



ANGUILLA

INSURANCE ACT, 2004

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INSURANCE ACT, 2004

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I Assent

Alan Edden Huckle

Governor

ANGUILLA

NO. 6/2004

INSURANCE ACT, 2004

An Act to provide for the regulation of domestic and foreign insurance business from within Anguilla and for matters incidental or related thereto.

[Gazetted: 14 September 2004] [Commencement: Section 25]

ENACTED by the Legislature of Anguilla

Interpretation

1. In this Act –

“actuary” means a person who has qualified as an actuary by examination of the Institute of Actuaries in England or the Faculty of Actuaries in Scotland or the American Academy of Actuaries in North America, and who is a current member of good standing of one of the above professional associations or another professional actuarial association which is recognised by the Commission as such for the purpose of this Act;

“affiliate” means a person controlling, controlled by, or under common control with, another person;

“approved external insurer” means an insurer licensed as such under section 3(3);

“auditor” means a person who has qualified as an accountant by examination of, and holds a practicing certificate issued by one of the Institutes of Chartered Accountants in England and Wales, Ireland and Scotland, or the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants, and who is a current member of good standing of one of the above Institutes or another professional accountancy body which is recognised by the Commission as such for the purpose of this Act;

“Commission” means the Anguilla Financial Services Commission established under section 2 of the Financial Services Commission Act, 2003;

“Companies Act” means the Companies Act (Revised Statutes of Anguilla 2000 Chapter C65) and any amendments thereto;

“Company Management Act” means the Company Management Act (Revised Statutes of Anguilla 2000 Chapter C75) and any amendments thereto.

“contract” includes policy;

“Court” means the High Court;

“dollar” means the U.S. dollar or \$;

“domestic insurance business” means insurance business where the contract is in respect of the life, safety, fidelity or insurable interest (other than in respect of property) of a person who at the time of effecting the contract is ordinarily resident in Anguilla, or property that at the time of effecting the contract is in Anguilla or, in the case of a vehicle, vessel or aircraft, or other movable property is ordinarily based in Anguilla (but does not include re-insurance business);

“external insurer” means an insurer who is neither a local nor a foreign insurer and is registered as a foreign company pursuant to the Companies Act or is constituted as a mutual association acceptable to the Commission;

“Financial Services Commission Act” means the Financial Services Commission Act 2003 and any amendments thereto;

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

“foreign insurance business” means insurance business where insured risks are situate outside of Anguilla;

“foreign insurer” means an insurer which carries on foreign insurance business and is constituted through partnership, shareholding or other mutual association acceptable to the Commission,

“general business” means insurance business other than long term business, and for the removal of doubt includes –

- (a) credit life business, that is the business of effecting and carrying out contracts of insurance against risk of loss to persons arising from the non-payment of debts due to such persons by reason of the death of their debtors;
- (b) employee group business, that is the business of effecting and carrying out contracts of insurance on the lives of employees of the insured or of an affiliate of the insured;

“Governor” means the Governor in Council;

“insurance agent” means a person (not being an insurer) who solicits directly, or through sub-agents, advertising or other means, domestic business on behalf of not more than one insurer doing general business and not more than one insurer doing long term business;

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

“insurance business” means the business of undertaking liability under a contract of insurance to indemnify a person in respect of any loss or damage, including the liability to pay damages or compensation contingent upon the happening of a specified event, and includes re-insurance business, long term business and running-off business including the settlement of claims;

“insurance manager” means a person resident in Anguilla not being the employee of any insurer who is, or has available to him, a person with such insurance knowledge and expertise as the Commission may deem necessary for the conduct and management of the insurance business of any one or more insurers in a competent manner;

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

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

- (a) a local insurer, a foreign insurer or an external insurer; or
- (b) an association of individual underwriters, including Lloyds of London and other associations of underwriters recognised by the Commission;

“intermediary business” means the business of an insurance agent, insurance broker, insurance sub-agent, insurance manager or principal representative (insurance);

“licence” means a licence granted under this Act;

“local insurer” means an insurer, other than a foreign or external insurer, incorporated or constituted in and having its head office in Anguilla;

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

- (a) on human life or contracts to pay annuities on human life; but excluding contracts for credit life insurance and term life insurance for a period of five years or less other than convertible and renewable term life contracts;
- (b) against risks of the persons insured sustaining injury as the result of an accident or of an accident of a specified class or dying as the result of an accident or of an accident of a specified class or becoming incapacitated in consequence of disease or diseases of a specified class, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either not expressed to be terminable by the insurer before the expiration of five years from the taking effect thereof or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned; and

- (c) whether by bonds, endowment certificates or otherwise whereby in return for one or more premiums paid to the insurer a sum or series of sums is to become payable to the person insured in the future, not being contracts falling within paragraphs (a) or (b);

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

“person” includes an individual natural person, a company, or other legal entity recognised as such under the laws of another country or jurisdiction;

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

“prescribed” means prescribed by regulations;

“principal representative (insurance)” means a person who:

- (a) operates in Anguilla and, not being a *bona fide* employee of a licensed insurer, maintains for an insurer full and proper records of the business activities of that insurer; and
- (b) holds a general trust licence issued under the Trust Companies and Offshore Banking Act (Revised Statutes of Anguilla Chapter T60); or
- (c) holds a licence issued under the Company Management Act (Revised Statutes of Anguilla Chapter C75); or
- (d) holds an insurance manager’s licence granted under this Act and maintains an office and qualified staff in Anguilla;

“significant interest” means a person holding ten percent or more of the issued share capital and voting rights of a company or in the case of a company publicly traded on a stock exchange approved by the Commission, a holding of twenty-five percent or more;

“trust” means a trust formed under the Trusts Act; and

“Trusts Act” means the Trusts Act (Revised Statutes of Anguilla 2000 Chapter T70) and any amendments thereto.

Prohibition of unlicensed business

2. (1) No person shall carry on, or hold himself out as carrying on, insurance business of any kind in or from within Anguilla unless he holds a licence authorising him to carry on that kind of business and the licence has not been suspended.

(2) No person shall carry on, or hold himself out as carrying on, business in or from within Anguilla as:

- (i) an insurance manager;
- (ii) an insurance broker;
- (iii) an insurance agent;

- (iv) an insurance sub-agent; or
- (v) a principal representative (insurance),

unless he holds a licence issued in the appropriate category under this Act and the licence has not been suspended.

(3) A person who contravenes subsections (1) or (2) commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for one year or to both..

Classes of licences and Capital Requirements

3. (1) The Commission may grant licences under one or more of the following categories to persons who wish to carry on insurance business in or from within Anguilla –

- (a) Class ‘A’ Insurer’s Licence which shall permit a local or an external insurer to carry on insurance business, including domestic insurance business, generally in or from within Anguilla, providing that it has and maintains an issued and paid up capital of at least \$200,000.
- (b) Class ‘B’ Insurer’s Unrestricted Licence which shall permit a foreign insurer to carry on any foreign insurance business, including long-term foreign insurance business, providing that it has and maintains an issued and paid up capital of at least \$200,000.
- (c) Class ‘B’ Insurer’s General Licence which shall permit a foreign insurer to carry on general foreign insurance business, but not long-term foreign insurance business, providing that it has and maintains an issued and paid up capital of at least \$100,000.
- (d) Class ‘B’ Insurer’s Association Licence which shall permit a foreign insurer to carry on general foreign insurance business and long-term foreign insurance business, with two or more owners of the insurer, and its affiliates, and to carry on no more than thirty percent (30%) of its foreign insurance business (based on net premiums written) or 100% of its reinsurance business with persons who are not owners of the insurer or its affiliates, providing that it has and maintains an issued and paid up capital of at least \$100,000.
- (e) Class ‘B’ Insurer’s Group Licence which shall permit a foreign insurer to carry on any foreign insurance business, including long-term foreign insurance business, with a single owner of that insurer and its affiliates, and employees of the owner or its affiliates, providing that it has and maintains an issued and paid up capital of at least \$ 25,000.
- (f) Class ‘B’ Insurer’s Single Licence which shall permit a foreign insurer to carry on any foreign insurance business, including long-term foreign insurance business, with the sole owner of the insurer, if a company, providing that it has and maintains an issued and paid up capital of at least \$ 10,000.

(2) The Commission may grant licences under one or more of the following categories to persons who wish to carry on intermediary business in or from Anguilla –

- (a) Insurance Agent’s Licence;
- (b) Insurance Broker’s Licence;

- (c) Insurance Sub-Agent's Licence;
- (d) Insurance Manager's Licence; and
- (e) Principal Representative (Insurance)'s Licence.

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

(4) The Commission may order a licensee to increase its paid up capital to such greater amount as it may determine having regard to the nature and extent of insurance business being or sought to be undertaken.

(5) A company licensed to carry on long-term business may not also be licensed to carry on general business unless the Commission is satisfied that there are clear provisions requiring that such risks be undertaken separately on both a going concern and winding up basis.

(6) A company licensed under this section must ensure that its paid up capital is maintained in an amount not less than required by its licence or by the Commission under sub-section (4) and must report immediately to the Commission when its net worth falls below the amount equivalent to its required paid up capital.

Ownership by Trustees

4. With the approval of the Commission, the shares of an insurer licensed under this Act may be owned by trustees of a trust formed under the Trusts Act, and such trust may be a purpose trust or a trust comprising one or more beneficiaries.

Application for a licence

5. (1) Every application for a licence shall be filed with the Commission in the form and containing the information prescribed and shall be accompanied by the prescribed fee.

(2) The Commission may grant a licence, subject to such licensing terms and conditions as it thinks fit, or it may refuse to grant a licence.

(3) The Commission shall refuse to grant a licence if the Commission is of the opinion that:

- (a) an applicant is not –
 - (i) a fit and proper person, and
 - (ii) is not qualified to carry on insurance business
- (b) the persons having a significant interest, whether legal or equitable, directly or indirectly, in the applicant and its directors and officers are not fit and proper persons to have an interest in or be concerned with the management of a licensee, as the case may be
- (c) the applicant does not satisfy the requirements of this Act in respect of the application and will, upon issuance of the licence, not be in compliance with this Act in respect of licensing; and

(d) issuing the licence is against the public interest.

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

(a) honesty, integrity and reputation;

(b) competence, capability and experience;

(c) financial soundness; and

(d) previous conduct and activities in business and financial matters

(5) (a) Every applicant for a licence shall notify the Commission forthwith of any change in the information supplied in the application.

(b) A person who contravenes this subsection commits an offence.

(6) The Commission may require an applicant to provide additional information or documentation that it considers necessary to determine the application.

Payment of Annual fee

6. (1) Every holder of a current licence shall on or before every 15th day of January during the currency of the licence pay to the Commission the annual fee prescribed by regulations in respect of each class of licence held.

(2) Without prejudice to the foregoing provisions of this section, if the annual fee referred to in subsection (1) is not paid by the holder of a current licence on or before every 15th day of January during the currency of the licence, the unpaid annual fee may be sued for by the Commission by action as a civil debt and the Commission may by regulation order the payment of any penalties accrued in respect of the late payment of the fee.

(3) The Commission may suspend or revoke a licence if the licence holder fails to pay the prescribed annual fee together with the appropriate late payment penalty in full on or before 30th June in the year in which the annual fee is due

Use of the word “insurance”, etc.

7. (1) Any person, not having the approval of the Commission or being a licensee –

(a) uses or continues to use the words “insurance”, “assurance”, “indemnity”, “guarantee”, “underwriting”, “reinsurance”, “surety”, “casualty” or any other word which in the opinion of the Commission connotes insurance business or any of their derivatives in English or in any other language in the description or title under which he carries on business in or from within Anguilla, or

(b) makes or continues to make any representation in any billhead, letter, letterhead, circular, paper, notice, advertisement or in any manner whatsoever that he is carrying on insurance business,

commits an offence.

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

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

General requirements for licensed insurers

8. (1) A licensee undertaking domestic insurance business shall in respect of its general business maintain in a bank in Anguilla, which holds a domestic licence, funds in cash, short-term securities or other realisable investments approved by the Commission, the total value of which shall at least equal the total of its

- (i) unearned premium reserve
- (ii) outstanding claims reserve
- (iii) reserve for claims incurred but not reported; and
- (iv) unexpired risks reserve

(2) The Commission may require an approved external insurer to place with the Commission an interest bearing deposit to meet existing and future liabilities for a period to be determined by the Commission. The amount of the deposit will not exceed forty per centum of its annual premium income net of re-insurance premiums with respect to each class of insurance undertaken.

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

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

(5) Every licensed insurer shall prepare annual accounts in accordance with generally accepted accounting principles acceptable to the Commission, audited by an independent auditor approved by the Commission except that the Commission may, in writing, exempt any licensed insurer from the provisions of this subsection or part thereof.

(6) Every insurer licensed under Class 'A' other than an approved external insurer, who is carrying on general business shall, in addition, to the requirement in subsection (5), prepare annually a financial statement in the prescribed form, certified by an independent auditor approved by the Commission, to enable the Commission to be satisfied as to its solvency.

(7) Every insurer licensed under Class 'A' and Class 'B', excepting an approved external insurer, a Class 'B' Insurers Group Licence and a Class 'B' Insurers Single Licence, who is carrying on long-term business shall, in addition to subsection (5), prepare annually an actuarial valuation of its assets and liabilities other than business written on owners and affiliates of the insurance company certified by an actuary approved by the Commission, so as to enable the Commission to be satisfied as to its solvency. Furthermore –

- (a) every such insurer carrying on both long-term business and general business pursuant to section 3(5) shall keep separate accounts in respect of its long-term business;
- (b) (i) all receipts by any such insurer of funds in respect of its long-term business shall be placed in a separate long-term business fund; and
(ii) payments from the said long-term business fund shall not be made directly or indirectly for any purpose other than those of the insurer's long-term business, except insofar as such payments can be made out of any surplus disclosed on an actuarial valuation and certified by an actuary approved by the Commission to be distributable otherwise than to policy holders; and
- (c) every such insurer carrying on long-term business may establish any number of separate accounts in respect of contracts that it issues providing –
 - (i) annuities on human life; and
 - (ii) contracts of insurance on human life,

with separate and distinct assets for each separate account and such separate account shall be kept segregated one from the other and independent of all other funds of the insurer, and, notwithstanding any other written law to the contrary, are not chargeable with any liability arising from any other business of the insurer.

(8) Every insurer, other than an approved external insurer or an insurer who maintains permanently in Anguilla its principal office and staff, shall appoint an insurance manager and shall maintain permanently at a designated principal office in Anguilla, or some other location approved by the Commission, full and proper records of its business activities;

(9) Every insurer other than an approved external insurer carrying on business other than insurance business shall keep separate accounts in respect of its insurance business and shall segregate the assets and liabilities of its insurance business from those of its other business;

(10) The Commission may prescribe that any insurer shall not, without the specific approval of the Commission, make investments of a specified class and may in that case require such insurer to realise investments of that class within such period as may be prescribed; and

(11) No insurer shall without the prior approval of the Commission –

- (a) amalgamate with or acquire an ownership interest in any one or more insurers or in any other person; or
- (b) other than in the normal course of insurance business, transfer its insurance operations or a part thereof or accept transfer of the insurance operations or a part thereof from another insurer.

(12) An insurer licensed under Class ‘B’ may not carry on domestic business except to the extent that such business forms a minor part of the international risk of a policy holder whose main activities are in territories outside Anguilla. Any such insurer shall apply to the Commission in writing giving full particulars of any domestic business to be so carried on by the insurer.

(13) Every licenced insurer shall maintain a solvency margin equal to or greater than the margin specified in Regulations or in an amount specified by the Commission and shall report immediately to the Commission when such margin falls below the required level.

(14) Every insurer shall maintain reserves in an amount equal to or greater than the reserves specified in Regulations and shall report immediately to the Commission when such reserves fall below the required level.

(15) A licensed insurance broker may apply to the Commission to obtain a special dispensation to place a policy or contract of domestic business with one or more insurers unlicensed in Anguilla where–

- (i) the said insurers have not been refused a licence under this Act;
- (ii) the said insurers are approved by the Commission as being of sound reputation;
- (iii) the said insurance broker can demonstrate to the satisfaction of the Commission an evident need (in terms of additional capacity or policy coverage, or otherwise) that the business be so placed.

Such dispensation, if granted, shall be subject to review at such intervals, if any, as the Commission may specify when granting the dispensation and there shall be no appeal against the refusal of any such dispensation or renewal thereof and section 8 (3) shall apply to a policy placed under this subsection.

General requirements for other licensees

9. (1) An insurance agent, who acts on behalf of more than one insurer in respect of one class of insurance business being long-term or general, is deemed for the purpose of this Act to be acting as an insurance broker.

(2) The Commission may require a licensed insurance broker to maintain in force professional indemnity insurance in respect of his insurance broking activities for an indemnity of not less than one hundred thousand dollars for any one loss, or such other figure as may be prescribed by the Commission. Such professional indemnity insurance shall extend to include the activities on behalf of the broker or of his sub-agents, if any. In the event that such professional indemnity insurance be withdrawn, or

cancelled, or the said insurance be not renewed, the said broker shall immediately notify the Commission and shall forthwith cease to solicit further insurance business until such professional indemnity insurance has been reinstated or replaced.

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

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

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

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

Annual returns by licensed insurers

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

- (a) a certificate of solvency or of compliance with insurance legislation specifically enacted in the country or place where the said external insurer is constituted for its supervision and regulation, or some equivalent document acceptable to the Commission;
- (b) if the said insurer has a branch or other subsidiary activity in Anguilla, written confirmation that the said insurer accepts responsibility for all contracts issued by such branch or subsidiary activity and also for all acts, omissions and liabilities of such branch or subsidiary activity;
- (c) in respect of the said insurer's general domestic business, such information as the Commission may require concerning the availability of funds for prompt settlement of claims under such business;

- (d) in respect of the said insurer's long term domestic business, such information as the Commission may require concerning the investment of premium income received by the said insurer from such business;
- (e) details of reinsurance contracts and arrangements in respect of domestic insurance business;
- (f) if the said insurer is licensed under Class A for long term business, an actuarial valuation of its assets and liabilities certified by an actuary approved by the Commission, in accordance with section 8(7);
- (g) a list of insurance agents and insurance brokers who have the said insurer's authority to effect domestic business on its behalf;
- (h) written confirmation that the information set out in the application for the said insurer's licence, as modified by subsequent notifications of changes in accordance with section 5(5)(a), remains correct, and gives a full and fair picture of the said insurer's business;
- (i) details of insurance business being undertaken in Anguilla in the form prescribed; and
- (j) audited annual accounts as required under section 8(5).

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

- (a) the audited annual accounts as required under section 8(5);
- (b) a certificate of compliance as required by section 8(4);
- (c) if the said insurer is licensed under Class 'A' for general business, a financial statement in the prescribed form, certified by an independent auditor approved by the Commission, in accordance with section 8(6);
- (d) if the said insurer is licensed under Class 'A' for long-term business, an actuarial valuation of its assets and liabilities, certified by an actuary approved by the Commission, in accordance with section 8(7);
- (e) details of re-insurance contracts and arrangements in respect of domestic insurance business; and
- (f) a list of insurance agents and insurance brokers who have the insurer's authority to effect domestic business on its behalf.

(3) Each insurer who holds a licence under Class 'B' shall furnish to the Commission within six months of the end of its financial year an annual return in the form prescribed in the regulations and including:

- (a) the audited annual accounts as required under section 8(5);
- (b) a certificate of compliance as required under section 8 (4);

(c) such other information as the Commission may require in order to satisfy itself as to the solvency of the insurer and that the such insurer is complying with this Act.

(4) Returns shall be in the form and manner and contain such information as may be prescribed

(5) Regulations may be prescribed to include additional returns or additional information to be submitted by licensees under this section.

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

Annual returns by other licensees

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

- (a) confirmation in writing that the said agent in respect of a class of insurance business is acting for one insurer only and the name of that insurer;
- (b) evidence of the existence of a power of attorney, agency agreement or guarantee;
- (c) a list of the sub-agents, if any, authorised by the said agent to solicit domestic business on his behalf and on behalf of the insurer whom he represents; and
- (d) confirmation in writing that the information set out in the application for the said agent's licence, as modified by subsequent notifications of changes in accordance with section 5(5)(a), remains correct and gives a full and fair picture of the said agent's business.

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

- (a) a list of all insurers for whom the said insurance broker is authorised to act, and the premium income to each such insurer during the last financial year;
- (b) evidence of the existence of professional indemnity insurance in respect of his activities as an insurance broker as required under section 9(2);
- (c) a list of the sub-agents, if any, authorised by the said insurance broker to solicit domestic business on his behalf and on behalf of the insurers whom he represents; and
- (d) confirmation in writing that the information set out in the application for the said insurance broker's licence, as modified by subsequent notifications of changes in accordance with section 5(5)(a), remains correct and gives a full and fair picture of the said insurance broker's business.

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

- (a) confirmation in writing that the said sub-agent is acting for one insurance agent only, or for one insurance broker only, and the name of such insurance agent or insurance broker; and

- (b) confirmation in writing that the information set out in the application for the said sub-agent's licence, as modified by subsequent notifications of changes in accordance with section 5(5)(a), remains correct and gives a full and fair picture of the said sub-agent's insurance activities.

(4) Every licensed insurance manager shall furnish to the Commission within three months of the end of his financial year the following information –

- (a) a list of all insurers for whom the said insurance manager acts; and
- (b) confirmation in writing that the information set out in the application for the said insurance manager's licence, as modified by subsequent notifications of changes in accordance with section 5(5)(a), remains correct and gives a full and fair picture of the said insurance manager's activities.

(5) Returns shall be in the form and manner and contain such information as may be prescribed

(6) Regulations may be prescribed to include additional returns or additional information to be submitted by licensees under this section.

Shares not to be held, issued or transferred without the approval of the Commission

12. (1) No person may acquire, hold, whether legally or beneficially, directly or indirectly, or jointly with an associate, or dispose of ten percent or more of the issued share capital of a company, which is a licensee under the Act, without the prior approval of the Commission.

(2) In respect of a licensee whose shares or the shares of whose parent of holding company, if any, are publicly traded on a stock exchange approved by the Commission, no person may acquire, hold, whether legally or beneficially, directly or indirectly, or dispose of twenty-five percent or more of the issued share capital of a company, which is a licensee under the Act, without the prior approval of the Commission.

- (3) (a) A licensee; or
- (b) a person holding a significant interest, who disposes of shares that would result in his no longer holding a significant interest; and
- (c) a person acquiring a significant interest –

who does not seek the prior approval of the Commission under sub-sections (1) and (2) commits an offence.

(4) In subsections (1) and (2) the reference to shares being transferred or disposed of includes not only the holding, transfer or disposal of the legal interest in the shares but also the holding, transfer or disposal of any beneficial interest in the shares.

(5) The Commission may refuse to grant approval under sub-sections (1) and (2) if it is of the opinion that a person seeking to hold a significant interest is not a fit and proper person.

Number and Appointment of Directors

13. (1) A licensee, which is a company, shall have not less than 2 directors

(2) No appointment of a director or other senior officer of a licensee shall be made without the prior approval of the Commission, unless the licensee is exempted in writing by the Commission

(3) The Commission may refuse to grant approval under sub-section (2) if it is of the opinion that a person seeking appointment is not a fit and proper person.

Cease and desist orders

14. (1) Where the Commission is of the opinion that a person –

- (a) has committed, is committing, or is about to commit, an act that is an unsafe or unsound practice in conducting the business of its licence; or
- (b) has pursued, is pursuing, or is about to pursue, a course of conduct that is an unsafe or unsound practice in conducting the business of its licensee; or
- (c) is conducting business for which it does not hold the appropriate licence; or
- (d) is carrying on insurance business without a licence-

the Commission may direct the licensee –

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

issue a directive under section 31 of the Financial Services Commission Act.

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

Examination of a licensee

15. (1) The Commission shall:-

- (a) have access to and may take copies of all books and records and any documents in order to examine the affairs or business of any licensee or other person carrying on, or who has at any time carried on insurance business for the purpose of satisfying itself that this Act and Regulations have been or are being complied with and the licensee is in a sound financial position and is carrying on his business in a satisfactory manner;
- (b) examine all annual returns submitted to the Commission under sections 10 and 11;
- (c) request such other information as may be required to assess the business being undertaken by the licensee and its financial situation.

Enforcement Action

16. (1) Section 28 of the Financial Services Commission Act applies to licensees under this Act with the modifications specified in this section.

(2) For the purposes of Part 5 of the Financial Services Commission Act:

- (a) an insurer is deemed to be insolvent if the total value of its assets does not exceed the total amount of its liabilities by at least the minimum margin of solvency that it is required to maintain under section 8(13); and
- (b) “customer”, includes a policyholder.

(3) In addition to the grounds specified in section 28(1) of the Financial Services Commission Act, the Commission may take enforcement action against a licensed insurer if the Commission is of the opinion that the licensee’s insurance business, or any part of its insurance business, is not being carried on in accordance with sound insurance principles;

(4) Where the Commission is entitled to take enforcement action against a licensed insurer under section 28 of the Financial Services Commission Act, in addition to the powers exercisable under that section, the Commission may arrange for the compulsory transfer of the obligations of the licensee, who is or appears likely to become unable to meet its obligations as they fall due, to another insurer that accepts the transfer;

(5) Where the Commission is entitled to take enforcement action against a licensed insurer under section 28 of the Financial Services Commission Act it may, in addition to the directives specified in section 31 of the Financial Services Commission Act, issue one or more of the following directives to the insurer:

- (a) not to vary any existing contracts of insurance;
- (b) to limit to a specified amount the aggregate premiums to be received by it, whether net or gross of reinsurance premiums;
- (c) to refrain from making investments of a specified class or description;
- (d) impose conditions, or further conditions, as the case may be, upon the licence and amend, suspend or revoke any such condition;
- (e) to cause an actuary or such other person as may be specified by the Commission, at the cost of the licensee, to undertake an investigation into the insurer’s financial position and to submit a report to the Commission.

Surrender of licence

17. A licensee may apply to the Commission to surrender its licence if it –

- (a) has ceased to carry on or has not commenced the business in respect of which the licence was granted; or
- (b) is being wound up voluntarily and produces evidence that it is solvent and able forthwith to repay all its creditors,

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

Protected premium accounts

18. (1) As used in this section, and unless the context requires otherwise –

- (a) “creditor” means a person to whom an obligation is owed and includes any person who alleges or pursues a claim or cause of action in behalf of or in the name of a creditor or for the ultimate benefit of a creditor;
- (b) “intent to defraud” means an intention of a policy holder wilfully to defeat an obligation owed to a creditor;
- (c) “long-term premium” means any money, money’s worth or property (including existing policies of insurance or annuities) that is paid or transferred to an insurer licensed under this Act as, or held by such insurer as security for payment of a *bona fide* premium under a contract of long-term insurance issued by that insurer, which premium is paid in connection with
 - (i) an annuity on human life;
 - (ii) contract of insurance on human life;
 - (iii) a policy of insurance containing features of both subsections (i) and (ii).
- (d) “obligation” means an obligation or liability due to a specific creditor that existed on or before the date of a transfer of a long-term premium to a protected premium account and of which the policy holder had actual knowledge or notice;
- (e) “protected policy holder” means, for purposes of this section, a person who makes a contract with an insurer for a policy of long-term insurance and who pays or is obligated under that contract or an associated contract or policy to pay a long-term premium; and
- (f) “protected premium account” means an account or sub-account established by an insurer with an independent custodian to hold one or more long-term premiums paid or to be paid, or to secure payment to the insurer, which account is from or accounted for by the insurer separate from the general operating accounts of the insurer and from any protected premium accounts established for other unrelated policy-holders.

(2) This section applies to

- (a) any action or proceedings in any jurisdiction relating to the transfer or payment of money or other property, or the exchange of an existing policy, as a long-term premium payment to an insurer licensed hereunder in return for a contract or policy of long-term insurance, whether the money or property so transferred has its *situs* within or outside Anguilla after such transfer or disposition, so long as the transfer, payment or exchange of policies takes place after the commencement of this Act; and
- (b) any action or proceeding by a creditor alleging fraudulent conveyance, fraud or a cause of action sounding in fraud against a protected policy holder who has paid a long-term insurance premium to an insurer, and/or against the insurer to which or for whose benefit such premium was paid, to the exclusion of any other remedy, principle or rule of law of any jurisdiction, whether provided by statute or based on principles of equity or the common law.

(3) For purposes of this section, a premium shall be deemed paid when it is transferred to an insurance agent or broker, or when an existing contract or policy is exchanged in lieu of payment of a premium.

(4) No creditor of a protected policy-holder who has paid a long-term premium to an insurer may set aside or seek to set aside a transfer or payment of any long-term premium by the protected policy-holder to that insurer if such premium, less commissions charged or paid by or to the insurer, is placed in a protected premium account prior to or following such transfer unless it is determined, in a final order or judgment by the court, that the transfer or payment of the premium by the protected policy holder was made with the principal intent to defraud that creditor.

(5) For purposes of this section, the onus of proof of the protected policy holder's intent to defraud a creditor lies on the creditor.

(6) Notwithstanding anything to the contrary in this Act, no action or proceedings may be commenced in any jurisdiction to rescind, avoid, set aside or divert any payments of a long-term premium to which this section applies later than three years after the date of transfer or payment of that premium, or later than three years after the date of transfer or payment of the first premium, if the contract or policy calls for payments in instalments.

(7) A policy holder shall not have imputed to him any intent to defraud a creditor by reason that the policy holder –

- (a) is an owner, director or officer of the insurer to which the protected premium was paid; or
- (b) the policy holder is the settlor, trustee, protector or a beneficiary of a trust which is a beneficiary under the policy as to which a protected premium account is maintained.

(8) This section shall apply to actions, proceedings and arbitrations against protected policy holders, beneficiaries of policies with protected policy holders, insurers, and each of their officers, directors, employers and agents.

(9) So long as a protected premium account maintained under this section is accounted for by the insurer separate from every other such account, and independent of all other funds of the insurer, and notwithstanding the provisions of any law or principle of common law or equity to the contrary, no protected premium account or the insurer which owns or establishes such account shall be chargeable with or liable for –

- (a) any liability, obligation or loss arising from any general or other business of the insurer maintaining such account, or
- (b) the claims of any creditor or of any person, except as provided in this section or expressly in the policy as to which such protected premium account is maintained, or
- (c) any liability, obligation or loss arising from or primarily relating to any other policy holder of the insurer, whether that other policy holder is entitled to the protections of this Section or not.

(10) Neither the cash, liquidation or residual value under any policy as to which a protected premium account is maintained, nor dividends or other income paid to, by or for any such account, shall

be subject to any lien, charge, charging order, encumbrance, injunction, attachment or sequestration by any court except to the extent provided in a final order under sub-section (4) herein.

(11) No residual interest of an insurer, or any interest of a beneficiary in or under a policy, or policy, to which this section applies may be subject to any injunction, lien, charge, charging order, encumbrance, attachment or sequestration.

(12) A long-term premium paid by or for an insurer into a protected premium account shall be conclusively presumed to be a premium payment for insurance, and no protected premium account shall be construed to be a trust account or give rise to any inference that the relationship between the policy holder and the insurer is that of beneficiary and trustee, principal and agent, or broker and customer.

(13) A transfer of a long-term premium into a protected premium account may be rescinded or set aside only as provided in this section and then only to the extent necessary to satisfy the actual obligation to the creditor at whose instance the transfer has been set aside.

Additional requirements for foreign insurers carrying on long term insurance

18A (1) Notwithstanding any law to the contrary, where an insurer has paid premiums, whether from its general business accounts or from those of any of its protected premium accounts, to another insurer or re-insurer to insure or reinsure the life of any life insured by the insurer, the proceeds of the insurance or reinsurance for which such premiums were paid shall first be applied to provide the benefits specified in the policy issued by the insurer and shall not be available for any other purpose unless and until the insurer's obligation to pay such benefits has been met in full.

(2) Notwithstanding any law to the contrary, where any person shall acquire a policy of the type referred to in section 18 (1)(c)(i),(ii) or (iii) and issued by an insurer of which he, or a trust settled by him, is the protected policy holder, the said policy and the proceeds thereof including periodic or non-periodic payments or any refund or death benefit shall inure exclusively to the benefit of the protected policy holder and/or the person for whose use and benefit such policy, proceeds, payments or refund or death benefit is designated under the policy and all the foregoing shall be exempt from the claims of any creditor of the protected policy holder and/or such person and any creditor of the estate of the protected policy holder and/or such person.

(3) Notwithstanding any law to the contrary, where any person shall die leaving a policy referred to in section 18 (1)(c)(i),(ii) or (iii) and issued on his life by an insurer, the death proceeds payable under said insurance shall inure exclusively to the benefit of the person for whose use and benefit such insurance is designated in the policy in effect on death, and the said proceeds shall be exempt from the claims of any creditor of the insured, his estate, of any beneficiary under the policy or his estate, and of the protected policy holder or estate of the protected policy holder.

(4) When a policy referred to in section 18 (1)(c)(i),(ii) or (iii) is effected by any person on his own life or on another life in favour of some person other than himself or, if such a policy is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such policy or executors or administrators of such insured or the person effecting such policy, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting such policy whether or not the right to change the beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured or the measuring life under an annuity, if the beneficiary or assignee shall predecease such person; and the company issuing such policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms.

(5) Notwithstanding any law to the contrary, unless a policy referred to in section 18 (1)(c) (i),(ii) or (iii) is effected for the benefit of such creditor, the cash surrender value of a policy issued by an insurer shall not be attached, garnished or subject to any sort of legal process in favour of any creditor of the protected policy holder, the insured, the estates of any protected policy holder or insured, or of any beneficiary or the estate thereof under the policy or of the beneficiary of any trust which is the protected policy holder of a policy referred to in section 18 (1)(c) (i),(ii) or (iii) and issued by an insurer.

(6) Policies referred to in section 18 (1)(c)(i),(ii) or (iii) and issued by an insurer, which by their terms are subject to amendment, assignment, modification, alteration, novation, cancellation or redemption by the protected policy holder or the insurer, shall not be subject to amendment, assignment, modification,, alteration, novation, cancellation or redemption during any period during which the protected policy holder is acting under duress imposed by any lawful authority or otherwise other than a lawful authority in Anguilla.

(7) In the case where a payment or policy amendment, assignment, modification, alteration, novation, cancellation or redemption is made by an insurer or by any person acting on its behalf in contravention of this section, such insurer or person acting on its behalf shall be guilty of an offence. In addition, an insurer and any person acting on its behalf that is found guilty shall be liable in a civil action for damages, jointly and severally, to the protected policy holder, beneficiary, or any other person to whom the payment should have been held to benefit under this section, for the amount of the payment made in contravention of this section, or the value of any policy amendment, assignment, modification, alteration, novation, cancellation or redemption, plus any other reasonably foreseeable damages incurred as a result of the contravening act, including but not limited to reasonable attorney's fees incurred by the person or persons so damaged; but in no case shall such damages be awarded in excess of \$100,000.00.

(8) It shall be a defence to a charge under this section that the company or the person who acted therefore reasonably believed that the person who requested and/or ultimately received the payment was entitled to the payment under this section and the policy and was acting free of duress or order imposed upon him by any lawful authority or otherwise and a company or the person who acted therefore, charged with the offence proves that the company or such person had such a reasonable belief by admission into evidence of the inquiries made or caused to be made, by the company or the person who acted therefore, of:

- (a) the person who requested and/or ultimately received the payment; and
- (b) the protected policyholder; and
- (c) the person whose life is insured or the measuring life under an annuity contract; and
- (d) at least one other person, which may be a commercial agency, that could reasonably be expected to know or to discover if the person who requested and/or ultimately received the payment was entitled to the payment under this section and the policy and was acting under duress or order imposed upon him by any lawful authority or otherwise."

Non-application, etc.

19. (1) No company which is licensed under this Act is required to be licensed under the Trades, Businesses, Occupations and Professions Licensing Act (Revised Statutes of Anguilla 2000, Chapter T40).

(2) No company which is licensed pursuant to the Company Management Act or trust company which is licensed pursuant to the Trust Companies and Offshore Banking Act is required to be licensed as a Principal Representative (Insurance).

This Act has no application to or effect upon –

- (a) governmental pension arrangements;
- (b) the validity of policies of insurance in existence at the date of coming into effect of this Act;
- (c) the Friendly Societies Act (Revised Statutes of Anguilla 2000, Chapter F65).

(3) Contracts of insurance executed for or in connection with the foreign insurance business of a licensed insurer under this Act shall be exempt from stamp duty.

Regulations

20. (1) The Governor may, on the advice of the Commission, make regulations –

- (a) prescribing anything by this Act required to be prescribed;
- (b) exempting any person or class of persons or business or class of business from any provision of this Act;
- (c) prescribing forms to be used;
- (d) prescribing the format and content of any returns to be made under this Act;
- (e) prescribing capital and liquidity margins, solvency ratios, reserves and technical provisions to be maintained by licensees under this Act;
- (f) prescribing the payment of fees and penalty fees due under this Act or amending said fees; and
- (g) prohibiting certain investments or disallowing certain assets for the purposes of any provision of this Act
- (h) providing for the valuation and safe-keeping of assets;
- (i) prescribing standards of corporate governance and internal controls, to which licensees shall be subject
- (j) providing for such matters as may be necessary or convenient for carrying out or giving effect to this Act and its administration

(2) Regulations may make different provisions in relation to different persons, circumstances or cases.

Gazette Notices

21. The Commission shall cause notice of the issue, revocation or suspension of a licence to be published in the Gazette.

Offences

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

(2) A person who contravenes or fails to comply with any of the provisions of this Act or any regulations made hereunder commits an offence and except where provision by or under which the offence is created provides the penalty to be imposed, is liable on summary conviction to a fine of \$5,000.00 or to imprisonment for one year or to both.

Transitional Provisions

23. A person holding a licence under the Insurance Act (Revised Statutes of Anguilla Chapter 115) immediately before the commencement of this Act is deemed to have been granted a licence under this Act subject to such terms and conditions as may have been imposed on the granting of the licence under that Act.

Repeal

24. The Insurance Act (Revised Statutes of Anguilla 2002 Chapter I15) and the Insurance Regulations (Revised Regulations of Anguilla 2002 I15-1) are repealed.

Citation and commencement

25. This Act may be cited as the Insurance Act, 2004 and shall come into force on such date as the Governor may appoint by notice published in the Gazette.

Speaker

Passed by the House of Assembly the 3rd day of September, 2004.

Clerk of the House of Assembly