATT or is the holder of a valid practising certificate from such other professional association of accountants or auditors as the Central Bank may approve; and

(ii) has knowledge and experience satisfactory to the Central Bank, in the audits of insurers and other financial institutions; and

(c) it has adequate resources to perform its functions in accordance with this Act.

(3) For the purposes of this section, a member of an audit entity is not independent of an insurer or a financial holding company if he—

(a) is a connected party of the insurer or the financial holding company;

- (b) has any business relationship with the insurer or the financial holding company or with any of their respective connected parties, other than in his capacity as the auditor thereof or as a policyholder;
- (c) beneficially owns or controls, directly or indirectly, five per cent or more of the shares or other securities of the insurer or the financial holding company or of any of their respective affiliates;
- (d) is indebted to the insurer or any of its affiliates other than by virtue of a fully collateralized loan; and
- (e) has within two years immediately preceding the appointment of the audit entity, been a receiver, receiver-manager, liquidator or trustee in bankruptcy of any affiliate of the insurer or the financial holding company, other than a subsidiary or affiliate acquired through a realization of security.

(4) An insurer or financial holding company shall not appoint an audit entity to be the auditor of the insurer or financial holding company pursuant to subsection (1) unless—

- (a) the insurer or financial holding company has served written notice on the Central Bank of its intention to make such appointment; and
- (b) the Central Bank has failed to serve on the insurer or financial holding company a written notice of objection to the appointment within twenty business days either of—
 - (i) the date on which the insurer or financial holding company served notice of its intention to make the appointment pursuant to paragraph (a); or

- (ii) the date of receipt of all information requested by the Central Bank in respect of the notice,

whichever is the later.

(5) A member of an audit entity shall not be the audit partner, having primary responsibility for the audit of an insurer or a financial holding company for a period of more than five consecutive years.

(6) The auditor of an insurer or financial holding company shall not provide to that insurer or financial holding company—

- (a) book-keeping or other services related to its accounting records or financial statements;
- (b) financial information systems design and implementation services;
- (c) actuarial services;
- (d) internal audit outsourcing services; or
- (e) such other non-audit-related services as the Central Bank may specify.

(7) If an insurer or financial holding company fails to appoint an auditor satisfactory to the Central Bank, the Central Bank shall appoint such auditor at the expense of the insurer or the financial holding company, as the case may be.

Notification in respect
of auditors

76. (1) An insurer or a financial holding company shall forthwith give written notice, together with reasons, to the Inspector if—

- (a) it proposes to give notice to its shareholders of a resolution to remove an auditor before the expiration of his term of office;
- (b) it gives notice to its shareholders of a resolution to replace an auditor at the expiration of his term of office with a different auditor; or

(c) a person ceases to be an auditor of the insurer or financial holding company otherwise than in consequence of a resolution referred to in paragraphs (a) and (b).

(2) The auditor of an insurer or a financial holding company shall forthwith give written notice to the Inspector and to the insurer or financial holding company if he—

(a) resigns before the expiration of his term of office; or

(b) does not seek to be reappointed,

together with the reasons for such resignation or decision not to seek reappointment.

(3) The auditor of an insurer or of a financial holding company who receives a notice, or otherwise learns of a meeting of directors or shareholders called for the purpose of—

(a) removing the auditor from office; or

(b) appointing another person as auditor because the term of office of the auditor has expired or is about to expire,

shall submit to the insurer or financial holding company a written statement giving the reasons why he opposes or accepts his proposed removal or the appointment of another person as auditor, and if he submits such a statement he shall submit a copy of the statement to the Inspector.

(4) Where the auditor of an insurer or of a financial holding company receives notice under subsection (3) as a result of a disagreement with the board of directors or the officers of an insurer or of a financial holding company, the auditor shall submit to the insurer or the financial holding company, and to the Inspector, a written statement setting out the nature of the disagreement.

(5) Where the auditor of an insurer or financial holding company has resigned or the appointment of the auditor has been revoked, no person shall accept an appointment as auditor of that insurer or financial holding company until the person has requested and received from the auditor who has resigned or whose appointment as auditor has been revoked, a written statement of the circumstances and reasons for such resignation or why, in the opinion of the former auditor, his appointment was revoked.

(6) Notwithstanding subsection (5), a person may accept an appointment as auditor of an insurer or financial holding company if, within fifteen business days after a request under that subsection is made, no reply from the former auditor is received.

Duties of auditor to
report to board of
directors and
Inspector

77. (1) Where the auditor of an insurer or of a financial holding company discovers, in the ordinary course of an audit, any irregular transactions or conditions which, in the opinion of the auditor meets one or more of the following criteria:

- (a) any change in accounting policy or any presentation of, or any failure to present facts or figures which, in the opinion of the auditor, has the effect of materially misrepresenting the financial position of the insurer or financial holding company;
- (b) transactions that have a significant or material impact on the financial position of the insurer or financial holding company;
- (c) transactions or conditions giving rise to significant risks or large exposures that have the potential to jeopardize the financial viability of the insurer or financial holding company;
- (d) transactions or conditions indicating that the insurer or financial holding company has significant weaknesses in internal

controls which render it vulnerable to significant risks or exposures that have the potential to jeopardize its financial viability; and

- (e) any other transactions or conditions which, in the opinion of the auditor, should be included in a report under this section,

the auditor shall report such findings in writing to the chief executive officer and the board of directors of the insurer or financial holding company.

(2) Where the auditor of an insurer or a financial holding company discovers, in the ordinary course of an audit, that the insurer or financial holding company has contravened, is contravening or is likely to contravene this Act, the Regulations or any applicable financial reporting standards, the auditor shall report in writing such findings to the Inspector.

(3) Where the auditor of an insurer or of a financial holding company discovers, after receiving a request in writing from the Inspector for an investigation, any such transactions or conditions as set out in subsection (1), the auditor shall report such findings to the Inspector, and the Inspector shall share those findings with the insurer or financial holding company at such time as he deems necessary.

(4) The auditor of an insurer shall meet with the Inspector *in camera* at least once annually to discuss any matter relating to this Act and its Regulations.

(5) An auditor of an insurer who—

- (a) knowing that a financial statement does not fairly present the financial position of an insurer; or
- (b) being reckless as to whether a financial statement fairly presents the financial position of an insurer,

and renders an unqualified opinion on the financial statement, commits an offence.

(6) Any person who contravenes this section commits an offence and is liable on summary conviction—

- (a) in the case of the audit entity, to a fine of ten million dollars; and
- (b) in the case of an individual, to a fine of five million dollars and to imprisonment for five years.

Appointment of
actuary

78. (1) An insurer carrying on long-term insurance business or a general insurer carrying on the accident and sickness class of insurance business, and every other insurer that is required by the Inspector to provide actuarial reports, shall appoint an actuary pursuant to subsection (3).

(2) Within three years of the commencement of this Act, a general insurer carrying on insurance business shall appoint an actuary pursuant to subsection (3).

(3) An insurer shall not appoint a person to be its appointed actuary required to submit a report or certificate to the Inspector under this Act unless—

- (a) the insurer has served written notice on the Inspector of its intention to make such appointment;
- (b) the insurer has submitted the information on the criteria specified in Schedule 5 to the Inspector;
- (c) the Inspector has failed to serve on the insurer a written notice of objection to the appointment within twenty business days of the date on which the insurer served notice of its intention to make the appointment pursuant to paragraph (a) or the date on which all information required under paragraph (b) was submitted to the Inspector, whichever is later; and

(d) there is no situation in which an actuary's duty to the insurer or statutory duties comes into conflict with the actuary's personal interests or with the duties of the actuary to another party.

(4) The chief executive officer and the chief financial officer or a person performing like functions may not be appointed as, or hold the position of appointed actuary of an insurer.

79. (1) An insurer, shall forthwith give written notice Notification in respect of actuary together with reasons to the Inspector if its appointed actuary—

- (a) is removed before the expiration of his engagement;
- (b) is replaced at the expiration of his engagement with a different actuary; or
- (c) ceases to be its actuary in circumstances otherwise than those set out in paragraphs (a) and (b).

(2) The appointed actuary of an insurer shall forthwith give written notice to the Inspector and to the insurer if he—

- (a) resigns before the expiration of his engagement; or
- (b) does not seek to be reappointed, together with the reasons for such resignation or decision not to seek reappointment.

(3) An appointed actuary who receives a notice, or otherwise learns that –

- (a) his engagement is going to be discontinued; or
- (b) another person is to be appointed as actuary of the insurer because the engagement of the actuary has expired or is about to expire,

shall submit to the insurer a written statement giving the reasons why he opposes or accepts his proposed removal or the appointment of another person as appointed actuary, and shall submit a copy of any such statement to the Inspector.

(4) Where the appointed actuary of an insurer receives a notice under subsection (3) as a result of a disagreement with the board of directors or the officers of an insurer, the actuary shall forthwith submit to the insurer, and to the Inspector, a written statement setting out the nature of the disagreement.

(5) Where the appointed actuary of an insurer has resigned or the appointment of the actuary has been revoked, no person shall accept an appointment as an appointed actuary of that insurer until the person has requested and received from the actuary who has resigned or whose appointment as actuary has been revoked, a written statement of the circumstances and reasons for such resignation or why, in the opinion of the former actuary, his appointment was revoked.

(6) Notwithstanding subsection (5), a person may accept an appointment as the appointed actuary of an insurer if, within fifteen business days after a request under that subsection is made, no reply from the former actuary is received.

Protection for whistle-
blowers

80. (1) Where an auditor or former auditor of an insurer, or financial holding company or an actuary or former actuary of an insurer communicates information or gives an opinion to the Central Bank or the Inspector in good faith and—

- (a) he is required to give such information or opinion to the Central Bank or the Inspector under this Act or the Central Bank Act; or
- (b) where he reasonably believes that the insurer or financial holding company is in contravention of any written law,

such auditor, former auditor, actuary or former actuary shall not be liable in any civil action seeking indemnification for damages attributable to the auditor, actuary, former auditor or former actuary having communicated the information or given the opinion.

(2) This section applies to any matter of which an auditor, former auditor, actuary, or former actuary becomes aware in his capacity as auditor, former auditor, actuary or former actuary and which relates to the business or affairs of the insurer or any of its affiliates or any director or officer or relative of such persons in relation to which the information is given.

(3) Subsection (1) shall apply *mutatis mutandis* to—

- (a) any other person who is required to give information to the Central Bank or the Inspector under this Act; or
- (b) any employee or external service provider of the insurer or financial holding company who provides information to the Central Bank or the Inspector regarding the conduct of an insurer, its affiliate or any director, officer or relative of such persons, which the employee or external service provider reasonably believes constitutes a violation of any written law.

(4) This section applies to the former auditor and former actuary of a former insurer or former financial holding company.

81. (1) Where the Inspector has reasonable grounds to believe that the auditor or actuary of an insurer or financial holding company—

Referring matters to the professional association for auditors and actuaries

- (a) has failed to perform his duties or to comply with the provisions of this Act;

- (b) has been a party to the preparation of, or has rendered an unqualified opinion on a financial statement that does not fairly present the financial position of the insurer or financial holding company; or
- (c) is incompetent or is accused of professional misconduct,

the Inspector or Central Bank shall deliver a written report to the insurer, financial holding company and as appropriate ICATT, the Caribbean Actuarial Association or such other professional association that may in the opinion of the Inspector be relevant.

(2) Where the Inspector has made a report under subsection (1) in good faith, the Inspector shall not be subject to any action, claim or demand by, or any liability to, any person in respect of which the report was made.

*G. Prudential Requirements Restrictions
and Prohibitions*

Capital adequacy
liquidity

82. (1) An insurer or financial holding company shall, in relation to its operations on an individual and consolidated basis maintain—

- (a) adequate capital; and
- (b) adequate and appropriate forms of liquidity,

and shall comply with Schedule 9 and the Regulations in relation to adequate capital and adequate and appropriate forms of liquidity.

(2) An insurer which has been reissued a certificate of registration under section 23 shall within five years of the commencement of this Act increase its regulatory capital ratio in accordance with the Regulations and Schedule 9.

(3) Notwithstanding subsections (1) and (2), the Inspector may direct the insurer or financial holding company to—

- (a) increase its capital; or
- (b) provide additional liquidity,

in such forms and amounts, based on the particular circumstances of the insurer or financial holding company.

(4) An insurer or financial holding company shall comply with a direction under subsection (3) within such time as the Inspector may specify.

(5) Where an insurer does not comply with its capital adequacy requirements under this section the insurer commits an offence and is liable on summary conviction to a fine of five million dollars.

83. (1) An insurer which carries on insurance Adequate assets business through overseas branches shall maintain and hold adequate assets to support its liabilities to its foreign policyholders.

(2) An insurer shall maintain and hold adequate assets to support its liabilities to its Trinidad and Tobago policyholders.

84. (1) An insurer or financial holding company shall Restriction on payment of dividend not declare or pay a dividend or transfer an amount from which a dividend can be paid or make any payment to purchase or redeem any shares issued by it or reduce its stated capital—

- (a) where the assets of the insurer are insufficient to meet the requirements under this Act and the Regulations;
- (b) where the dividend would reduce the assets of an insurer below the amount referred to in paragraph (a);

- (c) where the Catastrophe Reserve Fund referred to in Part III or capital is less than the amount required under this Act and the Regulations;
- (d) until all the capitalized expenditure, including preliminary expenses, organizational expenses, share-selling commission and brokerage of the insurer not represented by tangible assets has been completely written off;
- (e) in the event of the Central Bank's exercise of its special emergency powers under the Central Bank Act without first obtaining the Central Bank's approval; or
- (f) where in the case of a financial holding company, any of the conditions referred to in paragraphs (a) to (e) apply to any of its insurer subsidiaries.

(2) Where an insurer or holding company declares a dividend but the catastrophe reserve fund or capital is less than the amount required under this Act, it shall not apply, allocate or transfer any part of its assets to pay dividends.

(3) An insurer, holding company or financial holding company who contravenes this section commits an offence and is liable on summary conviction to a fine of five million dollars.

Assets

85. (1) An insurer shall invest in assets in Trinidad and Tobago an amount equal to at least seventy-five per cent of its policy benefit liabilities, other insurance and contract liabilities and the surplus which is derived from participating policies denominated in Trinidad and Tobago dollars.

(2) For the purposes of subsection (1), assets not exceeding ten per cent of policy benefit liabilities, other insurance and contract liabilities and the surplus which

is derived from participating policies denominated in Trinidad and Tobago dollars shall be deemed to be assets in Trinidad and Tobago where such assets originate in any of the member States of the Caribbean Community.

(3) For the purposes of this Part—

(a) “assets in Trinidad and Tobago” means assets which—

- (i) originate in Trinidad and Tobago, and are denominated in Trinidad and Tobago currency;
- (ii) where denominated in a foreign currency, are issued or fully guaranteed by the Government of Trinidad and Tobago; or
- (iii) fixed income securities issued by companies domiciled in Trinidad and Tobago whether or not denominated in Trinidad and Tobago currency; and

(b) “Caribbean Community” means the Caribbean Community established by the Treaty of Chaguaramas.

(4) Where any liability in respect of policies is payable in a foreign currency, the insurer shall invest in foreign assets in that currency an amount not less than seventy-five per cent of such foreign currency liability.

(5) The assets of an insurer shall be invested in accordance with this Act and the Regulations.

(6) The board of directors of an insurer shall establish and maintain written policies and procedures relating to the investment of its assets.

(7) Where the board of directors of an insurer fails to comply with subsection (6), the Inspector may require the board of directors to take such action, within a specified period to effect compliance.

Investments to be
made in corporate
name

86. (1) All investments and deposits of an insurer shall be made in its corporate name and no director or officer of the insurer and no member of a committee which can exercise any authority over the investments and deposits of the insurer shall—

- (a) either directly or indirectly be a beneficiary or accept any fee, brokerage, commission, gift or other consideration for, or on account of any loan, deposit, purchase, sale, payment or exchange made by, or on behalf of, the insurer; and
- (b) be pecuniarily interested in any purchase, sale or loan made by, or on behalf of the insurer, whether as principal or agent and whether solely or jointly, save that where the director, officer or member of the committee is a policyholder he is entitled to all the benefits accruing to him under the terms of his contract.

(2) In respect of each credit exposure of an insurer, a written record showing the authorization thereof shall be made and signed by an officer of the insurer or by the chairman of the committee authorizing the credit exposure.

(3) Investment records are to be maintained at the insurer's principal office in Trinidad and Tobago.

(4) The insurer shall keep a separate record of all investments.

(5) Investments may be maintained in book-entry form if properly recorded with the Central Securities Depository of Trinidad and Tobago or such other recognized depository as the Central Bank may determine.

(6) A person who contravenes subsection (1) commits an offence and in the case of an insurer is liable on summary conviction to a fine of five million dollars.

87. (1) An insurer shall not, directly or indirectly hold shares or ownership interests in any entity, not including a financial entity, if such holding would result in—

Limits on acquisition
of shares or ownership
interests by an
insurer

- (a) the insurer having the power to—
 - (i) exercise twenty per cent or more of the voting rights at any general meeting of the entity;
 - (ii) elect twenty per cent or more of the directors or officers of the entity; or
 - (iii) exercise significant influence over the conduct of the business and affairs of the entity;
- (b) the insurer holding shares in a company or ownership interests in an unincorporated entity of a value equal to twenty-five per cent or more of the capital base of the insurer; or
- (c) the aggregate value of all such shareholdings and ownership interests referred to in paragraph (b) exceeding one hundred per cent of the capital base of the insurer.

(2) The restrictions imposed under subsection (1) shall not apply where such shareholding or ownership interest is acquired—

- (a) in the administration of the estate of a deceased person; or
- (b) in the course of the satisfaction of debts due to the local insurer,

but such shareholding or ownership interest shall be disposed of at the earliest possible time but in any

event, not later than five years from the date of acquisition or such further period as the Central Bank may permit.

(3) Notwithstanding subsection (1) and subject to subsections (6) and (8), an insurer shall not, without first obtaining the approval in writing of the Central Bank, acquire shares in such number that would equal ten per cent or more in any class of shares in a financial entity.

(4) The restrictions imposed under subsection (1) shall not apply to shares or ownership interests in entities which—

- (a) provide necessary services in support of the activities of an insurer, in the case where the insurer obtains the prior written approval of the Central Bank;
- (b) are engaged solely in the business of the establishment, distribution or sale of collective investment schemes;
- (c) are permissible real estate entities; or
- (d) are agencies established in accordance with section 30(11).

(5) An insurer shall not directly or indirectly hold any shares or ownership interest in a brokerage.

(6) Within sixty business days of the coming into force of this Act, an insurer shall notify the Central Bank of any shares or ownership interests held by it in any entity referred to in subsection (4).

(7) The Central Bank may—

- (a) approve the holding of the shares or ownership interests in an entity referred to in subsection (4)(a); or
- (b) require the insurer to dispose of any of the shares or ownership interests in an entity referred to in subsection (4)(a), in accordance with subsection (8),

if the Central Bank is of the opinion that the entity does not provide necessary services in support of the activities of the insurer.

(8) Within sixty business days of the coming into force of this Act, an insurer shall notify the Central Bank of any shares and ownership interests held by it in excess of any limit imposed by this section and the Central Bank shall require the insurer to dispose of any excess shares or ownership interest within such time as the Central Bank shall specify.

88. (1) An insurer shall not without the prior approval of the Central Bank—

Approval for certain transactions

- (a) directly or indirectly establish or acquire a subsidiary in, or outside of Trinidad and Tobago; or
- (b) enter into an agreement for sale or other transfer of—
 - (i) any of its subsidiaries of the insurer; or
 - (ii) its controlling or significant interest in a financial entity.

(2) An insurer shall not without prior approval of the Inspector—

- (a) enter into an agreement for sale or other transfer of ten per cent or more of—
 - (i) its assets;
 - (ii) the assets of any of its subsidiaries; or
 - (iii) the assets of any entity in which it has a controlling or significant interest; or
- (b) undertake any other restructuring that would result in a reduction in its capital.

Limits on credit
exposures

89. (1) An insurer shall not, directly or indirectly, incur a credit exposure to a person including a borrower group or related group in an aggregate amount that exceeds twenty-five per cent of its capital base, other than a credit exposure that is—

- (a) fully guaranteed by the Government of Trinidad and Tobago;
- (b) extended directly to, or fully guaranteed by a sovereign state, other than the Government of Trinidad and Tobago, with an investment grade rating from a credit rating agency approved by the Central Bank and said guarantee is explicit, unconditional, legally enforceable and irrevocable over the life of the credit exposure in question;
- (c) extended directly to the Government of Trinidad and Tobago;
- (d) fully secured at all times by cash in Trinidad and Tobago dollars or other currencies readily convertible to Trinidad and Tobago dollars, delivered to the insurer and placed with it in a special account, in an approved financial institution, secured by a charge in favour of the insurer; or
- (e) for a period of less than twenty business days and fully secured by investments that are investment grade, as rated by a credit rating agency approved by the Central Bank, provided that the insurer shall give the Central Bank prior notice of such exposure being incurred.

(2) An insurer shall not, directly or indirectly, incur any large exposure to a person including a borrower group or related group if by so doing the

aggregate principal amount of all such large exposures would exceed eight hundred per cent of the capital base of the insurer.

(3) The aggregate principal amount referred to in subsection (2) shall include the aggregate principal amount for connected parties referred to in section 90(1)(b).

(4) Where, in any particular case—

- (a) an insurer is in contravention of the limits referred to in subsections (1) and (2); or
- (b) a credit exposure of an insurer is not prudent,

the Inspector may require an insurer to reduce its credit exposure, increase its stated capital pursuant to section 22(7), or, where applicable, make adequate provisions for potential losses.

(5) Within sixty days of the commencement of this Act, an insurer shall notify the Inspector of—

- (a) all credit exposures to persons including borrower groups or related groups which are in excess of the limits under this section; and
- (b) the measures that the insurer shall take in order to—
 - (i) reduce within a period of three years the excess credit exposures granted so that they are within the limits in subsections (1) and (2); or
 - (ii) provide within a period of two years, additional capital.

(6) Any modification of, addition to, or renewal or extension of a credit exposure referred to in subsection (5) shall be subject to the limits imposed by this section.

(7) Notwithstanding subsection (6), the limits imposed by this section shall not apply to modifications which seek to reduce the insurer's credit exposure to any person, related group or borrower group.

(8) Where a sovereign state loses its investment grade rating from a credit rating agency approved by the Central Bank—

(a) any credit exposure incurred by the insurer shall be subject to the limit in subsection (1); and

(b) the provisions of section 91 shall apply.

(9) The Central Bank may, from time to time, establish criteria to be taken into account in determining credit exposure and other exposures to risk, by publication of a notice in the *Gazette* or through directions to a particular insurer.

(10) The requirements of this section shall apply—

(a) to an insurer on an individual basis and on a consolidated basis to include where applicable, all the domestic and foreign—

(i) subsidiaries of the insurer; or

(ii) companies in which the insurer is a significant shareholder; and

(b) on a consolidated basis, to a financial holding company and all of the domestic and foreign members of the financial group that the financial holding company controls.

Limits on credit exposures to connected parties

90. (1) An insurer shall not, directly or indirectly, incur credit exposures—

(a) to any connected party or connected party group in a principal amount exceeding ten per cent of its capital base; or

(b) to all connected parties and connected party groups in an aggregate principal amount exceeding twenty-five per cent of its capital

base, other than a credit exposure listed in section 89(1).

(2) Subject to section 89(1) and (2), subsection (1) shall not apply to—

- (a) a subsidiary of an insurer where no other connected party holds any share in such subsidiary; or
- (b) a holding company or financial holding company of an insurer that is itself an insurer or permit holder under this Act, respectively.

(3) For the purposes of subsections (1) and (2), equity investments in wholly owned subsidiaries that are insurers, shall not be taken into account in the determination of credit exposure.

(4) Notwithstanding subsection (1), an insurer shall not incur credit exposures to—

- (a) a director of the insurer;
- (b) an officer of the insurer; or
- (c) a relative of a person referred to in paragraphs (a) and (b), in an amount exceeding—
 - (i) in the case of a non-executive director or relative of a non-executive director, two per cent of the capital base of the insurer; or
 - (ii) in the case of an executive director, officer, or relative of an executive director or officer, two per cent of the capital base of the insurer or two years' emoluments of the director or officer,

whichever is the lesser.

(5) The limit referred to in subsection (4) shall not apply to a loan made on the security of a mortgage on the principal residence in Trinidad and Tobago of a director or officer of the insurer where the amount of the loan does not exceed eighty per cent of the value of the property at the time the loan is made.

(6) Any credit exposure incurred by an insurer to a connected party or to a connected party group under this section shall be—

- (a) on similar terms and conditions on which such credit exposure is offered to the public; and
- (b) subject to the approval of the board of directors.

(7) Within sixty business days of the commencement of this Act, an insurer shall notify the Inspector of all credit exposures to connected parties and connected party groups which are in excess of the limits fixed under this section or not in accordance with subsection (6).

(8) With the exception of subsections (7) and (10), this section does not apply in respect of any credit exposure incurred by an insurer to a connected party or a connected party group prior to the commencement of this Act.

(9) Any modification of, addition to, renewal or extension of a credit exposure referred to in subsection (7) shall be subject to the limits imposed by this section.

(10) Where, in the opinion of the Inspector, a credit exposure incurred by an insurer to a connected party or to a connected party group exposes the insurer to excessive risk, or does not accord with the terms and conditions referred to in subsection (6)(a), the Inspector may require the insurer to set aside or direct that changes be made to the credit exposure, or require the insurer to limit or reduce the credit exposure.

- (11) This section shall apply—
- (a) to an insurer on an individual basis, and on a consolidated basis to include where applicable, all the domestic and foreign—
 - (i) subsidiaries of the insurer; and
 - (ii) companies in which the insurer is a significant shareholder; and
 - (b) on a consolidated basis, to a financial holding company and all of the domestic and foreign members of the financial group that the financial holding company controls.

(12) For the purposes of sections 89 and 90, where the credit exposures of two (or more) statutory companies or state owned enterprises do not meet the criteria set out under section 89(1)(a), and are not otherwise connected to each other, those entities will not be deemed to be part of a borrower group.

91. (1) Where an insurer has contravened the limitations on credit exposures referred to in sections 89 and 90, the insurer shall inform the Inspector within two business days of becoming aware of such contravention.

(2) A person who contravenes subsection (1) commits an offence and is liable for any contravention of sections 89 and 90.

(3) Where an insurer informs the Inspector that it has contravened a credit exposure limit, the Inspector shall require the insurer to reduce its credit exposure or take such other steps within a specified period as he determines appropriate.

- 92.** (1) An insurer shall not directly or indirectly—
- (a) acquire its own shares or the shares of its holding company or financial holding company, except that an insurer shall be allowed to acquire and cancel shares issued by it pursuant to the Companies Act;

Reporting
contravention of
credit exposure
limits

Prohibitions with
respect to acquiring
shares, borrowing or
lending funds

- (b) deal in, underwrite or incur credit exposures on the security of its own shares or the shares of a holding company, financial holding company or subsidiary of the insurer;
- (c) grant unsecured credit except—
 - (i) to any person for temporary cover for general insurance, which shall not exceed twenty business days; or
 - (ii) for advances to agents, sales representatives or to employees against commissions or salaries to be earned; or
- (d) guarantee on behalf of any person, other than a subsidiary or entity controlled by the insurer, the payment or repayment of any sum of money unless—
 - (i) the sum of money is a fixed sum of money with or without interest thereon; and
 - (ii) the person on whose behalf the insurer has undertaken to guarantee the payment or repayment has an unqualified obligation to reimburse the insurer for the full amount of the payment or repayment to be guaranteed;
- (e) issue bonds or other evidence of indebtedness unless they are fully paid for in money or with the approval of the Inspector in property; and
- (f) grant to a person the right to appoint a receiver or a receiver-manager of the property or business of the insurer.

(2) The restriction imposed under subsection (1)(a) shall not prevent an insurer from acting as trustee of a pension fund plan, or from investing the assets of the plan in shares of the insurer or in a financial holding company, holding company or subsidiary of the insurer up to a limit of ten per cent of the assets of the pension fund plan, inclusive of revaluation gains and losses on the shares.

(3) The board of directors of an insurer shall—

(a) establish and maintain written policies in relation to the—

(i) creation of a security interest of the insurer to secure obligations of the insurer; or

(ii) acquisition by the insurer of a beneficial interest in property that is subject to a security interest; and

(b) review annually the policies referred to in paragraph (a) to ensure compliance with its policies.

(4) An insurer may only grant a security interest—

(a) on immovable property; or

(b) on assets other than immovable property, as collateral for an asset-backed security or such other securities as the Inspector may approve.

(5) If an insurer has committed a breach of subsection (1), the insurer shall, on becoming aware of that fact, notify the Inspector without delay.

H. *Judicial Management, Suspension and Winding up*

Application for
judicial management

93. (1) Where the Inspector is satisfied that—

- (a) a ground for revocation under section 34(1) exists;
- (b) the insurer or financial holding company has failed to submit financial statements and returns in accordance with sections 144, 145 and 146 and that the true financial position of an insurer or financial holding company is uncertain; or
- (c) a financial holding company is no longer considered to be fit and proper in accordance with Schedule 5,

he shall advise the Board accordingly.

(2) The Board may, after receiving the advice of the Inspector and where it is of the opinion that it is necessary or proper for the insurer or financial holding company or any part of its business be placed under judicial management, direct the Central Bank to apply to the High Court for an order of judicial management.

(3) An insurer or financial holding company may, after giving the Central Bank one month's notice in writing of its intention to do so apply to the High Court for an order that it or any part of its business be placed under judicial management.

(4) Where an application is made to the High Court under this section—

- (a) the insurer or the financial holding company, as the case may be; and
- (b) the Central Bank,

shall be entitled to be heard on the application.

(5) Where an application is made under this section for an order in respect of any insurer or financial holding company, all actions and the execution of all

writs, summonses and other processes against the insurer or financial holding company shall, by virtue of this section, be stayed and shall not be proceeded with, without the prior leave of the High Court or unless the High Court directs otherwise.

94. (1) An order for the judicial management of an insurer or financial holding company or of any part of its business shall be subject to the provisions of this section and of sections 93 and 95 to 100. Judicial management

(2) The High Court shall appoint a judicial manager who shall receive such remuneration from the insurer or financial holding company and may at any time cancel the appointment and appoint some other person as the judicial manager.

(3) The High Court may, if it thinks fit, charge the remuneration charges and expenses of the judicial manager on the property of the insurer or financial holding company in such order of priority, in relation to any existing charges on that property, as it thinks fit.

(4) Where an order for judicial management is made under this section, the management of the insurer or financial holding company or of that part of its business to which the order relates shall, on and after the date specified in the order, vest exclusively in the judicial manager.

(5) A person who is appointed judicial manager, shall not, except with the leave of the High Court, issue any new policies other than paid-up policies.

(6) The High Court may from time to time issue to the judicial manager such directions regarding his powers and duties as it considers necessary.

(7) The judicial manager shall act under the control of the High Court and may at any time apply to the High Court for instructions as to the manner in which he shall conduct the judicial management or in

relation to any matter arising in the course of the judicial management.

(8) The judicial manager shall give a report on the status of the judicial management to the Central Bank on a monthly basis and shall provide the Central Bank with such information as it may from time to time require and shall report to the Central Bank whenever he intends to apply to the High Court for instructions and shall at the same time furnish the Central Bank with particulars of the application.

(9) The Central Bank is entitled to be heard on any application made pursuant to subsection (7) and may make an application to the High Court to be heard on any matter relating to the conduct of the judicial management.

Report by judicial
manager

95. (1) The judicial manager shall conduct the management with due diligence, and shall as soon as possible after his appointment, file with the High Court a report stating which of the following courses is in the circumstances, in his opinion most advantageous to the general interests of the policyholders of the insurer:

- (a) the transfer of the business of the insurer to some other company in pursuance of a scheme to be prepared in accordance with sections 73 to 80 (whether the policies of the business continue for the original sums insured, with the addition of bonuses that are attached to the policies, or varied for reduced amounts or otherwise varied in the case of annuities);
- (b) the carrying on of its business by the insurer (whether the policies of the business continue for the original sums insured, with the addition of bonuses that are attached to the policies, or varied for reduced amounts or otherwise varied in the case of annuities) or financial holding company;

- (c) the winding up of the insurer or financial holding company or of any part of its business; or
- (d) the dealing with part of the business of the insurer or financial holding company in one manner, and with another part in another manner.

(2) The judicial manager shall, as soon as he has filed the report, furnish a copy thereof to the Central Bank and make a written application to the High Court for an order to give effect to the course stated in the report.

(3) The report or a copy thereof shall be open for inspection by any person during official hours at the registry of the High Court in which the report is filed or at such other place as the Central Bank determines.

(4) Where the judicial manager recommends the transfer of the business of the insurer or financial holding company in accordance with subsection (1)(a), the Central Bank shall assess whether the proposed transfer meets the criteria of sections 61 and 62 and advise the High Court of its assessment during the hearing under section 96(1).

96. (1) The High Court shall on the hearing of an application made under section 95(2)—

Decision of High Court on judicial manager

- (a) after hearing the Central Bank, the judicial manager and any other person who in the opinion of the High Court ought properly to be heard; and
- (b) after considering the report of the judicial manager,

make an order giving effect to the course which it considers in the circumstances to be most advantageous to the general interest of the policyholders of the insurer.

(2) An order of the High Court under subsection (1) shall be binding on all persons, and shall have effect notwithstanding anything contained in the articles of incorporation or continuance, by-laws or other constituent documents of the insurer or financial holding company.

Transfer of business
to another company

97. (1) Where an order is made by the High Court for the transfer of the business of an insurer or financial holding company to some other company, the judicial manager shall prepare a scheme of transfer in accordance with section 58.

(2) The judicial manager shall submit a copy of the scheme of the transfer to the Central Bank at least ten business days before making an application to the High Court for a confirmation of the scheme in accordance with subsection (3).

(3) The judicial manager shall apply to the High Court for a confirmation of a scheme of transfer and the Central Bank shall be entitled to be heard by the High Court on its confirmation.

(4) Until a scheme of transfer is confirmed by the High Court, the management of the insurer or financial holding company shall continue to be vested in the judicial manager.

(5) Where the High Court confirms a scheme of transfer, the High Court shall order the Registrar of Companies to issue a certificate of amalgamation under the Companies Act.

Cancellation of
contracts or
agreements

98. The High Court may, either of its own motion or on the application of the judicial manager, at any time while an order made under section 94 is in force with respect to an insurer or financial holding company, after hearing all persons who, in the opinion of the High Court are entitled to be heard, cancel or vary, either unconditionally or subject to such conditions as the High Court thinks just, any contract or agreement,

other than a policy between the insurer or financial holding company and any other person, which the High Court is satisfied is detrimental to the interests of the policyholders.

99. The judicial manager shall not be subject to any ^{Indemnity} action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the exercise of, or in connection with the exercise of, the powers conferred on him under this Part.

100. (1) The judicial manager, the Central Bank or any interested person may at any time apply to the High ^{Cancellation of} Court for the cancellation of an order made by the High ^{judicial management} Court under section 94.

(2) Where an application is made under subsection (1) and the High Court has heard the Central Bank on such application, the High Court may cancel the order if it appears to it that—

- (a) the purpose of the order has been fulfilled;
- or
- (b) it is undesirable for the order to remain in force.

(3) Upon the cancellation of an order the judicial manager shall be divested of the management which shall thereupon vest in the board of directors, other governing body of the company, the liquidator or receiver, appointed by the High Court.

101. (1) Subject to subsections (11) and (12), where ^{Suspension of} the Inspector is satisfied that an insurer has a ^{operations} regulatory capital ratio of seventy per cent or less, he shall direct the insurer in writing to comply with section 82 within a period of sixty business days.

(2) Where the insurer fails to comply with section 82 in accordance with subsection (1), the Inspector shall advise the Board accordingly.

(3) The Board shall, after receiving the advice of the Inspector under subsection (2), order the insurer to suspend business forthwith and—

- (a) where there are reasonable grounds to believe that the circumstances leading to the order of suspension may be rectified, direct the Inspector to make an application for an order of judicial management in accordance with section 93; or
- (b) where there are no reasonable grounds to believe that the circumstances leading to the order of suspension may be rectified, direct the Inspector to make an application to wind up such insurer in accordance with section 103.

(4) Where the Board orders that an insurer's business be suspended under subsection (3), it may also direct the Inspector to take charge of all the books, records, other documents, including electronically stored information, and assets of the insurer and to take all such measures as may be necessary to—

- (a) prevent the continuation in business by that insurer during the period of suspension; and
- (b) preserve the assets of the insurer.

(5) Notwithstanding subsections (3) and (4), the Board may also direct the Inspector to take all such measures as may be necessary to collect—

- (a) premiums due in respect of long-term insurance business of an insurer; and
- (b) all receivables due and owing to the insurer during the period of suspension,

and any monies so collected shall be held in escrow during the period of suspension.

(6) All costs incurred by the Inspector under subsections (4) and (5) shall be treated as a loan by the

Central Bank to the insurer and shall be repaid out of the funds of the insurer in the event that the insurer is liquidated.

(7) An order made under subsection (3) shall cease to have effect on the appointment of a judicial manager or liquidator, as the case may be, or where the petition is presented and dismissed.

(8) Notwithstanding section 10(13), any person who directly or indirectly prevents the Inspector, any person authorized in writing by the Central Bank or a designated member of staff of the Central Bank from—

- (a) entering the premises of an insurer;
- (b) having access to its books, records or other documents, including electronically stored information; or
- (c) having the items in paragraph (b) made readily available,

during a period of suspension, commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

(9) Where the Board suspends the business of an insurer under this section, all claims, actions and the execution of all writs, summonses and other processes against the insurer shall, by virtue of this section, be stayed and shall not be proceeded with, without the prior leave of the High Court or unless the High Court directs otherwise.

(10) No time shall run in relation to any period of limitation prescribed by the Limitation of Certain Actions Act or any other written law relating to the limitation of actions, proceedings or the enforcement of any judgment or order in respect of any claim of a person pursuant to a policy against an insurer, from the date of the order under subsection (3) and until the termination of the suspension of the insurer's business in accordance with this section.

(11) Subsection (1) shall not apply to an insurer registered under the former Act and which at the commencement of this Act is subject to the powers of the Central Bank under section 44D of the Central Bank Act.

(12) Subsection (1) shall not apply to an insurer registered under the former Act, other than an insurer referred to in subsection (11), for a period of twenty-four months from the commencement of this Act.

Other grounds for suspension

102. (1) Notwithstanding the provision of sections 101(11) and (12) where it appears to the Board that there are grounds on which its power to revoke the registration of an insurer under section 34 is exercisable, the Board may, after considering the circumstances, suspend the operations of the insurer and the provisions of section 101(3) to (10) shall apply *mutatis mutandis*.

(2) Where a financial holding company fails to submit financial statements and returns in accordance with sections 144, 145 and 146 and the Board is satisfied that the true financial position of the financial holding company is uncertain, is insolvent or its continuation in business is likely to involve a loss to the policyholders, the Board may after considering the circumstances, suspend the operations of the financial holding company and the provisions of section 101(3) to (10) shall apply *mutatis mutandis*.

High Court may order winding up

103. (1) The High Court may order the winding up of an insurer or financial holding company and appoint a liquidator in accordance with the Companies Act subject to the modification that the insurer or financial holding company may also be ordered to be wound up on the petition of—

- (a) the Central Bank; or
- (b) ten or more policyholders owning policies of an aggregate of not less than twenty per cent of the aggregate sum assured of the insurer.

(2) A petition shall not be presented except by leave of the High Court, and such leave shall not be granted unless—

(a) a *prima facie* case has been established to the satisfaction of the High Court; and

(b) security for costs for such amounts as the High Court may think reasonable has been given.

(3) The Central Bank shall be a party to any proceedings under the Companies Act relating to the winding up of an insurer or financial holding company.

(4) A reference in this section to an “insurer” shall include an “insurance company” which has ceased to be registered under this Act but remains under any liability in respect of its policyholders.

(5) The appointment of a liquidator, receiver or receiver-manager does not in any way absolve any director or officer of the insurer or financial holding company from liability arising from wilful neglect, fraudulent transactions, abuse of policyholders funds, or from any breach of the provisions of this Act.

104. (1) An order of the High Court for the winding up ^{Procedure on} of an insurer or financial holding company shall be ^{winding up} subject to the provisions of this section and sections 105 and 106.

(2) Subject to subsections (4) and (6), a liquidator appointed under section 103 shall act under the control of the High Court and may apply to the High Court at any time for instructions as to the manner in which he shall conduct the winding up or in relation to any matter arising in the course thereof.

(3) The liquidator shall furnish the Central Bank with—

(a) such information as the Central Bank may from time to time require within the period specified by the Central Bank;

- (b) all documents submitted to the Registrar of Companies as required under the Companies Act within five business days of such submission; or
- (c) particulars of any application that the liquidator intends to make under subsection (2) at least ten business days prior to the making of such application.

(4) The Central Bank is entitled to be heard on an application under subsection (2) and may make an application to the High Court to be heard on any matter relating to the conduct of the winding up.

(5) The liquidator may, in the case of an insurer which was carrying on long-term insurance business, continue to carry on the business with a view to its being transferred as a going concern to another insurer, whether in existence or being formed for that purpose.

(6) For the purposes of exercising his functions under subsection (5), the liquidator may agree to the variation of any contracts of insurance in existence at the date of the order but he shall not effect any new contracts of insurance.

(7) Where the liquidator is satisfied that the interests of the creditors in respect of liabilities of the insurer or financial holding company require the appointment of a special manager, he may apply to the High Court for such an appointment.

(8) The High Court may on an application under subsection (7), appoint a special manager to act during such time and with such powers as the High Court may direct.

(9) A liquidator or a special manager, or both, shall receive such remuneration as the High Court directs.

(10) In addition to any other action that the Central Bank may take, it is entitled to make complaints to the Registrar of Companies who shall enquire into the matter and take such appropriate action.

105.(1) The liquidator shall ascertain, in such manner and on such basis as the High Court may approve, the value of the liability of the insurer to every person who, according to the books of the insurer, is entitled to, or is interested in a policy issued by the insurer and shall in such manner as he thinks proper give notice to every such person of the value so ascertained.

Ascertainment of
value of liability
under policies

(2) A person to whom notice is given under subsection (1) shall be bound by the value ascertained by the liquidator unless he disputes the valuation in such manner and within such time as is prescribed by Rules of Court or as the High Court, in any particular case, by order directs.

106.(1) Where the High Court makes an order for the winding up of part of the business of an insurer a scheme for the purpose of the winding up shall be prepared and submitted for the confirmation of the High Court by the liquidator, receiver or receiver-manager appointed in respect of the insurer or financial holding company where the order is made pursuant to section 103.

Winding up of
part of business
of insurer

(2) Any scheme prepared under this section shall provide—

- (a) for the allocation and distribution of the assets and liabilities of the insurer between any classes of business affected by the winding up, including the allocation of any surplus assets which may arise on the proposed winding up;
- (b) for any future rights of every class of policyholders in respect of their policies; and

(c) for the manner in which any part of the business of the insurer may be wound-up and may contain such provisions as are expedient for giving effect to the scheme.

(3) The provisions of sections 105 and 107 shall apply, with such adaptations as are necessary, on a winding up in accordance with a scheme under this section.

Application of assets of an insurer and priority of policyholders

107.(1) On the winding up of an insurer in the event that the assets are insufficient to meet—

- (a) policy liabilities;
- (b) unexpired risks and outstanding claims; or
- (c) the aggregate of (a) and (b),

the claims on Trinidad and Tobago and foreign policies shall have priority over the claims of other unsecured creditors.

(2) Where—

- (a) the insurer enters into—
 - (i) a scheme of transfer or amalgamation under sections 57 to 64 of this Act; or
 - (ii) an arrangement under section 237(1)(b), (c) or (d) of the Companies Act; or
- (b) the business of the insurer or any part thereof is being restructured pursuant to section 44D of the Central Bank Act,

the assets of the insurer shall, subject to the rights of secured creditors and the payment of expenses directly related to the arrangement including the costs of valuations of assets, the fees of experts retained by the insurer and the costs of voluntary separation agreements, be applied first to securing policyholders and thereafter to other unsecured creditors, whether or not the assets are insufficient to meet policy liabilities.

(3) Notwithstanding the provisions of this section, the expenses of the liquidator shall be a first charge on the assets of the insurer.

108. (1) An insurer or financial holding company shall not pass a resolution for a voluntary winding up or commence a voluntary winding-up without first obtaining written approval of the Central Bank.

(2) An insurer or financial holding company that makes an application for approval of the voluntary winding up under subsection (1) shall submit to the Central Bank—

- (a) the draft resolution to voluntarily wind up;
- (b) the draft of the advertisement that the insurer or financial holding company intends to publish as required under the Companies Act and subsection (6)(a);
- (c) any draft statutory declaration that the directors intend to make pursuant to section 410 of the Companies Act;
- (d) audited financial statements of the insurer or financial holding company;
- (e) the name and other particulars of the proposed liquidator in the case of a members' voluntary winding up; and
- (f) such other information as the Central Bank may require.

(3) The Central Bank shall not provide the approval referred to in subsection (1) unless it is satisfied that the voluntary winding up will be effected in a manner that would not pose undue risks to policyholders and consumers of the insurer or adversely affect public confidence in the financial system of Trinidad and Tobago.

(4) The Central Bank shall, within forty business days of receipt of the documents referred to in subsection (2), communicate to the insurer or financial

holding company, its approval or non-approval of the voluntary winding up of the insurer or financial holding company.

(5) Where the Central Bank has given the insurer or financial holding company approval to voluntarily wind up, the insurer or financial holding company shall hold a meeting to pass the resolution to voluntarily wind-up within two months of the date of approval.

(6) An insurer or financial holding company shall within ten business days after it has passed the resolution to voluntarily wind-up, give notice of the resolution—

- (a) by publication in the *Gazette* and in two daily newspapers circulated in Trinidad and Tobago;
- (b) to the Registrar of Companies; and
- (c) to its policyholders and other consumers, in such form and containing such information as the Central Bank may require.

(7) Section 104(3) shall apply *mutatis mutandis* to this section.

(8) An insurer or financial holding company that contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine of six hundred thousand dollars and every director who votes for, or consents to a resolution authorizing a voluntary wind up in contravention of this section also commits an offence and is liable on summary conviction, to a fine of six hundred thousand dollars and to imprisonment for two years.

(9) The provisions of this section shall apply, with such modifications as are necessary on a voluntary winding up in accordance with the provisions of the Companies Act.

109. (1) The liquidator shall conduct the liquidation and management of an insurer or financial holding company with due diligence including the greatest economy compatible with efficiency. Protection of receiver, receiver-manager and liquidator

(2) Where the Court, on application of the Central Bank, a contributory, a creditor or policyholder, is satisfied that the liquidator is acting with unreasonable delay or is failing or has failed to carry out any duty imposed in this Part or under any other written law, the Court may make an order, on such terms as it considers proper—

- (a) directing the liquidator to carry out that duty;
- (b) restraining the liquidator from dealing with the property of the insurer or financial holding company until that duty has been carried out; or
- (c) removing the liquidator and appointing another liquidator.

(3) Where the Central Bank, a contributory, creditor or policyholder claims unreasonable delay or failure to act pursuant to subsection (1), the Court shall consider all relevant factors in deciding whether the delay was unreasonable including—

- (a) the length of the delay;
- (b) the complexity of the liquidation;
- (c) the reasons for the delay; and
- (d) the conduct of the liquidator, the insurer or financial holding company, the Central Bank and the applicant.

(4) The liquidator shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the exercise of, or in connection with the exercise of the powers conferred on him under this Part.

PART IV
INTERMEDIARIES

Registration of
intermediaries

110. (1) No person shall, in respect of any class and type of insurance business, carry on business as an agency or brokerage unless that person is registered under this Part and no person other than a company may be registered as an agency or brokerage.

(2) No individual shall, in respect of any class and type of insurance business, carry on business as a broker, agent, sales representative, or adjuster unless he is registered under this Part.

(3) No person shall, in respect of any class and type of insurance business, carry on business as an insurance consultant unless he is registered under this Part.

(4) A company which at the commencement of this Act is registered as an agent or broker under the former Act, shall be deemed to have been registered as an agency or brokerage, as applicable, under this Part.

(5) An individual that is registered as an agent or broker under this Part shall be incorporated within one year of the commencement of this Act.

(6) An individual who at the commencement of this Act is registered as a salesman, agent, broker or adjuster under the former Act, shall be deemed to have been registered as a sales representative, agent, broker or adjuster under this Part.

(7) Where the Central Bank has reasonable grounds to believe that a person is carrying on any aspect of insurance business without being registered under this Act, the provisions of section 21(6) shall apply.

(8) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of three million dollars.

(9) An individual who contravenes subsection (2) or (3) commits an offence and is liable on summary conviction to a fine of one million, five hundred thousand dollars and to imprisonment for two years.

111. (1) An application for registration under this Part ^{Application for registration} shall be made to the Central Bank, in accordance with the form specified by the Central Bank and shall be accompanied by evidence of payment of the application fee prescribed in Schedule 2.

(2) On receipt of an application, the Central Bank may request the applicant to furnish such additional information as the Central Bank may consider necessary.

(3) Where a company wishes to be registered as an agency of more than one insurer in accordance with section 129(3), a separate application shall be made in respect of each insurer.

112. (1) An individual shall not be registered as a sales representative in respect of any particular class and type of insurance business where the insurer, agency or brokerage by which he is employed or contracted at the time of his application for registration as a sales representative—

(a) is not registered under this Act; or

(b) is carrying on the particular class and type of insurance business in contravention of this Act.

(2) An individual shall not be registered as a sales representative with more than one agency or insurer under the same class of insurance business at any particular time.

(3) An individual shall not be registered as a sales representative with more than one brokerage at any particular time.

(4) No person carrying on business as an insurance consultant shall—

(a) carry on business as a broker, sales representative, agent or adjuster; or

(b) carry on the business of an insurance agency or the business of an insurance brokerage.

(5) Where an individual wishes to be registered as a sales representative of more than one insurer or agency, the provisions of section 129(3) shall apply *mutatis mutandis* and the individual shall make a separate application in respect of each insurer or agency.

(6) A significant or controlling shareholder, director, officer or other employee of a brokerage shall not be registered as a sales representative of an insurer or agency, an agency or an agent of an insurer.

(7) A significant or controlling shareholder, director, officer or other employee of an insurer shall not be registered as a broker or brokerage or as a sales representative of a brokerage.

(8) A significant or controlling shareholder, director, officer or other employee of an insurer or agency shall not be registered as an adjuster.

(9) An individual shall not be registered as an agent or broker with more than one agency or brokerage as applicable.

(10) A company shall not be registered to carry on the business of an insurance brokerage or the business of an insurance agency under this Part unless it has in its employ at least one broker or agent, as applicable, and such broker or agent shall be an officer of the brokerage or agency, as the case may be.

(11) An agency shall not carry on any business other than the business of an insurance agency except for the distribution and sale of collective investment schemes.

(12) A brokerage shall not carry on any business other than the business of insurance brokerage except for the distribution and sale of collective investment schemes and the administration of self-insurance on behalf of an entity.

(13) An agency or brokerage who contravenes subsection (11) or (12) commits an offence and is liable on summary conviction to a fine of three hundred and fifty thousand dollars.

113.(1) Subject to this Part, the Central Bank may either unconditionally or subject to such conditions as the Central Bank considers necessary, register an applicant as an intermediary in respect of such class and type of insurance business as may be specified in its certificate of registration.

Central Bank to
register person
under this Part

(2) The Central Bank may, subject to sections 110 and 111, register an applicant as an intermediary where the Central Bank is satisfied—

- (a) that the applicant is a fit and proper person in accordance with the criteria set out in Schedule 5;
- (b) that the applicant has complied with all obligations imposed on him by, or under this Act and Regulations made thereunder;
- (c) that the applicant is competent to carry on business as an intermediary in the particular class and type of insurance business in which the person applied to be registered;
- (d) in the case of a company applying to carry on business as a brokerage, that it has such stated capital and professional indemnity cover as required pursuant to section 116;
- (e) in the case of a company applying to carry on business as a brokerage, that no agreement relating to the preferential offer of insurance business and which is likely to impair the applicant's impartiality in placing insurance business, such as an

agreement for preferential terms of commission or other compensation, has been made between the applicant and any other person carrying on insurance business, except that a brokerage may enter into an agreement as provided for under section 130; and

- (f) in the case of an application to be an agent, broker, sales representative or adjuster, that the applicant has complied with any requirement imposed by the Regulations relating to the passing of any examination and has the relevant experience prescribed by the Regulations.

(3) The Central Bank shall, where it refuses an application for registration under this Part, notify the applicant in writing of its refusal either generally or in respect of a particular class of insurance business, give reasons for its refusal and inform the applicant of his right to appeal under section 124.

Provisional
certificates for
sales representatives

114. (1) Where a person does not have the educational qualification necessary to be considered fit and proper for registration as a sales representative of an insurer or brokerage, but an insurer or brokerage has endorsed his application to be a sales representative and he otherwise meets the fit and proper requirements, the Central Bank may issue a provisional certificate permitting the person to perform the functions of a sales representative of an insurer or brokerage for a period of not more than three years.

(2) The provisional certificate issued to a sales representative of an insurer under subsection (1) shall be subject to the following conditions:

- (a) the person holding a provisional certificate shall be supervised by a registered sales representative;

- (b) all documents, including an application form, which are usually signed by a sales representative in relation to the sale of a policy shall be signed by both the person holding a provisional certificate and the supervisor of the registered sales representative; and
- (c) any other condition which in the opinion of the Central Bank is necessary for the protection of policyholders.

(3) The provisional certificate issued to a sales representative of a brokerage under subsection (1) shall be subject to the following conditions:

- (a) the person holding a provisional certificate shall be supervised by a registered broker; and
- (b) any other condition which in the opinion of the Central Bank is necessary for the protection of policyholders.

(4) Where a provisional certificate is issued to a person under this section for a period of less than three years and such person does not achieve the educational qualification necessary to be registered as a sales representative by the expiry date of the provisional certificate—

- (a) the Central Bank may subject to paragraph (b), renew the provisional certificate or at any subsequent time grant a new provisional certificate to that person;
- (b) the person shall not be allowed to perform the functions of a sales representative pursuant to a provisional certificate issued under subsection (1) and this subsection in excess of an aggregate period of three years; and

(c) the person shall immediately stop performing the functions of a sales representative where the provisional certificate has expired and the person has not been issued a certificate of registration as a sales representative pursuant to section 113.

(5) Where a person holding a provisional certificate under this section achieves the necessary educational qualification to be registered as a sales representative, he may apply for such registration under the provisions of this Part no later than twenty business days before the expiry of the provisional certificate or at any time thereafter.

(6) No person shall perform the functions of a sales representative during any period in which he is not registered.

Personal liability

115.(1) An intermediary is personally liable to a policyholder on all contracts of insurance—

- (a) made by, or through him directly or indirectly with any company which is not registered in Trinidad and Tobago or elsewhere to carry on insurance business; or
- (b) unlawfully made by, or through him directly or indirectly with an insurer or foreign insurance company in the same manner as if the intermediary had been an insurance company.

(2) Where an intermediary places insurance business with a foreign insurance company he shall disclose this information to the consumer and receive the signed authorization of the consumer in a form approved by the Central Bank.

(3) An intermediary which places business with a foreign insurance company shall comply with such reporting requirements as may be specified by the Central Bank.

(4) An intermediary who contravenes subsection (2) or (3) commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars.

116. (1) Each brokerage shall maintain professional indemnity insurance of at least five million dollars, with a maximum deductible of fifty thousand dollars or ten per cent of stated capital, whichever is greater. Capital and professional indemnity cover

(2) Each brokerage shall maintain at all times minimum stated capital of at least five hundred thousand dollars, which shall be in the form of cash and approved securities.

(3) A brokerage which immediately before the commencement of this Act is registered as a broker but is not in compliance with subsection (2), shall within three years of the commencement of this Act increase its stated capital to not less than the amount prescribed in subsection (2) as follows:

- (a) two hundred thousand dollars by the end of the first year;
- (b) three hundred and fifty thousand dollars at the end of the second year; and
- (c) five hundred thousand dollars at the end of the third year,

following commencement.

(4) Within six months following commencement of this Act, a brokerage that is subject to subsections (2) and (3) shall submit a plan acceptable to the Central Bank for increasing its minimum stated capital to the amounts required under subsections (2) and (3).

(5) If a brokerage fails to submit a plan when required to do so or fails to implement an accepted plan, the Central Bank may impose any conditions on the registration of the brokerage that it considers to be necessary.

(6) A brokerage that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars and in the case of a continuing offence, to a fine of fifteen thousand dollars per day for each day the offence continues.

Certificate of
registration

117. (1) The Central Bank shall issue a certificate of registration to every person registered under this Part.

(2) A certificate of registration shall—

- (a) be valid for such period as is stated in the certificate, not to exceed three years from the date of issue for a certificate issued to a sales representative, an agency, agent, broker, brokerage or adjuster;
- (b) be renewable for the periods stated in paragraph (a);
- (c) state the types of insurance business and each class in respect of which the person is registered;
- (d) where a company is registered as an agency, specify the insurer in respect of which the company is so registered;
- (e) where an individual is registered as a sales representative, specify the insurer, agency or brokerage, as applicable, in respect of which the person is so registered; and
- (f) where an individual is registered as an agent or broker, specify the agency or brokerage as applicable, in respect of which the individual is registered.

(3) The Central Bank shall issue a schedule to every certificate of registration of an agency or brokerage, which shall list the names of the agents or brokers registered to such agency or brokerage, as applicable.

(4) The certificate of registration shall be prominently displayed at the principal place of business of the agency or brokerage and a copy thereof shall be similarly displayed at each of its offices in Trinidad and Tobago.

(5) A certificate of registration shall be *prima facie* evidence that the person named therein has been registered in the capacity stated therein.

(6) A company which without reasonable excuse fails to comply with the provisions of subsection (4) commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars.

118. Where the Central Bank has issued a certificate of registration pursuant to section 117, the intermediary shall continuously meet all registration requirements and comply with all terms and conditions of its registration.

119. (1) A certificate of registration shall not be renewed if the sales representative, agent, broker or adjuster to whom it is issued has not complied with continuing professional development requirements.

(2) The Minister may after consultation with the Central Bank appoint a statutory body or company incorporated under the Companies Act as an approved educational institution for all or any combination of the following purposes:

- (a) to supervise and administer the examinations referred to in Part IV of this Act and the Regulations;
- (b) to supervise and administer CPD activities;
- (c) to provide written verification that the activities listed in a CPD Return constitute CPD activities; and
- (d) such other purposes as the Central Bank may require.

(3) An approved educational institution shall be appointed for a period of three years in the first instance and shall be eligible for reappointment for further periods of not less than twelve months but no more than three years.

Certificate to be
produced on
request

120. Every person registered under this Part shall produce his certificate of registration or a copy thereof when requested to do so by—

- (a) any person authorized in writing by the Central Bank;
- (b) the insurer or a person in respect of whom he is registered to carry on business as a sales representative; and
- (c) an actual or a prospective consumer.

Revocation of
registration

121. (1) The Central Bank may revoke the registration of a person registered under this Part in respect of all or any of the classes and types of insurance business the person is registered to carry on where—

- (a) any of the criteria prescribed in Schedule 5 is not or has not been fulfilled or is unlikely to be, or may not have been fulfilled in respect of the person;
- (b) the person has failed to comply with any obligation imposed on it by, or under this Act and the Regulations;
- (c) the Central Bank has been provided with false, misleading or inaccurate information by, or on behalf of the person or, in connection with an application for registration, by, or on behalf of a person who is or is, to be a director or officer of the person;
- (d) in the opinion of the Inspector, the interests of policyholders or potential policyholders of the insurer were in any way threatened,

whether by the manner in which the person is conducting or proposes to conduct its affairs;

- (e) the person has not carried on business as an intermediary in Trinidad and Tobago, within one year of being registered to carry on such business or has not carried on such business in Trinidad and Tobago for a period of more than six months;
- (f) in the case of a person registered as an agency or a brokerage, a receiver, receiver-manager or liquidator has been appointed;
- (g) the person fails to comply with any requirement, prohibition, compliance direction or any other direction issued by the Central Bank;
- (h) in the case of a person registered as a brokerage, the stated capital or professional indemnity insurance of the broker is less than the amount prescribed in section 116;
- (i) in the case of a person registered as an agency or a brokerage, the company has merged or has been amalgamated with another company and the registration is no longer required;
- (j) the business of the person is no longer the business for which it was registered;
- (k) a final judgment obtained against the person in any court and from which no appeal is pending remains unsatisfied for at least forty business days;
- (l) the person has committed, is committing, is about to commit, or is pursuing or is about to pursue a course of conduct that is an unsafe or unsound practice;

- (m) the person has been convicted of fraud;
- (n) the person requests that registration be revoked; or
- (o) the person has failed to comply with any obligation imposed on him by any written law for the prevention of money laundering or terrorist financing including the Proceeds of Crime Act, the Anti-Terrorism Act, the Financial Intelligence Unit of Trinidad and Tobago Act and any Regulations made thereunder.

(2) Before registration is revoked by the Central Bank under subsection (1), the Central Bank shall give to the person written notice of its intention to do so, specifying the grounds upon which the Central Bank proposes to revoke the registration and the date on which such proposed revocation is to take effect, and shall require the person to submit to the Central Bank within a specified period a written statement of any objections to the revocation of the registration.

(3) After serving a notice of intention under subsection (2), to revoke the registration, and after taking into account any objection under subsection (2), the Central Bank shall decide whether to revoke the registration and shall inform the person by notice in writing, of its final decision.

(4) Where the Central Bank decides to revoke the registration under this section, the notice of revocation shall include the date on which the revocation takes effect, a statement of the grounds for the decision and the appeal process under section 124.

122. (1) The Central Bank shall immediately revoke the registration of an agent, broker, brokerage, agency or sales representative where the Central Bank has—

- (a) received notice under section 123(1) that the contract of an agent, broker, agency or sales representative has been terminated; or

(b) revoked the registration of an insurer, agency or brokerage in respect of which an agent, agency, broker, or sales representative has been registered.

(2) Where the Central Bank has revoked the registration of an agent, agency, broker or sales representative under subsection (1), the Central Bank shall give written notice of the revocation to the agent, agency, broker or sales representative.

123. (1) Where a contract of—

- (a) a sales representative has been terminated by the insurer, agency or brokerage in respect of which it, or he was registered to carry on such business;
- (b) an agency has been terminated by the insurer; or
- (c) an agent or broker has been terminated by the agency or brokerage in respect of which he has been registered,

Notice of termination
of intermediary
to be given

the insurer, agency or brokerage which terminates the contract shall give written notice to the Central Bank in the form approved by the Central Bank, within five business days of such termination.

(2) Where an agent, agency, broker or a sales representative enters into any new contract with a relevant registrant, the agent, broker, agency or sales representative shall reapply for registration under section 111.

(3) An agent, broker or sales representative that enters into a new contract with an agency, a brokerage or an insurer, shall not conduct any insurance business unless he has received a certificate of registration in respect of such agency, brokerage or insurer, as the case may be.

(4) An agency, brokerage or insurer shall not conduct any insurance business with an agent, broker or sales representative unless such agent, broker or sales representative has received a certificate of registration in respect of such agency, brokerage or insurer, as the case may be.

(5) An agent, broker or sales representative that contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of one million and five hundred thousand dollars and to imprisonment for two years.

(6) An agency, brokerage or insurer that contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of three million dollars.

Right of appeal

124. A person who is aggrieved by the decision of the Central Bank to refuse to register him or to revoke his registration as an intermediary under this Part may invoke the appeal process under section 253.

Restriction on payment of compensation for placing or negotiating insurance

125. Where, at the date of placing or negotiating insurance a person is not registered as an agency, a brokerage or a sales representative, no insurer and no officer, employee or agent of the insurer shall pay, agree to pay, or allow to be paid to that person compensation or anything of value for placing, negotiating or attempting to place or negotiate insurance or for negotiating the continuance or renewal of insurance other than reinsurance.

Rebating

126. No insurer and no officer, employee or agent of an insurer and no broker or salesman shall directly or indirectly—

- (a) make or attempt to make an agreement as to the premium to be paid for a policy other than as specified in the policy; or

- (b) pay, allow, give, offer or agree to pay, allow or give a rebate of the whole, or part of the premiums stipulated by the policy or any other consideration or thing of value intended to be in the nature of a rebate of premium,

to any person who is insured or is applying for insurance in respect of life, person or property in Trinidad and Tobago.

127.(1) Nothing in sections 125 and 126 shall affect any payment by way of dividend, bonus, profit or savings, which is provided for by the policy. Exemption for payment of dividend to salaried employee

(2) Nothing shall be construed so as to prevent a registrant from offering a policy at special rates to a *bona fide* salaried employee or the spouse or a child of such employee, in respect of insurance issued for any class of business or so as to require such employee to be registered under this Part.

128.(1) Every insurer shall make a return to the Central Bank within sixty business days after the end of the financial year in such form and at such other times as the Central Bank requires, showing all persons— Company to make return to the Central Bank

- (a) registered as its agencies and sales representatives in Trinidad and Tobago; and
- (b) to whom it has, within such period as may be specified in the form, paid or agreed to pay or allowed to be paid directly or indirectly, compensation for placing or negotiating any class of insurance business or negotiating the continuance or renewal of such insurance or for attempting to do so.

(2) Every agency or brokerage shall make a return to the Central Bank within sixty business days after the end of the financial year in such form and at such other times as the Central Bank requires, showing all persons—

- (a) registered as its agents, brokers or sales representatives in Trinidad and Tobago, as the case may be; and

(b) to whom it has, within such period as may be specified in the form, paid or agreed to pay or allowed to be paid directly or indirectly, compensation for placing or negotiating any class of insurance business or negotiating the continuance or renewal of such insurance or for attempting to do so.

Authority of
agency

129. (1) Subject to subsection (3), no agency shall—

- (a) be an agency providing the same class of insurance business for two or more insurers;
- (b) act or purport to act on behalf of more than one insurer; or
- (c) represent himself to the public by advertisement or otherwise as the agency of more than one insurer.

(2) Notwithstanding subsection (1), where an agency is unable to negotiate insurance on behalf of an applicant for insurance with the insurer in respect of which he is registered to carry on business, the agency may procure the insurance from another insurer if that insurer obtains in each case the consent in writing of the insurer in respect of which the agency is registered and files a copy of such consent with the Central Bank within seven business days of its receipt.

(3) Where the Central Bank has received an application from an agency to act on behalf of more than one insurer, the Central Bank may approve the application—

- (a) in respect of a different class, within any one type of insurance business; or
- (b) in respect of a different type of insurance business.

(4) The Central Bank may refuse to grant or may revoke an approval granted under subsection (3) where it is satisfied that the granting or continuance of such approval is not in the public interest.

(5) An agency that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars.

130. (1) In the case of a brokerage that has entered into an agreement under which the brokerage can commit an insurer to provide coverage to a consumer in accordance with such criteria as may be established by the insurer, or an agreement that is unique, the brokerage shall disclose such arrangement to the consumer in writing in such manner as may be specified by the Central Bank.

Disclosure of preferential arrangements by brokerage

(2) A brokerage that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars.

131. (1) An agent, agency, broker, brokerage or a sales representative shall not—

Offence to procure payment of premium by fraudulent misrepresentation

- (a) knowingly procure by fraudulent representations payment or the obligation for payment of any premium on an insurance policy;
- (b) cause a policyholder to discontinue an insurance policy without first discussing the advantages and disadvantages of the discontinuance of the policy; or
- (c) cause a policyholder to replace a long-term insurance policy without first discussing the advantages and disadvantages of the discontinuance of the policy and obtaining the policyholder's signature on the disclosure form set out in Schedule 7.

(2) An agent, broker, or sales representative who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one million, five hundred thousand dollars and to imprisonment for two years.

(3) An agency or brokerage that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of three million dollars.

Receipt of premiums

132.(1) Premiums or other payments due that are received by an agency, brokerage or a sales representative on behalf of an insurer shall be deemed to be received by the insurer notwithstanding any conditions or stipulations to the contrary.

(2) Upon receipt of any premium or other payment due from a consumer, the agency, brokerage or sales representative shall issue to the consumer a receipt, which shall be considered to be a receipt of the insurer.

(3) If a premium is paid to an agency, brokerage, or sales representative then the insurer shall not avoid liability under the contract of insurance for non-payment of premiums.

Consumer trust
account

133.(1) An agency registered to carry on general insurance business, shall establish and maintain a consumer trust account for the receipt and payment of consumer funds.

(2) A brokerage shall establish and maintain a consumer trust account for the receipt and payment of consumer funds, in respect of each type of insurance for which it is registered.

(3) An agency registered to carry on general insurance business or a brokerage shall deposit monies received from a consumer for the account of an insurer or from an insurer for the account of a consumer in each consumer trust account.

(4) An agency or a brokerage transacting general insurance business shall be permitted to deduct from the consumer trust account any commission and other deduction to which it may by agreement be entitled.

(5) A brokerage transacting long-term insurance business shall not be permitted to deduct from a consumer trust account any commission and other deductions.

(6) Subject to subsection (4), an agency registered to carry on general insurance business or a brokerage shall not commingle the monies to be deposited in a consumer trust account with any other monies of the agency or the brokerage.

(7) Each agency registered to carry on general insurance business and brokerage shall report to the Central Bank on each consumer trust account in accordance with the timing, form and content of such reports as the Central Bank may specify.

(8) An agency or brokerage that contravenes subsection (1), (2), (3), (5) or (6) commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars.

134. (1) An agency, brokerage or sales representative that receives monies from a consumer for the account of an insurer registered to carry on general insurance business or the accident and sickness class of business shall pay over such monies to the insurer within ten business days after the end of the month in which the monies were received.

(2) An agency, brokerage or sales representative of an insurer that receives monies from a consumer for the account of an insurer registered to carry on long-term insurance business shall pay over such monies to the insurer within ten business days from the date on which it received such monies.

(3) Where an insurer at the request of a brokerage provides temporary cover in respect of general insurance on credit in accordance with section 92(1)(c)(i), the brokerage is liable to the insurer for the premium due in respect of such cover and such premium may be sued for and recovered from the brokerage as a civil debt.

(4) An agency, brokerage or sales representative that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars.

Payment to
consumer

135. (1) An agency, brokerage or sales representative that receives a cheque in the name of a consumer from an insurer shall deliver or make reasonable efforts to deliver the cheque to the consumer within five business days from the date on which the cheque was received.

(2) Notwithstanding subsection (1), where an agency or brokerage receives a cheque in the name of a consumer from an insurer in respect of an accident and sickness claim, the agency or brokerage shall deliver or make reasonable efforts to deliver the cheque to the consumer within ten business days from the date on which the cheque was received.

(3) An agency or brokerage that receives a cheque in its name from an insurer for the account of a consumer shall deposit such cheque in its consumer trust account within three business days on which it was received.

(4) An agency or brokerage that makes a deposit in accordance with subsection (3) shall pay over or make reasonable efforts to pay over the same to the consumer within seven business days from the date on which such deposit was made.

Financial statement
of intermediary

136. (1) Every agency and brokerage shall submit to the Inspector within sixty business days after the end of its financial year, and at such other times as may be required by the Inspector, financial statements prepared in accordance with financial reporting standards and duly audited in accordance with International Standards on Auditing.

(2) Every financial statement submitted by an agency or brokerage shall be signed by a director and an agent or broker, as the case may be.

(3) The auditor of every agency and brokerage shall monitor and evaluate compliance with the Proceeds of Crime Act and the Anti-Terrorism Act and any regulations made thereunder, any guideline on anti-money laundering and combating terrorist financing issued by the Central Bank and submit an annual report including recommendations to the Central Bank within four months of the end of its financial year.

(4) The provisions of section 146 in relation to the submission of financial statements shall apply *mutatis mutandis* to the submission of financial statements pursuant to subsection (1).

137. Every brokerage shall keep, in relation to Monthly accounts insurance placed with it relating to each class or classes of insurance business for which it is registered, monthly accounts showing all receipts and expenses relating to such insurance business and such accounts shall be completed not later than fifteen business days after the end of the month in respect of which they are prepared.

138. Every agency shall keep, with respect to policies Monthly records of agencies issued or renewed by them, such monthly records as will enable the amounts due to them by the insurer or due from them to the insurer to be determined, and such records shall be completed not later than fifteen business days after the end of the month in respect of which they are prepared.

139. (1) The auditor of an agency or brokerage shall Audits of accounts of agencies and brokerages include in its opinion to the financial statements whether or not the agency or brokerage has satisfied the requirements of sections 133, 134 and 135.

(2) Where the Inspector has reasonable grounds to believe that the auditor of an agency or brokerage—

(a) has failed to perform his duties or to comply with the provisions of this Act;

- (b) has been a party to the preparation of, or has rendered an unqualified opinion on a financial statement that does not fairly present the financial position of the agency or brokerage; or
- (c) is incompetent or is accused of professional misconduct,

the Inspector or Central Bank shall deliver a written report to the agency or brokerage and as appropriate ICATT or such other professional association that may, in the opinion of the Inspector be relevant.

(3) Where the Inspector has made a report under subsection (2) in good faith, the Inspector shall not be subject to any action, claim or demand by, or any liability to, any person in respect of which the report was made.

Persons may act as adjusters during a catastrophe

140.(1) For the purposes of this section, “foreign adjuster” means a person who is registered in another jurisdiction to carry on the business of an adjuster and is permitted under this section to act as an adjuster during periods of catastrophe.

(2) In the event of a catastrophe an insurer, brokerage or adjuster may retain the services of a foreign adjuster and notwithstanding section 110(2), such person may carry on the business of an adjuster in accordance with this Part.

(3) An insurer, brokerage or adjuster which retains the services of a foreign adjuster under subsection (2) shall submit a certified copy of that person’s certificate of registration in another jurisdiction to the Inspector within five business days of retaining such person.

(4) Upon receipt of a certificate of registration under subsection (3), the Inspector may—

- (a) prohibit the person from further acting as an adjuster; or

(b) allow the person to continue acting as an adjuster upon such terms and conditions as may be appropriate.

(5) A person who continues to act as an adjuster when prohibited by the Inspector or acts in contravention of terms and conditions set by the Inspector under subsection (4) commits an offence and is liable on summary conviction to a fine of one million, five hundred thousand dollars and to imprisonment for two years.

(6) The Inspector may notify insurers, brokerages or adjusters of the date on which the catastrophe shall be deemed to be terminated for purposes of this section and any person who continues to act as an adjuster after such date commits an offence and is liable on summary conviction to a fine of one million, five hundred thousand dollars and to imprisonment for two years.

141. (1) A person who contravenes any provision of this Part commits an offence and the offence shall be deemed to be continued so long as the default continues. ^{Offences for intermediaries}

(2) All offences against this Part for which no other penalty is expressly provided are punishable—

(a) in the case of an agency or brokerage, by a fine not exceeding twenty thousand dollars and to an additional fine of two thousand dollars for each day the offence continues; and

(b) in the case of agent, broker, sales representative, adjuster or insurance consultant, by a fine not exceeding ten thousand dollars and to an additional fine of one thousand dollars for each day the offence continues.

PART V

FINANCIAL STATEMENTS AND RETURNS

142. This Part does not apply to a privately administered pension fund plan, an association of underwriters, an intermediary or an insurance consultant. ^{Non-application of Part}

Duty of company to
keep books, vouchers,
and valuation of
assets

143. (1) Every insurer and financial holding company shall keep at its head office, such books, vouchers, records, receipts, schedules and other documents as may be necessary to enable it to prepare the financial statements and returns required under this Act.

(2) Every insurer and financial holding company shall cause its books, vouchers, records, receipts, schedules and other documents to be readily available for examination and shall assist as far as possible in facilitating the examination.

(3) The assets of each insurer and financial holding company shall be valued in accordance with financial reporting standards and such values shall be used for the financial statements, reports, and returns required under this Act or the Regulations.

(4) Where the financial reporting standards do not provide a method for valuing certain assets, the board of directors of an insurer or financial holding company shall approve a methodology to value such assets.

(5) The fair value of property shall be determined by the appraisal of a qualified valuer at the time of acquisition and thereafter on a triennial basis.

(6) Notwithstanding subsection (5), an insurer or financial holding company shall cause annual appraisals of its property to be conducted where there are significant and volatile market fluctuations in value.

(7) The Inspector may require new appraisals to be conducted by a qualified valuer from a list of qualified valuers provided by the Inspector, at the insurer's or financial holding company's expense, whenever he considers it advisable.

Financial statements

144. (1) Every insurer and financial holding company shall submit to the Inspector within sixty business days after the end of its financial year and at such other times as may be required by the Inspector,

financial statements of all its operations both domestic and foreign, prepared in accordance with financial reporting standards and duly audited in accordance with International Standards on Auditing, on an individual basis and on a consolidated basis.

(2) The Inspector may require for regulatory purposes that an insurer or financial holding company exclude a subsidiary or other company in which it has a significant shareholding from the consolidated financial statements required under subsection (1).

(3) An insurer and financial holding company shall submit audited financial statements on the request of the Inspector in respect of any—

- (a) subsidiary of the insurer;
- (b) financial holding company or company in which the insurer or financial holding company is a significant shareholder; or
- (c) member of the financial group which the financial holding company controls.

(4) Every financial statement submitted by an insurer and financial holding company shall be signed by two directors of the relevant company.

(5) If, in the opinion of the Inspector, the information contained in the financial statements required under this section, indicates the likelihood of insolvency of any company under subsection (3), the Inspector may, after consultation with the insurer or the financial holding company require the insurer or financial holding company to take such measures as the Inspector may consider necessary to prevent the financial condition of the company under subsection (3) from affecting the insurer or financial holding company and, in particular, may require that the—

- (a) company referred to in subsection (3)—
 - (i) increase its stated capital; or

- (ii) transfer or otherwise dispose of its business or part of its business; or
- (b) insurer or financial holding company—
 - (i) cease to make any advances or incur any credit exposures to the company; or
 - (ii) make special provision for any potential losses which in the opinion of the Inspector, the company is likely to incur where such company has credit exposures with the insurer.

(6) A person who fails to comply with subsection (4) commits an offence and is liable on summary conviction to a fine of five million dollars and, in the case of a continuing offence, to a fine of five thousand dollars per day for each day that the offence continues.

Returns

145. (1) Every insurer and financial holding company shall submit to the Inspector within sixty business days after the end of its financial year and at such other times as may be required by the Inspector, and in such form as the Inspector may from time to time specify, audited returns prepared in accordance with the Act and financial reporting standards on an individual and a consolidated basis, signed by the chief financial officer and one director of the company containing—

- (a) statements of its assets and liabilities;
- (b) statements of its earnings and expenses;
- (c) the reports of the auditor as required by section 147(1)(a); and
- (d) any other information that the Inspector may require.

(2) Where an insurer is carrying on long-term insurance business, every balance sheet which it is required to prepare under subsection (1) shall bear a certificate signed by its appointed actuary in accordance with the Regulations.

(3) Every insurer and financial holding company shall submit to the Inspector quarterly returns in a form as specified by the Inspector within twenty business days after the end of each quarter.

(4) Every insurer and financial holding company shall submit to the Inspector a quarterly return showing all credit exposures amounting to ten per cent or more of the capital base of the insurer or financial holding company within twenty business days after the end of each quarter.

(5) The Inspector may apply additional reporting requirements under this section to an insurer or a financial holding company, including—

- (a) subsidiaries of the insurer or financial holding company and companies in which the insurer or financial holding company is a significant shareholder;
- (b) members of a financial group which the insurer controls; and
- (c) minority holdings of the insurer or financial holding company.

(6) No statement or return shall in any case be required in respect of the affairs of any particular policyholder of an insurer.

(7) Every insurer and financial holding company shall submit to the Inspector within twenty business days at the end of every quarter a list of its shareholders including beneficial and nominee shareholders—

- (a) who hold five per cent or more of its stated capital; and
- (b) any agreement with respect to the voting of shares of the insurer or financial holding company.

(8) Whenever a person becomes the holder of five per cent or more of the stated capital of an insurer or financial holding company, the insurer or financial holding company shall, within twenty business days of the person becoming such a holder, notify the Inspector.

Transition period
for submitting
financial
statements and
returns

146. Notwithstanding sections 144(1), 145(1) and 152 an insurer and financial holding company shall be permitted to submit its audited financial statements and returns and to publish its audited financial statements within four months after the end of its financial year, for the first year following the commencement of this Act.

Audits of returns

147. (1) The auditor of an insurer or financial holding company shall—

- (a) audit the returns of the insurer or financial holding company filed annually pursuant to section 145(1); and
- (b) report annually in writing to the Inspector on the adequacy of the accounting procedures, records and such internal control systems of the insurer or financial holding company as may be relevant to its financial reporting function;

(2) The auditor of an insurer shall report annually in writing to the Inspector on whether the—

- (a) insurance liabilities relating to unexpired general insurance policies have been calculated in accordance with the provisions of section 212;
- (b) provisions regarding the settlement of outstanding claims are adequate, having regard to the latest estimated cost of settlement of such claims; and
- (c) separate accounts established pursuant to section 42 have been maintained in accordance with the Act and Regulations.

(3) The provisions of subsection (2)(a) and (b) shall apply only to an insurer carrying on general insurance business.

(4) The Inspector may, by notice in writing to an insurer or financial holding company require its auditor to comply with such other reporting requirements as the Inspector may stipulate in addition to International Standards on Auditing with respect to the report and annual returns referred to in subsection (1).

(5) The Inspector—

(a) shall, in relation to the audit of an insurer or financial holding company have access to the working papers of the auditor for a period not exceeding four years preceding the date of submission of the audit report; and

(b) may require the auditor of an insurer or financial holding company to provide him with any further information that he considers relevant.

(6) Every insurer and financial holding company shall pay the expenses incurred by its auditor in the performance of the duties and obligations set out in this Part.

(7) Where the auditors, for the purpose of meeting their responsibilities under subsection (1), (2) and (8)—

(a) are unable to obtain all the information they require; or

(b) are not completely satisfied with the information contained in the returns on which they are reporting,

they shall in their report specify the matters in respect of which they were unable to obtain information or were not completely satisfied with such information.

(8) The auditor of an insurer or financial holding company shall monitor and evaluate compliance with the Proceeds of Crime Act and the Anti-Terrorism Act and any regulations made thereunder, any guideline on anti-money laundering and combating terrorist financing issued by the Central Bank and submit an annual report including recommendations to the Central Bank within four months of the end of its financial year.

Unsatisfactory
financial
statements
and returns

148. (1) Where it appears to the Inspector that any financial statement or return submitted to the Central Bank by an insurer or financial holding company in accordance with sections 144 and 145—

- (a) is in any particular unsatisfactory, incomplete, incorrect or misleading; or
- (b) does not comply with the requirements of this Act,

he may, by notice in writing, require such explanations as he considers necessary to be made by, or on behalf of the insurer or financial holding company within such time as is specified in the notice.

(2) After considering any explanations made by, or on behalf of the insurer or financial holding company or where no explanations were made within the time specified in the notice or where the Inspector does not serve a notice under subsection (1), the Inspector may reject the financial statement or return.

(3) Where the Inspector rejects any financial statement or return under subsection (2), he may give directions as he thinks necessary for varying the financial statements or returns within such time as he may specify or he may proceed to issue compliance directions in accordance with section 155.

Offence
re: submission
of documents

149. An insurer or financial holding company which fails to submit any financial statement or return to the Inspector in accordance with section 144 or 145 or which submits such a document that is in any particular

unsatisfactory, incomplete, incorrect or misleading or that does not comply with the requirements of this Act commits an offence.

150. An insurer shall not commingle the funds of its insurance business with the funds of any other business. No commingling of funds

151. (1) Where an insurer is carrying on more than one class of insurance business and an amount received or paid by the insurer is not received or paid wholly in respect of any one class of insurance business the insurer shall apportion the amount in an equitable manner between the several classes of insurance business to which the receipt or payment may be applicable. Apportionment of receipts and payments between various classes of insurance business

(2) Whenever the Inspector requires the reporting of financial results by classes within a type of insurance business and an amount received or paid by the insurer is not received or paid wholly in respect of any one class or type of insurance business, an insurer shall, for the purposes of that report, apportion the amount received, paid, or apportioned with respect to the relevant class or type of insurance business in an equitable manner between the several classes within that type of insurance business.

152. (1) Every insurer and financial holding company shall within sixty business days after the end of its financial year publish in at least two daily newspapers circulated in Trinidad and Tobago and exhibit in a conspicuous place in each of its offices, the audited financial statements referred to in section 144(1). Publication of financial statements

(2) An insurer shall—

(a) in addition to the audited financial statements referred to in subsection (1), keep at each of its offices, such other information for the protection of policyholders and other consumers as the Central Bank may specify from time to time; and

(b) during normal business hours make copies of the information referred to in paragraph (a) available for inspection by its policyholders and other consumers upon request.

(3) The Central Bank may consult with insurers to create abridged financial statements for the purpose of publication.

(4) Where the Central Bank and ICATT have agreed to abridged financial statements under subsection (3), the Central Bank shall publish a notice in the *Gazette* and in at least two daily newspapers circulated in Trinidad and Tobago.

(5) Following a publication under subsection (4), every insurer and financial holding company may publish abridged financial statements instead of its financial statements in accordance with the requirement under subsection (1).

Power to appoint
independent
actuaries

153.(1) The Inspector may appoint an independent actuary to review actuarial work required under this Act or to make an independent investigation into the insurer's financial condition, if the Inspector is of the opinion that the appointment is necessary.

(2) The independent actuary shall submit a report to the Inspector and the insurer on the results of such review or investigation.

(3) The costs incurred in carrying out the review or investigation under subsection (1) are payable by the insurer.

Power to prohibit
recognition of
insurance

154.(1) The Inspector may prohibit an insurer from recognising in its financial statements or returns any asset or any reduction of liabilities, or require that the amounts thereof be varied, in respect of reinsurance, any arrangement having the effect of reinsurance, or any other arrangement with another insurance company if, in the opinion of the Inspector—

(a) there is a significant possibility that the insurer's counterparty or counterparties under such reinsurance or other arrangement may default on their obligations thereunder;

- (b) the reinsurance or other arrangement does not result in a reduction of risk for the insurer commensurate with the amount of the asset or reduction in liability that would result from its recognition;
- (c) the reinsurance or other arrangement is not adequate in terms of criteria set out in Guidelines; or
- (d) the reinsurance or their arrangement would significantly increase the risk that the insurer is, or is likely to be unable to meet its liabilities.

(2) An insurer shall not allow its reinsurance arrangements to lapse.

(3) An insurer shall within twenty business days of the expiry of prior reinsurance arrangements or any other change to its reinsurance arrangements—

- (a) notify the Central Bank in writing of the particulars of such changes; and
- (b) provide the relevant information regarding its reinsurer or reinsurance arrangements to the Central Bank upon request.

PART VI

COMPLIANCE DIRECTIONS AND INJUNCTIVE RELIEF

155. (1) Notwithstanding any other action or remedy available under this Act, if the Inspector reasonably believes that any person including the principal representative of a foreign insurance company—

- (a) has committed, is committing, or is about to commit an act, or is pursuing or is about to pursue any course of conduct, that is an unsafe or unsound practice;
- (b) has committed, is committing, or is about to commit an act, or is pursuing or is about to pursue a course of conduct, that may directly or indirectly be prejudicial to the interest of policyholders;

- (c) has violated, is violating or is about to violate any of the provisions of any law;
- (d) has breached any requirement or failed to comply with any measure imposed by the Central Bank or Inspector in accordance with this Act or the Regulations;
- (e) is unlikely to meet the liabilities due to policyholders of the insurer; or
- (f) is likely to continue in business that would result in a loss to the policyholders of the insurer,

the Inspector may direct the person to—

- (i) cease or refrain from committing the act, pursuing the course of conduct, or committing a violation; or
- (ii) perform such acts which, in the opinion of the Inspector, after consultation with the Governor, are reasonably necessary to remedy the situation or minimize the prejudice.

(2) For the purposes of this section, the term “unsafe or unsound practice” shall include, without limitation, any action or omission that is contrary to generally accepted standards of prudent operation and conduct, the possible consequences of which, if continued, would be a risk of loss or damage to the registrant, policyholders or consumers.

(3) Subject to subsection (6), before a direction is issued under subsection (1), the person to whom the direction is to be issued shall be served with a notice specifying—

- (a) the facts of the matter;
- (b) the directions that are intended to be issued; and

(c) the time and place at which the person served with the notice may make representations to the Inspector.

(4) If the person served with the notice referred to in subsection (3) fails to make representation at the time and place stipulated by the said notice, the Inspector may proceed to issue directions.

(5) Where, after considering the representations made in response to the notice referred to in subsection (3), the Inspector determines that the matters specified in the notice are established, the Inspector may proceed to issue directions to the person served with the notice.

(6) Notwithstanding subsection (3) if, after consultation with the Governor the Inspector is of the opinion that the length of time required for representations to be made might be prejudicial to the interests of policyholders or to the stability of the financial system, the Inspector may issue an emergency direction with respect to the matters referred to in subsection (1), not exceeding twenty business days.

(7) A person shall be entitled to make representations within twenty business days after the issuance of the directions by the Inspector under subsection (6).

(8) A direction made under subsection (6), shall be complied with during the period specified and shall continue to have effect after the expiration of such period if no representations are made to the Inspector within that period or, if representations have been made, the Inspector notifies the person to whom the direction was issued that he is not satisfied that there are sufficient grounds for revoking the direction.

(9) If a person fails to comply with a direction issued or made under subsection (4), (5) or (6) respectively, the Inspector may, in addition to any other action that may be taken under this Act, apply to the High Court for an order requiring that person to comply with the direction and any other order the High Court deems fit.

(10) A person who fails to comply with directions under this section commits an offence and is liable, on summary conviction in the case of—

- (a) an insurer or financial holding company, holding company, controlling shareholder, or significant shareholder to a fine of five million dollars and, in the case of a continuing offence, to a fine of five hundred thousand dollars for each day that the offence continues;
- (b) a director or officer, other employee or agent, or principal representative of a foreign insurance company, holding company or financial holding company, to a fine of five million dollars and to imprisonment for five years and, in the case of a continuing offence, to a fine of five hundred thousand dollars for each day that the offence continues;
- (c) an agency or brokerage, to a fine of one hundred and fifty thousand dollars and in the case of a continuing offence, to a fine of fifteen thousand dollars for each day the offence continues;
- (d) a director, officer or other employee of an agency or brokerage, to a fine of eighty thousand dollars and in the case of a continuing offence, to a fine of fifteen thousand dollars for each day the offence continues; and
- (e) an agent, broker, sales representative, adjuster or any other person, to a fine of eighty thousand dollars and in the case of a continuing offence, to a fine of eight thousand dollars for each day the offence continues.

156. Where the Central Bank reasonably believes that ^{Injunctive relief} a person is in violation of this Act, or is engaged in any activity or course of conduct described under section 155(1), the Central Bank may in addition to, or in lieu of other actions authorized under this Act—

- (a) seek a restraining order or other injunctive or equitable relief, to prohibit the continued violation or prevent the activity or course of conduct in question or any other action; or
- (b) pursue any other remedy which may be provided by law.

PART VII

LONG-TERM INSURANCE BUSINESS

A. Actuarial Investigations

157. (1) This Part shall apply to all insurers carrying ^{Application of this Part} on long-term insurance business.

(2) Sections 163 and 165 to 210 shall apply to insurers only in respect of their Trinidad and Tobago business, in any class of long-term insurance.

(3) Sections 196 and 199 shall also apply to insurers which carry on general insurance business.

158. (1) Every insurer carrying on long-term ^{Actuarial reports} insurance business shall—

- (a) as at the end of each financial year cause its appointed actuary to—
 - (i) make a valuation of its policy liabilities and other actuarial liabilities; and
 - (ii) prepare an actuarial report, in accordance with the Regulations; and
- (b) submit the actuarial report referred to in paragraph (a) to the Inspector within sixty business days after the end of each financial year.

(2) The actuarial report required under subsection (1) shall include a description of any matters for which the appointed actuary was unable to obtain information or for which he was not satisfied with the information provided.

(3) Where an insurer causes its appointed actuary to make an investigation and the results of the investigation are made public, the insurer shall cause a copy of the actuarial report to be submitted to the Inspector within five business days of making the results of such report public.

(4) For the purposes of this section, “policy liabilities and other actuarial liabilities” includes—

- (a) policy benefit liabilities;
- (b) premium liabilities;
- (c) claims liabilities; and
- (d) liabilities in respect of guarantees or other commitments—
 - (i) to policyholders and other consumers under contracts of insurance;
 - (ii) to persons to whom the insurer owes benefits; and
 - (iii) associated with the business carried on by an insurer pursuant to section 30(7),

net of reinsurance recoverables or other relevant deductions.

Financial condition
reports

159.(1) For the purpose of this section, “financial condition report” means a report on the prospective ability of an insurer as at a particular date to meet its future obligations to policyholders and to those to whom it owes benefits.

(2) The appointed actuary shall carry out an annual investigation of the insurer regarding its current and expected future financial condition so as to identify plausible threats and actions which will mitigate those threats.

(3) With effect from the end of its first financial year that ends after the expiration of twelve months from the commencement of this Act, an insurer shall—

- (a) each financial year cause its appointed actuary to prepare a written financial condition report in accordance with the Regulations;
- (b) submit a copy of the report referred to in paragraph (a) to the Inspector, within sixty business days after the end of each financial year; and
- (c) submit a copy of the report referred to in paragraph (a) to the board of directors.

(4) In addition to the annual requirement in subsection (3), where the appointed actuary of an insurer discovers any matters or conditions that, in the opinion of the appointed actuary, could have material adverse effects on the financial condition of the insurer and may require urgent corrective action, the appointed actuary shall immediately report such findings in writing to—

- (a) the Inspector; and
- (b) the chief executive officer and the board of directors of the insurer.

160. (1) An insurer may, from a participating account, ^{Distribution of surplus} in a financial year or at any time within six months after the end of that financial year, make a payment to its shareholders, or transfer an amount to an account from which a payment may be made to its shareholders if—

- (a) the aggregate of the amount so paid or transferred in respect of that financial year does not exceed twenty-five per cent of the portion of the profits paid or distributed in respect of that financial year to participating policyholders;

- (b) in respect of that financial year, the insurer paid or distributed dividends or bonuses to its participating policyholders out of the profits of the participating account in accordance with its dividend or bonus policy;
- (c) in the opinion of the appointed actuary, due regard has been given to the interest and fair treatment of the policyholders, including their reasonable expectations; and
- (d) in the opinion of the appointed actuary, the payment to the shareholders, or the transfer to the account from which a payment can be made to the shareholders—
 - (i) would not affect the insurer's ability to meet its obligations under its participating policies, including its ability to continue to comply with its dividend or bonus policy or to maintain the levels or rates of dividends or bonuses paid or distributed to the insurer's participating policyholders; and
 - (ii) would not lead to a breach of this section or section 82 or 84.

(2) Where the amount paid or transferred under subsection (1) is less than the maximum amount allowed under the dividend and bonus policy, the insurer shall not pay or transfer the difference between the amount actually paid or transferred and the maximum amount allowed under dividend and bonus policy, to the shareholders at any time after the expiration of the six-month period referred to in subsection (1).

(3) The only transfers that may be made from a participating account maintained pursuant to section 42 are—

- (a) transfers made pursuant to subsection (1);
- (b) transfers made in respect of transfers or reinsurance of all or any portion of the participating policies in respect of which the participating account is maintained;
- (c) transfers, with the approval of the Inspector, of amounts that can be reasonably attributed to sources not related to the participating policies in respect of which the account is, or has been maintained, if the transfer would not, in the opinion of the appointed actuary, materially affect the company's ability to continue to comply with its dividend or bonus policy, maintain the levels or rates of dividends or bonuses paid to the company's participating policyholders or meet the company's obligations under its participating policies; and
- (d) transfers with the approval of the Inspector and the High Court made pursuant to a reattribution plan.

(4) Subject to this section, the directors of an insurer that issues participating policies may declare, and the company may pay or otherwise satisfy, a dividend, bonus or other benefit on those policies and such payment or satisfaction shall be in accordance with its dividend or bonus policy established pursuant to the Regulations.

(5) The appointed actuary shall, annually in writing, report to the directors on the fairness to participating policyholders of a proposed dividend, bonus or other benefit and whether it is in accordance with the policy. The directors shall consider the appointed actuary's report before declaring the dividend, bonus or other benefit.

(6) The report of the appointed actuary referred to in subsection (5) shall be prepared in accordance with generally accepted actuarial practice with such changes as may be determined by the Inspector and any additional directions that may be made by the Inspector.

(7) The directors of an insurer shall not declare a dividend, bonus or other benefit to participating policyholders or authorize transfers from the participating account if there are reasonable grounds for believing that—

- (a) the company is, or the payment or other satisfaction would cause the company to be, in contravention of section 82 or the Regulations; or
- (b) the declaration or transfer is not fair and equitable to participating policyholders or that their reasonable expectations have not been given due regard.

(8) An insurer who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of five million dollars.

B. Issue of Policies

Pricing of
policies

161.(1) An insurer shall not issue any policy unless the pricing of the policy has been approved by an actuary as being suitable for the class of policy to which the policy belongs.

(2) The Inspector may at any time require the insurer to obtain and to furnish the Inspector with a report by the appointed actuary as to the appropriateness of the pricing of any class of policy.

(3) Where a report is required under subsection (2), the insurer shall not issue any policy of that class unless it has obtained from the appointed actuary approval as to the pricing of policy.

(4) When approving the pricing under subsection (1) in respect of any class of policy, an actuary shall have regard to—

- (a) the maximum rate of commission proposed to be paid to any person; and
- (b) the maximum rate of reduction of premium to be allowed to any person,

in respect of that class of policy.

162. Where the pricing of a policy is approved by an actuary in respect of any class of policy, the insurer shall not, except with the approval of an actuary, pay or allow in respect of any policy of that class a commission or a reduction of premium at a rate greater than—

- (a) the maximum rate of commission or reduction of premium to which the actuary had regard to when approving the rate of premium; or
- (b) the maximum rate of commission or reduction of premium payable by the insurer, immediately prior to the commencement of this Act, in respect of policies of that class, if any, issued using the approved pricing,

whichever is the greater.

163. An employer shall not enter into, and an insurer shall not issue, an annuity contract for the benefit of an employee unless the employer has first obtained the written consent of the employee.

164. (1) Every insurer registered to carry on long-term insurance business shall not issue, accept or amend any form of proposal, policy, endorsement or application unless the standard form has been approved by the Inspector.

(2) Where an insurer has submitted a request for approval under this section, the insurer shall also submit—

- (a) details of the pricing under section 161(1); and

(b) copies of the following forms where applicable:

- (i) the standard form of proposal;
- (ii) the standard form of policy;
- (iii) the standard form of endorsement;
and
- (iv) the form of application.

(3) The Inspector may specify such other information as he thinks necessary for the review of a standard form under this section.

(4) A form of proposal shall be framed so as to require a person making a proposal for a life policy to specify the date of birth of the person whose life is proposed to be insured and the person making the proposal shall supply those particulars to the best of his knowledge and belief.

(5) Where an insurer has submitted a request for approval with all of the required information, a standard form under this section will be deemed to be approved sixty business days after the request and all of the required information is received by the Inspector, unless he informs the insurer otherwise.

Insurer may
give notice
requiring
proof of age

165. Where an insurer issues a life policy which provides that proof of age of the life of the insured is a condition precedent to the payment of the sum insured, the insurer shall, unless the age of the life insured has already been admitted by it, issue on, or with the policy a printed notice stating that proof of age of the life insured may be required prior to the payment of the sum insured.

Procedure where
insurer declines to
accept proof of age
tendered

166. Where an insurer declines to accept the proof of age tendered in respect of a policy, whether issued before or after the commencement of this Act, the policyholder or his legal personal representative may apply to the High Court for an order directing the insurer to accept the proof tendered.

167.(1) A policy is not void by reason only of a Policy not to be void by reason only of misstatement of misstatement of the age of the life insured.

(2) Where there is proof of the true age of the life age of the life insured or other incorrect statement insured and such age is greater than the age on which the policy is based, the insurer may vary the sum insured by and the bonuses, if any, allotted to the policy so that, as varied, they bear the same proportion to the sum insured by, and the bonuses, if any, allotted to the policy before variation as the amount of the premiums which have become payable under the policy as issued bears to the amount of the premiums which would have become payable if the policy had been based on the true age.

(3) Where there is proof of the true age of the life insured and such age is less than the age on which the policy is based, the insurer shall either—

(a) vary the sum insured by, and the bonuses, if any, allotted to the policy so that, as varied, they bear the same proportion to the sum insured by, and the bonuses, if any, allotted to the policy before variation as the amount of the premiums which have become payable under the policy as issued bears to the amount of the premiums which would have become payable if the policy had been based on the true age; or

(b) reduce, as from the date of issue of the policy, the premium payable to the amount which would have been payable if the policy had been based on the true age and repay the policyholder the amount of over-payments of premium less any amount paid as the cash value of bonuses in excess of the cash value which would have become payable if the policy had been based on the true age.

(4) A policy issued after the 10th day of December, 1966, shall not be void by reason only of any incorrect statement, other than a statement as to the age of the life insured, made in any proposal or other document on the faith of which the policy was issued or reinstated by the insurer unless the statement—

- (a) was fraudulently untrue; or
- (b) is material in relation to the risk of the insurer under the policy and was made within the period of three years immediately preceding the date on which the policy is sought to be voided or the date of the death of the life insured, whichever is the earlier.

Minors may
effect policies
or take
assignments
of policies

168. (1) A minor who has attained the age of sixteen years—

- (a) may effect a policy upon his own life or upon another life in which he has an insurable interest; or
- (b) may take an assignment of a policy,

and subject to subsection (3), is as competent in all respects to have and exercise the powers and privileges of a policyholder as he would had he been of full age.

(2) A minor who has attained the age of sixteen years may assign or mortgage a policy with the prior consent in writing of his parent or a person standing in *loco parentis* to the minor.

(3) This section does not—

- (a) impose on a minor any liability to which, but for this section, he would not be subject;
- (b) confer on a minor any power or capacity which, but for this section, he would not have;
- (c) validate a receipt, a discharge or a surrender of, or security over a policy given by a minor which, but for this section would not be valid; or

(d) validate any assignment of a policy which, but for this section, would not be valid.

169. (1) An insurer shall only enter into a contract of insurance with the insured person or a person who has an insurable interest in the insured person.

(2) An insurable interest shall be deemed to be had by—

- (a) a parent, or a legal guardian of a child under eighteen years of age or a person in *loco parentis* to such child, in the life of the child;
- (b) a husband, in the life of his wife;
- (c) a wife, in the life of her husband;
- (d) any person, in the life of another upon whom he is wholly or in part dependent for support or education;
- (e) a company or other legal person in the life of a director, officer or employee thereof;
- (f) a person who has a pecuniary interest in the duration of the life of another person, in the life of that person; and
- (g) a person, in the life of his or her cohabitant as defined in the Cohabital Relationships Act.

(3) No insurer shall issue a policy on the life of a person unless that person signs the insurance application form, except for minors.

(4) Nothing in this section shall be construed as limiting or restricting the meaning of “insurable interest” as understood immediately before the commencement of this Act.

C. Assignments and Mortgages of Policies

Assignment of
policies

170. (1) Subject to section 173, every assignment of a policy shall be by deed or by other instrument, and if by other instrument, such instrument shall be substantially in accordance with the forms set out in Schedule 3.

Schedule 3

(2) An assignment is not binding on the insurer liable under the policy until written notice of the date and purport of the assignment is received by the insurer at its principal office in Trinidad and Tobago.

(3) Every insurer shall register in the register of policies required to be kept by section 270, the date and purport of every assignment of which it receives notice and the date on which the notice is received.

(4) A copy of an entry made in accordance with subsection (3), and certified by the secretary or any director or authorized person or by the Attorney-at-law for the insurer shall—

(a) as regards the registration and the date of registration of the assignment, be conclusive evidence thereof; and

(b) as regards the date on which the notice was received, be *prima facie* evidence thereof.

(5) Priority of claims under any assignment shall be determined according to the order in which notice is received by the insurer, except that a subsequent assignee does not, by giving notice first, obtain priority over a previous assignment of which he had notice when taking the assignment.

(6) An assignee under a duly registered assignment shall have all the powers and be subject to all the liabilities of the assignor under the policy, and may sue in his name on the policy, but nothing in this section shall be construed so as to admit the assignee to

membership of an insurer or to deprive the assignor of his membership in respect of a policy, except as provided in the instruments constituting the insurer or in its articles of incorporation, by-laws or other constituent document.

(7) The receipt of the assignee shall be a discharge to the insurer for all monies paid by the insurer under the policy.

(8) The insurer shall be notified in writing of every trust, right, equity or interest created in respect of a policy.

171. (1) Notwithstanding anything contained in Effects of notice section 170, an insurer shall not be entitled to any protection under that section or rely upon any of the provisions of that section where the insurer—

- (a) has not acted in good faith; or
- (b) has received notice in writing of any trust, right, equity or interest of any person.

(2) Where an insurer receives notice in writing of any trust, right, equity or interest of any person, the insurer may, if it thinks fit pay to the Central Bank any money payable under the policy, and the receipt of the Central Bank for the money shall be a valid discharge to the insurer for the money so paid.

(3) Money paid to the Central Bank pursuant to subsection (2), shall be paid by the Central Bank to such person or persons as the High Court orders.

172. (1) The rights and liabilities arising under a Assignment of policy to insurer not to extinguish rights and liabilities policy shall not be deemed, either at law or in equity, to be merged or extinguished by reason only of an assignment of the policy, whether at law or in equity, to the insurer which issued the policy.

(2) Notwithstanding anything to the contrary in section 170, 171 or 173, but subject to subsection (3), no assignment of an industrial policy shall be valid without the consent of the insurer liable under such policy.

(3) Where the insurer refuses its consent to the assignment of an industrial policy, the policyholder may appeal to the Central Bank.

Policies held by trustees

173. Where an insurer is satisfied that a policy has been issued or transferred to, or the ownership of a policy is otherwise vested in persons as trustees and those persons are no longer the trustees for the purposes of the trust the insurer may, if it sees fit, at the request in writing of the persons claiming to be trustees for the time being for the purposes of the trust and on the evidence of a statutory declaration by one of those persons verifying the claim, record the names of those persons as the holders of the policy, and thereupon those persons shall become the holders of the policy.

Memorandum of discharge and deed of release

174. (1) Upon the payment or discharge of any money or other obligation secured by an assignment of a policy, the assignee shall give to the assignor a memorandum of discharge in the form as prescribed in Schedule 3 and shall, where the assignment was by deed, also execute a deed of release in favour of the assignor.

Schedule 3

(2) Upon the presentation of the memorandum of discharge to the insurer, the insurer shall register the discharge in its register of policies.

Existing assignments and notices to continue to have effect

175. (1) Every assignment of a policy made under the former Act and every notice of an assignment or of a trust, right, equity or interest of any person, if valid, when made or given shall, without prejudice to anything contained therein, have effect for all purposes, as if made or given under this Act.

(2) Every assignment registered in a register of policies under the former Act shall be deemed to have been registered under this Act.

*D. Paid-up Policies, Surrender Values and
Non-Forfeiture*

176. (1) Sections 177 to 181 shall not apply to— Application to class
of policy

- (a) an instrument securing the grant of an annuity for a term dependent upon human life, not being a deferred annuity during the period of deferment; or
- (b) a policy which provides insurance against contingencies none of which may happen, not being a policy which provides for the payment of a sum of money if the life insured by the policy survives a specified period.

(2) The Minister may after consultation with the Central Bank declare by Order, subject to negative resolution of Parliament, that the provisions of this section and of sections 177 to 181 shall apply in respect of any policy or class of policies with such modifications as may be prescribed by the Order and where such a declaration is made, the provisions of this section and of sections 177 to 181 shall apply in respect of that policy or class of policies accordingly.

177. (1) A policyholder who desires to discontinue Paid-up policies further premium payments on a policy on which not less than three years' premiums have been paid in cash shall, where the policy has a cash surrender value, be entitled on application to the insurer to receive in lieu of the cash surrender value a paid-up policy.

(2) Where a paid-up policy is issued pursuant to subsection (1) and the contingency occurs which would have rendered the insurer liable under the original policy, the insurer shall thereupon be liable under the paid-up policy.

Surrender of policies

178. (1) The owner of a policy, other than an annuity contract,—

- (a) in respect of which there is no contractual obligation on the owner to make any payments of premiums after the first year for which the policy is in force; or
- (b) which is not a policy under subparagraph (a) that has been in force for at least three years,

shall, on application to the insurer, be entitled to surrender the policy and to receive not less than the cash surrender value of the policy less the amount of any debt owing to the insurer under or secured by the policy and less any applicable surrender penalties.

(2) Subject to subsection (3) the owner of an annuity contract that is in the accumulation stage shall, on application to the insurer, be entitled to surrender the policy and to receive not less than the cash surrender value of the policy less the amount of any debt owing to the insurer under or secured by the policy and less any applicable surrender penalties.

(3) The owner of an annuity contract that is in the accumulation stage and has been in force for less than five years may only surrender the policy where he requires immediate cash in circumstances of financial hardship.

Central Bank may suspend or vary obligation of insurer to pay surrender value

179. The Central Bank may, on an application by an insurer, suspend or vary for such period and subject to such conditions as the Central Bank thinks fit, the obligation of the insurer to make payments pursuant to the policy where in the Central Bank's opinion, such payments would be prejudicial to the financial viability of the insurer or to the interests of its policyholders.

180. (1) An ordinary policy shall not be forfeited by reason only of non-payment of any premiums where the surrender value of the policy, calculated as at the day immediately preceding that on which the premium falls due, exceeds the sum of the amount of the debts owing to the insurer under, or secured by, the policy and the amount of the overdue premium.

Non-forfeiture of ordinary policies in certain cases of non-payment of premiums

(2) An insurer may until payment of the overdue premium, charge compound interest on it, on terms not less favourable to the policyholder than such terms, if any, as may be specified in the policy.

(3) The overdue premium and any interest charged on it under this section which remains unpaid shall for the purposes of this Act be deemed to be a debt owing to the insurer under the policy.

(4) An ordinary policy shall not be forfeited by reason only of non-payment of any premiums where the surrender value of the policy, calculated as at the day immediately preceding that on which the premium falls due, does not exceed the sum of the amount of the debts owing to the insurer under, or secured by, the policy and the amount of the overdue premium, unless on or after the day on which the premium fell due—

(a) the insurer liable under the policy serves a late-payment notice on the policyholder stating—

- (i) the date of the notice, the due date of the premium and the amount due or payable to the insurer; and
- (ii) that the policy will be forfeited at the expiration of twenty business days after the date of the notice if the premium or a sum sufficient to keep the policy in force is not paid to the insurer within that period; and

(b) a period of at least twenty business days has elapsed after service of the notice.

(5) For the purposes of subsection (4), a notice posted to the last known address of the policyholder shall be deemed to be service of the notice on the policyholder.

Treatment of debts
on issue of paid-up
policies

181. Where, in pursuance of any provision of this Part a policyholder is entitled to receive or an insurer is required to issue a paid-up policy and there is any debt owing to the insurer under or secured by the policy, the insurer may elect—

(a) to treat the debt as a debt secured by the paid-up policy and thereupon the paid-up policy shall be security for the debt owing to the insurer; or

(b) in ascertaining the amount of the paid-up policy, to reduce the amount by taking into account, on a basis approved by the Central Bank, the debt owing to the insurer and thereupon the debt shall cease to be owing to the insurer.

E. *Payment of Policy Monies*

Interest of life
insured to be
protected in certain
cases

182. (1) The property and interest of any person in a policy upon his own life shall not be liable to be applied or made available in payment of his debts by any judgment, order or process of any court.

(2) Where a person who has effected a policy on his life dies, the monies payable upon his death under or in respect of such policy shall not be applied or made available in payment of his debts by any judgment, order or process of any court, or by retainer by an executor or administrator, or in any other manner, except by virtue of—

(a) a contract or a charge made by the person whose life is insured; or

(b) an express direction contained in his will or other testamentary instrument executed by him that the monies arising from the policy shall be so applied.

(3) A direction to pay debts or a charge of debts upon the whole or any part of the testator's estate or a trust for the payment of debts, is not an express direction for the purposes of subsection (2)(b).

(4) The provisions of subsection (2)(b) shall apply only where no named beneficiary has been designated in accordance with section 183.

183. (1) A policyholder may designate his legal personal representative, trustee or beneficiary as the person to receive the proceeds of the insurance policy—

Designation of beneficiaries generally

- (a) at the time of making a contract of insurance; or
- (b) at any time subsequent to the making of the contract.

(2) A designation made under subsection (1)—

- (a) shall be in the form and effected in the manner specified in the contract of insurance;
- (b) shall be submitted to the insurer at its principal office in Trinidad and Tobago within the lifetime of the policyholder;
- (c) shall, subject to section 184(3)(b), not affect the right of a policyholder to assign, exercise rights under or in respect of, surrender or otherwise deal with, the contract of insurance as provided therein or as may be agreed upon with the insurer; and
- (d) may, subject to section 184(1) and (2)(a), be altered or revoked from time to time and such alteration or revocation shall be made

by declaration which shall be submitted to the insurer at its principal office in Trinidad and Tobago within the lifetime of the policyholder.

(3) Where the policyholder is the life insured, a designation made in favour of the “heirs”, “next-of-kin” or “estate” of the life insured or the use of words of like import in a designation, shall be deemed to be a designation of the legal personal representative of the life insured.

(4) Where a designation is made in favour of a legal personal representative or is deemed under subsection (3) to be so made, that legal personal representative shall receive the proceeds of the insurance policy on behalf of the beneficiaries of the life insured’s estate.

(5) An insurer shall, in a contract of insurance, specify the requirements for the making of a valid submission under subsection (2)(b) and (d).

Irrevocable
designation of
beneficiaries

184.(1) A policyholder may designate irrevocably a named beneficiary—

- (a) at the time of the making of a contract of insurance; or
- (b) by declaration at any time subsequent to the making of the contract.

(2) Where a policyholder designates a beneficiary irrevocably, then so long as the designated beneficiary is alive—

- (a) subject to section 185, the policyholder shall not alter or revoke the designation without the beneficiary’s consent; and
- (b) the policyholder shall not assign, exercise rights under or in respect of, encash any units accruing to, surrender or otherwise deal with, the insurance policy without the beneficiary’s consent.

(3) The provisions of section 183(2)(a) and (b) shall apply to a designation made under subsection (1).

(4) For the purposes of sections 184 to 192, “declaration” means an instrument signed by the policyholder and signed and witnessed by a Justice of the Peace, Notary Public or Commissioner of Affidavits in which the policyholder designates, alters or revokes the designation of his legal personal representative, trustee or a beneficiary.

185. (1) Where under section 184(1), in respect of a life policy, a named beneficiary is the policyholder’s spouse or cohabitant then, if during the subsistence of the insurance policy, the named beneficiary ceases to be the policyholder’s spouse or cohabitant, otherwise than by death—

Alteration or
revocation of
designation on
cessation of marriage

- (a) the policyholder may alter or revoke the irrevocable designation without the consent of the named beneficiary; and
- (b) such alteration or revocation shall be made by declaration which shall be submitted to the insurer at its principal office in Trinidad and Tobago within the lifetime of the policyholder.

(2) A designation by a policyholder shall not be regarded as irrevocable unless the words creating the irrevocable designation are clear and unequivocal and—

- (a) are prominently displayed on the proposal form and signed by the policyholder; and
- (b) there is sufficient evidence that the meaning of the word “irrevocable” was explained to the policyholder at the time that the proposal form was signed.

186. (1) Notwithstanding the designation of a beneficiary irrevocably under section 184(1), a policyholder is entitled, while living, to the dividends or bonuses declared on a contract of insurance, unless the contract otherwise provides.

a Policyholder entitled
to dividends

(2) Unless the contract of insurance otherwise directs, an insurer may apply the dividends and bonuses declared on a contract of insurance to that contract for the purpose of keeping the contract in force.

Circumstances in which insurance proceeds are not part of policyholder's estate

187. Where the policyholder is the life insured and where the proceeds of an insurance policy are payable to a beneficiary, such proceeds shall not form part of the policyholder's estate and shall not, as from the date that the proceeds of the insurance policy become payable, be subject to the claim of any of the policyholder's creditors.

Presumption of trust negated

188. Except in cases where the policyholder expressly provides for the creation of a trust, there shall be no presumption of a trust in a contract of insurance.

Appointment of trustee

189. (1) A policyholder may, in a contract of insurance or by declaration, appoint a trustee for a beneficiary and may alter or revoke that appointment by declaration.

(2) Where an insurer makes a payment to a trustee for a beneficiary, the insurer shall be discharged from further liability to the extent of the payment.

Beneficiary predeceasing life insured

190. Where a beneficiary predeceases the life insured and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract of insurance or by a declaration, the deceased beneficiary's share of the policy proceeds shall be payable as follows:

- (a) to the surviving beneficiary;
- (b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares; or
- (c) if there is no surviving beneficiary, to the estate of the life insured.

191. A beneficiary may, on the death of a life insured, ^{Right to enforce} enforce for his own benefit, and a trustee appointed ^{payment of proceeds} pursuant to section 189 may enforce as trustee, the payment of the proceeds of an insurance policy made payable to him in the contract of insurance, or by a declaration, and in accordance with the provisions thereof.

192. A life insured under a group policy may, in his ^{Power of group life} own name, enforce a right given to him under the group ^{insured to sue insurer} policy.

193. (1) Notwithstanding section 183, where under a ^{Payment of policy} policy, money is payable by an insurer to the legal ^{monies without} personal representative of a deceased person the ^{production of grant of} insurer may, without requiring the production of any ^{probate or letters of} grant of probate or letters of administration, pay the ^{administration in} money together with any bonuses, which have been ^{certain cases} added to the policy, to a person who satisfies the insurer that he is entitled—

- (a) under the will or on the intestacy of the deceased person, to the property of such person; or
- (b) to obtain probate of the will of the deceased person or to take out letters of administration of his estate,

but the insurer shall not in the aggregate pay to such person more than twenty-five thousand dollars, or such other amount determined by the Minister under section 279(4), and shall retain such percentage of the total sum due under the policy for payment as may be determined by the Board of Inland Revenue for the purposes of such duties as may be due on the estate of the deceased.

(2) Every person to whom money is paid pursuant to this section shall apply the money in administering the estate of the deceased and, if the insurer thinks fit, it may require those persons to give sufficient security by bond or otherwise that the money paid will be so applied.

(3) Notwithstanding section 183, where under a policy there is no named beneficiary, the insurer may pay a maximum sum of twenty-five thousand dollars, or such other amount determined by the Minister under section 279(4), to a funeral home to offset funeral expenses of the life insured without requiring the production of any grant of probate or letters of administration.

Insurer discharged
from further liability
in certain cases

194. Where an insurer makes a payment pursuant to section 193, the insurer shall be discharged from all further liability with respect to—

- (a) the money paid to the Board of Inland Revenue; and
- (b) the application of the money paid under any policy issued by it.

Death of policyholder
who is not the life
insured

195. (1) Where the policyholder, not being the life insured, pre-deceases the life insured and a person satisfies the insurer that he is entitled—

- (a) under the will or on the intestacy of the deceased policyholder, to the benefit of the policy; or
- (b) to obtain probate of the will or to take out letters of administration of the estate of the deceased policyholder,

the insurer may, without requiring the production of any grant of probate or of letters of administration, endorse on the policy a declaration that the requirements of paragraph (a) or (b) have been satisfied and that the person has become the policyholder.

(2) Subsection (1) does not confer on a person who becomes the policyholder any beneficial interest in the policy which he would not otherwise have had.

(3) This section does not apply to—

- (a) a policy, the surrender value of which at the date of the death of the deceased policyholder, exceeds ten thousand dollars; or

(b) a policy which is one of two or more policies held by the deceased policyholder and issued by the same insurer if the aggregate of the surrender values of those policies at the date of the death of the deceased policyholder, exceeds ten thousand dollars.

(4) For the purposes of subsection (3), the surrender value of a policy is the amount, including any amount in respect of bonus additions, which would be paid by the insurer issuing the policy upon its surrender.

196. (1) An insurer may pay to the Central Bank any money payable by it in respect of a policy for which, in the opinion of the insurer, no sufficient discharge can otherwise be obtained. Insurer may pay money to the Central Bank

(2) The receipt of the Bank for any money paid under subsection (1) shall be a good and valid discharge to the insurer for the money so paid, and the money shall be dealt with according to an order made by the Court.

(3) The Central Bank shall pay into the Consolidated Fund any monies received under this section and there shall be paid from the Consolidated Fund such sums as are necessary to give effect to this section or any order granted under subsection (2).

(4) Upon the payment of monies to any person pursuant to an order made by the High Court under subsection (2), the Central Bank shall be discharged from all further liabilities, costs, claims, actions, or any liability in damages or any other remedy whatsoever including costs to such person or his heirs and assigns.

197. (1) Every insurer shall within forty business days after the end of its financial year publish in the *Gazette* and in at least two daily newspapers circulated in Trinidad and Tobago a statement showing all policies in Unclaimed money

respect of which amounts remain payable by the insurer for a period of seven years and the statement shall be submitted to the Central Bank within five business days of publication.

(2) The insurer may deduct the cost of publication from any unclaimed money.

(3) Every statement published under subsection (1) shall require the person entitled to the amount payable or his legal personal representative to submit a claim to the insurer within sixty business days from the date of publication in the *Gazette* or daily newspapers, whichever is published later.

(4) Where any amount payable under a policy included in the statement published under subsection (1) remains unclaimed, the insurer shall pay such sum into the Central Bank within twenty business days after the expiration of the period stated in subsection (3).

(5) Every insurer shall, at the time of making the payment to the Central Bank referred to in subsection (4), submit a listing in respect of each policy which shall specify—

- (a) the policy number and date of issue;
- (b) the name and last known address of the policyholder; and
- (c) the amount due and the date on which it became due.

(6) The Central Bank shall pay into the Consolidated Fund any money received under subsection (4).

(7) Where unclaimed money is paid into the Central Bank and a person subsequently makes a claim on such money, the insurer if it is satisfied that the person is entitled to the money shall request the Central Bank to pay over the money to the insurer.

(8) Where the Central Bank has received a request in accordance with subsection (7), the Central Bank shall release the money to the insurer and the insurer shall thereupon pay the money to the person.

(9) Where unclaimed money is paid into the Central Bank under subsection (4), and the insurer subsequently sells or disposes of that class of insurance business, the purchasing insurer shall be entitled to make the request under subsection (7) and the Central Bank shall release the money to that insurer which shall thereupon pay the money to the person.

(10) Where unclaimed money is paid into the Central Bank under subsection (4) and the insurer has ceased to carry on insurance business and has not sold or disposed of such business, a person may apply to the Central Bank for a release of the money and the person shall furnish the Central Bank with information and documents as may be specified by the Central Bank.

(11) The Central Bank, where it is satisfied that the person who applied for a release under subsection (10) would have been paid the unclaimed money by the insurer, may release the monies to the person.

(12) Where the insurer has paid into the Central Bank an amount in respect of a policy and the insurer satisfies the Central Bank that the amount paid exceeds the amount which would have been payable under the policy, the Central Bank shall refund to the insurer the amount of the excess.

(13) There shall be paid from the Consolidated Fund such sums as are necessary to give effect to this section.

(14) In this section, “unclaimed money” means all sums of monies which become legally payable by an insurer in respect of policies and are not claimed within seven years after the maturity date of the policy.

*F. Provisions Relating to Industrial Life Insurance
Business*

Objection to policies

198. (1) Where, within twenty business days of the delivery of an industrial policy by an insurer—

(a) to the policyholder; or

(b) at the place of abode of the policyholder, to some other person residing at that place and apparently not less than sixteen years of age,

and by whom any premium in respect of the policy is paid on behalf of the policyholder, the policyholder returns the policy to the insurer with an objection in writing to any term or condition of the policy, the insurer shall forthwith refund any premium paid in respect of the policy which shall thereupon be cancelled.

(2) Where an industrial policy is sent by post by an insurer to the person to whom it is issued, it shall, unless the contrary is proved, be deemed to have been delivered to him at the time at which it would reach him in the ordinary course of post.

(3) For the purposes of this section, a policy shall be deemed to have been returned to an insurer with an objection if the policy and the written objection are posted for transmission to the insurer by registered letter.

Return of industrial policy and premium receipt book after inspection

199. Where an insurer carries on industrial life insurance business, or any person authorized by such insurer takes possession of an industrial policy or a premium receipt book or any other document issued in connection with the policy, a receipt for the policy, book or document shall be given to the person from whom it was received, and the policy, book or document shall be returned to that person on demand at any time after the expiration of twenty business days from the receipt thereof, unless—

(a) it is required for the purposes of evidence in legal proceedings;

- (b) the policy has been terminated by reason of the satisfaction of all claims arising under it; or
- (c) in the case of a policy, the insurer is entitled to retain the policy as security for money owing to the insurer by the policyholder.

200. A person who wilfully makes or orders or allows Falsification to be made any entry or erasure in, or omits any entry or orders or allows any entry to be omitted from a collecting book or a premium receipt book, with intent to falsify the book or to evade any of the provisions of this Act, commits an offence.

201. (1) Where an agent or sales representative of an Voidance of policy insurer writes or fills in any particulars in a proposal for an industrial policy with the insurer, then, notwithstanding any agreement to the contrary between the applicant and the insurer, a policy issued in pursuance of the proposal shall not be void by reason only of an incorrect or untrue statement contained in such particulars unless the incorrect or untrue statement was in fact made by the applicant to the agent or sales representative for the purposes of the proposal.

(2) The burden of proving that an incorrect or untrue statement was made by the applicant lies on the insurer.

(3) Nothing in this section shall allow the voidance of any policy for any reason or in any circumstances for, or in which the policy could not have been void apart from the provisions of this section.

202. Every industrial policy issued by an insurer Particulars to be specified on policies shall contain—

- (a) an endorsement or a statement in distinctive type specifying whether the policy is, or is not a participating policy; and

- (b) a short statement in a form approved by the Central Bank setting out—
- (i) the right of the policyholder to be granted a paid-up policy;
 - (ii) the right of the policyholder to surrender his policy and to receive in cash the surrender value of the policy; and
 - (iii) the conditions under which the policy may be forfeited.

Issue of premium
receipt book

203. (1) An insurer shall, in respect of each industrial policy issued by it, issue to the policyholder a premium receipt book.

(2) An insurer shall not issue or permit to be used one premium receipt book in respect of two or more policies held by different policyholders who are not members of the same household.

(3) Every premium receipt book issued by an insurer shall contain in respect of each policy to which it relates—

- (a) an endorsement or a statement in distinctive type of the particulars referred to in section 202;
- (b) an entry made by the insurer of the following matters:
 - (i) the surname and initials of the policyholder and, where the policy is issued in respect of the life of a person other than the policyholder, the surname and initials of that person;
 - (ii) the date and number of the policy;
 - (iii) the amount of the weekly or other periodical premium; and

- (c) a notice stating that proof of age may be required before payment of the sum insured.

204. (1) Every payment in respect of premiums under an industrial policy made to an agent, a sales representative or an employee of the insurer shall be recorded by the agent, sales representative or employee in the premium receipt book so as to clearly indicate the date to which premiums have been paid in respect of the policy or policies to which the premium receipt book relates, and the record shall—

Premium receipt book
to show date to which
premiums have been
paid

- (a) where it is the first entry on a page of the premium receipt book, be signed by the agent, sales representative or employee with his usual signature; and
- (b) where it is not such an entry, be signed by the agent, sales representative or employee with his usual signature or be initialled by him.

(2) Where a premium receipt book relates to more than one policy and any payment for premiums on the policies is made which is less than the aggregate of the weekly or other periodical premiums in respect of all those policies, the person making the payment shall be required by the agent, sales representative or employee of the insurer to state the policy or policies in respect of which no payment or an insufficient payment is made, and the agent, sales representative or employee shall clearly record the fact stated in the premium receipt book.

(3) The insurer shall, unless the amount of the deficiency referred to in subsection (2) is paid before any further premiums are paid—

- (a) cause a separate premium receipt book to be issued in accordance with section 203 in respect of any policy in relation to which the deficiency exists; and

(b) cause to be cancelled the particulars and entry relating to any such policy in the premium receipt book.

Guarantor not liable to refund commission on lapsed policies

205. Any provision in an agreement whereby the guarantor of an agent of any insurer is, or may be required to pay to the insurer the amount of any commissions repayable by the agent on account of lapsed industrial policies shall be void.

Certificate of indebtedness not conclusive evidence

206. Any provision in an agreement, whereby the production in any legal proceedings of a certificate signed by an officer of an insurer may be deemed to be conclusive evidence of the indebtedness or the amount of the indebtedness to the insurer of any agent or of any guarantor of an agent, shall be void.

Non-forfeiture of industrial policy in certain cases of non-payment of premiums

207. (1) An industrial policy on which less than one year's premiums have been paid shall not be forfeited by reason only of the non-payment of any premium, unless the premium has remained unpaid for not less than four weeks after it became due.

(2) An industrial policy on which at least one year's but less than two years' premiums have been paid shall not be forfeited by reason only of the non-payment of any premium, unless the premium has remained unpaid for not less than eight weeks after it became due.

(3) An industrial policy on which at least two years' premiums have been paid shall not be forfeited by reason only of the non-payment of any premium, unless the premium has remained unpaid for not less than twelve weeks after it became due.

(4) Where an industrial policy on which at least three years' premiums have been paid has been forfeited by reason of the non-payment of any premium, the insurer shall, without requiring any application from the policyholder, issue a paid-up policy for an amount not less than that specified in the table included in the policy.

(5) Where a paid-up policy is issued pursuant to subsection (4) and the contingency occurs which would have rendered the insurer liable under the original policy, the insurer shall thereupon be liable under the paid-up policy.

(6) The insurer shall notify the policyholder in writing of the fact that the paid-up policy has been granted and shall specify the amount of the policy and the contingency upon which the policy is payable.

(7) An industrial policy shall not be forfeited by reason only of the non-payment of any premium where the non-payment is as a result of non-collection by the insurer.

G. *Miscellaneous*

208. (1) Where—

Lost policy

(a) the holder of a policy; or

(b) a person claiming the benefit of the provisions of section 191 or 193 in respect of a policy,

alleges that the policy is lost, defaced or has been destroyed, the insurer liable under the policy may, subject to this section, on written application by the holder of the policy or by the person referred to in paragraph (b) and upon such evidence as to the loss, defacement or destruction of the policy as the insurer considers sufficient, issue to the applicant a special policy in substitution for the policy.

(2) Where an application is made under subsection (1)(b), the insurer shall not issue a special policy to such person unless it is satisfied that the provisions of section 193 or 195 should be applied in favour of the applicant.

- (3) A special policy shall—
- (a) be a copy, as nearly as can be ascertained, of the policy in substitution for which it is issued;
 - (b) contain copies of every endorsement on the original policy registered by the insurer; and
 - (c) state the reason for the issue of such a policy.

(4) Before issuing a special policy, the insurer shall give at least twenty business days' notice of its intention to do so in the *Gazette* and in at least two daily newspapers circulated in Trinidad and Tobago.

(5) The costs of the advertisement and all other costs incurred in the issue of a special policy shall be paid by the applicant at the time when the application is made.

(6) The fact that a special policy has been issued and the reason for its issue shall be recorded by the insurer in the appropriate register.

(7) Where an insurer fails to issue a special policy within six months after the receipt of a written application under subsection (1) the High Court may, on an application by the policyholder or beneficiary and upon such evidence as to the loss or destruction of the original policy as it deems sufficient, order the insurer, upon such terms and within such time as the High Court thinks fit, to issue a special policy to the applicant.

(8) Where the holder of a special policy or a person claiming the benefit of the provisions of section 193 or 195 in respect of a special policy claims that the special policy is lost or has been destroyed, the provisions of this section shall apply as if the special policy were an original policy issued by the insurer.

209. A policy shall not be avoided merely on the ground that the person whose life is insured suffered capital punishment or died by his own hand or act, whether or not at the time of his death he was mentally ill, where, upon the true construction of the policy, the insurer thereby agreed to pay the sum insured on the happening of either of those events. Effect of Capital punishment or suicide on policy

210. Any term or condition of a policy which limits, to an amount less than the sum insured, the amount payable under the policy, in the event of the death of the life insured occurring as a result of war, shall not have any force or effect unless the person who effected the policy agreed in writing to the insertion in the policy of that term or condition. Conditions as to war risk void

PART VIII

GENERAL INSURANCE

211. Except as explicitly provided otherwise, this Part shall apply to all insurers carrying on general insurance business. Application of this Part

212. (1) Every insurer shall include in its financial statements and returns adequate provisions for its policy liabilities including unexpired risks and outstanding claims determined in accordance with financial reporting standards. Computation of insurance liabilities

(2) Every insurer shall furnish to the Inspector details of the methods and assumptions used in calculating the liabilities required under subsection (1) at the time of submission of its financial statements and returns.

(3) The Inspector may disallow any methods or assumptions used in calculating the liabilities referred to in subsection (1) where, in the opinion of the Inspector, they do not result in adequate provision for liabilities and the Inspector may—

(a) direct an insurer to adopt any method or assumption as he considers necessary; and

- (b) reject the financial statements and returns and the provisions of section 148(3) shall apply *mutatis mutandis* to this section.
- (4) For the purposes of this Part—
 - (a) “provisions for outstanding claims reserve” means the amount set aside by an insurer at the end of its financial year for the purpose of meeting its unsettled claims, (including claims in respect of which the amounts have not been determined and claims arising out of incidents which have not been notified to the insurer) under contracts of insurance, in respect of incidents occurring before the end of that year and for the purpose of meeting expenses likely to be incurred in connection with the settlement of such claims; and
 - (b) “provision for unexpired risk” means the amount set aside by an insurer at the end of its financial year, in respect of risk to be borne by the insurer after the end of its financial year under contracts of insurance entered into before the end of that year and includes, the unearned premium less any deferred acquisition cost plus any additional provision for unexpired risk, required as a result of the liability adequacy test in the financial reporting standards.

Average provision

213.(1) An insurer may not rely on an average provision included in a general insurance contract in respect of property unless, before the contract was entered into—

- (a) the insurer clearly informed the insured; or
 - (b) in the case of a policy covering a group insurance scheme, the insurer clearly informed the insured group policy provider;
- or

(c) in the case of a policy insuring residential developments, the insurer clearly informed the homeowners' association,

in writing of the nature and effect of the provision including whether the provision is based on indemnity or on replacement value of the property that is the subject matter of the contract.

(2) For the purposes of this section, "average provision" means a provision in a general insurance contract in respect of property which allows an insurer to pro rate the value of a claim by a policyholder, where the sum insured under the contract is less than the insurable value of the property, using the following formula:

$$C \times (S/I)$$

Where—

"C" is the value of the claim;

"S" is the sum insured at the date the contract was issued; and

"I" is the insurable value of the property at the date the contract was issued.

214. (1) The appointed actuary of an insurer carrying on general insurance business shall investigate the financial condition of the insurer and submit a report in accordance with section 159, and the provisions of that section shall apply *mutatis mutandis* to this section. Reports for general insurance business

(2) Notwithstanding subsection (1), within three years of the commencement of this Act, the report required to be submitted under this section may be prepared by the chief financial officer of an insurer where an actuary has not yet been appointed.

Inspector may require
actuarial reports

215.(1) Subject to subsection (5) every insurer carrying on general insurance business shall—

(a) cause its appointed actuary to make a valuation each financial year of its policy liabilities including provisions for unexpired risks and outstanding claims and to prepare a report of the valuation; and

(b) submit the actuarial report referred to in paragraph (a) to the Inspector within sixty business days after the end of its financial year.

(2) The appointed actuary shall apply the standards of accepted actuarial practice with respect to the work required under this Act and the Regulations.

(3) The actuarial report required under subsection (1) shall include a description of any matters for which the actuary was unable to obtain information or for which he was not satisfied with the information provided.

(4) Where an insurer causes its appointed actuary to make an investigation and the results of the investigation are made public, the insurer shall cause a copy of the actuarial report to be submitted to the Inspector within five business days of making the results of such report public.

(5) Notwithstanding subsection (1), within three years of the commencement of this Act, the actuarial valuation and report required to be submitted under this section may be limited to the accident and sickness class of business only.

PART IX

PENSION FUND PLANS

Plan to be registered

216.(1) No person may establish or operate a pension fund plan (hereinafter referred to as “a plan”) in Trinidad and Tobago unless the plan is registered under this Part.

(2) A plan which was registered under the former Act or the Insurance Act, 1966 shall be deemed to be registered under this Part.

217. (1) Subject to the provisions of this Part, where a plan establishes a fund under trusts which are subject to the laws of Trinidad and Tobago, in connection with an undertaking or a combination of undertakings carried on wholly or partly in Trinidad and Tobago, and the main purpose of that fund is—

- (a) the provision of superannuation allowances on retirement to persons employed in the undertaking or in the combination of undertakings in connection with which the fund is established;
- (b) the provision of pensions to the spouses of persons who are or have been so employed and of periodical allowances to, or in respect of the children of such persons; or
- (c) the assurance of capital sums on the death of persons who were so employed,

such a plan shall be qualified for registration under this Part if the Rules of the plan comply with the requirements set out in Part I of Schedule 4.

(2) Where a plan establishing a fund for any of the purposes set out in subsection (1)(a), (b) or (c) is in operation before the commencement of this Act, that plan shall, subject to such directions as to the amendment of its Rules as the Central Bank may give, be treated as qualified for registration under this Part although—

- (a) the fund created under the plan is not established under trusts; or
- (b) the plan does not comply with the requirements set out in Part I of Schedule 4.

Registration

218. (1) An application for the registration of a plan under this Part shall be addressed to the Central Bank and shall—

- (a) be in the form prescribed;
- (b) be signed by the trustees of the plan;
- (c) specify the address at which communications concerning the plan shall be received (hereinafter referred to as “the address of the plan”);
- (d) be accompanied by—
 - (i) two copies of the trust deed and of the Rules of the plan;
 - (ii) a copy of the actuarial report on which the plan is based;
 - (iii) a list of the names and addresses of the trustees of the plan;
 - (iv) in the case of an insured plan, a copy of the policy of insurance related to benefits provided by the plan; and
 - (v) such other documents or further information as may be prescribed.

(2) Where an application is made in accordance with the provisions of this Part for the registration of a plan the Central Bank shall register the plan and the Rules thereof where it is satisfied that the plan has qualified for registration.

(3) The Central Bank shall on registering a plan under this Part enter in the register the address of the plan and the names and addresses of the trustees.

(4) Where—

- (a) the trust deed or the Rules, or both, of a plan registered under this Part (hereinafter referred to as “a registered plan”) are amended; or

- (b) there is any change in the address of the plan or in the names or addresses of the trustees thereof,

the trustees shall, within fifteen business days of the amendment or the change, apply for the registration of the amendment or for the correction of the register in respect of the change.

(5) An application for an amendment or for the correction of the register in respect of a change shall be addressed to the Central Bank and shall—

- (a) be in the form prescribed;
- (b) be signed by one of the trustees of the plan; and
- (c) be accompanied—
 - (i) in the case of an amendment, by two copies thereof signed by one of the trustees; or
 - (ii) in the case of a change, by such particulars as may be necessary for the correction of the register.

219.(1) An amendment to a trust deed or Rules, or both, of a registered plan shall not be valid unless the amendment is registered. Amendment not valid until registered Chap. 32:01

(2) Where an application for the registration of an amendment is made in accordance with section 218(5), the Central Bank shall register the amendment, where it is satisfied—

- (a) that the trust deed or the Rules, or both, as amended would not have disqualified the plan from registration under this Part; or
- (b) in the case of a plan which should be harmonised with the system of national insurance established under the National Insurance Act, that the plan otherwise

complies with the requirements of any Regulations made under that Act for the purpose of harmonization.

Certificate of
registration

220.(1) The Central Bank shall, on registering any plan or any amendment to the trust deed or the Rules, or both, of a registered plan under this Part, issue to the applicant a certificate of registration.

(2) Any document purporting to be a certificate of registration issued by the Central Bank under subsection (1), shall be received in evidence and be deemed to be so issued without further proof, unless the contrary is shown, and shall be conclusive evidence of the fact certified.

Cancellation of
registration

221.(1) The registration of a registered plan shall not be cancelled unless the plan has been wound-up.

(2) The decision to wind up a pension plan shall be recorded by board resolution.

(3) The Central Bank, trustees and management committee shall be informed of a person's intention to wind up a plan, in writing, within twenty business days of the board resolution and such notification to the Central Bank, trustees and the management committee shall be done simultaneously and accompanied by a copy of the relevant board resolution.

(4) The written notice shall specify the wind up date and the reasons for the wind up.

(5) Notwithstanding subsection (1), (2) or (3), the registration of a registered pension plan shall not be cancelled unless the plan has been wound-up.

(6) The trustees of a registered plan shall, within ten business days of the completion of the winding up of the plan, notify the Central Bank in writing that the winding up has been completed.

(7) On receiving notice in writing that a registered plan has been wound-up, the Central Bank shall cancel the registration of the plan where it is satisfied that—

- (a) the plan has been wound-up; and
- (b) the assets of the plan have been applied in accordance with the Rules of the plan.

222. (1) The fees payable in respect of—

Fees to be prescribed

- (a) the registration of a plan;
- (b) the registration of any amendment to the trust deed or the Rules, or both of the registered plan;
- (c) the correction of the register occasioned by a change in the name or address of a trustee or a change in the address of a registered plan,

shall be such as may be prescribed in the Regulations.

(2) Notwithstanding the provisions of subsection (1), no fees shall be payable in respect of the registration of any amendment to the Rules of a registered plan where the amendment is solely for the purpose of complying with the requirements of any Regulations made under the National Insurance Act, for the purpose of harmonisation.

223. (1) Where an application is made under this Part for the registration of a plan, the Rules of which were made before the commencement of this Act, and the Central Bank is satisfied that the Rules of the plan contain provisions which were embodied only for the purpose of avoiding the application to the trusts of the plan of the rule of law relating to perpetuities, the Central Bank may, at the request of the trustees who made the application—

Power to delete provisions for avoiding the rule against perpetuities

- (a) amend the Rules by deleting those provisions; and

(b) make any further amendments which are, in the opinion of the Bank, necessary as a result of the deletion.

(2) Where the Rules of a plan are amended by the Central Bank pursuant to subsection (1), the Rules shall, when registered, have effect subject to the amendments.

Supplementary provisions as to powers of Central Bank

224.(1) The Central Bank may require any person who is an employer, an insurer, a trustee or an officer of a plan for the registration of which application has been made under this Part, or of any registered plan, to furnish either by statutory declaration or otherwise, any information or explanation which may be necessary for the proper exercise and performance of the powers and duties of the Central Bank under this Part.

(2) Where the trustees of a registered plan commit a breach of trust by making an unauthorized investment or by violating any rule of the plan, which is necessary for registration under this Part, the Central Bank shall have the same remedies in all respects for the breach of trust as if it were a person beneficially interested in the plan.

(3) The Central Bank or any person authorized by the Central Bank in writing may, at any reasonable time, inspect or examine any books, records or other documents relating to a registered plan or any plan in respect of which an application for registration is made under this Part, or any securities or obligations in which pension fund monies of any such plan are invested.

Penalties for default

225.(1) Every trustee and the secretary of a registered plan commit an offence where in respect of that plan, there is default in complying with any of the requirements of this Part relating to—

(a) accounts and reports;

- (b) the making of applications for the registration of any amendment to the trust deed or to the Rules, or both, of the plan or, the correction of the register in respect of a change in the address of the plan or in the names and addresses of the trustees thereof; or
- (c) the giving of notice to the Central Bank of the winding up of the plan.

(2) It is a defence to any proceedings instituted under subsection (1) against the trustees and the secretary of a registered plan to prove that the default occurred without their consent or connivance and was not facilitated by any neglect on their part.

(3) A person who is lawfully required under this Part by the Central Bank to furnish any information or explanation which could with reasonable diligence, be furnished by him and who fails to comply with any such requirement within ten business days after written notice thereof has been delivered to him, commits an offence.

(4) A person who commits an offence under this Part is liable on summary conviction to a fine of five thousand dollars and in the case of a continuing offence to a fine of one hundred dollars for every day during which the offence is committed after conviction thereof.

226. (1) The trustees of each plan registered under this Part shall—

Annual accounts and balance sheet to be submitted

- (a) submit annually to the Central Bank a balance sheet and statement of accounts for each accounting year within six months of the expiration of that accounting year; and
- (b) file with the Central Bank annually or at such periods and in such form as may be prescribed any information or return relating to such plan.

(2) The balance sheet and statement of accounts referred to in subsection (1) shall—

(a) before they are submitted to the Central Bank, be audited by an auditor approved by the Central Bank; and

(b) be prepared in accordance with the forms set out as Forms A and B respectively, of Part II of Schedule 4.

Schedule 4

Actuarial
investigation

227.(1) The trustees of each registered plan shall appoint an actuary or a consulting actuary to make an investigation into the financial condition of the plan and to report on his findings.

(2) An investigation under subsection (1) shall be made every three years or at such shorter intervals as the Central Bank may specify.

(3) A copy of the report prepared in accordance with Part III of Schedule 4 and signed by the actuary shall be furnished to the Central Bank within nine months after the date of the investigation.

(4) The provisions of subsections (1) and (3) shall not apply to a plan insured with an insurer, but the trustees of such a plan shall obtain from the insurer a certificate to the effect that the plan has been valued by an actuary.

(5) The certificate required under subsection (4) together with the Tables set out in Part III of Schedule 4 shall be deposited by the trustees with the Central Bank.

Investments

228.(1) The trustees of a registered plan shall not invest the assets of the plan except—

(a) in such securities as may be allowed in Schedule 8; and

Schedule 8

(b) in any other manner as prescribed by the Regulations.

(2) No trustee may invest the assets of a pension fund in the equity, debentures or other evidence of indebtedness of the employer or any subsidiary or associate of the employer or of any company of which the employer is a subsidiary or an associate.

(3) The Minister may, on the recommendation of the Central Bank, prescribe by Order, subject to negative resolution of Parliament, the percentage which a plan's assets originating in Trinidad and Tobago shall bear to the total of its assets.

229. The rule of law relating to perpetuities shall not apply and shall be deemed never to have applied to the trusts of a registered plan. Rules of law against perpetuities not to apply

PART X

ASSOCIATION OF UNDERWRITERS

230. (1) No association of underwriters may carry on insurance business in Trinidad and Tobago unless it is registered under this Part and the provisions of sections 23(1), (4) and (5) shall apply *mutatis mutandis*. Registration of association of underwriters

(2) An application for registration of an association of underwriters shall be accompanied by—

- (a) a copy of its statute or deed of association;
- (b) a certificate stating, in the case of an association of underwriters established outside of Trinidad and Tobago that—
 - (i) the association of underwriters has been established for at least five years;
 - (ii) the law of the country in which it was established provides for the regulation of associations of underwriters; and

- (iii) the association of underwriters is operating in accordance with that law;
- (c) a list of the names and addresses of its members operating in Trinidad and Tobago and persons appointed as its agents or brokers in Trinidad and Tobago;
- (d) evidence of payment to the Central Bank of the application fee prescribed in Schedule 2; and
- (e) any further information the Central Bank may require.

(3) The Central Bank may register an association of underwriters where it is satisfied that the association of underwriters complies with the provisions of this Part.

(4) An association of underwriters may be registered to carry on any class of general insurance business listed in Schedule 1 and the accident and sickness class of insurance business.

(5) An association of underwriters constituted outside of Trinidad and Tobago shall authorize a person resident in Trinidad and Tobago as its principal representative, to accept on behalf of the members of the association of underwriters, service of process in any legal proceedings and any notices or other correspondence from the Central Bank and such person shall meet the criteria set out in Schedule 5.

(6) Upon the commencement of this Act, the Central Bank shall issue to every association of underwriters carrying on insurance business in Trinidad and Tobago immediately before the commencement of this Act a certificate of registration specifying the classes of insurance business for which it is registered.

(7) An association of underwriters that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five million dollars.

231. (1) The Central Bank shall upon approval of an application made under section 230 notify the applicant in writing of its approval and the requirement to make the deposit under section 233. Applicant to be informed of Central Bank's decision with respect to application

(2) Upon receipt of evidence by the applicant that the deposit has been made in accordance with section 233 and that the application fee has been paid, the Central Bank shall issue a certificate of registration to the association of underwriters signed by the Governor which shall specify the classes of general insurance business and the accident and sickness class of insurance business in respect of which the association of underwriters is registered and which shall be *prima facie* evidence of its registration.

(3) Where the decision is made to reject an application, the Central Bank shall notify the applicant in writing of its rejection and shall give reasons to the applicant within ten business days of the date of rejection.

232. An association of underwriters may carry on its insurance business through brokerages registered under this Act. Restriction on registration

233. (1) An association of underwriters shall not be registered under this Part to carry on any class of general insurance business unless it has deposited with the Central Bank the greater of an amount equal to— Deposit by association of underwriters

(a) twenty per cent of the stated capital that would be required of an insurer that is carrying on the class or classes of business it intends to carry on, plus an amount equivalent to cover all policyholder liabilities; or

(b) forty per cent of the premium income of its members, with respect to Trinidad and Tobago insurance business during the financial year last preceding the date of the deposit.

(2) Where an association of underwriters has made a deposit as required by subsection (1), it shall at the end of each financial year, deposit an amount equal to the difference between the last preceding deposit and the amount required by subsection (1).

(3) A deposit made in pursuance of this section may be either in the form of cash or in the form of approved securities or partly in the form of cash and partly in the form of approved securities.

Deposits form part
of assets

234.(1) All deposits made by an association of underwriters pursuant to this Act shall form part of the assets of the association of underwriters.

(2) All interest and dividends accruing due on any approved securities shall be paid to the association of underwriters.

(3) A deposit made in respect of any type of insurance business shall be retained by the Central Bank until the association of underwriters ceases to be registered in respect of that class of insurance business or the deposit is required in the winding up of the association of underwriters.

Maturity of assets
in the deposit

235.(1) An association of underwriters shall notify the Inspector, in writing, of the maturity of an asset held in the deposit at least ten business days prior to the maturity date of such asset.

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

236. (1) An association of underwriters whose registration has been revoked and is not under liability to its policyholders may apply in writing to the Central Bank for a release of its deposit.

Release of deposit
upon revocation

(2) On making an application under subsection (1), the association of underwriters shall—

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

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

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

(ii) requesting any policyholder who is opposed to the release of the deposit to file his opposition in respect of any outstanding liabilities with the Central Bank on or before the date specified in the notice.

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

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

(a) apply to the High Court for a winding up order in accordance with section 34(11); or

(b) apply to the High Court for an order to make payment from the deposit to those policyholders and to release any remaining funds to the association of underwriters.

Release of deposit where an insurer is still a going concern

237. (1) Notwithstanding section 234(3), an association of underwriters may apply in writing to the Inspector for a partial release of its deposit where it is in excess of the requirements of this Act.

(2) The Inspector, where he is satisfied that the deposit retained by the Central Bank is in excess of the requirements of section 233 in respect of continuing policyholders, may release to the association of underwriters such portion of the excess in the deposit as the Inspector considers appropriate in the circumstances.

Central Bank may release deposit to liquidator

238. Notwithstanding the provisions of section 234 where an association of underwriters is in liquidation, the Central Bank shall pay to the liquidator all monies and securities held as a deposit under section 233 in respect of that association of underwriters and the liquidator shall, in accordance with the provisions of this Act, apply such monies and securities towards discharging the liabilities under Trinidad and Tobago policies for—

(a) accident and sickness class of insurance business; and

(b) general insurance business.

Inspector to furnish certificate of deposit

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

240. (1) Where the Inspector is satisfied that by ^{Deposit to be increased where in deficit} reason of depreciation in the value of securities or for any other cause, the value of approved securities deposited by an association of underwriters under section 233 falls short of the value required by this Act, the Inspector shall by notice in writing require the association of underwriters to deposit within five business days with the Central Bank monies or approved securities, or both, to a value which the Inspector considers sufficient to bring the amount of the deposit up to the value required by this Act.

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

241. Where any monies or approved securities, or ^{Responsibility for lost securities} both, retained by the Central Bank as, or as part of the deposit required to be made by an association of underwriters under section 233 are, while so retained, lost, stolen, destroyed or damaged, the loss suffered by all persons interested in the monies or the approved securities shall be remedied by the payment of monies by the Central Bank for that purpose.

242. An association of underwriters may at any time ^{Substitution of statutory deposit} substitute for any monies or approved securities retained by the Central Bank as, or as part of the deposit required to be made under section 233, any other monies or approved securities where the total amount then deposited is not less than the amount required to be deposited under this Act and the monies or approved securities so substituted shall be subject to the same charge or liability as the monies or approved securities for which they were substituted.

Maintenance of
deposit

243. (1) An association of underwriters shall at all times maintain the deposit required under section 233 and shall fund the deposit as follows:

- (a) annually, based on its audited financial returns; and
- (b) quarterly, based on its quarterly return,

within five business days after the submission of its returns.

(2) An association of underwriters that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five million dollars.

Documents and
information relating
to insurance business
to be furnished to
Inspector

244. (1) An association of underwriters established in Trinidad and Tobago and registered under this Part, shall, within six months of the end of its financial year furnish to the Inspector such documents and information as he may require.

(2) An association of underwriters established outside of Trinidad and Tobago and registered under this Part shall, within six months of the end of each financial year, furnish to the Inspector—

- (a) a certified copy of such returns relating to the insurance business of its members during the preceding year as are required to be made to the supervisory authority or other public authority in the country in which the association of underwriters is established;
- (b) a certificate, signed by the Chairman or other presiding officer of the association of underwriters and signed by, or on behalf of, the supervisory authority or other public authority stating whether the association of underwriters has complied with the requirements of the law governing the regulation of associations of underwriters in the country in which it is established;

- (c) the latest annual list of the names of its members and the names of the members of its committee or other governing body;
- (d) a list of the names and addresses of its members operating in Trinidad and Tobago and persons appointed as its agents and brokers in Trinidad and Tobago;
- (e) a statement of receipt and expenditure by its members in Trinidad and Tobago during the preceding year;
- (f) a calculation of its assets and liabilities in respect of its Trinidad and Tobago business, including an actuarial certificate in such form as the Central Bank may direct; and
- (g) any other documents and information as required by the Inspector.

(3) In addition to the annual submission under subsections (1) and (2) an association of underwriters shall submit—

- (a) a statement of receipt and expenditure by its members in Trinidad and Tobago during the preceding quarter; and
- (b) a calculation of its assets and liabilities in respect of its Trinidad and Tobago business,

within twenty business days after the end of each quarter.

(4) Every association of underwriters shall, within six months of the end of its financial year publish in at least two daily newspapers circulated in Trinidad and Tobago the statement referred to in subsection (2)(e).

245. (1) The Inspector may make or cause to be made Additional powers of the Inspector an examination and inquiry into the affairs or business of each association of underwriters for the purpose of satisfying itself that the provisions of this Act are being

observed and that the association of underwriters is in a sound financial condition, and the Inspector shall specify the frequency, form and content of any such reporting requirement.

(2) The Inspector may impose any reporting requirement on associations of underwriters that it considers necessary for the purpose of satisfying itself that the provisions of this Act are being observed and that the association of underwriters is in a sound financial condition, and the Inspector shall specify the frequency, form and content of any such reporting requirement.

(3) The Inspector may require an association of underwriters to cause an actuary to make an investigation into its financial condition, including a valuation of its liabilities in respect of every class of insurance business and to furnish the Inspector with a report of the result of the investigation.

(4) The Inspector may, by notice, require any association of underwriters registered under this Part—

(a) to furnish him at such time and in such manner as he may determine with such information in connection with association of underwriters' insurance business as he may specify;

(b) to produce at such time and place as he may determine such books or papers in connection with the association of underwriters' insurance business as he may specify; or

(c) to produce forthwith to any person authorized in writing by the Central Bank or Inspector such books or papers as the Central Bank or Inspector may specify.

(5) The Inspector may issue compliance directions to an association of underwriters and section 155 shall apply, *mutatis mutandis* to this Part.

246. (1) The Central Bank shall prohibit a registered association of underwriters from writing new policies in any class of insurance business where the Central Bank is satisfied that it is in the interest of the policyholders or prospective policyholders to do so.

Registered association of underwriters may be prohibited from writing business

(2) Where the Central Bank exercises its power under subsection (1), it shall notify the registered association of underwriters in writing of its decision and shall state the reasons therefore.

247. An association of underwriters shall not offer a new or amended product to policyholders or potential policyholders in Trinidad and Tobago without first furnishing the Inspector with the information required under section 33 or 164 and the provisions of those sections shall apply *mutatis mutandis* to this Part.

Product approval

248. (1) The Board may revoke the registration of an association of underwriters, if at any time it is satisfied that the circumstances specified in subsection (2) so warrant and shall give written notice to the registered association of underwriters stating that it has revoked the registration of the association of underwriters giving reasons for doing so.

Revocation of registration

(2) The circumstances referred to in subsection (1) are that the Board is satisfied that—

- (a) the registration was procured as a result of any misleading or false representation or in consequence of any incorrect information, whether such representation was made or information was supplied wilfully or otherwise;
- (b) the association of underwriters or any of its members is insolvent;
- (c) the association of underwriters has committed, is committing, or is about to commit an act, or is pursuing, or is about to pursue any course of conduct, that is an unsafe and unsound practice;

- (d) the association of underwriters has contravened any of the provisions of this Act or of the Regulations or any condition, direction or requirement imposed under this Act;
- (e) the association of underwriters has unreasonably delayed the payment or settlement of any claim arising under any policy issued or effected in Trinidad and Tobago by it or on its behalf;
- (f) the persons who manage the association of underwriters are not fit and proper persons to manage the association of underwriters; or
- (g) the employees of the association of underwriters are incapable of carrying on the relevant class of insurance business in an efficient manner.

(3) Notwithstanding subsection (1), the Central Bank shall at any time revoke the registration under this Part of a registered association of underwriters if requested to do so by the association of underwriters or if it is satisfied that the members of the association of underwriters have not commenced business within one year of registration or have ceased to carry on business in Trinidad and Tobago.

(4) Where the Central Bank revokes the registration of an association of underwriters, it shall state in writing its reasons.

Policies issued before
rejection of
application or
revocation of
registration

249. An association of underwriters, the registration of which has been revoked shall continue to carry on business relating to policies issued by it before the date on which it was notified of the revocation unless the Central Bank is satisfied that it has made suitable arrangements for its obligations under such policies.

PART XI

JURISDICTION OF COURTS, APPEALS AND OFFENCES

250. Every policy issued in Trinidad and Tobago through a person or an office in Trinidad and Tobago shall, notwithstanding any agreement to the contrary, be governed by the laws of Trinidad and Tobago and shall be subject to the jurisdiction of the courts of Trinidad and Tobago. ^{Jurisdiction of local courts}

251. Notwithstanding anything in any other law to the contrary, any complaint relating to an offence under this Act which is triable by a Magistrate's Court in Trinidad and Tobago may be so tried if it is laid at any time within seven years after the commission of the offence. ^{Jurisdiction and limitation}

252. In any proceedings where a certificate signed by the Governor, a true copy of, or extract from a document certified as such by the Governor or a Deputy Governor or a copy of the *Gazette* or daily newspaper purporting to contain the document certifies— ^{Documents to be received in evidence}

- (a) that a particular person is or is not a registrant or insurance consultant or was or was not registered at a particular time;
- (b) the date on which a particular registrant or insurance consultant became or ceased to be registered;
- (c) whether or not a particular registrant's or insurance consultant's registration is or was restricted; or
- (d) the date on which a restricted registration expires or expired,

such certificate or document shall be admissible in evidence.

253. (1) Except where otherwise provided by this Act or the Regulations, an appeal shall lie to a Judge of the High Court from any decision, direction, refusal, ruling or order of the Minister, the Central Bank, the Board or the Inspector given or made under this Act.

(2) An appellant may, within fifteen business days of the receipt of the notification of the decision, direction, refusal, ruling or order of the Minister, the Central Bank, the Board or the Inspector, file with the Registrar of the Supreme Court, an appeal against such decision, direction, refusal, ruling or order, setting forth the ground of appeal.

(3) Notwithstanding that an appeal lies under this Act or under the Regulations from any decision, direction, refusal, ruling or order of the Minister, the Central Bank, the Board or the Inspector, such decision, direction, refusal, ruling or order shall be binding upon the appellant unless, on an *inter partes* application made to the High Court for the grant of an injunction before the determination of the appeal, the High Court is satisfied that circumstances exist that warrant the stay of the particular decision, direction, refusal, ruling, order or any further action by the Minister, the Central Bank, the Board or the Inspector and grants an injunction to the appellant on such terms and conditions as the High Court may direct.

(4) Where a Judge grants an injunction under subsection (3)—

(a) no further action may be taken by the Minister, the Central Bank, the Board or the Inspector in respect of any decision, direction, refusal, ruling or order to which the injunction relates; and

(b) the injunction shall have effect—

(i) unless otherwise revoked, varied or suspended by the High Court, before any proceedings to which the appeal relates, are concluded; or

- (ii) until the High Court determines the appeal,

whichever is earlier.

(5) On an appeal, the appellant and the Minister, the Central Bank, the Board or the Inspector as respondent may appear personally or be represented by an Attorney-at-law or any other person.

(6) On an appeal, a Judge or the Court of Appeal, as the case may be, may confirm, reverse or vary any decision, direction, refusal, ruling or order made or given by the Minister, the Central Bank, the Board or the Inspector.

(7) Subject to this Part, the procedure for determining appeals shall be in accordance with the Civil Proceeding Rules of the Supreme Court of Judicature.

254.(1) Any person who, in purported compliance ^{Offences} with any requirement under this Act or the Regulations, furnishes any information, provides any explanation or makes any statement which he knows or has reasonable cause to believe to be false or misleading commits an offence.

- (2) A person who contravenes—
- (a) any provision of this Act or any Regulations or Order made hereunder; or
 - (b) any direction, requirement or measure given or made by the Central Bank, the Board or the Inspector,

commits an offence and the offence shall be deemed to be continued so long as the default continues.

(3) Any contravention against this Act or the Regulations for which no other penalty is expressly provided, is punishable by a fine not exceeding six hundred thousand dollars and to imprisonment for two years and in the case of a continuous offence, to fine of sixty thousand dollars for each day the offence continues.

(4) Where a person is convicted of an offence under this Act, the court may, in addition to any punishment it may impose, order that person to comply with the provisions of this Act or any Regulations or Order made hereunder or any direction, requirement or measure given or made by the Central Bank, the Board or the Inspector, in respect of which the person was convicted.

(5) In any proceedings for an offence under this Act or the Regulations, it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by any person under his control.

(6) In any proceedings for an offence under this Act or the Regulations, where it is proved that the person charged intended to deceive, defraud or profit from the offence, the penalty shall be a fine ten times the amount stipulated for that offence and to imprisonment for twenty years.

(7) The court may, in addition to any other punishment it may otherwise impose under subsection (6)—

- (a) order the person to comply with the requirement in respect of which the person was convicted;
- (b) where it is satisfied that as a result of the commission of the offence the convicted person acquired any monetary benefits or that monetary benefits accrued to the convicted person's spouse or other dependant, order the convicted person to pay restitution to the party deceived or defrauded, in an amount equal to the court's estimation of those monetary benefits.

(8) Where a person commits an offence under this Act and such offence is proved to have been—

(a) committed with the acquiescence, consent or connivance of—

- (i) any director or officer of the company;
- (ii) any person purporting to act in a capacity referred to in subparagraph (i); or
- (iii) an actuary or auditor of the insurer or financial holding company; or

(b) attributable to any neglect on the part of—

- (i) any director or officer of the company;
- (ii) any person purporting to act in a capacity referred to in subparagraph (i); or
- (iii) an actuary or auditor of the insurer or financial holding company,

the persons referred to in paragraph (a) or (b) shall be presumed to have also committed the offence.

255. (1) A person who perpetrates a financial fraud on Financial fraud on policyholders policyholders commits an offence.

(2) Any director or officer of an insurer, financial holding company, brokerage or agency who—

- (a) falsifies the accounts of the insurer, brokerage or agency which leads to a loss of policyholders' funds;
- (b) uses policyholders' funds for his own benefit or for the benefit of his relatives and persons connected with him which leads to a loss of policyholders' funds; or

(c) provides to the Central Bank or Inspector false or misleading financial data or other relevant information with the intent to conceal the true financial position of an insurer, brokerage or agency, perpetrates a financial fraud on policyholders.

(3) Any sales representative who uses policyholders' funds for his own benefit or for the benefit of persons connected with him which leads to a loss of policyholders' funds perpetrates a financial fraud on policyholders.

(4) Any person who commits an offence under this section is liable on summary conviction—

(a) where the person is an individual, to a fine of ten million dollars and to imprisonment for ten years;

(b) where the person is an entity—

(i) every director or officer of such entity is liable to a fine of ten million dollars and to imprisonment for ten years; and

(ii) the entity is liable to a fine in an amount of twenty million dollars.

Offence to induce person to enter into contract of insurance by means of a false statement

256. A person who by—

(a) knowingly making a false, misleading or deceptive statement;

(b) recklessly making, dishonestly or otherwise, any statement which is false, misleading or deceptive; or

(c) dishonestly concealing material facts,

induces or attempts to induce another person to enter into or cancel or offer to enter into or cancel any contract of insurance commits an offence and is liable on summary conviction to fine of five million dollars and to imprisonment for five years.

257.(1) A person other than a registrant shall not ^{Restriction on issuing insurance advertisement} issue or cause to be issued any advertisement inviting the public to enter into contracts of insurance with that person or with some other person.

(2) For the purpose of this section—

- (a) an advertisement issued by a registrant by way of display or exhibition in a public place shall be treated as issued by the registrant on every day on which it causes or permits the advertisement to be displayed or exhibited;
- (b) an advertisement issued by any person on behalf of, or to the order of a registrant shall be treated as an advertisement issued by that registrant; and
- (c) an advertisement inviting the entering into of contracts of insurance with an insurer specified in the advertisement shall be presumed, unless the contrary is proved, to have been issued by the insurer.

(3) In any proceedings for an offence under this section it shall be a defence for the person charged to prove that he is a person whose business it is to publish or to arrange for the publication of advertisements and that he received the advertisement in the ordinary course of business and did not know and had no reason to suspect that the publication would constitute such an offence.

258.(1) Where a person alleges that or where in the ^{Advertisement} opinion of the Inspector, a registrant has issued or caused to be issued any advertisement which is misleading or objectionable, the Inspector may require the correction or withdrawal of the advertisement or any part thereof.

(2) A registrant that does not correct or withdraw the advertisement or any part thereof as required by the Inspector, commits an offence.

Information not to be disclosed

259.(1) No registrant, financial holding company, controlling shareholder, significant shareholder or affiliate of a registrant, and no director, officer, employee or agent of a registrant, financial holding company or other controlling shareholder or affiliate who receives information in the course of his duties relating to the business or other affairs of a policyholder, consumer of the insurer or of any other person shall disclose the information unless—

- (a) the disclosure is required under compulsion of law; or
- (b) the policyholder, consumer or other person concerned expressly consents to the disclosure.

(2) No person who obtains information referred to in subsection (1) shall disclose the information without the consent of the person to whom it relates and the person from whom it was received.

(3) Notwithstanding subsection (1), a registrant or a person authorized by the registrant may, with the consent of the policyholder, consumer or other person concerned, exchange information with another registrant.

- (4) This section does not apply to—
 - (a) information disclosed in good faith in the course of the performance of duties or responsibilities imposed by this Act or in the implementation of measures countering money laundering and terrorist financing; and
 - (b) the provision of information necessary to combat fraud against insurers.

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

260. (1) The Central Bank may issue to any person Administrative fines who, there is reasonable cause to believe, has committed an offence referred to in Schedule 6, a notice offering the Schedule 6 person the opportunity to dispense with any liability to conviction in respect of that offence by payment of the administrative fine specified for the offence in Schedule 6.

(2) Where a person is given a notice under this section, criminal proceedings shall not be taken against him for the offence specified in the notice until the expiration of fifteen business days commencing from the day after which the notice was served.

(3) Where a person fails to pay the administrative fine referred to in subsection (1), or where he pays the administrative fine but continues to commit the offence after the expiration of fifteen business days following the date of receipt of the notice referred to in subsection (1), that person is liable on summary conviction for the offence committed.

(4) Where a person paid an administrative fine under subsection (1), but continues to commit the offence and is convicted under subsection (3), he is liable to the criminal penalty prescribed in Schedule 6 from the date after which he made the payment.

(5) Payment of an administrative fine under this section shall be made to the Central Bank and a certificate that payment of the penalty was made to the Central Bank by the specified date shall, if the certificate purports to be signed by an authorized officer of the Central Bank be admissible as evidence of the facts stated therein.

(6) All monies received under this section shall be paid into the Central Bank and credited to the Consolidated Fund.

(7) A notice under subsection (1) shall—

- (a) specify the offence alleged;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation; and

(c) state—

- (i) that criminal proceedings shall not be laid until the expiration of fifteen days from the date of receipt of the notice where payment of the administrative fine is made and the commission of the offence is discontinued;
- (ii) the amount of the administrative fine and the fact that it is to be paid to the Central Bank; and
- (iii) that the Central Bank shall not accept any payments in respect of a notice under subsection (1) after the expiration of the fifteen business days.

(8) In any proceedings for an offence to which this section applies, no reference shall be made to the giving of any notice under this section or to the payment or non-payment of an administrative fine thereunder unless in the course of the proceedings or in some document which is before the court in connection with the proceedings, reference has been made by, or on behalf of the accused to the giving of such a notice, or, as the case may be, to such payment.

(9) Administrative fines under this section in respect of insurers shall be calculated with reference to the insurer's proportion of the industry's new gross annualized premium income.

(10) Where an insurer's proportion of the industry's new gross annualized premium income is two and a half per cent or less, it shall pay fifty per cent of the administrative fine prescribed in Schedule 6.

(11) The Minister after consultation with the Central Bank may by Order, vary the percentage of the insurer's proportion of the industry's new gross annualized premium income stated in respect of subsection (10).

261. (1) A person who without reasonable excuse ^{Offence to suppress information} alters, suppresses, conceals or destroys or refuses to produce any document which he is liable to produce or has been so required to produce commits an offence.

(2) A person shall not, with intent to defeat the purposes of this Act or with intent to delay or obstruct the carrying out of an investigation under this Act send, cause to be sent, or conspire with another person to send out of Trinidad and Tobago a book, other document or any money or property belonging to, or under the control of an insurer or a financial holding company.

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

PART XII

FACILITATION OF TRANSFERS AND UNDERTAKINGS

262. In this Part—

Definitions

“the appointed day” means such day as is appointed by a Vesting Order for the coming into force of that Order;

“existing” means existing or in force, as the case may require, immediately before the appointed day;

“insurer” includes a foreign insurer under section 281;

“security” includes a mortgage or charge, whether legal or equitable, debenture, guarantee, lien, pledge whether actual or constructive, hypothecation, indemnity, undertaking or other means of securing payment or discharge of a debt or liability or obligation whether present or future, actual or contingent;

“undertaking” means the insurance business and business of a financial nature carried on by an insurer or any part of the business so carried on;

“will” includes a codicil and any other testamentary writing.

Vesting Order

263. (1) Where an agreement has been entered into for the acquisition by a person (hereinafter referred to as the “transferee”), of the undertaking of an insurer (hereinafter referred to as the “transferor”), the transferee may, for the purpose of effecting the transfer to and the vesting in the transferee of the undertaking, make a written application to the Minister, notice of which shall be published in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago.

(2) Upon the making of such an application, the Minister may, if he thinks fit, make an order under this Part called a “Vesting Order”, transferring to and vesting in the transferee the undertaking, as from the appointed day, and thereupon all such existing property, rights, liabilities and obligations as are intended by the agreement to be transferred and vested shall, by virtue of this Act, and without further assurance be transferred to, and shall vest in the transferee, to the intent that the transferee shall succeed to the whole or such part of the undertaking of the transferor as is contemplated by the agreement.

(3) For the avoidance of doubt a Vesting Order shall take effect on the appointed day specified in the Order, whether or not the Vesting Order is published in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago, after the appointed day.

(4) No transfer or vesting effected by a Vesting Order shall—

- (a) operate as a breach of covenant or condition against alienation;
- (b) give rise to any forfeiture; or
- (c) invalidate or discharge any contract or security.

(5) Notwithstanding any other law, a Vesting Order may in the discretion of the Minister, provide for the carrying forward by the transferee and setting off for corporation tax purposes of such of the losses of the transferor as may be specified, as if the undertaking of the transferor had not been permanently discontinued on the appointed day and a new undertaking had been set up and commenced by the transferee.

264. (1) Without prejudice to the generality of section 265, the effect of a Vesting Order as regards the undertaking thereby transferred shall be that on and from the appointed day—

- (a) every existing contract to which the transferor was a party, including a contract of insurance, whether in writing or not, shall be construed and have effect as if—
 - (i) the transferee had been a party thereto instead of the transferor;
 - (ii) for any reference however worded and whether express or implied, to the transferor there were substituted, as respects anything

Supplementary
provisions as to
transfers

falling to be done on or after the appointed day, a reference to the transferee; and

- (iii) for any reference however worded and whether express or implied, to the directors or to any director, officer, clerk or servant of the transferor were, as respects anything falling to be done on, or after the appointed day, a reference as the case may require to the directors of the transferee or to such director, officer, clerk or servant of the transferee as the transferee may appoint or, in default of appointment, to the director, officer, clerk or servant of the transferee who corresponds as nearly as possible to the first mentioned director, officer, clerk or servant;
- (b) any contract between the transferor and policyholder or person claiming through a policy shall become a contract between the transferee and that policyholder or person claiming through a policy;
- (c) any existing instruction, direction, mandate, power of attorney or consent given to the transferor shall have effect as if given to the transferee;
- (d) any security transferred to the transferee by a Vesting Order that immediately before the appointed day was held by the transferor as security for the payment or discharge of any debt or liability or obligation, whether present or future, actual or contingent, shall be held by, and

be available to, the transferee as security for the payment or discharge of such debt or liability or obligation; and any such security which extends to future advances or liabilities shall, on and from the appointed day, be held by, and be available to, the transferee as security for future advances by and future liabilities to the transferee in the same manner and in all respects as future advances by or liabilities to, the transferor were secured thereby immediately before the appointed day;

- (e) any judgment or award obtained by or against the transferor and not fully satisfied before the appointed day shall be enforceable by or against the transferee; and
- (f) unless the agreement provides to the contrary, any officer, clerk or servant employed by the transferor immediately before the appointed day shall become an officer, clerk or servant, as the case may be, of the transferee on terms and conditions not less favourable than those on which he was so employed immediately before the appointed day, and such employment with the transferor and transferee respectively, shall be deemed for all purposes to be a single continuing employment, except that no director, officer, secretary or auditor of the transferor shall by virtue only of a Vesting Order become a director, officer, secretary or auditor, as the case may be, of the transferee.

(2) Subsection (1)(a)(ii) and (iii) shall apply to any statutory provision, to any provision of any existing contract to which the transferor was not a party and to any provision of any other existing document, not being a contract but including in particular a will, as they apply in relation to a contract to which subsection (1)(a) applies.

(3) Any property or rights transferred to, and vested in, the transferee which immediately before the appointed day were held by the transferor, whether alone or jointly with any other person—

- (a) as trustee or custodian trustee of any trust, deed, settlement, covenant, agreement or will, and whether originally so appointed or not, and whether appointed under hand or seal, or by order of any Judge;
- (b) as executor of the will of a deceased person;
- (c) as administrator of the estate of a deceased person;
- (d) as judicial trustee appointed by order of any Judge; or
- (e) in any other fiduciary capacity whatsoever,

shall, on and from the appointed day be held by the transferee, whether alone or jointly with such other person, in the same capacity, upon the trusts, and with the powers and subject to the provisions, liabilities and obligations applicable thereto, respectively.

Transfers subject to stamp duty

Chap. 76:01

265. The transfer of and vesting in, the transferee of an undertaking by a Vesting Order shall, unless exempted, either generally or in some particular case, by the Order, be subject to the provisions of the Stamp Duty Act, as if the Order was, in each of the cases in which the duty is imposed on the several instruments specified in the Schedule to that Act, an instrument between party and party within the contemplation of the Act.

PART XIII

MISCELLANEOUS

Standards of market conduct

Schedule 12

266. Registrants and insurance consultants shall comply with the standards on market conduct as prescribed in Schedule 12.

267. An insurer shall fully settle all judgment claims ^{Settlement of judgment claims} within forty business days of a judgment order, unless there is a stay of execution.

268. (1) In the case of an individual life policy, upon ^{Proof of policy} acceptance of the risk, an insurer shall issue a policy within twenty business days of acceptance of the risk.

(2) In the case of a group policy, the insurer shall issue a certificate to the insured within twenty business days of acceptance of the risk.

(3) In the case of a general insurance policy, upon first acceptance of the risk, the insurer shall issue a policy to the insured and upon each renewal date thereafter the insurer shall issue a certificate to the insured, within twenty business days of receipt of all relevant documentation pertaining to the risk.

269. (1) A person shall not publish in respect of an ^{Issue of capital by company} insurer or in respect of a company proposed to be formed to carry on insurance business a prospectus, notice, circular, advertisement or other invitation offering to the public for subscription any shares in the insurer or proposed company unless the prospectus, notice, circular, advertisement or other invitation is first approved by the regulatory authority under the Securities Act and copies of the approved documents are ^{Act No. 17 of 2012} submitted to the Central Bank.

(2) A person who is acting as the promoter of any such proposed company shall not accept any office of profit in the company or any payment or pecuniary advantage other than as provided in the prospectus, notice, circular, advertisement or other invitation.

270. (1) An insurer shall keep in accordance with this ^{Register to be kept} section—

(a) a register of its Trinidad and Tobago policies; and

(b) a register of its foreign policies.

(2) An insurer shall appoint an officer in charge of the registers referred to in subsection (1).

(3) The Inspector shall be notified in writing of the name of the officer in charge of the registers referred to in subsection (1) and of any change of the officer in charge of the registers within five business days of such appointment.

(4) Upon request by a person having a beneficial interest in a Trinidad and Tobago policy, an insurer shall search its register of Trinidad and Tobago policies for evidence of the existence of a Trinidad and Tobago policy.

(5) An officer designated by the insurer shall issue a report of the results of the search within forty business days of receipt of the request to the person making the request.

(6) Where it is subsequently discovered that a Trinidad and Tobago policy existed at the date of the request and the person was not so informed, the insurer shall compensate any person having a beneficial interest in that policy with interest at the weighted average of the prime rate of interest on any amount claimed and due to such person under the policy calculated from the date on which the person would have been entitled to such payment until full payment is made.

Registration of policy

271. (1) Every Trinidad and Tobago policy and foreign policy existing at the date of the commencement of this Act shall as at that date be registered by the insurer in the register required to be kept under section 270.

(2) An insurer shall specify the address of its registered office on every Trinidad and Tobago policy issued by it.

(3) Every policy issued by an insurer shall immediately after issue be registered by the insurer in the register.

(4) All money payable in respect of a Trinidad and Tobago policy shall, unless the insurer and the policyholder otherwise agree, be payable at the registered office.

272. (1) Where a notice is required or permitted by Serving of notice this Act to be given to, or served upon a person, the notice shall be in writing and may be given or served—

(a) where the notice is addressed to a person other than a company, by serving it upon him personally or by sending it by registered post addressed to him at his usual or last known place of abode or business; and

(b) where the notice is addressed to a company, by serving it personally upon the person last known to the Central Bank or the Inspector as being a director or the principal representative or an officer of the company or by sending it by registered post addressed to such person at his address last known to the Central Bank or the Inspector.

(2) Where a notice is sent by registered post, it shall be deemed to have been given or served on the date on which it would have been delivered in the ordinary course of post.

(3) In this section, “company” includes a body corporate which has ceased carrying on insurance business in Trinidad and Tobago.

273. Any document required by or under this Act to Authority to sign documents be signed by a director, may be signed by any other officer of the company where—

(a) the officer is authorized to do so by the board of directors; and

(b) the board of directors has notified the Central Bank or the Inspector in writing of the authorization.

Printing of documents **274.** Where a document is by this Act required to be printed, the Central Bank may permit it to be typewritten or to be reproduced by such means as the Central Bank may approve.

Policy not invalidated in certain cases **275.** Failure on the part of an insurer to comply with any provision of this Act shall not in any way invalidate a policy issued by the insurer.

Currency **276.** Notwithstanding any other written law, for the purpose of this Act, insurance business may be carried on in any currency.

Consultations **277.**(1) Before making or amending Regulations under this Act the Minister may consult with the registrants and other persons who may be affected by the draft regulations or amendment.

(2) Before making or amending Guidelines referred to in section 278, the Central Bank shall issue draft Guidelines or draft amendments thereof and shall consult for a period not exceeding sixty business days with the registrants who may be affected by the draft Guidelines or amendments.

(3) Where, in the opinion of the Minister, any matter to be dealt with in Regulations has become urgent, the Minister may proceed to make such Regulations without the consultation referred to in subsection (1), and may subsequently consult within sixty business days with the registrants and other persons who may have been affected by the Regulation or amendment.

(4) Where, in the opinion of the Governor after consultation with the Inspector, any matter proposed to be dealt with in Guidelines or by an amendment thereof has become urgent, the Central Bank shall

proceed to issue the Guidelines or amendments thereof without following the process referred to in subsection (2), and shall subsequently consult with the registrants who may have been affected by the Guidelines or amendments.

278. (1) The Central Bank may issue Guidelines to— Guidelines

- (a) facilitate compliance with this Act;
- (b) enable the Central Bank to meet its objectives; or
- (c) aid compliance with the Proceeds of Crime Act, the Anti-Terrorism Act, or any other written law in relation to the prevention of money laundering and combating the financing of terrorism which may be in force from time to time.

(2) Guidelines issued under this section shall not be regarded as a statutory instrument.

(3) Contravention of a Guideline although not an offence, shall not prevent the Central Bank or the Inspector from taking action under section 155.

279. (1) The Minister may, upon recommendation by Regulations and amendment of Schedules the Central Bank, make Regulations for generally giving effect to the provisions of this Act.

(2) Regulations made under this Act shall be subject to negative resolution of Parliament, unless the Regulations affect constitutional rights in which case, they shall be subject to affirmative resolution of Parliament.

(3) The Minister may, by Order, upon recommendation by the Central Bank, amend the Schedules.

(4) The Minister may, by Order, upon recommendation by the Central Bank, vary the amount specified—

- (a) in the definition of “insolvent” in section 4(2);

(b) in section 193(1) and (3); and

(c) in section 195(3) and (4).

(5) Any amendment to Schedule 6 shall be subject to affirmative resolution of Parliament.

Chap. 84:01 repealed **280.** The Insurance Act is repealed.

Transitional and
savings provisions

281. (1) Notwithstanding section 280, the former Act and the Regulations made thereunder shall apply to a foreign insurer for a period of eighteen months from the commencement of this Act in order to facilitate a reorganization of the foreign insurer's business such that the foreign insurer can comply with the requirements of section 21(1) of this Act.

(2) A foreign insurer shall reorganize its business pursuant to subsection (1) within a period of eighteen months from the commencement of this Act or within such shorter period as the Central Bank may direct.

(3) For the purposes of this section, "foreign insurer" means a branch of a foreign insurance company, which is registered under the former Act to carry on insurance business in Trinidad and Tobago.

(4) Where a foreign insurer engages in a reorganization of its business pursuant to subsection (1) or (2), the Central Bank may exempt the foreign insurer from the requirements of sections 84 to 87 of the former Act.

(5) A foreign insurer shall not transfer its business, or any part thereof, to a local company unless such company is first registered as an insurer in accordance with Part III.

(6) Where a foreign insurer fails to comply with the requirements of subsection (2) within the time specified thereunder, the foreign insurer shall be in contravention of section 21 of this Act.

282. The Proceeds of Crime Act, the Central Bank ^{Consequential} Act, the Married Persons Act and the Financial ^{amendments} Institutions Act are amended to the extent as specified in Schedule 13.

Schedule 13

SCHEDULE 1

(Sections 4, 24 and 230)

TYPES AND CLASSES OF INSURANCE BUSINESS

For the purposes of this Act, insurance business shall be categorized according to types of insurance business and each type of insurance business will be subdivided into classes as follows:

TYPE A—GENERAL INSURANCE BUSINESS

- (1) “Liability Insurance Business” means the business of effecting and carrying out contracts of insurance against risks of the persons insured incurring liabilities to third parties, not being risks arising out of, or in connection with the use of, motor vehicles or out of, or in connection with the use of, vessels or aircraft or risks incidental to the construction, repair or docking of vessels or aircraft, or policies insuring employers against liability to pay compensation or damages to workers in their employment.
- (2) “Marine, Aviation and Transport Business” means the business of effecting and carrying out contracts of insurance where the policyholder has a residential or business connection to Trinidad and Tobago—
 - (a) upon vessels or aircraft or upon the machinery, tackle, furniture or equipment of vessels or aircraft;
 - (b) upon goods, merchandise or property of any description whatever on board of vessels or aircraft;
 - (c) upon the freight of, or any other interest in, or relating to vessels or aircraft;
 - (d) against damage arising out of, or in connection with, the use of vessels, or aircraft, including third-party risks;
 - (e) against risks incidental to the construction, repair or docking of vessels including third-party risks;

- (f) against transit risks (whether the transit is by sea, inland water, land or air, or partly one and partly another), including risks incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance; or
 - (g) against any other risks, insurance against which is customarily undertaken in conjunction with, or as falls within the definition by virtue of any of the foregoing paragraphs.
- (3) “Motor Vehicle Insurance Business” means the business of effecting and carrying out contracts of insurance against loss of, or damage to, or loss or damage arising out of, or in connection with the use of, motor vehicles, inclusive of third-party risk but exclusive of transit risks.
- (4) “Pecuniary Loss Insurance Business” means the business of effecting and carrying out contracts of insurance against any of the following risks:
- (a) of loss to the persons insured arising from the insolvency of their debtors or from the failure (otherwise than through insolvency) of their debtors to pay their debts when due;
 - (b) of loss to the persons insured arising from their having to perform contracts of guarantee entered into by them;
 - (c) of loss to the persons insured attributable to their incurring unforeseen expenses; or
 - (d) neither falling within any of the foregoing paragraphs nor being a kind such that the carrying on of the business of effecting and carrying out contracts of insurance against them constitutes the carrying on of insurance business of some other class and,

excludes risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reductions of the scope of business so carried on.

- (5) “Personal Accident Short-Term Insurance Business” means the business of effecting and carrying out contracts of insurance—
- (a) in the case of accident—
 - (i) insurance against loss resulting from bodily injury to, or the death of, a person caused by an accident; or;

- (ii) insurance whereby an insurer undertakes to pay a certain sum or sums of insurance monies in the event of bodily injury to, or the death of, a person caused by an accident; or
- (b) in the case of sickness—
- (i) insurance against loss resulting from the sickness or disability of a person other than loss resulting from an accident or death;
 - (ii) insurance whereby an insurer undertakes to pay a certain sum or sums of insurance monies in the event of the sickness or disability of a person other than as a result of an accident; or
 - (iii) insurance whereby an insurer undertakes to pay a certain sum or sums of insurance monies to reimburse expenses incurred for the health care, including the preventive care of a person other than as a result of an accident.

Contracts of insurance referred to in paragraph (5) under “Personal Accident Short-Term Insurance Business” are required to be—

- (a) attached as riders or additional benefits to other General Insurance contracts and meet all of the following criteria:
- (i) have a policy period no longer than one year;
 - (ii) have a period for which benefits may be payable following a sickness or accident of no longer than five years;
 - (iii) have no provision for guaranteed renewability or guaranteed extension of cover;
 - (iv) provide indemnity only if an event indemnified by the General Insurance contract to which it is attached occurs prior to, or simultaneous with accident or sickness; and
 - (v) have a premium no more than twenty-five per cent of the premium of the General Insurance contract to which they are attached; or

- (b) standalone contracts of insurance and meet all of the following criteria:
- (i) have a policy period no longer than one year plus odd business days;
 - (ii) have a period for which benefits may be payable following a sickness or accident of no longer than five years;
 - (iii) have no provision for guaranteed renewability or guaranteed extension of cover;
 - (iv) to the extent that the policy provides benefits on death, that this component of the policy is a minor component and the benefits relate only to specific causes of death; and
 - (v) to the extent that the policy provides cover for medical and/or hospital expenses, that this cover is incidental to other coverage under the policy and is not the main component of the policy.
- (6) “Property Insurance Business” means the business of effecting and carrying out contracts of insurance against risks of loss of, or damage to, real or personal property, not being risks of a kind such that the business of effecting and carrying out contracts of insurance against them constitutes marine, aviation and transport insurance business or motor vehicle insurance business and includes risks of loss to the persons insured attributable to interruption of the carrying on of business carried on by them or to reduction of the scope of business so carried on.
- (7) “Workers Compensation Insurance Business” means the business of effecting and carrying out contracts of insurance against the liability of an employer to pay compensation to workers, whether under statute or negligence, for accident or injury related to the employment.

Incidental Business

If a single policy covers risks that would fall into more than one class, the insurer may classify it into the class that represents the predominant risk. All other risks on the policy would be included in the dominant class and may be referred to as incidental business.

For example, a Home policy may include a legal liability cover, but the entire policy can be classified as Property.

This provision does not prohibit an insurer from allocating a policy to more than one Class if it wishes to do so. An insurer should consider allocating a policy to more than one class if each of the components is significant in its own right, the insurer determines the premium separately for each component and the insurer is able to separate claims into the relevant Classes.

Market Practice

In determining the appropriate Class for any policy, the insurer may consider normal market practice in making such determinations, in addition to the definitions in this Schedule. For example, major risks in the petroleum industry or insurance of certain construction projects may conventionally be regarded as Marine business, even though the definitions in this Schedule may classify the policy as Property.

If an insurer uses market practice in determining the appropriate Class it must do so on a consistent basis.

TYPE B—LONG-TERM INSURANCE BUSINESS

- (1) “Accident and Sickness Insurance Business” means the business of effecting and carrying out contracts of insurance—
- (a) in the case of accident—
 - (i) insurance against loss resulting from bodily injury to, or the death of, a person caused by an accident; or
 - (ii) insurance whereby an insurer undertakes to pay a certain sum or sums of insurance monies in the event of bodily injury to, or the death of, a person caused by an accident; and
 - (b) in the case of sickness—
 - (i) insurance against loss resulting from the sickness or disability of a person other than loss resulting from an accident or death;
 - (ii) insurance whereby an insurer undertakes to pay a certain sum or sums of insurance monies in the event of the sickness or disability of a person other than as a result of an accident; or
 - (iii) insurance whereby an insurer undertakes to pay a certain sum or sums of insurance

monies to reimburse expenses incurred for the health care, including the preventive care of a person other than as a result of an accident,

and is not Personal Accident Short-Term Insurance Business.

- (2) “disability income insurance” means insurance whereby an insurer undertakes to pay a certain sum of monies in the event of—
- (a) bodily injury to a person caused by an accident; or
 - (b) sickness or disability of a person other than as a result of an accident.
- (3) “Industrial Life Insurance Business” means the business of effecting and carrying out contracts of insurance upon human life, premiums in respect of which are contracted to be paid at intervals of less than forty business days and which are usually received by means of collectors.
- (4) “Life Insurance Business” means the business of effecting and carrying out contracts of insurance that are payable—
- (a) on the death of a person;
 - (b) on the happening of an event or contingency dependent on human life;
 - (c) at a fixed or determinable future time,
- for a term dependent on human life, and without restricting the generality of the foregoing includes—
- (i) insurance whereby an insurer, as part of a contract of life insurance undertakes to pay an additional amount of insurance monies in the event of the death by accident of the person whose life is insured;
 - (ii) insurance whereby an insurer as part of a contract of life insurance undertakes to pay insurance monies or to provide other benefits in the event that the person whose life is insured becomes disabled as a result of bodily injury or disease; or
 - (iii) an undertaking to provide an annuity contract.

SCHEDULE 2

(Sections 18, 24, 26, 27, 51, 111 and 230)

APPLICATION AND ANNUAL FEES**PART A**

The following fees shall be payable by insurance companies in accordance with the provisions of this Act:

Section	Matters in Respect of which Fee is Payable	Application Fee Payable in Trinidad and Tobago Dollars	Annual Fee Payable in Trinidad and Tobago Dollars
24	Application by a company to the Central Bank for registration under this Act to carry on insurance business	10,000	100,000 payable no later than the thirty-first day of January in each year or such later date as may be specified by the Central Bank
26	Application by a foreign insurance company for the approval in writing of the Central Bank to establish, acquire or open a representative office in Trinidad and Tobago	10,000	25,000 payable no later than the thirty-first day of January in each year or such later date as may be specified by the Central Bank
27(1)	Application by a local insurer for the prior approval of the Central Bank to establish, close or relocate a branch outside Trinidad and Tobago	10,000	NIL

APPLICATION AND ANNUAL FEES—*CONTINUED*

PART A

Section	Matters in Respect of which Fee is Payable	Application Fee Payable in Trinidad and Tobago Dollars	Annual Fee Payable in Trinidad and Tobago Dollars
51	Application for a permit to carry on the business of a financial holding company	10,000	100,000 payable no later than the thirty-first day of January in each year or such later date as may be specified by the Central Bank
230	Application to be registered as an association of underwriters	10,000	100,000 payable no later than the thirty-first day of January in each year or such later date as may be specified by the Central Bank

PART B
INTERMEDIARIES

The following fees shall be payable by intermediaries in accordance with the provisions of this Act:

Section	Matters in Respect of which Fee is Payable	Registration Fee Payable in Trinidad and Tobago Dollars
111	Application to be registered as a sales representative	1,000
111	Application to be registered as an agent	1,000
111	Application to be registered as a broker	3,500
111	Application to be registered as an adjuster (individual)	3,500
111	Application to be registered as an agency	3,500
111	Application to be registered as a brokerage	6,500
111	Application to be registered as an adjuster (company)	6,500
111	Application to be registered as an insurance consultant	6,500

SCHEDULE 3

(Section 170)

FORM A

ABSOLUTE ASSIGNMENT

Policy Number..... on the life of

.....

Policy Owner (if not the above)

Assignee: (Name)

(Address)

.....

In consideration of

the undersigned hereby assigns and transfers all rights, title, and interest in and to the above-mentioned policy, issued by..... unto the above-named assignee, his executors, administrators, successors and assigns including the right to surrender the same for the surrender value and to receive any dividends and other amounts payable thereunder, whose receipt or acquittance for all amounts payable shall be a full discharge of all claims thereunder.

Dated at this day of, 20....

Signed in the presence of:

.....
Witness

.....
Policy Owner

.....

.....

NOTE: Additional lines are provided for signature of persons with beneficial interests.

FORM B

(Section 170)

ASSIGNMENT AS SECURITY

Policy Number on the life of

.....
Policy Owner (if not the above)

Assignee: (Name)

(Address)

In consideration of

the undersigned, hereby assigns and transfers as security all rights, title and interest in

and to the above-mentioned policy issued by

.....

unto the above-named assignee, his executors, administrators, successors and assigns whose receipt or acquittance for all the amounts payable under the said policy shall be a full discharge of all claims thereunder.

This assignment does not confer on the assignee the right to surrender the policy for the surrender value.

Dated at this day of, 20

Signed in the presence of:

.....

Witness

.....

Policy Owner

.....

.....

NOTE: Additional lines are provided for signature of persons with beneficial interests.

FORM C

(Section 174)

MEMORANDUM OF DISCHARGE

Policy Number Life Assured

.....

Policy Owner (if not above)

In consideration of

all the rights, title and interest in and to the above-mentioned
policy assigned to the undersigned on

..... as security

for securing

are hereby relinquished and the policy discharged.

Dated at this day of, 20

.....

Witness

.....

Signature of Assignee

SCHEDULE 4

(Sections 217, 226 and 227)

PART I**Requirements as to the Trust Deed and Rules of
Registered Pension Fund Plans**

1. The Trust Deed and Rules of a plan qualified for registration under this Act shall make provision for the following matters:

- (a) the whole of the objects for which the plan is established;
- (b) the appointment and removal of trustees;
- (c) the vesting in the trustees of all property belonging to the plan;
- (d) the investment in the names of the trustees of all capital money belonging to the plan and for authorizing the investments, if any, in addition to those authorized by law, in which the trustees may invest such moneys; but the Rules of a plan may provide for the deposit of such moneys with an institution licensed under the Financial Institutions Act;
- (e) the making of contributions to the plan by the employers of persons employed in the undertaking or combination of undertakings in connection with which the plan is established;
- (f) the contributions payable to and the rates of benefits payable from the fund or the method of calculating benefits so payable;
- (g) the conditions on which persons may become and may cease to be contributors to and entitled to benefits from the fund;
- (h) the protection of the vested rights of contributors to the plan;
- (i) the preparation of all statements of accounts, balance sheets and reports required by this Act to be prepared;
- (j) the supply (on demand) to every person having any rights in the plan, being a person who is, or has been employed in the undertaking in connection with which the plan is established, of a copy of the Rules of the plan and of all amendments thereof, and of the latest statements of accounts, balance sheets and report prepared in accordance with the requirements of this Act;

- (k) the circumstances in which the plan may be wound up and in the event of winding up, the use of the plan to purchase immediate annuities for contingent pensioners; and
- (l) the method by which the Rules may be amended.

2. The second part of the report shall contain the following information:

- (a) general observations regarding mortality, withdrawal and retirement from service and progression of salary during intervaluation period and general observations on any other factors entering into the valuation;
- (b) a description of the mortality and all other rates used (specimen rates to be shown in an appendix to the report);
- (c) average rates of interest realized by the assets of the fund whether invested or not during each year in the intervaluation period;
- (d) the rate of interest assumed in the calculations for the purpose of the valuation; and
- (e) a statement indicating—
 - (i) whether and how it has been secured that the estimated net liability in respect of any employer is not negative; and
 - (ii) the amount of and the reason for any special reserves which have been set up.

3. The final part of the report shall contain information about the results of the valuation, an analysis of the surplus or deficiency shown and a recommendation as to how much of the surplus can be regarded as disposable, or, if a deficiency, the manner in which the deficiency can be liquidated.

4. The report shall close with any further observations the actuary may wish to offer on the valuation.

PART II
FORMS
Form A

PENSION FUND PLAN

Revenue Account for the period
to

Revenue	\$	Expenditure	\$
1. Amount of the Fund at the beginning of the period*		1. Superannuation Benefits—	
2. Contributions by employees		(a) pension to retired employees;	
3. Contributions by employer		(b) widows' pensions;	
4. Any additional contribution by employer to meet deficiency or back service liabilities		(c) orphans' pensions;	
5. Interest dividend and rents		(d) retirement gratuities	
6. Other income (to be specified)		2. Death grants	
		3. Return on contributions on withdrawal	
		4. Other expenditure (to be specified)	
		5. Amount of the Fund at the end of the period*	

*May be omitted for an insured pension fund plan.

Form B

PENSION FUND PLAN

Balance Sheet as at 20.... for

Liabilities	\$	Assets	\$
Amount of fund as at		Mortgage	
Pensions due but not yet paid		Stock Exchange	
Other benefits (to be specified) due but not yet paid		Securities	
		Other assets (to be specified)	

(Note to be completed for an insured pension fund plan)

Details of Mortgages

Name of borrower	Nature of security	Original amount of loan	Method of repayment	Rate of interest	Amount outstanding on the valuation date	Date or outstanding period of repayment

Details of Stock Exchange Securities

Security	Date of redemption	Nominal Amount	Rate of interest or Dividend	Market value as at the valuation date	Book value	Value used in valuation

SCHEDULE 5

(Sections 11, 24, 26, 28, 29, 34, 36, 40, 51, 52, 53, 54, 61, 65, 78, 93, 113, 121 and 230)

MINIMUM CRITERIA FOR REGISTRATION

Where the provisions of the Act require a person to be fit and proper or to meet the criteria of Schedule 5, the following will be considered:

A. INDIVIDUALS TO BE FIT AND PROPER PERSONS

1. Every person who is, or is to be, a director, officer, actuary, controlling shareholder, significant shareholder or acquirer, of a registrant or financial holding company, principal representative of an association of underwriters, agent, broker, sales representative, adjuster or principal representative of an foreign insurance company must be a fit and proper person to hold the particular position.

2. In determining whether an individual is a fit and proper person to hold any particular position, regard shall be had to his good character and probity, competence and soundness of judgment for fulfilling the responsibilities of that position, the diligence with which he is fulfilling or likely to fulfill those responsibilities and whether the interests of policyholders or potential policyholders of the registrant or financial holding company are, or are likely to be, in any way threatened by his holding that position.

3. In addition to the criteria in paragraph 2, regard may be had to the previous conduct and activities in business or financial matters of the individual in question and, in particular, to any evidence that he has—

- (a) been convicted of an offence involving fraud, insider trading, money laundering, terrorist financing or other dishonesty or violence;
- (b) contravened any provision of this Act or any other written law appearing to the Central Bank to be designed for the protection of members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
- (c) engaged in any business practices that are deceitful, oppressive, unsafe, unsound or otherwise improper, whether unlawful or not, or which otherwise discredit his method of conducting business;
- (d) an employment record which leads the Central Bank to believe that the person carried out an act of impropriety in the handling of his employer's business;

- (e) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment;
- (f) not met the criteria under subhead B, paragraph 3; and
- (g) any other matter which the Central Bank may specify.

B. SHAREHOLDERS TO BE FIT AND PROPER

1. In determining whether a company is a fit and proper person to be a controlling shareholder, significant shareholder or acquirer, regard shall be had to, but not limited by, the following criteria, whether:

- (a) the directors and officers of the company have satisfied the fit and proper criteria set out in subhead A;
- (b) the company has been found guilty of insider trading or fraud involving trading in securities by local or foreign authorities;
- (c) the company has been convicted of an offence;
- (d) the company has contravened any provisions of this Act or any other law;
- (e) in the opinion of the Central Bank the company has not carried on its business in a prudent manner;
- (f) in the opinion of the Central Bank the company is insolvent or is likely to become insolvent;
- (g) the company has suspended, or is about to suspend payment, or is unable to meet its obligations as they fall due;
- (h) in the opinion of the Central Bank the affairs of the company or any associated person are being conducted in a manner prejudicial to the soundness of the company in question or the financial system of Trinidad and Tobago;
- (i) the composition of the board of directors meets the requirements of subhead C, paragraph 3; and
- (j) any other matter which the Central Bank may specify.

2. In determining whether a company has carried on its business in a prudent manner under paragraph 1(e), the Central Bank shall take into consideration—

- (a) the capital of the company in relation to the size and nature of the business or proposed business of the insurer or financial holding company;
- (b) credit concentration or proposed credit concentration and risk exposures or proposed risk exposures in the company and the insurer or financial holding company;
- (c) separation of the business or proposed business of the company and the insurer or financial holding company from other business and from other interests of any controlling shareholder or significant shareholder of the company;
- (d) internal controls and accounting systems or proposed internal controls and accounting systems of the company;
- (e) risk management systems and policies or proposed risk management systems and policies of the company and the insurer or financial holding company;
- (f) arrangements for any business, or functions relating to any business, of the company or the insurer or financial holding company to be carried on by any person other than the company or the insurer or financial holding company; and
- (g) such other matters as the Central Bank may specify.

3. The following criteria shall also be considered in determining whether a controlling shareholder is fit and proper under this paragraph:

- (a) the nature and sufficiency of the financial resources of the controlling shareholder as a source of continuing financial support for the insurer or financial holding company;
- (b) the soundness and feasibility of the controlling shareholder for the future conduct and development of the insurer's or financial holding company's business; and
- (c) the business record and experience of the controlling shareholder.

**C. INSURER, FINANCIAL HOLDING COMPANY, AGENCY AND
BROKERAGE TO BE FIT AND PROPER**

1. In determining whether an insurer, financial holding company, agency and brokerage is a fit and proper person, regard shall be had to the criteria listed in subhead B, paragraph 1 and to the criteria listed in this subhead.

2. At least two individuals with sufficient experience and knowledge of the business to direct effectively the business of the registrant or financial holding company.

3. In the case of a local insurer, financial holding company, agency or brokerage—

- (a) such number of directors without executive responsibility for the management of its business as the Central Bank considers appropriate having regard to the circumstances of the company and the nature and scale of its operations; and
- (b) the directors shall be selected from amongst persons drawn from diverse occupations, and the overall composition of the board should reflect a reasonable mix of skills and experience, in matters relating to finance, economics, accountancy, industry, commerce, law or administration.

4. An insurer, financial holding company, agency or brokerage shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain net assets which, together with other financial resources available to the company of such nature and amount as are considered appropriate by the Central Bank, to be—

- (a) commensurate with the nature and scale of the company's operations;
- (b) the classes and types of insurance business in which the company is involved;
- (c) sufficient to safeguard the interests of its policyholders and potential policyholders;
- (d) the risks inherent in its operations and in the operation of any affiliate so far as is capable of affecting the company; and
- (e) any other factors appearing to the Central Bank to be relevant.

5. An insurer, financial holding company, agency or brokerage shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate liquidity.

6. For the purposes of paragraph 5, the Central Bank may, to such extent as it thinks appropriate, take into account as liquid assets, assets of the company and facilities available to it which are capable of providing liquidity within a reasonable period.

7. An insurer, financial holding company, agency or brokerage shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will make adequate provision for depreciation or diminution in the value of its assets.

8. An insurer shall not be considered as having met its obligations to policyholders unless it has made adequate provision in respect of policyholder liabilities and claims reserving.

9. Where payment of principal or interest which is due and payable on any credit exposure granted by an insurer or financial holding company has not been made or effected for a period of sixty days, such credit exposure shall be considered non-performing unless it is fully secured and is in the process of collection.

10. An insurer, financial holding company, agency or brokerage shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate systems of internal control of its business and records.

11. Records and systems shall not be regarded as adequate unless they are such as to enable the business of the insurer, financial holding company, agency or brokerage to be prudently managed and the company to comply with the duties imposed on it by, or under this Act.

12. For the purposes of paragraph 4, “net assets”, in relation to a company, means stated capital and reserves.

D. TRUSTEE TO BE FIT AND PROPER

In determining whether a trustee is a fit and proper person, the Central Bank shall have regard to matters listed in subhead C where appropriate to the function of trustee.

E. INTEGRITY AND SKILLS

The business of an insurer, financial holding company, agency, brokerage or trustee or in the case of a company which has applied for registration or a permit, will be carried out with integrity and professional skills appropriate to the nature and scale of its activities.

SCHEDULE 6

(Sections 260 and 279)

ADMINISTRATIVE FINES**PART A****INSURERS**

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
17(2)	Failure to pay annual fees not later than the 31st day of January in each year or such later date as may be specified by the Central Bank	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
26(1)	Failure of a foreign insurance company to obtain prior approval of the Central Bank before establishing, acquiring or opening a representative office in Trinidad and Tobago or failure of a foreign insurance company to give notice in writing to the Central Bank before closing or relocating a representative office in Trinidad and Tobago	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
27(1)	Failure of an insurer to obtain the prior approval of the Central Bank in writing before establishing, closing or relocating a branch outside Trinidad and Tobago	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
27(3)	Failure of an insurer to notify the Central Bank in writing before establishing, acquiring, opening, closing or relocating a representative office outside Trinidad and Tobago	\$300,000 plus \$30,000 for each day the offence continues	\$75,000

SCHEDULE 6—CONTINUED**ADMINISTRATIVE FINES****PART A****INSURERS—Continued**

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
31	Failure of company to notify Central Bank of any change in particulars specified in the company's application	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
32(1)	Making an alteration to articles of incorporation or continuance, by-laws or other constituent documents without notifying and receiving the approval of the Inspector	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
32(4)	Failure of an insurer to submit to the Inspector copies of altered articles of incorporation or continuance, by-laws or other constituent documents	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
66	Director of an insurer or financial holding company being present or voting at a meeting of the board of directors or a committee of the board of directors of that insurer or financial holding company on a contract which would result in a direct or indirect financial benefit	\$500,000	\$125,000
67(5)	Failure of a director of an insurer or of a financial holding company to notify the Inspector of material risks	\$600,000 plus \$60,000 for each day the offence continues	\$10,000 for each day the offence continues

SCHEDULE 6—CONTINUED

ADMINISTRATIVE FINES

PART A

INSURERS—*Continued*

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
67(6)	Failure of a director of an insurer to submit within five business days to the Inspector reasons for resignation, removal or departure from office or the reasons why he opposes his removal or departure from office	\$600,000 plus \$60,000 for each day the offence continues	\$10,000 for each day the offence continues
67(7)	Failure of a director of an insurer or of a financial holding company to establish and maintain procedure for remuneration	\$600,000 plus \$60,000 for each day the offence continues	\$10,000 for each day the offence continues
67(8)	Failure of an insurer or of a financial holding company to submit to its audit committee an annual report regarding total remuneration paid to directors and officers within twenty business days after the end of the financial years	\$600,000 plus \$60,000 for each day the offence continues	\$10,000 for each day the offence continues
67(9)	An insurer awarding or paying any bonus to its directors or officers where its assets are insufficient to meet the requirements under the Regulations or the bonus would reduce the assets of the insurer below such requirements	\$600,000 plus \$60,000 for each day the offence continues	\$10,000
68(1)	Failure of an insurer to appoint an audit committee as constituted under this section	\$500,000 plus \$50,000 for each day the offence continues	\$125,000

SCHEDULE 6—CONTINUED**ADMINISTRATIVE FINES****PART A****INSURERS—Continued**

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
68(2)	Failure of an insurer to appoint an independent director and financial expert as chair of the audit committee	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
69	Failure of an insurer or financial holding company to submit to the Inspector reports as described under this section within sixty business days after the end of its financial year or when required by the Inspector	\$400,000 plus \$40,000 for each day the offence continues	\$8,000 for each day the offence continues
73(2)	Failure of the board of an insurer to provide the Inspector with the policies and documentation when requested, and the results of the compliance reviews within sixty business days after the end of its financial year	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
73(3)	Failure of an insurer to change policies and documentation as specified by the Inspector within sixty business days	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
73(4)	Failure of an insurer to take such action to establish policies and documentation within the period specified by the Inspector	\$500,000 plus \$50,000 for each day the offence continues	\$125,000

SCHEDULE 6—CONTINUED

ADMINISTRATIVE FINES

PART A

INSURERS—*Continued*

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
75(4)(a)	Failure of an insurer or financial holding company to serve on the Central Bank a written notice of intention to appoint an audit entity to act as an auditor	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
76(1)	Failure of a local insurer or financial holding company to give written notice and reasons to the Inspector of the removal or replacement of an auditor, or where a person ceases to be an auditor	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
76(2)	Failure of an auditor of an insurer or financial holding company to forthwith give written notice and reasons to the Inspector of the removal or replacement of an auditor before the expiration of his engagement, and where a person ceases to be an auditor	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
78(1)	Failure to appoint an actuary as specified under this section	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
78(3)	Failure of insurer to notify the Inspector as required under this section	\$300,000 plus \$30,000 for each day the offence continues	\$75,000

SCHEDULE 6—CONTINUED**ADMINISTRATIVE FINES****PART A****INSURERS—Continued**

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
79(1)	Failure of an insurer to give written notice to the Inspector of the removal or replacement of an appointed actuary, and where the person ceases to be an appointed actuary, and failure to give reasons to the Inspector for such removal or replacement	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
79(2)	Failure of the appointed actuary to give written notice to the Inspector and insurer if he resigns or does not seek re-appointment and failure to give reasons to the Inspector for such resignation or decision	\$300,000 plus \$30,000 for each day the offence continues	\$5,000 for each day the offence continues
79(4)	Failure of the appointed actuary to submit a written statement to the Inspector and the insurer setting out the nature of any disagreement	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
87(6)	Failure of an insurer to notify the Inspector of shares held in a company providing necessary support service and shares and ownership interests held in excess of any limit imposed by this section	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
88	Failure of an insurer to obtain the necessary approvals of the Central Bank under this section	\$500,000 plus \$50,000 for each day the offence continues	\$125,000

SCHEDULE 6—CONTINUED**ADMINISTRATIVE FINES****PART A****INSURERS—Continued**

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
89(1)	Incurring of a credit exposure by an insurer to a person in an aggregate amount that exceeds twenty-five per cent of its capital base except as prescribed by this section	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
89(2)	Incurring by an insurer of any large exposure to a person, including a borrower group or related group, where the aggregate principal amount of all large exposures will exceed eight hundred per cent of the capital base of the insurer	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
89(4)	Failure of an insurer to reduce credit exposure, increase capital, or make adequate provision for potential losses as prescribed by this section	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
89(5)	Failure of an insurer to notify the Inspector of all credit exposures to persons which are in excess of the limits, under section 89 and of the measures that shall be taken to reduce the credit exposures that are in excess of those fixed limits or to increase capital	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
90(1)	Failure of an insurer to comply with the general limit on credit exposures to connected parties or connected party groups	\$500,000 plus \$50,000 for each day the offence continues	\$125,000

SCHEDULE 6—CONTINUED
ADMINISTRATIVE FINES

PART A
INSURERS—Continued

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
90(4)	Incurring of a credit exposure by an insurer to a director or officer or their relatives in an amount greater than the limit specified in this section	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
90(6)	Incurring a credit exposure by an insurer to a connected party or connected party group on terms and conditions not similar to the terms and conditions on which such credit exposure is offered to the public, or without the approval of the board of directors	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
90(7)	Failure of an insurer to notify the Inspector of all credit exposures to connected parties and connected party groups which are in excess of the limits prescribed under this section	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
90(10)	Failure of an insurer to comply with the requirement of the Inspector to set aside, change, limit or reduce a credit exposure to a connected party or connected party group	\$500,000 plus \$50,000 for each day the offence continues	\$125,000

SCHEDULE 6—CONTINUED

ADMINISTRATIVE FINES

PART A

INSURERS—*Continued*

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
92(1)(a)	The direct or indirect acquisition by an insurer of its own shares or the shares of its holding company or financial holding company	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
128(1)	Failure of an insurer to submit to the Central Bank a listing of its agencies or sales representatives within sixty business days after the end of the financial year	\$300,000 plus \$30,000 for each day the offence continues	\$6,000 for each day the offence continues
144(1)	Failure of an insurer or financial holding company to submit to the Inspector financial statements in accordance with this section	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
144(3)	Failure of an insurer and financial holding company to submit audited financial statements on the request of the Inspector in respect of any— <p>(a) subsidiary of the insurer;</p> <p>(b) financial holding company or company in which the insurer or financial holding company is a significant shareholder; or</p> <p>(c) member of the financial group which the financial holding company controls</p>	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues

SCHEDULE 6—CONTINUED

ADMINISTRATIVE FINES

PART A

INSURERS—*Continued*

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
144(4)	Failure of an insurer or financial holding company to submit financial statements signed by two directors of the relevant company	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
145(1)	Failure of an insurer or financial holding company to submit audited returns to the Inspector in accordance with this section	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
145(2)	Failure of an insurer carrying on long-term insurance business to submit to the Inspector a balance sheet with a certificate signed by the appointed actuary	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
145(3)	Failure of an insurer or financial holding company to submit quarterly returns to the Inspector	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
152(1)	Failure of an insurer or financial holding company to publish audited financial statements in accordance with this section	\$400,000 plus \$40,000 for each day the offence continues	\$8,000 for each day the offence continues
152(2)	Failure of an insurer to keep at its offices and to make available for inspection certain information	\$300,000 plus \$30,000 for each day the offence continues	\$75,000

SCHEDULE 6—CONTINUED

ADMINISTRATIVE FINES

PART A

INSURERS—*Continued*

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
158(1)	Failure of an insurer to submit actuarial reports within the prescribed time to the Inspector	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
158(3)	Failure of insurer to submit a copy of any actuarial reports, the results of which are made public, within the prescribed time to the Inspector	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
161(1)	Failure of an insurer to obtain approval of the pricing of its policy by an actuary before issuing the policy	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
161(2)	Failure of an insurer to furnish the Inspector with a report by its appointed actuary on the appropriateness of the pricing of a class of policy	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
162	Failure of an insurer to obtain approval of an actuary to amend commission or premium	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
197(1)	Failure of an insurer to publish a statement of unclaimed monies and to submit the statement to the Central Bank in accordance with this section	\$400,000 plus \$40,000 for each day the offence continues	\$8,000 for each day the offence continues

SCHEDULE 6—CONTINUED

ADMINISTRATIVE FINES

PART A

INSURERS—*Continued*

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
197(4)	Failure of an insurer to pay into the Central Bank such unclaimed money within the prescribed time period under this section	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
197(5)	Failure of an insurer to submit listing as required under this section	\$300,000 plus \$30,000 for each day the offence continues	\$6,000 for each day the offence continues
212(1)	Failure of an insurer to include in its financial statements and returns a reserve for policy liabilities including unexpired risk and outstanding claims	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
212(2)	Failure of an insurer to submit to the Inspector details of the methods and assumptions used in calculating the reserve for outstanding unexpired risk and outstanding claims	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
244(1)	Failure of an association of underwriters established in Trinidad and Tobago to submit documents and information relating to its insurance business to the Inspector	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
244(2)	Failure of an association of underwriters established outside of Trinidad and Tobago to submit documents and information as required by this section	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues

SCHEDULE 6—CONTINUED**ADMINISTRATIVE FINES****PART A****INSURERS—Continued**

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
244(3)	Failure of an association of underwriters to submit documents and information relating to its insurance business as required under this section	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
244(4)	Failure of an association of underwriters to publish a statement of receipt and expenditure	\$400,000 plus \$40,000 for each day the offence continues	\$8,000 for each day the offence continues
245(4)	Failure of an association of underwriter to submit to the Inspector information as prescribed in this section	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
258(2)	Failure of a registrant to correct or withdraw a misleading or objectionable advertisement	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
269(1)	Failure by a person to obtain the approval of the regulatory authority under the Securities Act and submit to the Central Bank copies of the documents as required under this subsection	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
269(2)	Acceptance by a promoter of any office or profit or any payment or pecuniary advantage which is not provided in the prospectus notice, circular, advertisement or other invitation referred to in this section	\$300,000 plus \$30,000 for each day the offence continues	\$75,000

SCHEDULE 6—CONTINUED
ADMINISTRATIVE FINES

PART A
INSURERS—Continued

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
270(1)	Failure of insurer to maintain a register of policies in accordance with this section	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
270(3)	Failure to notify the Inspector in writing of the identity or change in identity of the person in charge of the register in accordance with this section	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
270(4)	Failure of an insurer to search its register of Trinidad and Tobago policies within the time prescribed in this section	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
270(5)	Failure of the officer designated by the insurer to submit reports as required under this section	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues
271(1)	Failure of an insurer to register a policy	\$500,000 plus \$50,000 for each day the offence continues	\$125,000
271(2)	Failure of an insurer to enter the address of its registered office on every Trinidad and Tobago policy	\$300,000 plus \$30,000 for each day the offence continues	\$75,000
271(3)	Failure of an insurer to register a policy immediately after its issue	\$300,000 plus \$30,000 for each day the offence continues	\$75,000

SCHEDULE 6—CONTINUED**ADMINISTRATIVE FINES****PART B****AGENCIES AND BROKERAGES**

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
115(2)	Failure of an agency or brokerage to disclose information to the consumer as required by this section	\$17,000 plus \$1,700 for each day the offence continues	\$4,250
115(3)	Failure of an agency or brokerage to comply with reporting requirements as may be specified by the Central Bank	\$17,000 plus \$1,700 for each day the offence continues	\$4,250
116(4)	Failure of a brokerage to submit a plan for the increase of its minimum stated capital as required under this section	\$17,000 plus \$1,700 for each day the offence continues	\$4,250
117(4)	Failure of an agency or brokerage to prominently display a certificate of registration or a copy of a certificate of registration as required by this section	\$10,000 plus \$1,000 for each day the offence continues	\$2,500
120	Failure to produce certificate upon request	\$10,000 plus \$1,000 for each day the offence continues	\$2,500
123(1)	Failure of an agency or brokerage to give notice within five business days to the Central Bank where a contract has been terminated as required by this section	\$10,000 plus \$1,000 for each day the offence continues	\$2,500
128(2)	Failure of an agency or brokerage to make return to the Central Bank on its agents, brokers and sales representatives as required by this section	\$10,000 plus \$1,000 for each day the offence continues	\$2,500

SCHEDULE 6—CONTINUED
ADMINISTRATIVE FINES

PART B
AGENCIES AND BROKERAGES—Continued

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
132(2)	Failure of an agency or brokerage to issue a receipt to a consumer	\$17,000 plus \$1,700 for each day the offence continues	\$4,250
133(7)	Failure to submit reports to the Central Bank on the consumer trust account within the specified time in this section	\$17,000 plus \$1,700 for each day the offence continues	\$4,250
136	Failure of an agency or brokerage to submit financial statements within the time prescribed in this section	\$17,000 plus \$1,700 for each day the offence continues	\$4,250

PART C
BROKERS, AGENTS, ADJUSTERS AND SALES REPRESENTATIVES

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
120	Failure of an agent, broker or sales representative to produce certificate upon request	\$5,000 plus \$500 for each day the offence continues	\$1,250
132(2)	Failure of a sales representative to issue a receipt to a consumer	\$8,500 plus \$850 for each day the offence continues	\$2,125

SCHEDULE 7

(Section 131)

LIFE INSURANCE DISCLOSURE FORM

If you are replacing a current insurance policy, you should be given this form before you fill out an application for the new insurance. This form requires you to consider certain questions as you make the decision whether to replace your current life insurance policy.

Replacing a life insurance policy means a transaction whereby life insurance is purchased in a single policy or in several related policies by a person from an insurer and as a consequence of the transaction one or more life insurance policies are—

- (a) rescinded, lapsed or surrendered;
- (b) changed to paid-up insurance or continued as extended term insurance or under automatic premium loan;
- (c) changed in any manner so as to effect a reduction in benefits;
- (d) changed so that cash values in excess of fifty per cent of the tabular cash value of the contract of insurance are released;
- (e) subjected to borrowing of any policy loan values whether in a single loan or under a schedule of borrowing over a period of time whereby an amount in excess of fifty per cent of the tabular cash value is borrowed on one or more life insurance policies; or
- (f) cancelled within one year after a new policy has been issued but does not include a transaction where—
 - (i) a new life insurance policy is made with an insurer with whom the person has an existing life insurance policy in furtherance of a contractual conversion privilege exercised by the person;
 - (ii) a life insurance policy is replaced by an annuity; or
 - (iii) a life insurance policy is replaced by group insurance.

The new insurer must give you a copy of your policy once it has been approved. You have one month from the time you receive a copy of this disclosure form to withdraw the new application and receive a full refund of any premiums paid.

Ask yourself the following questions as you consider replacing your current life insurance policy:

(1) Is the new policy enough of an improvement to justify any new costs? All new policies have some new costs, such as those for underwriting, administration and commissions.

(2) Do premiums under the new policy increase as you age? The premiums on some policies go up as you get older or if you get sick.

(3) Are there circumstances where your new policy does not pay benefits? Your policy should specify whether the insurer will not pay because of suicide or because you provided incomplete information.

(4) Does the new policy pay you as much as the current one? Make sure you look over the details of death benefits, cash value, and dividends carefully.

(5) Does the new policy guarantee to insure you, or allow you to increase your insurance coverage, no matter what your future medical condition? Your current policy may do this.

(6) Does your new policy let you borrow money at attractive interest rates? Your current policy may do this.

(7) Are you losing tax advantages or creating a tax liability? Many current insurance policies provide valuable income tax benefits. These are not available in some new policies. Cancellation of your current policy may increase your income tax this year. Make sure that you fully understand the tax consequences of changing policies.

LIFE INSURANCE DISCLOSURE FORM

Please Print	Your Current Policy	Proposed Replacement Policy
PART A—GENERAL INFORMATION		
Policy number		<i>Not applicable</i>
Insurance Company		
Date of Issue		<i>Not applicable</i>
Insured		
Name of the person who owns the policy (if not owned by the person who is insured)		
Type of policy (whole life, term, universal, etc.)		
Will you have to pay extra premiums or will your coverage be reduced if you smoke, have health problems, or work at a risky occupation?		
Most policies will not pay if the person insured commits suicide within two years of the policy's issue date. When does the suicide period on the policy expire?		
A policy may not pay if information on the application was incomplete (for example, if the insured person did not disclose a previous illness to the insurance company). If this information is not discovered within a certain period (usually two years), however, the policy will pay, in the absence of fraud. On what date does this period expire?		
Does the policy give the right to buy additional insurance, whatever the insured person's health? If yes, when and how much?		
Does the policy have any other benefits, e.g., waiver of premium or accidental death and dismemberment?		

LIFE INSURANCE DISCLOSURE FORM—*CONTINUED*

Please Print	Your Current Policy	Proposed Replacement Policy
PART B—Premiums		
A premium is the amount of money you pay the insurance company to be insured. Some policies guarantee that the premium amount will stay the same for the length of the policy. Will this policy's premium stay the same?		Not applicable
What is the annual premium? What is the annual premium per \$1,000 of insurance? If Universal Life, what premium is being paid currently? Is there a minimum premium? Is there a maximum premium?		
If Universal Life, is the formula by which expenses are calculated guaranteed?		
Does any of the coverage, including riders, change over time?		
If yes, which coverage changes? By how much?		
PART C—Guaranteed Death Benefits		
What does the policy pay if the insured person dies today?		
Will this amount change or expire at any time?		
If so, how?		
If Universal Life, is the charge for the death benefit guaranteed? (A maximum cost of insurance rate)		
What is the maximum cost of insurance at: Age 50? Age 55? Age 60? Age 65? Age 70?		

LIFE INSURANCE DISCLOSURE FORM—*CONTINUED*

Please Print	Your Current Policy	Proposed Replacement Policy
PART D- Cash Value, Dividends and Loans		
Some policies have a cash value, which means that some of the insurance premium goes into a reserve that grows in value. The owner of the policy has the option of taking out this cash value, which may end the policy or reduce the death benefit. Does this policy have a cash value?		
If yes, what is the total cash value at the last anniversary? What will the guaranteed cash value be at: Age 50? Age 55? Age 60? Age 65? Age 70?		
Can loans be taken out on this policy? If yes, at what interest rate may money be borrowed, and on what terms (for example, a set maximum or a variable rate)		
If there is a loan currently outstanding on the policy		Not applicable
Can withdrawals be made on this policy (Universal Life)? If so, what is the charge for a withdrawal? Can this charge change?		
Some policies pay dividends based on the performance of the insurance company. Is this policy eligible for dividends?		
If so, what dividends option was selected? (For example, increased insurance coverage, reduced premiums, cash payments, accumulation)		

LIFE INSURANCE DISCLOSURE FORM—*CONTINUED*

Please Print	Your Current Policy	Proposed Replacement Policy
PART D—Cash Value, Dividends and Loans		
How much was the most recent dividend? (If applicable)		
If Universal Life, is there a minimum investment guarantee or a minimum interest rate?		

NOTE: Because there are many costs associated with issuing a new policy, it may be in your financial interest to amend the current policy rather than replacing it. In considering your replacement decision, you may wish to seek the advice of the company that issued your current policy.

	Consumer's Name (Please Print)
	Consumer's Signature
	Date
Agent's Name (Please Print)	<p style="text-align: center;">Agent's Statement</p> <p>I have completed this form fully and accurately, and have explained the significance of all of the information contained on the form to the consumer.</p>
Agent's Signature	
Licence Number	

IMPORTANT

DO NOT SIGN THIS FORM UNLESS YOU HAVE DISCUSSED ALL THE IMPLICATIONS OF REPLACING YOUR CURRENT INSURANCE POLICY WITH YOUR AGENT, BROKER OR SALES REPRESENTATIVE.

I have read this form completely, and my agent, broker or sales representative has explained the significance of the information contained in the form and discussed the implications with me.

Consumer's signature:

Witnessed by Broker, Agent or Sales Representative

Date:

SCHEDULE 8

(Section 228)

ASSETS IN WHICH REGISTERED PLANS MAY BE INVESTED

The Trustees of a registered plan may invest the assets of the plan in the following:

1. (a) the bonds, debentures, stocks, or other evidences of indebtedness of, or guaranteed by the Government of—
 - (i) Trinidad and Tobago;
 - (ii) any Commonwealth country or dependency or the Republic of Ireland;
 - (iii) any member country of the Organisation of Economic Co-operation and Development;
 - (iv) the United States of America or a state thereof approved by the Inspector;
 - (v) the country in which the head office of the company is situated or a province or state thereof; or
 - (vi) any country approved by the Central Bank;
- (b) the bonds, debentures or other evidence of indebtedness of a corporation incorporated in Trinidad and Tobago which are fully secured by a statutory charge upon real estate or upon the plant or equipment or other tangible assets of the corporation used in the transaction of its business;
- (c) the bonds, debentures or other evidence of indebtedness issued by an authority or other body without share capital established and empowered pursuant to a statute of Trinidad and Tobago to administer, regulate the administration of, provide or operate port, harbour, airport, bridge, highway, tunnel, transportation, communication, sanitation, water, electricity, or gas services or facilities and for any of these purposes to levy, impose or make taxes, rates, fees or other charges which may be used only in carrying out the objects of the authority or other body and are sufficient to meet its operation, maintenance and debt service charges;

- (d) the bonds, debentures or other securities of, or those guaranteed by international financial institution approved by the Minister;
- (e) guaranteed investment certificates issued by a trust company incorporated in any country listed in subparagraph (a) which at the date of vesting thereof in trust, complied with the requirements set out in subparagraph (f) in respect of the payment of dividends;
- (f) the fully paid ordinary shares, preferred shares, bonds, debentures or other evidence of indebtedness of a company incorporated in any country listed in subparagraph (a) which during a period of five years ending less than one year before the date of purchase thereof has either paid a dividend in each such year upon its ordinary shares or had earnings in each such year available for the payment of a dividend upon such shares, of at least four per cent of the average value at which the shares were carried in the capital stock account of the company during the year in which the dividend was paid or in which the company had earnings available for the payment of dividends, as the case may be;
- (g) ordinary shares, preferred shares, bonds or debentures of a company incorporated in Trinidad and Tobago and approved by the Minister;
- (h) the units, certificates or other evidence of participation in a scheme for indebtedness of the Unit Trust Corporation of Trinidad and Tobago;
- (i) unit certificates, shares or other evidence of participation in financial assets not exceeding ten per cent of the Statutory Fund Requirement and whose portfolio is regulated either by authorities in Trinidad and Tobago or in any—
 - (i) member country of the Organisation of Economic Co-operation and Development;
 - (ii) Commonwealth country; or
 - (iii) other country,that the Minister may by Order declare an approved country; or
- (j) the shares of a venture capital company registered under the Venture Capital Act.

2. Mortgages and other titles for repayment of loan secured by—
- (a) real estate or leaseholds for a term of years or other estate or interest in real estate in Trinidad and Tobago where the amount of the loan together with the amount of indebtedness under any mortgage or other charge on the real estate or interest therein ranking equally with or superior to the loan does not exceed eighty per cent of the value of the real estate or interest therein, subject to the exception that a company—
 - (i) may upon the sale of real estate in which its funds are invested, accept a mortgage or other title for repayment on such real estate, as part payment and secured thereon for more than eighty per cent of the sale price of such real estate; or
 - (ii) may invest in a mortgage or other title for repayment on real estate where the amount of indebtedness under any mortgage or other charge on such real estate or interest therein ranking equally with or superior to the loan does not exceed ninety per cent of the value of the real estate as long as that portion of the indebtedness in excess of seventy-five per cent of the value of the real estate is guaranteed by the Housing Development Corporation by a company registered under this Act to carry on that class of insurance business;
 - (b) real estate or leaseholds in Trinidad and Tobago notwithstanding that the loan exceeded the amount which the company may otherwise invest in, if the excess is guaranteed or insured by the Government or through an agency of the Government of Trinidad and Tobago; or
 - (c) ground rents, mortgages or hypothecs on real estate or leaseholds in Trinidad and Tobago or in the country in which the head office of the company is situated, where the amount of the mortgage or hypothec together with the amount of indebtedness under any mortgage or hypothec on the real estate or leasehold ranking equally with or superior to the mortgage or hypothec which is invested in does not exceeding eighty per cent of the value of the real estate or leasehold covered thereby.

3. Real estate or leaseholds in Trinidad and Tobago for the production of income either alone or jointly with any other company transacting insurance business in Trinidad and Tobago or with any other company incorporated in Trinidad and Tobago where—

- (a) a lease of the real estate or leasehold is made to, or guaranteed by the Government of Trinidad and Tobago or an agency of the Government or a municipality in Trinidad and Tobago and the lease provides for a net revenue sufficient to yield a reasonable interest return during the period of the lease and to repay at least eighty-five per cent of the amount invested in the real estate or leasehold within the period of the lease but not exceeding thirty years from the date of investment; or
- (b) the real estate or leasehold has produced in each of the three years immediately preceding the date of investing therein net revenue in an amount which if received in each year following the date of investment, would be sufficient to yield a reasonable interest return on the amount invested in the real estate or leasehold and to repay at least eighty-five per cent of that amount within the portion of the economic lifetime of the improvements to the real estate or leasehold which remain at the date of investment but not exceeding forty years from that date.

4. Cash balances deposited with—

- (a) any bank or other financial institution licensed under the Financial Institutions Act; or
- (b) any building society which may be approved by the Central Bank.

5. (1) The total accepted value of the pension fund assets invested in ordinary shares shall not at any time exceed fifty per cent of the accepted value of the total of such assets in Trinidad and Tobago of the plan.

(2) Notwithstanding paragraph 5(1) and subject to any requirements as specified by the Central Bank by notice published in the *Gazette*, a registered pension fund plan which has a total accepted value of assets in excess of one hundred and fifty per cent of its total liabilities may invest in ordinary shares up to a limit of—

- (a) fifty per cent in respect of that portion of the total accepted value of assets equivalent to one hundred and fifty per cent of the total liabilities; and

(b) one hundred per cent in respect of that portion of the total accepted value of assets in excess of one hundred and fifty per cent of the total liabilities in such manner that the aggregate value of the investment under this subparagraph and subparagraph (a) shall not exceed seventy per cent of the total accepted value of the assets of the plan.

(3) For the purposes of paragraph 5(2) total liabilities shall be determined based on the assumptions used in the latest actuarial investigation conducted pursuant to section 227 of the Act and details of the plan's membership used for the purpose of determining these liabilities shall comply with such requirements as specified by the Central Bank.

6. No single mortgage included as an asset in the plan may exceed ten per cent of the total assets of the plan.

7. A pension fund shall not invest in trust bonds, debentures or other evidence of indebtedness on which payment of principal or interest is in default.

8. A pension fund shall not purchase more than thirty per cent of the ordinary shares of any corporation.

SCHEDULE 9

(Section 82)

TRANSITIONAL CAPITAL RATIOS

During a transition period no later than the insurer's fifth financial year end following commencement of the Regulations, the following transitional regulatory capital ratios shall be attained by the dates specified:

Date	Minimum Regulatory Capital Ratio	Minimum Net Tier 1 Ratio
As at the insurer's first financial year end following commencement of the Regulations	110%	77%
As at the insurer's second financial year end following commencement of the Regulations	120%	84%
As at the insurer's third financial year end following commencement of the Regulations	130%	91%
As at the insurer's fourth financial year end following commencement of the Regulations	140%	98%
As at the insurer's fifth financial year end following commencement of the Regulations	150%	105%

SCHEDULE 10

(Section 42)

SEPARATE ACCOUNTING

Assets vested in trust in overseas jurisdictions shall not be held in the Trinidad and Tobago policy account.

SCHEDULE 11

(Section 4)

DETERMINATION OF CREDIT EXPOSURE

In determining Credit Exposure:

1. In the case of credit exposure arising from investment in an asset-backed security, if—

- (a) the underlying assets are vested in a trustee on behalf of the participants or beneficial owners under a deed of trust constituting the asset-backed security;
- (b) the underlying assets of the asset-backed security are transferred from the seller to the trustee by way of an executed instrument of transfer and such trustee is the registered owner of such assets;
- (c) the trustee, without being compelled to take recourse to the seller, is empowered by the deed of trust constituting the asset-backed security to take enforcement action against the issuer of any securities including in the underlying assets;
- (d) participants or beneficial owners under the deed of trust constituting the asset-backed security have a right of action against the trustee, where the trustee has acted negligently or committed a breach of trust; and
- (e) the seller and trustee are financial institutions regulated by the Central Bank,

the credit exposure shall be determined using the look through method.

SCHEDULE 12

(Section 266)

STANDARDS OF MARKET CONDUCT

Definitions

“charge” means any cost or fee which a policyholder must pay in connection with a product or service provided by an insurer;

“introductory interest rate” is an interest rate favourable to the consumer that applies for a specified period of time at the beginning of the contract;

“key information” means any information which is likely to influence a policyholder’s actions with regard to a product or service;

“promotional documents” means any document used as a marketing or sales material. This may include printed, electronic or digital posters, cards, brochures, pamphlets, illustrations.

A. SALES AND MARKETING MATERIALS

General Principles

Insurers should ensure their sales and marketing materials and procedures do not mislead consumers. Insurers should be legally responsible for all statements made in marketing and sales materials they produce related to their products. All marketing and sales materials should be easily readable and understandable by the general public.

1. Sales and Marketing Materials

An insurer shall ensure that all information it provides to a policyholder is clear, accurate and up to date. Key information shall be brought to the attention of the consumer. The method of presentation shall not disguise, diminish or obscure important information—

(a) An insurer must ensure that:

the design, presentation and content of promotional documents used as Sales and Marketing materials are clear, fair, accurate and not misleading;

- (b) An insurer must ensure that promotional documents are not misleading in particular in relation to:
 - (i) the insurer's ability to provide the product or service being marketed or sold;
 - (ii) the scale of the insurer's activities;
 - (iii) the extent of the resources of the insurer;
 - (iv) the nature of the insurer's or any other person's involvement in the product or service;
 - (v) the scarcity of the product or service;
 - (vi) past performance or possible future performance of the product or service;
- (c) An insurer must ensure that its name is clearly shown in all promotional documents;
- (d) An insurer must ensure that:
 - small print or footnotes are only used to supplement or elaborate on the key information in the main body of the promotional document and must be of sufficient size and prominence to be clearly legible;
- (e) An insurer must ensure that a promotional document that uses promotional or introductory interest rates clearly states the expiry date of that interest rate and provides an indication of the rate that will apply thereafter;
- (f) An insurer must ensure that any assumptions or illustrations, on which a statement, promise or forecast contained in a promotional document is based, are clearly stated, reasonable and up to date;
- (g) An insurer must ensure that a document that promotes more than one product sets out clearly the key information relating to each product in such a way that a consumer can distinguish between the products;
- (h) Where an intermediary is tied to a single provider for a particular product or service, the intermediary must disclose this fact in all promotional documents for the advertised product or service;

- (i) An insurer must ensure that comparisons or contrasts are based either on facts verified by the insurer, or on reasonable assumptions stated within the promotional document. They should be presented in a clear, fair and balanced way and not omit anything material to the comparison or contrast. Material differences between the products must be set out clearly; and
- (j) An insurer must ensure that a promotional document only describes a product or service as free where the product or service in its entirety is available free of charge to the consumer.

2. Marketing Materials for Investment Products

- (a) An insurer must ensure that a promotional document for a product where the consumer may not get back 100% of the initial capital invested contain a warning statement, which states that if you invest in the product, the consumer may lose some or all of the money invested; and
- (b) An insurer must ensure that where the product or service can fluctuate in price or value, the promotional document contains a warning statement, which states that your return on investment is subject to market conditions and as such may fluctuate.

B. UNDERSTANDING CONSUMERS' NEEDS

General Principles

The insurance intermediary or officer should be required to obtain sufficient information about the consumer to ensure an appropriate product is offered. Formal "fact finds" should be specified for long-term savings and investment products and they should be retained and be available for inspection for a reasonable number of years.

1. Knowing the Consumer

An insurer shall gather and record sufficient information from the consumer prior to offering, recommending, arranging or providing a product or service appropriate to that consumer. The level of information gathered should be appropriate to the

nature and complexity of the product or service being sought by the consumer, but shall be to a level that allows the insurer to provide a professional service and shall include details of the consumer's:

- (a) Needs and objectives including, where relevant:
 - (i) the length of time for which the consumer wishes to hold a product;
 - (ii) need for access to funds (including emergency funds);
 - (iii) need for accumulation of funds.
- (b) Personal circumstances including, where relevant:
 - (i) age;
 - (ii) health;
 - (iii) knowledge and experience of financial products;
 - (iv) dependents;
 - (v) employment status;
 - (vi) known future changes to his/her circumstances.
- (c) Financial situation including, where relevant:
 - (i) income;
 - (ii) savings;
 - (iii) financial products and other assets;
 - (iv) debts and financial commitments.
- (d) An insurer shall endeavor to have the consumer certify the accuracy of the information it has provided to the insurer.

2. Assessing suitability

When assessing the suitability of a product or service for a consumer, the insurer must, at a minimum, consider and document whether, on the basis of the information gathered under Provisions B1(a) to (c):

- (a) the product or service meets that consumer's needs and objectives;
- (b) the consumer:
 - (i) is likely to be able to meet the financial commitment associated with the product on an ongoing basis;

- (ii) is financially able to bear any risks attaching to the product or service; and
- (c) the product or service is consistent with the consumer's attitude to risk.

An insurer must ensure that any product or service offered to a potential consumer is suitable to that potential consumer, having regard to the facts disclosed by the potential consumer and other relevant facts about that potential consumer of which the insurer is aware.

The following additional requirements apply:

- (a) where an insurer offers a selection of product options to the consumer, the product options contained in the selection must represent the most suitable from the range available from the insurer; and
- (b) where an insurer recommends a product to a consumer, the recommended product must be the most suitable product for that consumer.

C. PRIVACY AND DATA PROTECTION

General Principles

Policyholders have a right to expect that their financial transactions are kept confidential. Insurers should protect the confidentiality and security of personal data, against any anticipated threats, or hazards to the security or integrity of such information, and against unauthorized access.

1. Confidentiality and Security of Policyholders' Information

An insurer must ensure that, where it communicates with a policyholder, it has in place appropriate arrangements to ensure the security of information received from the policyholder and the secure transmission of information to the policyholder—

- (a) electronic policyholder information should be stored on a secure server that is protected by passwords or other security protection. Servers should be kept in a physically secure area;
- (b) sensitive policyholder data should not be stored on computers accessible by an Internet connection. If sensitive data is stored on such computers, appropriate software and firewall protection and intrusion detection devices should be utilized;

- (c) secure backup media should be maintained and archived data kept secure;
- (d) all systems should be password protected and automatically locked once there has been no activity for a specified period of time. Passwords should be changed regularly and times of log on and off should be recorded;
- (e) access to physical locations containing electronic policyholder information, such as buildings, computer facilities and records storage facilities should be restricted to authorized individuals only;
- (f) procedures should be designed to ensure that modifications to policyholder records and information are monitored and recorded and that checks are in place to detect and/or prevent and deal with unauthorized modification;
- (g) monitoring systems and procedures to detect actual and attempted attacks on, or intrusions into information systems should be in place;
- (h) employees should be properly trained in maintaining the security, confidentiality and integrity of policyholder records and information. Training should be consistent with the user's function; and
- (i) all new employees should be apprised of the security policies and procedures and should be trained in maintaining the security, confidentiality and integrity of policyholder records and information within two months of joining the insurer.

D. AGENT TRAINING

1. Insurers must develop, control and approve all illustrative and promotional documents used by agents in the solicitation of business.
2. Insurers must have a process in place to ensure that only authorized illustrative and promotional material are used by agents in the conduct of a sale.
3. Insurers must put a compliance programme in place to ensure that after the sale is made, no unauthorized promotional and illustrative material were used by agents to make the sale, and that a proper needs analysis was completed.

4. Insurers must have documented training programs for agents and ensure all agents are put through this process.

E. POST SALE COMMUNICATION

General Principles

Insurers should ensure their post-sale documents and communications are clear, fair, complete and do not mislead policyholders. Insurers shall ensure that information contained in post-sale documents and other forms of communication is accurate and up to date, and clearly written. All appropriate and relevant information must be included on the communication. The method of presentation of the information shall not disguise, diminish or obscure important information.

1. An insurer must make adequate disclosure to the policyholders of all relevant information on the performance of their insurance policies.

2. Any and all options presented post-sale to policyholders must include information that is adequate enough to enable policyholders to make informed decisions.

SCHEDULE 13

(Section 282)

CONSEQUENTIAL AMENDMENTS

First Column	Second Column
The Proceeds of Crime Act, Chap. 11:27	<p>In section 2(1), in the definition of the term “financial institution”, delete paragraph (e) and substitute the following paragraph:</p> <p>“(e) an insurance company or an agency or brokerage registered under the Insurance Act, 2015;”.</p>
The Married Persons Act, Chap. 45:50	Repeal section 11.
The Central Bank Act, Chap. 79:02	<p>In section 44D(1)(c)—</p> <p>(a) delete the full stop at the end of subparagraph (viii) and substitute a semicolon; and</p> <p>(b) insert after subparagraph (viii) the following new subparagraph:</p> <p>“(ix) in the case of an insurance company, to make an</p>

CONSEQUENTIAL AMENDMENTS—CONTINUED

First Column	Second Column
<p>The Financial Institutions Act, Chap. 79:09</p>	<p>application to the High Court for an order to amend or suspend terms of contracts of insurance when a course of resolution action is pursued which involves a restructuring or transfer of business and, where in the opinion of the Central Bank, it is most advantageous to the general interests of the policyholders and the financial condition of the insurance company.”.</p> <p>A. In section 2(1), insert before the definition of “acquirer”, the following :</p> <p>“ “abridged financial statements” means a summary of financial statements, the format and contents of which are agreed to in writing between the Central Bank and the Institute of Chartered Accountants of Trinidad and Tobago.”;</p> <p>B. In section 5(3)—</p> <p>(a) in paragraph (b), delete the word “and”;</p> <p>(b) in paragraph (c), delete the full stop and substitute the words “; and”; and</p> <p>(c) insert after paragraph (c), the following paragraph:</p> <p>“(d) ensure compliance of licensees with legislation to combat money laundering and terrorist financing.”;</p> <p>C. In section 8—</p> <p>(a) in subsection (2)(a), delete the words “for purposes related to that regulation” and substitute the words “for regulatory purposes”;</p> <p>(b) in subsection (2)(c), delete the words “the designated authority under the Proceeds of Crime Act” and substitute the words “the Financial Intelligence Unit established under the Financial</p>

CONSEQUENTIAL AMENDMENTS—CONTINUED

First Column	Second Column
	<p>Intelligence Unit of Trinidad and Tobago Act”;</p> <p>(c) in subsection (3)—</p> <p>(i) delete the words “the designated authority” and substitute the words “the Financial Intelligence Unit”; and</p> <p>(ii) delete the words “regulatory authority” and substitute the word “person”;</p> <p>D. In section 23—</p> <p>(a) in subsection (1)(b), insert after the word “Act”, the words “or any other written law”;</p> <p>(b) in subsection (1)(l), delete the full-stop and substitute the words “; and”;</p> <p>(c) after subsection (1)(l), insert the following paragraph:</p> <p>“(m) the licensee has failed to comply with any obligation imposed on it by any written law for the prevention of money laundering or terrorist financing including the Proceeds of Crime Act, the Anti-Terrorism Act, the Financial Intelligence Unit of Trinidad and Tobago Act and any Regulations made thereunder, respectively.”;</p> <p>E. Insert after section 51(4), the following section:</p> <p>“ 51. (4A) Notwithstanding that a licensee has offered a new or materially different product or service in accordance with subsection (4), the Inspector may subsequently prohibit the licensee from continuing to offer the new or materially different product or service, if in the opinion of the Inspector the continued use of the new or materially different product or service will be fraudulent, unjust, imprudent, or not in the public interest and the Inspector shall give written reasons for the prohibition.”;</p>

CONSEQUENTIAL AMENDMENTS—CONTINUED

First Column	Second Column
	<p>F. In section 62, insert after subsection (18), the following subsections—</p> <p style="padding-left: 40px;">“ (19) Where the provisions of this Act require anything to be done within a specified period of time and the person who is required to comply with the time limit prescribed is unable to do so because of circumstances beyond his control, including but not limited to the occurrence of any hurricane, storm, fire, flood or any similar natural disaster or events such as industrial unrest, riot, public disorder or the like, the Inspector shall grant such extension of time as may be reasonably sufficient for the doing of the act or thing.”;</p> <p>G. In section 72, delete subsection (11) and substitute the following subsection:</p> <p style="padding-left: 40px;">“ (11) Where the circumstances so warrant, the Central Bank may apply to the High Court for the disposal of shares on such terms and conditions as the High Court deems appropriate.”;</p> <p>H. In section 78, delete the words “, by notice,” wherever they occur.;</p> <p>I. Insert after section 80(1), the following subsections:</p> <p style="padding-left: 40px;">(1A) The Central Bank may consult with licensees to create abridged financial statements for the purpose of publication.</p> <p style="padding-left: 40px;">(1B) Every licensee and financial holding company may publish abridged financial statements instead of its financial statements in accordance with the requirement under section 80(1).</p> <p>J. In section 119(2), delete the words “three years” and substitute the words “seven years”.</p>

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

Clerk of the Senate

I confirm the above.

President of the Senate

No. 9 of 2016

FIRST SESSION
ELEVENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

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

Received and read the

First time

Second time

Third time
