

A BILL

An Act to amend the Insurance Act, Chap. 84:01

Preamble

WHEREAS it is enacted *inter alia* by section 13(1) of the Constitution that an Act 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 such Act does so declare, it shall have effect accordingly:

And whereas it is provided by section 13(2) of the Constitution that an Act to which that section applies is one the Bill for which has been passed by both Houses of Parliament and that the final vote thereon in each House has been supported by the 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:

Short title

1. This Act may be cited as the Insurance (Amendment) Act, 2009.

Interpretation
Chap. 84:01

2. In this Act, “the Act” means the Insurance Act.

Section 3
amended

3. The Act is amended in section 3 –

- (a) in the definition of the term “Inspector” by deleting the words “section 30” and substituting the words “section 7 of the Financial Institutions Act, 2008”; and
- (b) by inserting in the correct alphabetical order, the following term:

“annuity contract” includes a contract for an annuity at the accumulation stage or the pay out stage;”

“registrant” means a person registered pursuant to section 16 of this Act”.

New section 6A
inserted

4. The Act is amended by inserting after section 6, the following section:

“Information
sharing

6A(1) Notwithstanding any other written law, the Central Bank or a person authorized in writing by the Central Bank may disclose -

- (a) any information regarding the business or affairs of a registrant or any of its affiliates; or
- (b) any information regarding a policyholder, holder of any annuity contract, holder of any other class of insurance business offered by an insurance company or other person dealing with a registrant, that is obtained in the official course of duties, to any local or foreign regulatory agency or body that regulates financial entities, for purposes related to that regulation.”

Section 37
amended

5. The Act is amended in section 37, by inserting after subsection (6), the following subsection:

“(7) In addition to the requirements set out in subsection (6), every company registered to carry on long term insurance business or motor vehicle insurance business or both, shall place assets in the statutory fund-

- (a) where the company carries on long term insurance business, assets equal to its liability and contingency reserves; and
- (b) where the company carries on motor vehicle insurance business, assets equal to its liability and reserves less the amount deposited on account of such business,

with respect to its Trinidad and Tobago policyholders as established by the quarterly returns required to be submitted under section 61A, within seven days after the submission of such quarterly returns.”

New section 50A
inserted

6. The Act is amended by inserting after section 50, the following section:

“Powers
of
Inspector

50A. (1) The Inspector or any person authorized in writing by the Central Bank or any designated member of staff of the Central Bank may enter into the premises of any registrant to

- (a) inspect any books records, accounts, vouchers, minutes of meetings, securities and other documents, including documents stored in electronic form, pursuant to this Act and Regulations made hereunder and take any copies of the whole or any part of any such record; or

- (b) to determine whether there is compliance with this

Act or any Regulations made hereunder.

(2) Where the Inspector or any person authorised by the Central Bank or any designated member of staff of the Central Bank

is -

(a) prevented from exercising the powers given to him under subsection (1);

(b) required to exercise the powers outside of normal working hours; or

(c) required to exercise the powers urgently,

he may apply for an *ex parte* order of a Judge of the High Court, which shall constitute the warrant for the Inspector or any person authorized in writing by the Central Bank or any designated member of staff to enter into the premises of the registrant.”

New section 61A inserted

7. The Act is amended by inserting after section 61, the following section:

“Quarterly returns

61A. Every insurer shall submit quarterly returns in a form as specified by the Central Bank, within twenty working days after the end of each quarter.”

Sections 65 to 67 deleted

8. The Act is amended by deleting sections 65 to 67 and by substituting the following:

“Compliance directions”

65(1) Notwithstanding any other action or remedy available under this Act, if in the opinion of the Inspector, a registrant, or any controller, officer, other employee or agent of a registrant, including the principal representative of a foreign insurer -

(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, holders of any annuity contract or holders of

- any other class of insurance business offered by an insurance company;
- (c) has violated or is about to violate any of the provisions of any law or Regulations made hereunder;
 - (d) has breached any requirement or failed to comply with any measure imposed by the Central Bank in accordance with the Act or Regulations made hereunder; or
 - (e) is unlikely to meet the demands of policyholders, holders of any annuity contract or holders of any other class of insurance business of the insurer or that its continuation in business is likely to involve a loss to the policyholders, holders of any annuity contract or holders of any other class of insurance business of the insurer

the Inspector may direct the insurer, and any such controller, officer, other employee or agent, or principal representative to :-

- (i) cease and 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 are necessary to remedy the situation or minimize the prejudice.
- (2) For the purposes of this section, the term “unsafe or unsound practices” 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 or policyholders, holders of any annuity contract or holders of any other class of insurance business offered by an insurance company.
- (3) Subject to subsection (6), before a direction is issued, 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 attend at the time and place stipulated by the said notice, the Inspector may proceed to issue directions in his absence.
- (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 in the opinion of the Inspector, the length of time required for representations to be made might be prejudicial to the interests of policyholders, holders of any annuity contract or holders of any other class of insurance business offered by an insurance company or to the stability of the financial system, the Inspector may make an interim direction with respect to the matters referred to in subsection (1) having effect for a period of not more than twenty working days.
- (7) A direction made under subsection (6) continues to have effect after the expiration of the twenty-day period referred to in that subsection 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 is issued that he is not satisfied that there are sufficient grounds for revoking the direction.
- (8) If a person to whom a direction is issued fails to comply with the said direction 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, cease the contravention or do anything that is required to be done, and on such application the Court may so order and make any other Order it thinks fit.

- (9) A person who fails to comply with directions under this section commits an offence and is liable, on summary conviction, -
- (a) in the case of a registrant 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) in the case of a controller or officer, other employee or agent, or principal representative of a registrant, to a fine of five million dollars and to imprisonment for five years.

Injunctive
relief

66. Where the Central Bank reasonably believes that a person is in violation of the Act, or is engaged in any activity or course of conduct described under section 65(1)(a) to (e), the Central Bank may in addition to, or in lieu of other actions authorised under this Act—

- (a) seek a restraining order or other injunctive or equitable relief, to prohibit the continued violation or to 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.”

Heading amended

9. The Act is amended by deleting the heading entitled “Judicial Management and Winding Up” appearing immediately before section 68 and by substituting the heading “Suspension and Winding Up”.

Sections 68 to 75 deleted

10. The Act is amended by deleting sections 68 to 75 and by substituting the following:

“Suspension

68(1) Where the Inspector is satisfied after an on-site or off-site examination of the affairs of an insurer that it is insolvent or unable to meet the minimum capital adequacy requirements or is unlikely to meet the demands of the policyholders, holders of any annuity contract or holders of any other class of insurance business of the insurer or that its continuation in business is likely to involve a loss to the policyholders, holders of any annuity contract or holders of any other class of insurance business of the insurer or to the creditors of the insurer, he shall advise the Board accordingly.

(2) The Board may, after receiving the advice of the Inspector and after considering all the relevant facts and circumstances, order the insurer to suspend business forthwith for a period of sixty days and may 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 prevent the continuation in business by that insurer during the period of suspension and preserve the assets of the insurer and all costs incurred shall be a first charge on the assets of the insurer.

(3) An order made under subsection (2) shall cease to have effect -

- (a) if the Board makes a further order permitting the insurer to resume business either unconditionally or subject to such conditions as it may consider necessary in the public interest or in the interests of the policyholders, holders of any annuity contract or holders of any other class of insurance business and potential policyholders, holders of any annuity contract or holders of any other class of insurance business of the insurer and other creditors of the insurer ; or

(b) upon the expiration of the period of sixty days from the day on which it is made, unless –

- (i) the Board extends the order for a period not exceeding a further sixty days;
- (ii) in the case of an insurer, an application is made to the Court for the appointment of a receiver or manager on behalf of the policyholders, holders of any annuity contract or holders of any other class of insurance business offered by an insurance company; or
- (iii) in the case of a local insurer, a petition is made to the Court by the Inspector, on authorization of the Board, for the winding-up of the insurer on behalf of its policyholders, holders of any annuity contract or holders of any other class of insurance business offered by an insurance company.

Chap: 81:01

(4) For the purposes of subsection (3)(b)(iii), the Court may order the winding-up of an insurer in accordance with the Companies Act subject to the modification that a local insurer may be ordered to be wound up on the petition of the Inspector on behalf of its policyholders, holders of any annuity contract or holders of any other class of insurance business offered by an insurance company .

(5) Any person who directly or indirectly prevents the Inspector or any person authorized in writing by the Central Bank or a member of staff of the Central Bank from having access to a registrant, its books, records or other documents, including electronically stored information, or fails to make them available, commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.”

Section 76
amended

11. The Act is amended in section 76 (1) by deleting the words “, sections 68 to 83”.

