



PARLIAMENT

REPUBLIC OF TRINIDAD AND TOBAGO

SECOND SESSION OF THE ELEVENTH PARLIAMENT (2016/2017)

REPORT
OF
THE JOINT SELECT COMMITTEE
APPOINTED TO CONSIDER AND REPORT ON THE INSURANCE BILL, 2016

Ordered to be printed

TOGETHER WITH THE MINUTES OF PROCEEDINGS

PARL: 14/3/71

HOR PAPER NO: / 2017

SENATE PAPER NO: /2017

MANDATE

1. Pursuant to resolutions of the House of Representatives on Friday February 3, 2017 and of the Senate on Tuesday February 7, 2017, a Joint Select Committee was established:

“to consider and report on a Bill entitled the Insurance Bill, 2016 and... to report on or before March 17th, 2017.”

MEMBERSHIP OF THE COMMITTEE

2. The following persons were appointed to serve on the Committee:
 - **Mr. Colm Imbert, MP**
 - **Mr. Faris Al-Rawi, MP**
 - **Mr. Fitzgerald Hinds, MP**
 - **Ms. Marlene McDonald, MP**
 - **Mr. David Lee, MP**
 - **Dr. Surujrattan Rambachan, MP**
 - **Mr. Stephen Creese**
 - **Mr. Wayne Sturge**
 - **Dr. Lester Henry**
 - **Mr. Daniel Dookie**
 - **Mr. Clarence Rambharat**
 - **Ms. Jennifer Raffoul**

CHAIRMANSHIP

3. At its First Meeting on Monday February 13, 2017, your Committee elected Mr. Colm Imbert, MP to be its Chair.

SECRETARIAT AND TECHNICAL SUPPORT

4. Secretariat support to the Committee was provided by:
 - Ms. Chantal La Roche, Legal Officer II, Secretary to the Committee
 - Ms. Simone Yallery, Legal Officer I, Assistant Secretary.

MEETINGS

5. Since its appointment, your Committee held ten (10) meetings on the following dates:
 - i. Monday February 13, 2017;
 - ii. Tuesday February 21, 2017;
 - iii. Tuesday March 14, 2017.
 - iv. Tuesday March 28, 2017;
 - v. Tuesday April 4, 2017;
 - vi. Wednesday May 24, 2017;

- vii. Friday June 9, 2017;
- viii. Friday June 23, 2017;
- ix. Tuesday July 11, 2017; and
- x. Tuesday July 18, 2017.

6. The attendance record and the Minutes of the Meetings are attached at **Appendix I**.

INTERIM REPORT

7. The Committee has reported to Parliament on four (4) previous occasions that its work was not yet complete. In its Fourth Interim Report, your Committee requested and was granted a further period of eleven (11) weeks to complete its work and to submit a final report to Parliament by **September 15, 2017**.

CONSIDERATION OF THE BILL

APPROACH TO DELIBERATIONS

8. At its **First Meeting** on February 13, 2017, your Committee discussed the engagement of stakeholders as well as external expert assistance to assist with its deliberations on the Bill. The Committee agreed that at its Second Meeting, the following would be done:
- i. determine its work plan;
 - ii. consider the method of communication with stakeholders and the public; and
 - iii. consider engaging external expert assistance to achieve the Committee's mandate.
9. At its **Second Meeting** on February 21, 2017, your Committee agreed that there was a need for public consultation on the Bill and that relevant Stakeholders and members of the public should be invited to submit comments on the Bill. Stakeholders identified for examination included the Insurance Brokers Association of Trinidad and Tobago (IBATT), the Association of Trinidad and Tobago Insurance Companies (ATTIC) and the Central Bank of Trinidad and Tobago (CBTT).
10. The Committee also agreed to engage Dr. Claude Denbow S.C. on an as needed basis to provide external expert assistance to achieve the Committee's mandate. It was also agreed that the assistance of the technocrats involved in the drafting of the Bill would be required during its deliberation. In this regard, the following officials from the Chief Parliamentary Counsel's Department and the Office of the Attorney General and Legal Affairs were present during the consideration of the Bill:

Chief Parliamentary Counsel's Department

- Mr. Ian Macintyre, SC Chief Parliamentary Counsel
- Ms. Lorraine John Assistant Chief Parliamentary Counsel

- Ms. Megan Doyle Parliamentary Counsel I

Office of the Attorney General and Legal Affairs

- Ms. Vyana Sharma Legal Counsel II

CALL FOR PUBLIC COMMENTS

11. Your Committee agreed to a deadline of March 6, 2017 at 4:00 p.m. for submissions on the Bill. The call for public comments on the Bill was published as follows:

- Trinidad and Tobago Newsday – Wednesday February 22, 2017;
- Trinidad and Tobago Express Newspapers - Saturday February 25, 2017
- Trinidad and Tobago Guardian – Thursday March 2, 2017;
- Parliament’s Website;
- Parliament Radio;
- Parliament Channel 11;
- Twitter;
- Google+; and
- Facebook.

WRITTEN SUBMISSIONS

12. As a result of the general call for submissions, your Committee received written submissions from:

- Lloyd’s of London
- ATTIC;
- IBATT;
- CBTT; and
- Members of the public:
 - Ms. Sharon Lans; and
 - Mr. Roland Karim.

13. Your Committee noted, that as a result of the number of submissions received from stakeholders and members of the public, it would have to examine the submissions on a clause by clause basis. All submissions received are attached at **Appendix II**.

14. At its **Third Meeting** held on Tuesday March 14, 2017, the Committee agreed that the relevant stakeholders would be examined at the Fourth and Fifth Meeting of the Committee.

EXAMINATION OF WITNESSES

15. At its **Fourth and Fifth Meetings** held on March 28 2017 and April 4 2017, respectively, your Committee examined officials/representatives of IBATT and ATTIC. IBATT and ATTIC made a presentation which itemised their associations’ concerns and comments regarding the Bill and detailed recommendations and changes to the Bill.

16. At its **Sixth Meeting** held on May 24 2017, your Committee examined officials/representatives of the CBTT. The CBTT provided comments on submissions made by ATTIC, IBATT and Lloyd's of London as well as its own recommendations/comments.
17. At its **Seventh Meeting** held on June 9 2017, your Committee discussed two (2) additional submissions received from CBTT and took the decision to forward CBTT's submissions to IBATT and ATTIC to canvass its feedback.

CLAUSE BY CLAUSE ANALYSIS OF BILL

18. At its **Eighth Meeting** held on Friday June 23 2017, your Committee commenced clause by clause analysis of the Bill, examining Clauses 1 to 114.
19. At its **Ninth Meeting** held on Tuesday July 11 2017, your Committee continued its clause by clause analysis, examining Clause 115 to 255 and at the **Tenth Meeting** held on Tuesday July 18 2017, your Committee completed clause by clause analysis of the Bill, examining Clauses 256 to 282, Schedules 1 to 13 and the clauses which had been previously deferred.

MAIN ISSUES DISCUSSED

20. Consequent on the submissions received by your Committee and the discussions with the technical team, your Committee identified the following areas of the Bill which needed to be addressed and amended. These were questions of:
 - a. whether new definitions should be included in Clause 4 and the amendment of existing definitions in the Bill?
 - b. the amendment to penalties/fines in the Bill and determining whether various offences in the Bill should be classified as summary, hybrid or indictable.
 - c. whether to amend Clause 16 to include the ability to share information with the Board of Inland Revenue, to give effect to a declared agreement?
 - d. whether Clause 21(5) should be amended to allow a broker to negotiate and procure insurance business, on behalf of his client, directly from a foreign insurance company?
 - e. clause 27: whether to consider setting a specific timeframe or using the words "within a reasonable time" for approval to be given?
 - f. clause 85: whether the percentage should be adjusted which an insurer should invest in Trinidad and Tobago as compared to foreign assets?

- g. whether Clause 112 (1) to (10) should be offences?
- h. clause 136 (3): whether to delete the sub clause or whether the sub clause could be more suitably placed in another legislation?
- i. whether Clause 140 should be amended to include “complex claims” in sub clauses (1) and (2) and whether sub clauses (3), (4) and (5) be deleted.
- j. whether Clause 254 (2) be redrafted to avoid strict liability offences?

REPORT

21. In accordance with Standing Orders 114(1) and 104(1) of the House of Representatives and the Senate, respectively, your Committee wishes to report that it has completed its work.

RECOMMENDATION

22. Your Committee recommends that the Parliament agree with its proposals for amendments to the Bill, attached at **Appendix III**. Your Committee further recommends that the Parliament consider and adopt the (amended) Insurance Bill, 2016. A consolidated version of the amended Bill is attached at **Appendix IV** for ease of consideration.

Respectfully submitted,

Sgd.

Mr. Colm Imbert, MP
Chairman
September 08, 2017

List of Appendices

Appendix I.....	Minutes of Proceedings and Attendance Record
Appendix II.....	Submissions Received by the Committee
Appendix III.....	List of Recommended Amendments
Appendix IV.....	Consolidated Version of Bill (with amendments)

MINUTES
OF
PROCEEDINGS
AND
ATTENDANCE RECORD

ATTENDANCE RECORD

JSC ON INSURANCE BILL, 2016

Meetings	Mr. Colm Imbert	Mr. Faris Al-Rawi	Mr. Fitzgerald Hinds	Mr. David Lee	Ms. Marlene Mc Donald	Dr. Surujrattan Rambachan	Mr. Clarence Rambharat	Mr. Daniel Dookie	Mr. Wayne Sturge	Dr. Lester Henry	Mr. Stephen Creese	Ms. Jennifer Raffoul
First Meeting 13.02.2017	✓	✓	Excused	✓	✓	✓	✓	✓	✓	✓	✓	✓
Second Meeting 21.02.2017	✓	✓	Excused	✓	✓	✓	✓	✓	✓	Excused	Excused	Excused
Third Meeting 14.03.2017	✓	✓	✓	✓	✓	✓	Excused	✓	Excused	✓	✓	✓
Fourth Meeting 28.03.2017	✓	✓	Excused	✓	Excused	✓	✓	✓	✓	✓	Excused	✓
Fifth Meeting 04.04.2017	✓	✓	✓	✓	✓	✓	Excused	Excused	Excused	✓	✓	✓
Sixth Meeting 24.05.2017	✓	✓	Excused	✓	Excused	Excused	✓	✓	Excused	✓	Excused	✓
Seventh Meeting 09.06.2017	✓	Excused	Excused	✓	✓	✓	✓	✓	Excused	Excused	✓	Excused
Eighth Meeting 23.06.2017	✓	✓	✓	✓	Excused	Excused	✓	Excused	Excused	Excused	Excused	✓
Ninth Meeting 11.07.2017	✓	✓	✓	Excused	Excused	✓	Excused	✓	Excused	Excused	✓	✓
Tenth Meeting 18.07.2017	✓	✓	✓	Excused	Excused	✓	Excused	✓	Excused	Excused	✓	✓



JOINT SELECT COMMITTEE ON THE INSURANCE BILL, 2016

MINUTES OF THE FIRST MEETING HELD IN THE ARNOLD THOMASOS ROOM (WEST), LEVEL 6, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT-OF-SPAIN ON FEBRUARY 13, 2017 at 11:25 A.M.

PRESENT

Mrs. Brigid Annisette-George - Speaker of the House

Committee Members

Mr. Faris Al-Rawi, MP	-	Member
Mr. Colm Imbert, MP	-	Member
Ms. Marlene Mc Donald, MP	-	Member
Mr. David Lee, MP	-	Member
Dr. Surujrattan Rambachan, MP	-	Member
Mr. Clarence Rambharat	-	Member
Mr. Daniel Dookie	-	Member
Dr. Lester Henry	-	Member
Mr. Wayne Sturge	-	Member
Mr. Stephen Creese	-	Member
Ms. Jennifer Raffoul	-	Member

Secretariat

Ms Chantal La Roche	-	Secretary
Ms Simone Yallery	-	Assistant Secretary

ABSENT/EXCUSED

Mr. Fitzgerald Hinds, MP	-	Member

COMMENCEMENT

1.1 The meeting was called to order by the Speaker of the House at 11:25 a.m.

ANNOUNCEMENTS

2.1 The Speaker of the House informed Members that Ms Chantal La Roche would serve the Committee as Secretary, and Ms. Simone Yallery would serve as Assistant Secretary.

ELECTION OF CHAIRMAN

- 3.1 The Speaker advised that her role was to facilitate the election of a Chair and she invited nominations.
- 3.2 Mr. Daniel Dookie nominated Mr. Colm Imbert for the chairmanship and this nomination was seconded by Mr. Faris Al-Rawi.
- 3.3 There being no further nominations, Mr. Imbert was declared the duly elected Chairman. The Speaker wished the Members productive and cooperative deliberations. Mr. Imbert was invited to take the Chair.

(The Speaker exited the meeting.)

QUORUM

- 4.1 The Chairman proposed a quorum of five (5) persons, inclusive of the Chair, provided there is a Member present from the Senate and the House of Representatives. The Committee agreed to this proposal.

DISCUSSIONS ON THE WAY FORWARD

Election of a Vice-Chairman

- 5.1 The Chairman proposed that a Vice-Chairman be elected as the Chairman may not be able to attend all meetings.
- 5.2 The Chairman nominated Mr. Faris Al-Rawi be elected to the post of Vice-Chairman.
- 5.3 There being no further nominations, Mr. Al-Rawi was declared the Vice-Chairman of the Committee.

Determination of the Second Meeting and the Work Plan

- 5.4 The Chairman proposed and the Committee agreed that the Second Meeting will be held on Tuesday February 21, 2017 at 11:00 a.m.
- 5.5 Discussion ensued on the issues of inviting stakeholders to appear before the Committee and engaging external expert assistance.
- 5.6 The Chairman proposed and the Members agreed that at the Second Meeting, the Committee shall:
- i. determine its work plan;
 - ii. consider the method of communication with stakeholders and the public; and
 - iii. consider engaging external expert assistance to achieve the Committee's mandate.

ADJOURNMENT

- 6.1 There being no other business, the Chairman thanked Members and adjourned the meeting to Tuesday February 21, 2017 at 11:00 a.m.

6.2 The adjournment was taken at 11:32 a.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

February 13, 2017



JOINT SELECT COMMITTEE ON THE INSURANCE BILL, 2016

MINUTES OF THE SECOND MEETING HELD IN THE A.N.R ROBINSON (WEST) MEETING ROOM , LEVEL 9, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT-OF-SPAIN ON FEBRUARY 21, 2017 at 11:00 A.M.

PRESENT

Committee Members

Mr. Colm Imbert, MP	-	Chairman
Mr. Faris Al-Rawi, MP	-	Vice Chairman
Ms. Marlene Mc Donald, MP	-	Member
Mr. David Lee, MP	-	Member
Dr. Surujrattan Rambachan, MP	-	Member
Mr. Clarence Rambharat	-	Member
Mr. Daniel Dookie	-	Member
Mr. Wayne Sturge	-	Member

Secretariat

Ms Chantal La Roche	-	Secretary
Ms Simone Yallery	-	Assistant Secretary

ABSENT/EXCUSED

Mr. Fitzgerald Hinds, MP	-	Member
Mr. Stephen Creese	-	Member
Dr. Lester Henry	-	Member
Ms. Jennifer Raffoul	-	Member

COMMENCEMENT

1.2 The meeting was called to order by the Chairman at 11:02 a.m.

ANNOUNCEMENTS

2.1 The Chairman indicated that Mr. Stephen Creese had asked to be excused from the day's meeting.

CONFIRMATION OF MINUTES

3.1 The Committee examined the Minutes of the First Meeting held on Monday February 13, 2017.

3.2 There being no omissions and corrections, the Minutes were confirmed on a motion moved by Ms. Marlene Mc Donald and seconded by Mr. David Lee.

MATTERS ARISING FROM MINUTES

Work Plan and Method of Communicating with Stakeholders

- 4.1 Per **Item 5.6**, the Chairman invited Members to discuss the work plan and the method of communicating with stakeholders. After some discussion, the Chairman proposed and Members agreed to the following:
- i. a call for written submission from the public would be placed in daily newspapers, radio and television stations and social media platforms; and
 - ii. invitations for written submission would be issued to specific stakeholders to appear before the Committee.
- 4.2 The Committee agreed to a deadline for public comments on the Bill would be Monday March 6th, 2017 at 4:00 p.m.

Identifying Stakeholders

- 4.3 Per **Item 5.6**, the Committee further agreed, after some discussions, to invite the following stakeholders to appear:
- i. The Association of Trinidad and Tobago Insurance Companies;
 - ii. Insurance Brokers Association of Trinidad and Tobago ; and
 - iii. Central Bank of Trinidad and Tobago.
- 4.4 The Committee also agreed that the decision to invite members of the public or any other entity to appear before the Committee would be made after evaluating the written submissions received.

External Consultant

- 4.5 Per **Item 5.6**, the Committee considered several experts to provide technical assistance to the Committee.
- 4.6 The Committee agreed that in light of his previous work on the Bill, communication would be initiated with Dr. Claude Denbow, S.C. for legal advisory assistance to be provided on an as required basis.

OTHER MATTERS

- 5.1 The Secretariat was directed to:
- i. communicate with Dr. Claude Denbow S.C. with a view to engaging his services as an external consultant;
 - ii. arrange for the publication of an advertisement inviting written submissions; and
 - iii. circulate to Members a copy of the Joint Select Committee Report-Insurance Bill, 2015.
- 5.2 The Chairman proposed and the Committee agreed that the Third Meeting will be held on Tuesday March 7th, 2017 at 11:00 a.m.

ADJOURNMENT

- 6.1 There being no other business, the Chairman thanked Members and adjourned the meeting to Tuesday March 7th, 2017 at 11:00 a.m.
- 6.2 The adjournment was taken at 11:20 a.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

February 24, 2017



JOINT SELECT COMMITTEE ON THE INSURANCE BILL, 2016

MINUTES OF THE THIRD MEETING HELD IN THE A.N.R ROBINSON (WEST) MEETING ROOM, LEVEL 9, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT-OF-SPAIN ON MARCH 14, 2017 at 10:30 A.M.

PRESENT

Committee Members

Mr. Colm Imbert, MP	-	Chairman
Mr. Faris Al-Rawi, MP	-	Vice Chairman
Mr. Fitzgerald Hinds, MP	-	Member
Ms. Marlene McDonald, MP	-	Member
Mr. David Lee, MP	-	Member
Dr. Surujrattan Rambachan, MP	-	Member
Mr. Daniel Dookie	-	Member
Mr. Stephen Creese	-	Member
Dr. Lester Henry	-	Member
Ms. Jennifer Raffoul	-	Member

Secretariat

Ms. Chantal La Roche	-	Secretary
Ms. Simone Yallery	-	Assistant Secretary

ABSENT/EXCUSED

Mr. Wayne Sturge	-	Member
Mr. Clarence Rambharat	-	Member

COMMENCEMENT

1.1 The meeting was called to order by the Chairman at 11:03 a.m.

ANNOUNCEMENTS

2.1 The Chairman indicated that Mr. Wayne Sturge had asked to be excused from the day's meeting.

CONFIRMATION OF MINUTES

- 3.1 The Committee examined the Minutes of the Second Meeting held on Monday February 21, 2017.
- 3.2 There being no omissions and corrections, the Minutes were confirmed on a motion moved by Mr. Al-Rawi and seconded by Mr. David Lee.

MATTERS ARISING FROM MINUTES

- 4.1 **Per Items 4.1 (i) and 4.2**, the Chairman informed Members that the call for submissions was published via the
- i. Newspapers:
 - Wednesday February 22, 2017 – Newsday Newspapers
 - Saturday February 25, 2017 - Express Newspapers
 - Thursday March 2, 2017 - Guardian Newspaper
 - ii. Twitter;
 - iii. Parliament’s Facebook page;
 - iv. Parliament Channel 11;
 - v. Parliament Radio;
 - vi. Parliament’s website; and
 - vii. Google Plus
- 4.2 The Chairman informed the Committee that the Secretariat received written submissions from the Association of Trinidad and Tobago Insurance Companies, Insurance Brokers Association of Trinidad and Tobago and a member of the public.
- 4.3 The Chairman then invited Members to consider a request by the Oilfields Workers Trade Union (OWTU) for an extension of time of ten (10) working days to make written submissions. After some discussion, the Chairman proposed and Members agreed to grant the extension until Monday March 20th, 2017. The Secretariat was directed to communicate the extension to the OWTU.
- 4.4 Based on a request from Mr. Lee, it was agreed that, if available, the Secretariat would circulate the recommendations on the insurance industry contained in the Colman Commission of Enquiry Report.
- 4.5 **Per Item 4.5**, the Members engaged in discussion on the need for the engagement of an expert to provide technical assistance to the Committee. The Chairman informed Members that Dr. Claude Denbow S.C. had confirmed his availability at a discounted fee. After some discussion, it was agreed that Dr. Denbow S.C. would be engaged on an as needed basis.
- 4.6 **Per Items 4.1 (ii) and 4.3**, the Chairman invited Members to consider dates for the examination of the following stakeholders:
- i. The Association of Trinidad and Tobago Insurance Companies;

- ii. Insurance Brokers Association of Trinidad and Tobago ; and
- iii. Central Bank of Trinidad and Tobago.

- 4.7 Discussions ensued during which, the Chairman proposed and the Members agreed to the following:
- i. Insurance Brokers Association of Trinidad and Tobago and Central Bank of Trinidad and Tobago to be examined on Tuesday March 28, 2017 at 9:30 a.m.
 - ii. Association of Trinidad and Tobago Insurance Companies to be examined on Tuesday April 4, 2017 at 10:30 a.m.

OTHER MATTERS

- 5.1 The Secretariat was directed to circulate to Members:
- i. a copy of the Joint Select Committee Report-Insurance Bill, 2015; and
 - ii. a matrix of the criminal offences prescription and the capital adequacy which was produced for the JSC on the Insurance Bill, 2015.
- 5.2 The Committee agreed to request from the Chief Parliamentary Counsel:
- i. a comparative table to cross reference the Insurance Bill, 2015 with the Bill as amended and appended to the JSC Report on the Insurance Bill, 2015.
 - ii. the status of Regulations (if any) made under the Insurance Bill, 2016.
- 5.3 The Committee agreed that an Interim Report should be tabled to bring to the attention of the Parliament that an extension in time is necessary in order for the Committee to complete its deliberations. The Committee agreed to request an extension to Friday April 28, 2017.
- 5.4 The Chairman directed the Secretariat to circulate the Interim Report by round robin to all Members for approval.
- 5.5 The Chairman proposed and Members agreed that its Fourth Meeting will be held on Tuesday March 28, 2017 at 9:30 a.m. and its Fifth Meeting will be held on Tuesday April 4, 2017 at 10:30 a.m.

ADJOURNMENT

- 6.1 There being no other business, the Chairman thanked Members and adjourned the meeting to Tuesday March 28, 2017 at 9:30 a.m.
- 6.2 The adjournment was taken at 11:31 a.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

March 15, 2017



JOINT SELECT COMMITTEE ON THE INSURANCE BILL, 2016

MINUTES OF THE FOURTH MEETING HELD IN THE ARNOLD THOMASOS MEETING ROOM (EAST), LEVEL 6, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT OF SPAIN ON MARCH 28TH, 2017 at 9:30 a.m.

PRESENT

Committee Members

Mr. Colm Imbert , MP	-	Chairman
Mr. Faris Al-Rawi, MP	-	Vice Chairman
Mr. David Lee, MP	-	Member
Dr. Surujrattan Rambachan, MP	-	Member
Mr. Clarence Rambharat	-	Member
Mr. Wayne Sturge	-	Member
Dr. Lester Henry	-	Member
Mr. Daniel Dookie	-	Member
Ms. Jennifer Raffoul	-	Member

Secretariat

Ms. Chantal La Roche	-	Secretary

ABSENT/EXCUSED

Mr. Fitzgerald Hinds, MP	-	Member
Ms. Marlene McDonald, MP	-	Member
Mr. Stephen Creese	-	Member

COMMENCEMENT

- 1.1 The meeting was called to order by the Chairman at 9:40 a.m.

ANNOUNCEMENTS

- 1.2 The Chairman advised that the following Members would be absent from the day's meeting:
- Mr. Fitzgerald Hinds, MP (overseas)
 - Ms. Marlene Mc Donald (ill)
 - Mr. Stephen Creese (conflicting JSC meeting)

CONFIRMATION OF MINUTES

- 2.1 There being no corrections, the Minutes were confirmed on a motion moved by Mr. Daniel Dookie and seconded by Mr. David Lee.

MATTERS ARISING FROM MINUTES

- 3.1 The Chairman brought the following matters to the attention of Members:

Item 4.3

- a) O.W.T.U. was informed of the extended deadline to submit their written comments on the Bill but had requested a further extension to April 28, 2017.

The Committee agreed that no further extension of time would be granted.

Item 4.4

- b) As directed, the Secretariat wrote to the Director of Public Prosecutions requesting the recommendations on the insurance industry contained in the Colman Commission of Enquiry Report (if available).

Item 4.7

- c) Insurance Brokers Association of Trinidad and Tobago (IBATT) and Central Bank of Trinidad and Tobago (CBTT) were invited to attend the day's meeting.

Item 5.1

- d) The following documents have been circulated to Members:
- The Report of the JSC appointed to consider the Insurance Bill, 2015;
 - A matrix of criminal offences/penalties; and
 - A comparative table of the Insurance Bills, 2013 and 2015.

Representatives of IBATT were invited to join the meeting at this time.

DISCUSSIONS WITH THE INSURANCE BROKERS ASSOCIATION OF TRINIDAD AND TOBAGO

- 4.1 The Chairman welcomed the representatives of the Insurance Brokers Association of Trinidad and Tobago (IBATT) and asked them to introduce themselves and make opening remarks.
- 4.2 Representing IBATT were:
- | | | |
|-------------------|---|------------------|
| ▪ Prakash Bhaggan | - | President |
| ▪ Robert Lazzari | - | Executive Member |
| ▪ Gina Samaroo | - | Executive Member |
| ▪ Rodney Farah | - | Executive Member |
| ▪ Anthony Farah | - | Executive Member |
- 4.3 The President of IBATT made a PowerPoint presentation during which certain matters were raised for the consideration of the Committee. These are outlined in Appendix I to these Minutes.
- 4.4 At the end of the presentation, the Chairman thanked the representatives of IBATT for their attendance and excused them from the meeting.

OTHER BUSINESS

- 5.1 The Committee agreed that representatives of the Central Bank of Trinidad and Tobago would be invited to reappear at a subsequent meeting.

ADJOURNMENT

6.1 There being no other business, the Chairman thanked Members and adjourned the meeting to Tuesday April 4th, 2017 at 10:30 a.m.

6.2 The adjournment was taken at 11:26 a.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

Monday 3 April 2017



JOINT SELECT COMMITTEE ON THE INSURANCE BILL, 2016

MINUTES OF THE FIFTH MEETING HELD IN THE A.N.R ROBINSON MEETING ROOM (WEST), LEVEL 9, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT OF SPAIN ON APRIL 4TH, 2017 at 10:30 a.m.

PRESENT

Committee Members

Mr. Colm Imbert, MP	-	Chairman
Mr. Faris Al-Rawi, MP	-	Vice Chairman
Mr. Fitzgerald Hinds, MP	-	Member
Ms. Marlene McDonald, MP	-	Member
Mr. David Lee, MP	-	Member
Dr. Surujrattan Rambachan, MP	-	Member
Dr. Lester Henry	-	Member
Mr. Stephen Creese	-	Member
Ms. Jennifer Raffoul	-	Member

Secretariat

Ms. Chantal La Roche	-	Secretary
Ms. Simone Yallery	-	Assistant Secretary

ABSENT/EXCUSED

Mr. Daniel Dookie	-	Member
Mr. Wayne Sturge	-	Member
Mr. Clarence Rambharat	-	Member

COMMENCEMENT

- 1.1 The meeting was called to order by the Chairman at 10:40 a.m.

ANNOUNCEMENTS

- 1.2 The Chairman advised that the following Members would be absent from the day's meeting:
- Mr. Daniel Dookie
 - Mr. Clarence Rambharat (conflicting engagement)
 - Mr. Wayne Sturge (conflicting engagement)

CONFIRMATION OF MINUTES

- 2.1 There being no corrections, the Minutes were confirmed on a motion moved by Dr. Surujrattan Rambachan and seconded by Mr. David Lee.

MATTERS ARISING FROM MINUTES

- 3.1 The Chairman brought the following matters to the attention of Members:

Per Item 3.1 (a)

- e) The O.W.T.U. was informed of the Committee's decision that no further extensions of time would be granted.

Per Item 3.1 (b)

- f) No response has been received from the Director of Public Prosecution (D.P.P.), on the recommendations on the insurance industry contained in the Colman Commission of Enquiry Report.
- g) The following Draft Regulations made under Clause 279 of the Insurance Bill, 2016 were circulated to Members:
 - The Insurance (Capital Adequacy) Regulations, 2017;
 - The Insurance (Caribbean Policy Premium Method) Regulations, 2017;
 - The Insurance (Financial Condition Report for General Insurance) Regulations, 2017;
 - The Insurance (Approved Securities) Regulations, 2017;
 - Central Bank (Payment of Supervisory Fees and Charges) (Amendment) Regulations, 2017;
 - The Insurance (Companies) Registration Regulations, 2017;
 - The Insurance (Financial Condition Report for Long-Term Insurance) Regulations, 2017;
 - The Insurance (Intermediaries) Regulations, 2017;
 - The Insurance (Pension Fund Plan Investments) Regulations, 2017;
 - The Insurance (Pension Fund Plans Registration Fees) Regulations, 2017; and
 - The Insurance (Participating Account) Regulations, 2017.

***Representatives of Association of Trinidad and Tobago Insurance Companies (ATTIC)
were invited to join the meeting at this time***

**DISCUSSIONS WITH THE ASSOCIATION OF TRINIDAD AND TOBAGO
INSURANCE COMPANIES**

- 4.1 The Chairman welcomed the representatives of the Association of Trinidad and Tobago Insurance Companies (ATTIC) and asked them to introduce themselves and make opening remarks.
- 4.2 Representing ATTIC were:
 - Mr. James Camacho - President
 - Mr. Paul Traboulay - Vice President (General)
 - Mr. Andrew Ferguson - Vice President (Life)
 - Mr. Baliram Sawh - Director
 - Mr. Douglas Camacho - Member Insurance Bill Committee
- 4.3 The representatives of ATTIC made a PowerPoint presentation during which certain matters were raised for the consideration of the Committee. These are outlined in Appendix I to these Minutes.

- 4.4 At the end of the presentation, the Chairman thanked the representatives of ATTIC for their attendance and excused them from the meeting.

ADJOURNMENT

- 5.1 There being no other business, the Chairman thanked Members and adjourned the meeting to a date to be fixed.
- 5.2 The adjournment was taken at 12:15 p.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

April 5, 2017



JOINT SELECT COMMITTEE ON THE INSURANCE BILL, 2016

MINUTES OF THE SIXTH MEETING HELD IN THE ARNOLD THOMASOS MEETING ROOM (WEST), LEVEL 6, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT OF SPAIN ON MAY 24TH, 2017 at 10:30 a.m.

PRESENT

Committee Members

Mr. Colm Imbert, MP	-	Chairman
Mr. Faris Al-Rawi, MP	-	Vice Chairman
Mr. David Lee, MP	-	Member
Mr. Clarence Rambharat	-	Member
Dr. Lester Henry	-	Member
Mr. Daniel Dookie	-	Member
Ms. Jennifer Raffoul	-	Member

Secretariat

Ms. Chantal La Roche	-	Secretary
Ms. Simone Yallery	-	Assistant Secretary

ABSENT/EXCUSED

Ms. Marlene McDonald, MP	-	Member
Dr. Surujrattan Rambachan, MP	-	Member
Mr. Fitzgerald Hinds, MP	-	Member
Mr. Wayne Sturge	-	Member
Mr. Stephen Creese	-	Member

COMMENCEMENT

- 1.1 The meeting was called to order by the Chairman at 10:33 a.m.

ANNOUNCEMENTS

- 2.1 The Chairman advised that the following Members asked to be excused the day's meeting:
- a) Ms. Marlene McDonald (conflicting engagement).
 - b) Mr. Fitzgerald Hinds (conflicting engagement).

CONFIRMATION OF MINUTES

- 3.1 There being no corrections, the Minutes were confirmed on a motion moved by Mr. David Lee and seconded by Mr. Daniel Dookie.

MATTERS ARISING FROM MINUTES

- 4.1 The Chairman brought the following matters to the attention of Members:

Per Item 3.1 (b)

- h) A response was received from the Director of Public Prosecutions dated April 20, 2017 in which he advised of his inability to accede to the Committee's request to obtain the recommendations on the insurance industry contained in the Colman Commission of Enquiry Report into CLF/CLICO.

Per Items 4.1 – 4.4

- i) The Association of Trinidad and Tobago Insurance Companies (ATTIC) submitted the following documents as requested by the Committee:
- Strict Liability Offences in the Insurance Bill: ATTIC's Objections in Principle and in Comparative Perspective;
 - Strict Liability Offences in the Insurance Bill and the Impact of Clause 254 (8); and
 - "Note on Strict Liability in the Insurance Bill – Edward Fitzgerald QC CBE and Joseph Middleton".

DISCUSSIONS WITH THE CENTRAL BANK OF TRINIDAD AND TOBAGO

- 5.1 The Chairman advised Members that the Central Bank of Trinidad and Tobago submitted comments on the Insurance Bill, 2016 ("the Bill") which were circulated to Members.

(Meeting suspended)

Representatives of Central Bank of Trinidad and Tobago (CBTT) were invited to join the meeting at this time

- 5.2 The meeting resumed and the Chairman welcomed the representatives of the CBTT and asked them to introduce themselves.

- 5.3 Representing CBTT were:

▪ Mrs. Michelle Chong Tai - Bell	Inspector of Financial Institutions, Financial Institutions Supervision Department
▪ Mrs. Michelle Francis-Pantor	Deputy Inspector Banks, Non- Banks and Payment Systems Oversight, Financial Institutions Supervision Department
▪ Ms. Alana Mykoo	FISD Officer, Financial Institutions Supervision Department

▪ Mr. Rene Singh	Legal Counsel II, Legal, Contract and Corporate Secretariat Services
▪ Ms. Deborah Boynes	Senior Legal Counsel, Legal, Contract and Corporate Secretariat Services

5.4 The following officials from the Chief Parliamentary Counsel's Department and the Office of the Attorney General and Legal Affairs were present to assist the Committee:

Chief Parliamentary Counsel's Department

Ms. Lorraine John	Assistant Chief Parliamentary Counsel
Ms. Megan Doyle	Parliamentary Counsel I

Office of the Attorney General and Legal Affairs

Ms. Vyana Sharma Legal Counsel

5.5 Mrs. Chong Tai - Bell made opening remarks and opined that the Bill seeks to rectify deficiencies in the legislative regime for the insurance industry and ensure compliance with the globally accepted framework for effective supervision of the insurance sector.

5.6 Issues discussed included:

- The 80/20 rule which requires that insurance companies should invest no less than 80 per cent in Trinidad and Tobago assets and no more than 20 per cent in foreign assets;
- The severity of fines and penalties in the Bill;
- The definitions of “self-insurance”, “privately administered pension fund plans” and “annuity”
- Clause 19 of the Bill on the non-application of Part III of the Bill to privately administered pension fund plan, an association of underwriters, an intermediary or an insurance consultant;
- The protection of consumers and market conduct;
- Capital adequacy and the limit on mutual funds and Collective Investment Schemes; and
- The treatment of Lloyd’s as an underwriting association versus a separate entity.

5.7 CBTT's comments on submissions made by ATTIC, IBATT and Lloyd's are at **Appendix I** to these Minutes.

- 5.8 At the end of the presentation, the Chairman thanked the representatives of CBTT for their attendance and excused them from the meeting.

OTHER BUSINESS

- 6.1 The Committee requested that Central Bank provide written clarification on which offences in the Bill should be treated indictably, which offences should be treated summarily and the rationale for each recommendation.

ADJOURNMENT

- 7.1 There being no other business, the Chairman thanked Members and adjourned the meeting to Friday June 9, 2017 at 10:00 a.m.

- 7.2 The adjournment was taken at 11:32 a.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

May 24, 2017



JOINT SELECT COMMITTEE ON THE INSURANCE BILL, 2016

MINUTES OF THE SEVENTH MEETING HELD IN THE A.N.R ROBINSON MEETING ROOM (WEST), LEVEL 9, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT OF SPAIN ON JUNE 9TH, 2017 at 10:00 a.m.

PRESENT

Committee Members

Mr. Colm Imbert, MP	-	Chairman
Ms. Marlene McDonald, MP	-	Member
Dr. Surujrattan Rambachan, MP	-	Member
Mr. David Lee, MP	-	Member
Mr. Clarence Rambharat	-	Member
Mr. Daniel Dookie	-	Member
Mr. Stephen Creese	-	Member

Secretariat

Ms. Chantal La Roche	-	Secretary
Ms. Simone Yallery	-	Assistant Secretary

ABSENT/EXCUSED

Mr. Faris Al-Rawi, MP	-	Vice Chairman
Mr. Fitzgerald Hinds, MP	-	Member
Mr. Wayne Sturge	-	Member
Dr. Lester Henry	-	Member
Ms. Jennifer Raffoul	-	Member

COMMENCEMENT

- 1.1 The meeting was called to order by the Chairman at 10:05 a.m.

ANNOUNCEMENTS

- 2.1 The Chairman advised that the following Members asked to be excused the day's meeting:
- c) Ms. Jennifer Raffoul (conflicting engagement).
 - d) Mr. Wayne Sturge (conflicting engagement).
 - e) Mr. Faris Al-Rawi (conflicting meeting).

CONFIRMATION OF MINUTES

- 3.1 There being no corrections, the Minutes were confirmed on a motion moved by Mr. Daniel Dookie and seconded by Mr. Clarence Rambharat.

MATTERS ARISING FROM MINUTES

- 4.1 The Chairman brought the following matter to the attention of Members:

Per Item 6.1

- j) Two (2) submissions were received from the Central Bank of Trinidad and Tobago (CBTT):
- Appendix I- CBTT Feedback to the JSC on Comments from the Insurance Industry on Capital Adequacy”; and
 - Appendix II – Offences under the Insurance Bill No. 9 of 2016 – Feedback from Central Bank.

COMMENCEMENT OF THE CLAUSE BY CLAUSE EXAMINATION OF THE BILL

Representatives of Office of the Chief Parliamentary Counsel were invited to join the meeting at this time

- 5.1 The following officials from the Chief Parliamentary Counsel’s Department were present to assist the Committee:

Chief Parliamentary Counsel’s Department

Mr. Ian MacIntyre	Chief Parliamentary Counsel
Ms. Megan Doyle	Parliamentary Counsel I

- 5.2 Following some discussions, the CPC’s Department was instructed to provide the following by Friday June 16, 2017 by 12:00 p.m.

- (a) A table detailing all the clauses of the Insurance Bill, 2016, and inclusive of:
- comments and/or concerns on each clause;
 - recommendations by stakeholders and members of the public including amendments, deletions, and/or insertions; and
 - recommendations of the Office of Chief Parliamentary Counsel on each clause; i.e. agreement or disagreement with comments and/or proposed amendments, deletions, and/or insertions.
- (b) A summarised version of the table at 5.3 (a), highlighting only clauses which require further discussion or consideration.

- 5.3 The Secretariat was directed to circulate the documents to Members on June 16, 2017.

- 5.4 The Chairman thanked the representatives of CPC's Department for their attendance and excused them from the meeting.

OTHER BUSINESS

- 6.1 The Chairman advised Members that the Committee received comments from ATTIC on CBT's submission and that the submissions were circulated by the Secretariat.

ADJOURNMENT

- 7.1 There being no other business, the Chairman thanked Members and adjourned the meeting to Friday June 23, 2017 at 10:00 a.m.
- 7.2 The adjournment was taken at 10:25 a.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

June 9, 2017



JOINT SELECT COMMITTEE ON THE INSURANCE BILL, 2016

MINUTES OF THE EIGHTH MEETING HELD IN THE A.N.R ROBINSON MEETING ROOM (WEST), LEVEL 9, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT OF SPAIN ON JUNE 23RD, 2017 at 10:00 a.m.

PRESENT

Committee Members

Mr. Colm Imbert, MP	-	Chairman
Mr. Faris Al-Rawi, MP	-	Vice Chairman
Mr. Fitzgerald Hinds, MP	-	Member
Mr. David Lee, MP	-	Member
Mr. Clarence Rambharat	-	Member
Ms. Jennifer Raffoul	-	Member

Secretariat

Ms. Chantal La Roche	-	Secretary
Ms. Simone Yallery	-	Assistant Secretary

ABSENT/EXCUSED

Ms. Marlene McDonald, MP	-	Member
Dr. Surujrattan Rambachan, MP	-	Member
Mr. Daniel Dookie	-	Member
Mr. Stephen Creese	-	Member
Mr. Wayne Sturge	-	Member
Dr. Lester Henry	-	Member

COMMENCEMENT

1.1 The meeting was called to order by the Chairman at 10:22 a.m.

ANNOUNCEMENTS

- 2.1 The Chairman advised that the following Members asked to be excused the day's meeting:
- f) Mr. Daniel Dookie (conflicting engagement).
 - g) Dr. Lester Henry (conflicting engagement).
 - h) Mr. Wayne Sturge (conflicting engagement).

- i) Dr. Surujrattan Rambachan (emergency).
- j) Mr. Stephen Creese (conflicting meeting).

CONFIRMATION OF MINUTES

- 3.1 There being no corrections, the Minutes were confirmed on a motion moved by Mr. Clarence Rambharat and seconded by Mr. David Lee.

MATTERS ARISING FROM MINUTES

- 4.1 The Chairman brought the following matter to the attention of Members:

Per Item 5.2

- k) Two (2) submissions were received from the Office of the Chief Parliamentary Counsel (CPC) and were circulated by the Secretariat:
- “Matrix of the Insurance Bill, 2016 detailing comments of Central Bank, ATTIC, Lloyd’s of London, CPC and IBATT”; and
 - “Matrix of Clauses that require policy decisions from the JSC”.

COMMENCEMENT OF THE CLAUSE BY CLAUSE EXAMINATION OF THE BILL

Representatives of Office of the Chief Parliamentary Counsel were invited to join the meeting at this time

- 5.1 The following officials from the Office of the Chief Parliamentary Counsel were present to assist the Committee:

Chief Parliamentary Counsel’s Department

Ms. Lorraine John	Assistant Chief Parliamentary Counsel
Ms. Megan Doyle	Parliamentary Counsel I

- 5.2 The clause by clause consideration of the Bill proceeded as indicated in **Appendix I** to these Minutes.
- 5.3 The Committee agreed to continue its clause by clause analysis at the next meeting.
- 5.4 The Chairman thanked the representatives of CPC’s Department for their attendance and excused them from the meeting.

OTHER BUSINESS

- 6.1 The Chairman proposed and the Committee agreed that the Ninth Meeting will be held on Tuesday July 11, 2017 at 10:30 a.m.

ADJOURNMENT

7.1 There being no other business, the Chairman thanked Members and adjourned the meeting to Tuesday July 11, 2017 at 10:30 a.m.

7.2 The adjournment was taken at 11:55 a.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

June 27, 2017

Clause by Clause examination of the Insurance Bill, 2016

Friday June 23, 2017

Clause	Issue Raised	Decision Taken
1	None	Agreed
2	None	Agreed
3	None	Agreed
4	Clause 4 (1) Delete definition of “annuity contract” in Bill and replace with : “annuity contract” means a contract whereby one party undertakes in return for a consideration from another party to provide an annuity, or what would be an annuity except that the periodic payments may be unequal in amount, for a term dependent solely or partly on the life of a person.	Agreed
	Clause 4 (1) - Change "registered professional in his professional capacity" to "professional who is subject to a relevant oversight body, in his professional capacity" The Central Bank is not wedded to the idea of regulating “Insurance consultants” however defined. This was a decision of the previous Minister of Finance in the late stages of development of the Bill. Therefore there are limited provisions in the Bill dealing with insurance consultants. Therefore the central Bank proposes three options and will leave it to the CPC to decide: - Delete all references to “insurance consultants” altogether - Leave as per the 2016 Bill as laid - Change as per the Bank’s original submission	Recommended that the definition remain as drafted in the Bill.
	Clause 4 (1) In the definition of “participating account”. Reference to be changed from 43(1) (a) to 43 (1).	Agreed

Clause	Issue Raised	Decision Taken
	Clause 4 (1) - In the definition of “privately administered pension fund plan” change definition to: "privately administered pension fund plan" means a plan referred to in section 217. - The current definition does not cater for pension plans established by statutory bodies. Also, the Income Tax status of the plan is not relevant to the purposes of the Bill which is to ensure oversight over plans established under trust, whether or not approved by the Board of Inland Revenue.	Agreed
	Clause 4 (1) In the definition of "self- insurance", change definition to: "self-insurance" means the practice of (1) a company to provide benefits, other than for profit, for its employees or their dependents; or (2) a Friendly Society registered under the Friendly Society Act or a trade union registered under the Trade Union Act to provide benefits to its members or their dependents, other than for profit, and to assume responsibility for certain of its own losses including losses arising from the provision of such benefits "self-insurance" is not considered to be insurance business for the purposes of the Bill. "member" in the Bill is not circumscribed and therefore leaves room for wider interpretation of self-insurance than intended.	Agreed
	Clause 4 (1) Insert a definition for “collective investment scheme”.	Agreed
	Clause 4 (1) Insert a definition for “joint venture”	Suggested change not accepted. Do not insert a definition of “joint venture”.
	Clause 4 (1) Adjust the definition of “look through method”	Suggested redraft not accepted. Definition to remain as drafted in the Bill.
	Clause 4 (1) Amend the definition of “credit exposure” to include the words “net of specific provision”.	Deferred
	Clause 4 (1) Amend “insurance consultant” to specifically exclude brokers.	Agreed
	Clause 4 (1) Amend definition of “insurance business” to include reinsurance	Suggested change not accepted. Definition to remain as drafted.
5	None	Agreed

Clause	Issue Raised	Decision Taken
6	Clause 6 (1): - Change definition of “control” to: “control” means the power of a person, either alone or with an affiliate or relative or connected party or other person, or by an agreement or otherwise, to— (a) exercise more than fifty per cent of the voting rights at any meeting of shareholders of an entity; (b) elect a majority of the directors of an entity; (c) secure that the business and affairs of an entity are conducted in accordance with his wishes; or (d) directly or indirectly exercise dominant influence over the conduct of the business and affairs of an entity;”.	Agreed
10	Clause 10(8) – whether to change the offence to be a hybrid offence.	Agreed
11	Clause 11(6): - The Bill is silent on whether this offence is summary or indictable. Amend the Bill to state whether or not the offence in this Clause is a summary or indictable or hybrid offence. - Change the offence to be summary or hybrid	Change offence to be a hybrid offence .
12	None	Agreed
13	None	Agreed
14	None	Agreed
15	None	Agreed
16	Clause 16 (2): Amend to include the ability to share with the BIR to give effect to a declared agreement, i.e. include sections 6A(2) and (3) of the Insurance Act Chap. 84:01 (as amended by the Tax Information Agreements (United States of America) Act, 2017.	Agreed
17	None	Agreed
18	None	Agreed
19	None	Agreed
20	None	Agreed
21	Clause 21(5) - "its activities relate only to" should be changed to "its activities in Trinidad and Tobago relate only to". This clarifies that if the foreign company only does reinsurance business in Trinidad and Tobago registration is not required, whether or not it does business other than reinsurance outside of Trinidad and Tobago. Clause 21(5)- Direct placement of insurance with foreign providers should be allowed especially for marine and large	Agreed
		Deferred. CPC to determine the extent of this amendment.

Clause	Issue Raised	Decision Taken
	plants and for specialty policies not available locally, and may be subject to the Client signing a written acknowledgment that it is aware: (a) the insurance company is registered and operating in another territory; (b) is not registered in Trinidad and Tobago, (c) of the risks associated therewith; and (d) that any and action on the policy must be taken in the foreign courts subject to the jurisdictional and legal requirements set out in the contract of insurance.	
	• Clause 21(9): whether to change the offences to be indictable on hybrid.	Change offence to be an indictable offence .
22	None	Agreed
23	None	Agreed
24	• Clause 24 (5): whether to change offence to indictable or hybrid.	Change offence to be a hybrid offence .
25	None	Agreed
26	None	Agreed
27	1. In Clause 27(1)(a): change "establish a branch" to "establish a branch or agency". 2. In Clause 27 (1)(b): change "close or relocate a branch" to "close or relocate a branch or agency". This requirement should also apply to an agency.	Agreed to changes in Clauses 27 (1)(a) and 27 (1)(b) . CPC to add "unit" to definitions in both clauses, however this is subject to determining the use of "unit" in the Act.
	3. Consider establishing a timeframe for approvals to be given. CBITT to respond to request/approvals within 20 working days. 4. Considered the recommended clause: "Notwithstanding any other section in the Act, Central Bank, should respond to all requests or approvals under this Act within 20 working days. If the Inspector does not raise any objections or requests further information by the end of 20 working days from the submission of all required documents, the licensee can proceed as if the request is approved."	Agreed to recommended clause. However, CPC to delete "20 working days" and replace it with "a reasonable time".
	5. The Bill places significant requirements on licensees to respond to requests and submit filings on certain deadlines yet no accountability is placed on the Central Bank. These include but not limited to: •Clarification on the treatment of assets •Requests for decisions on amalgamation •Request for Central Bank reports (Insurance and Pensions Report last published 2007).	Agreed

Clause	Issue Raised	Decision Taken
	Regulations should specify the information required under the clause. Present Regulations do not specify this.	
28	None	Agreed
29	Clause 29(2): The Bill is silent on whether this offence is summary or indictable. Amend the Bill to state whether or not the offence in this Clause is an indictable or hybrid offence.	Change offence to be a hybrid offence .
30	None	Agreed
31	None	Agreed
32	None	Agreed
33	Clause 33 (6): The Bill is silent on whether this offence is summary or indictable. Amend the Bill to state whether or not the offence in this Clause is an indictable or hybrid offence.	Change offence to be a hybrid offence .
34	None	Agreed
35	Clause 35(5): whether to change offence to indictable or hybrid.	Change offence to be a hybrid offence .
36	None	Agreed
37	None	Agreed
38	Clause 38 (3): whether to change offence to indictable or hybrid.	Change offence to be a hybrid offence .
39	None	Agreed
40	None	Agreed
41	None	Agreed
42	None	Agreed
43	None	Agreed
44	Clause 44(6): whether to change offence to summary or hybrid.	Change offence to be an indictable offence .
45	Clause 45 (2): whether to change offence to summary or hybrid	Change offence to be a summary offence .
46	None	Agreed
47	Clause 47(1): Change “shall” to “may”. Sub clause (2) allows an alternative course of action. Hence the use of the word “shall” could be misleading. Also in circumstances where there are no non-financial entities in the group, restructuring may not be necessary.	Agreed to delete “shall” and insert “may”.
	Clause 47(3): Change “shall” to “may”. Align with the equivalent section in the Financial Institutions Act, that is, section 67 (3).	Agreed to delete “shall” and insert “may”.

Clause	Issue Raised	Decision Taken
	Either - Insert of new clause 46B in the Stamp Duty Act Chap 76:01; Or - a new clause in the Insurance Bill. “Notwithstanding anything in the Act, stamp duty and other statutory charges shall not be chargeable on any instrument made for the purposes of or in connection with ensuring compliance with the requirements of the Insurance Act.”	No new clause will be added.
48	None	Agreed
49	None	Agreed
50	Clause 50(4): whether to change offence to indictable or hybrid	Change offence to be an indictable offence .
51	Clause 51(8): whether to change offence to indictable or hybrid.	Change offence to be a hybrid offence .
52	Clause 52(4): whether to change offence to summary or hybrid	Change offence to be a hybrid offence .
	Clause 52(15)(a): whether to change offence to indictable or hybrid <i>or summary</i>.	Change offence to be a summary offence .
	Clause 52(15)(b): whether to change offence to summary or hybrid.	Change offence to be a hybrid offence .
53	Clause 53(13)(a): whether to change offence to indictable or hybrid	Change offence to be a hybrid offence .
	Clause 53(13)(b): whether to change offence to summary or hybrid.	Change offence to be a hybrid offence .
54	Clause 54(14): whether to change offence to summary or hybrid.	Change offence to be a hybrid offence .
55	None	Agreed
56	None	Agreed
57	None	Agreed
58	None	Agreed
59	None	Agreed
60	None	Agreed
61	None	Agreed
62	None	Agreed
63	Clause 63 (3): whether to change offence to summary or hybrid	Change offence to be a hybrid offence .
64	None	Agreed

Clause	Issue Raised	Decision Taken
65	• Clause 65(12): whether to change all offences to indictable or hybrid.	Change offence to be an indictable offence .
	• Clause 65(13): whether to change offence to indictable or hybrid	Change offence to be an indictable offence .
66	None	Agreed
67	• Clause 67(2) – whether to change offence to a hybrid offence.	Change offence to be a summary offence .
	• Clause 67(3): Change "that pose material risks to the insurer or financial holding company" to "that in the opinion of the directors have material adverse effects on the financial condition of the insurer or financial holding company and require prompt rectification." • The current language of the Bill is too open ended. The proposed wording is akin to the language of Section 369 of the Canadian Insurance Act.	Agreed.
68	• Clause 68(1): Composition of audit committee. ○ Reduce the number of independent directors to one. ○ No definition of independence in the Bill.	Change is not recommended . Retain clause 68 (1) as drafted in Insurance Bill, 2016.
	• Clause 68(5): Independent Director - Limit term of Director to eight (8) years. Director connectivity be addressed. Limited available and willing talent pool. Provision may not strengthen corporate governance.	Change is not recommended . Retain clause 68 (5) as drafted in Bill.
69	None	Agreed
70	None	Agreed
71	None	Agreed
72	None	Agreed
73	None	Agreed
74	None	Agreed
75	None	Agreed
76	None	Agreed
77	• Clause 77(5) - The Bill is silent on whether the offences under this clause are summary or indictable. Amend the Bill to state whether or not the offences in this Clause are indictable or hybrid offences.	Change offence to be an indictable offence . Fine will now be five (5) million dollars and imprisonment for ten (10) years.
77 (6)	• Clause 77(6) – whether to change offences to indictable or hybrid.	Change offence to be an indictable offence . However, CPC to review: • the effect of 77 (6) (a) & (b). • the definition of “audit entity”.
78	None	Agreed

Clause	Issue Raised	Decision Taken
79	None	Agreed
80	None	Agreed
81	None	Agreed
82	Clause 82 (5) Delete the words "capital adequacy" so that failure to comply with both capital adequacy and liquidity requirements is an offence.	Agreed to delete the words "capital adequacy".
	Clause 82 (5): Whether to change offence to indictable or hybrid.	Change offence to be a hybrid offence .
83	None	Agreed
84	Whether to change offence to indictable or hybrid.	Change offence to be a hybrid offence .
85	Clause 85 (1): Investment in T&T assets - Reduce investment in assets in T&T from 75% to 60%. Paucity of domestic investment opportunity - Potential of increased systemic risk - Uneven playing field with respect to investments - Investments in assets of CARICOM origin to be reviewed. - The requirement to match liabilities with a specific percentage of local assets is historically a policy position of the Government to encourage local investment. The maximum permissible share of foreign assets has been 20% for many years. The Bill increases this proportion to 25% and ATTIC proposes to increase it to 40%.	Agreed to change the percentages to 70% (local) and 30% (foreign).
	Clause 85(4): Liability in respect of foreign currency policies - Investment in foreign assets to be no less than 75% of foreign currency liability. - There are provisions within the risk based capital regulation whereby the insurer is required to hold capital as a buffer against foreign exchange mismatch risks. Accordingly the Central Bank does not object to ATTIC's proposal to further increase the permissible foreign assets and/or to eliminate the CARICOM exception if the JSC is so minded.	Change the percentages to 70% (local) and 30% (foreign).
86	Clause 86(6): whether to change offence to indictable or hybrid.	Change offence to be a hybrid offence .
87	None	Agreed
88	None	Agreed
89	None	Agreed
90	None	Agreed

Clause	Issue Raised	Decision Taken
91	Clause 91(2): The Bill is silent on whether this offence is summary or indictable. Amend the Bill to state whether or not the offence in this Clause is a summary or hybrid offence.	Change offence to be a hybrid offence .
92	None	Agreed
93	None	Agreed
94	None	Agreed
95	None	Agreed
96	None	Agreed
97	None	Agreed
98	None	Agreed
99	None	Agreed
100	None	Agreed
101	Clause 101(8): whether to change offence to indictable or hybrid.	Change offence to be a hybrid offence .
102	None	Agreed
103	None	Agreed
104	None	Agreed
105	None	Agreed
106	None	Agreed
107	None	Agreed
108	Clause 108(8): whether to change offence to summary or hybrid.	Change offence to be a summary offence .
109	None	Agreed
110	Clause 110(8): whether to change offence to indictable or hybrid.	Change offence to be a hybrid offence .
	Clause 110(9): whether to change offence to indictable or hybrid.	Change offence to be a hybrid offence .
111	None	Agreed
112	Clause 112(13): whether to change all offences to summary or hybrid.	Deferred: CPC to review clause
113	Clause 113 (2): Whether section 113(2)(d) should be deleted and that the current conditions governing registration remain in force.	Not recommended. Clause 113(2) (d) to remain as drafted.
114	Clause 114 (3): - Whether CBTT should consult before imposing conditions for registration. - Removal of the requirement for brokerage staff to be registered, or CBTT identify with specificity: (a) The staff/ positions to be so registered;	Not recommended. Clause 114 (3) to remain as drafted.

Clause	Issue Raised	Decision Taken
	(b) The rationale as the brokerage is registered as there is a cost; (c) The framework for getting this in position and the agency responsible for administering and effecting same. • Sales representatives in brokerages be exempted from the continuous education requirement.	

June 27, 2017



JOINT SELECT COMMITTEE ON THE INSURANCE BILL, 2016

MINUTES OF THE NINTH MEETING HELD IN THE A.N.R ROBINSON MEETING ROOM (WEST), LEVEL 9, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT OF SPAIN ON JULY 11TH, 2017 at 10:30 a.m.

PRESENT

Committee Members

Mr. Colm Imbert, MP	-	Chairman
Mr. Faris Al-Rawi, MP	-	Vice Chairman
Mr. Fitzgerald Hinds, MP	-	Member
Dr. Surujrattan Rambachan, MP	-	Member
Mr. Daniel Dookie	-	Member
Mr. Stephen Creese	-	Member
Ms. Jennifer Raffoul	-	Member

Secretariat

Ms. Chantal La Roche	-	Secretary
Ms. Simone Yallery	-	Assistant Secretary

ABSENT/EXCUSED

Ms. Marlene McDonald, MP	-	Member
Mr. David Lee, MP	-	Member
Mr. Clarence Rambharat	-	Member
Mr. Wayne Sturge	-	Member
Dr. Lester Henry	-	Member

COMMENCEMENT

- 1.1 The meeting was called to order by the Chairman at 10:52 a.m.

ANNOUNCEMENTS

- 2.1 The Chairman advised that the following Members asked to be excused from the day's meeting:
- k) Dr. Lester Henry
 - l) Mr. Wayne Sturge (conflicting engagement)
 - m) Mr. Clarence Rambharat

CONFIRMATION OF MINUTES

- 3.1 There being no corrections, the Minutes of the Eighth Meeting were confirmed on a motion moved by Mr. Fitzgerald Hinds and seconded by Ms. Jennifer Raffoul.

MATTERS ARISING FROM MINUTES

- 4.1 There were no matters arising from the Minutes of the Eighth Meeting.

RECEIPT OF LATE SUBMISSION BY INSURANCE BROKERS OF TRINIDAD AND TOBAGO (IBATT)

- 5.1 The Chairman informed the Committee that the Secretariat received two late submissions from IBATT.
- 5.2 The Chairman proposed and Members that the submissions would be circulated and considered during the continuation of clause by clause examination of the Bill.

CLAUSE BY CLAUSE EXAMINATION OF THE BILL

Representatives of Office of the Chief Parliamentary Counsel were invited to join the meeting at this time

- 6.1 The following officials from the Office of the Chief Parliamentary Counsel were present to assist the Committee:

Chief Parliamentary Counsel's Department

Ms. Lorraine John	Assistant Chief Parliamentary Counsel
Ms. Megan Doyle	Parliamentary Counsel I

- 6.2 The clause by clause consideration of the Bill continued as indicated in **Appendix I** to these Minutes.
- 6.3 The Committee examined clauses 115 to 255 and agreed to continue clause by clause analysis at the next meeting.
- 6.4 The Chairman thanked the representatives of CPC's Department for their attendance and excused them from the meeting.

OTHER BUSINESS

- 7.1 The Chairman requested that the Chief Parliamentary Counsel's Department provide further clarification by Friday July 14, 2017 as follows:
- i. Clause 140 (provide further information from Central Bank on the inclusion of cases of major loss and the effect on policy of sub clause 5);

- ii. Clause 197 (provide further information from Central Bank on endowment policies);
- iii. Clause 251 (definition of “relevant date” and consequential amendments to Financial Institutions Act and Securities Act); and
- iv. Clauses 254 (possible inclusion of a mens rea).

7.2 Mr. Al-Rawi gave an undertaking to provide further information on:

- i. the proposal to delete Clause 136(3);
- ii. the “low risk” designation of general insurance business of agencies and brokerages for Anti Money Laundering/Combating Financing of Terrorism (AML/CFT) by the Central Bank of Trinidad and Tobago; and
- iii. whether the requirement would more suitably be placed in Proceeds of Crime Act or related regulations.

7.3 The Chairman proposed and the Committee agreed that the Tenth Meeting will be held on Tuesday July 18, 2017 at 10:30 a.m.

ADJOURNMENT

8.1 There being no other business, the Chairman thanked Members and adjourned the meeting to Tuesday July 18, 2017 at 10:30 a.m.

8.2 The adjournment was taken at 12:36 p.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

July 14, 2017

APPENDIX I

Clause by Clause examination of the Insurance Bill, 2016

Tuesday July 12, 2017

Clause	Issue Raised	Decision Taken
115	Clause 115 (1) (a): whether to delete clause 115 (1)(a)?	Suggested change is not accepted. Clause to remain in Bill.
	Clause 115 (4): whether to change offence to summary or hybrid?	Change offence to be a summary offence.
116	Indemnity cover and the increase in the minimum stated capital for brokers	Sub clauses (1) and (2) to remain as drafted in Bill.
	Clause 116 (6): whether to change offence to summary or hybrid?	Change offence to be a summary offence.
117	Clause 117 (6): whether to change offence to summary or hybrid?	Change offence to be a summary offence.
118	None	Agreed
119	Clause 119: Persons with a certain level of experience and age in the business should be exempted from this requirement. CBTT should identify the level of training and education required for both registration and continuous registration before the Bill is advanced.	Suggested change not accepted.
120 - 122	None	Agreed
123	Clause 123 (5): whether to change offence to summary or hybrid?	Change offence to be an indictable offence.
	Clause 123 (6): whether to change offence to summary or hybrid?	Change offence to be an indictable offence.
124	None	Agreed
125	- Request to include insurance consultants in Clause 125. - This clause seeks to prohibit insurance companies from compensating unregistered persons for the placement or negotiation of insurance on their behalf. Insurance consultants are remunerated by the client for a fee and not by the insurer. Therefore this clause is not applicable to them.	Agreed that Clause 125 does not apply to insurance consultants.

Clause	Issue Raised	Decision Taken
126	Change references of “salesman” to “sales representative”.	Agreed
	- Whether CBTIT should issue a “statement” with respect to brokerage fee basis presently ongoing with some state enterprises. - Insurers should not be allowed to: (i) rebate premiums to consumers. (ii) give credit to insureds or preferential premium payment terms e.g. premium financing. (iii) “double quote” or offer conflicting terms and conditions to any intermediary or consumers. - If a premium is paid directly to the insurer, then the insurer should remit the commission to the intermediary within ten days of the issuance of the receipt. - Refund premiums should be in the currency in which it was paid and in the form of an Insurers cheques. - Insurance consultants should also be subject to this section. - The encroachment on the insurers ability to sell their products directly and would restrict consumer choice.	Suggested changes not accepted.
127 - 128	None	Agreed
129	Clause 129 (5): whether to change offence to summary or hybrid?	Change offence to be a summary offence.
130	Clause 130 (1): Consider the following: - Whether CBTIT should specify the form and arrangements of the letter to be disclosed to the Customer or alternatively the matters that must be included or covered under same.	Not Agreed

Clause	Issue Raised	Decision Taken
	Clause 130 (1): Consider the following: - Whether CBTT will issue the requisite guidance as part of the implementation and rollout prior to Proclamation of the Act.	Agreed that CBTT will issue the requisite guidance as part of implementation and rollout prior to Proclamation of the Act.
	Clause 130 (2): whether to change offence to summary or hybrid?	Change offence to be a summary offence .
131	Clause 131 (1) (c): Delete "and obtaining the policyholder's signature on the disclosure form set out in Schedule 7" and replace with "and shall comply with the standards on post sale communication as prescribed in Schedule 12 and the form of disclosure set out in Guidelines."	Agreed
	Clause 131 (1) (c): Delete Schedule 7 and renumber the Schedules. (Note that Schedule 12 is the Schedule on Standards of Market Conduct and will become Schedule 11 after Schedule 7 is deleted). Schedule 7 has been drafted in technical language and not plain English.	Agreed
	Clause 131 (1) (c): - The requirement for a signature may not achieve the intent of the Clause to ensure that policyholders can make informed decisions and may preclude subsequent action being taken against an errant intermediary for wilful misrepresentation.	Agreed
	Clause 131 (1) (c): - The Central Bank can supplement the market conduct standards by issuing Guidelines prescribing the form of disclosure.	Agreed
	Clause 131 (2): whether to change offence to indictable or hybrid?	Change offence to be an indictable offence .
	Clause 131 (3): whether to change offence to indictable or hybrid?	Change offence to be an indictable offence .
132	Whether to include a sub-section mandating that “where a broker is to be paid by an insurer from the premium so collected that the insurers remit the payment due to the broker within ten (10) business days of receipt of the said premium by the insurer”.	No change to clause as drafted. Will be addressed through contractual arrangements.

Clause	Issue Raised	Decision Taken
	This would best be addressed through the contractual arrangements between the broker and the insurer and not via the legislation.	
133	- Commissions be deducted prior to paying insurers and that the timeframe for payment of cheques to customers and or insurers by intermediaries be applied. - Removal of the requirement for a brokerage to establish a customer trust account for receipt and payment of customer funds, in respect of each type of insurance for which it is registered. - Implementing Separate Customer Trust Accounts (section 133) is impractical, adds unnecessary cost with no additional real consumer protection and will take an inordinate amount time to implement and manage. Established best practices worldwide do not require separate customer trust accounts. - Whether section 133(5) should be deleted.	Suggested changes not accepted.
	- The requirements for brokers and agencies to establish and maintain consumer trust accounts ensures that policyholders' funds are not co-mingled with the funds of the broker or agency. This is for the protection of consumer. - The Central Bank does not agree that the requirement to implement separate Customer Trust Accounts for each of the two types of insurance business would be impractical to implement. No change is recommended. - Re: cl. 133(5) - Long term insurance contracts provide that coverage by the insurer only takes place when the risk has been accepted by the insurer and the full premium is paid to the insurer. The customer must complete the underwriting process – e.g. medical examinations, etc. Therefore, the brokerage is not entitled to a commission until the insurer accepts the risk and the full premium must be paid to the insurer. This is in keeping with long term insurance contractual provisions and normal market practice. No change is required.	Agreed.

Clause	Issue Raised	Decision Taken
	Clause 133 (8): whether to change offence to indictable or summary?	Change offence to be a summary offence.
134	Clause 134 (1): Whether to amend sub clause (1) to “within ten business days from the date on which it received such monies.”	Change time frame in sub clause (1) to reflect ten (10) business days.
	Clauses 134 (3) and (4): whether to delete sub clauses (3) and (4). Clause 134 (3): makes provision where a brokerage an insurer at the request of the brokerage provides temporary cover in respect of general insurance on credit that the brokerage is liable to the insurer for the premium due. This is not an unreasonable requirement. No change is recommended and no rationale has been provided by IBATT.	Agreed that sub clauses (3) and (4) will remain in Bill.
	Clause 134(4) – change offence to summary or hybrid	Change offence to be a summary offence.
135	Clause 135 (1): Amend so that the words “and credited” be inserted after the word received.	Suggested change not accepted.
	Amend subsection (3) the stipulated timeframe should be ten (10) days as opposed to three (3) days.	Suggested change not accepted.
	Consideration be given to direct payment as the section only refers to payment by cheques. Payments are sometimes made via set off, direct deposit and transfers as opposed to cheques.	Suggested change not accepted.
	The clause must address timely payment of commissions due to the broker.	Suggested change not accepted.
	Clause 135 (1): The term “and credited” is not necessary as Clause 135(1) speaks to cheques in the name of the consumer, not in the name of the agency, brokerage or sales representative	Agreed. Do not include the words “and credited” in Clause 135 (1).
	The purpose of clause 135(3) is to ensure that the funds from the insurer to the broker are not used for any purpose other than to pay claims to the insured. The Central Bank would not object to an increase in the timeframe but no more than five (5) business days.	Agreed that time frame be increased to five (5) business days.

Clause	Issue Raised	Decision Taken
	No change is recommended as all transfers and direct deposits should be made directly by the insurer to the consumer trust account. Clause 135(3) is intended to avoid any potential unreasonable delay in the delivery of funds to consumers.	Agreed that no change is recommended to Clause 135 (3)
	This would best be addressed through the contractual arrangements between the broker and the insurer and not via the legislation.	Agreed
136	Clause 136 (1): The report should be submitted within six (6) months and not sixty business days.	Suggested change not accepted.
	Whether six months is too long a period to receive confirmation of the financial position of a company. No change is recommended.	Agreed. Time frame will remain as sixty (60) business days
	Clause 136 (3) : - Delete Clause 136(3). General insurance business of agencies and brokerages has been designated "low risk" for AML/CFT by the Central Bank of Trinidad and Tobago. Policy proposals are being drafted for submission to NAMLAC¹ to implement a risk based approach to this business. This requirement would more suitably be placed in Proceeds of Crime Act or related regulations.	Deferred. Consideration to be given by Attorney General on this proposed amendment.
137	Either - Delete Section 137; or - CBTT should indicate the reason for monthly submissions. Monthly Accounts (section 137) is impractical and time consuming. Established best practices worldwide do not require monthly reporting in this vein.	Suggested change not accepted.
	Monthly accounts are an existing requirement under the current Insurance (Agents, Brokers, Salesmen and Adjusters)(Registration) Regulations (regulation 11). This is not a requirement to provide monthly financial reports to the Central Bank. The requirement to keep monthly accounts is a requirement to keep reasonably up to date financial accounting books and records.	Agreed
138	None	Agreed

¹ NAMLAC - National Anti-Money Laundering Committee

Clause	Issue Raised	Decision Taken
139	- This section can be abused and the Inspector's ability to act should be limited to where the person is found guilty of misconduct or the Inspector has proof or a prima facie case to conclude that the person falls under the parameters set out in 2(c). - Revisit Clause	Committee does not agree with position advanced. No change to clause as drafted.
	- The requirement is for the Inspector to have reasonable belief before making a report under Clause 139(2). - The Inspector must, therefore, have some objective basis for forming the reasonable belief. Given this standard, there are limits on the ability of the Inspector to abuse the process under Clause 139. The proposal that the report should be made only when the auditor is found guilty does not appear workable. This is because the issue at hand is the professional misconduct of the auditor and the body to make a finding on this point is ICATT which must first have a report or information before it.	Agreed that a balance is reasonably struck.
140	Either delete section 140 entirely	Suggested change not accepted.
	- OR amend subsection (1) to include cases of major loss and not only catastrophe. There are circumstances in relation to large or complex losses, in addition to catastrophes, where engagement of a foreign adjuster would be appropriate for insurer and insured alike. Clause 140 (1): Amend Clause 140 (1) by inserting the words "or complex claim" after the word "catastrophe".	Suggested change accepted. Insert after the word "catastrophe", the words "or complex claim".
	Clause 140 (2): Amend "catastrophe" to "complex claim or catastrophe" in Clause 140(2).	Suggested change accepted and agreed to by Committee.
	Clauses 140 (3), (4) (5) and (6): Consider deleting Clauses 140(3) to 140(6) and place the onus on the insurer to assess the bona fides of the foreign adjuster in keeping with Guidelines to be issued by the Central Bank.	Delete sub clauses (3), (4) and (5). CPC will seek feedback from CBT on the final language and the policy side of sub clause (5). Sub clause (6) will remain in Bill.
	Clause 140(5): whether to change offence to summary or hybrid?	Suggested change no longer applicable as sub clause (5) will be deleted.

Clause	Issue Raised	Decision Taken
	Clause 140(6): whether change offence to summary or hybrid?	Change offence to be a hybrid offence .
141	Clause 141: whether to change all offences to summary or hybrid?	Change offence to be a summary offence .
142 - 143	None	Agreed
144	Clause 144 (6): whether change offence to summary or hybrid?	Change offence to be an indictable offence .
145 - 148	None	Agreed
149	Clause 149: whether to change offence to summary or hybrid?	Change offence to be a hybrid offence .
150 - 154	None	Agreed
155	Clause 155 (10): whether to change offence to summary or hybrid?	Change offences as follows: Clause 155 (10) (a) - Change offence to be an indictable offence. Clause 155 (10) (b) - Change offence to be an indictable offence. Clause 155 (10) (c) - Change offence to be a summary offence. Clause 155 (10) (d) - Change offence to be a summary offence. Clause 155 (10) (e) - Change offence to be a summary offence.
156 - 159	None	Agreed
160	Clause 160 (8): whether to change offence to summary or hybrid?	Change offence to be an indictable offence .
161 -196	None	Agreed
197	Clauses 197 (1) and (14): Change "...showing all policies in respect of which amounts remain payable by the insurer for a	Deferred. CPC to request further information from

Clause	Issue Raised	Decision Taken
	period of seven years..." to "showing all policies with unclaimed moneys..." and in clause 197(14) change "within seven years after the maturity date of the policy" to "within the time which proceedings may be taken for their recovery".	Central Bank of Trinidad and Tobago on: • the endowment policy point, • why was there an exception of seven (7) years for endowment policies, • the frequency of and difficulty with endowment policies.
198 - 224	None	Agreed
225	• Clause 225 (3) and (4): ○ Change offence to summary or hybrid. ○ Increase the fine of \$5,000. ○ In addition to the recommendation from CPC to include a daily fine for continuing offences, particularly in respect of a failure to submit accounts and reports under clauses 226(1) and 227(3), it is suggested that the fine of \$5000.00 is too low and should be increased commensurate with the other fines in the Bill.	In Clause 225 (1), delete the word “commit” and insert the word “commits”. In Clause 225(3), change offence to a hybrid offence in keeping with Clause 254 (1).
226 – 229	None	Agreed
230	• Clause 230 (7): whether offence should be changed to indictable or hybrid?	Change offence to be an indictable offence .
	• Clause 230 (4): Delete sub clause (4)	Suggested change not accepted.
231 – 232	None	Agreed
233	• The increased burden on Lloyd’s. • Clause 233 (1) (a): Maintenance of the status quo of the current legislation and to replace sub clause (1)(a) with the following: “(a) the minimum stated capital that would be required of an insurer that is carrying on the class or classes of business it intends to carry on.	Agreed with CBTT’s position to amend Clause 233 (1) (a).

Clause	Issue Raised	Decision Taken
	- Prioritization of risks ceded to local insurance market. - Prevent leakage to foreign entities - Growth & development of local industry - Limit demand for foreign exchange - Profits retained locally	Suggested change not accepted.
234 – 239	None	Agreed
240	Clause 240 (2): whether to change offence to summary or hybrid?	Change offence to be an indictable offence .
241 – 242	None	Agreed
243	Clause 243 (2): whether to change offence to summary or hybrid?	Change offence to be an indictable offence .
244 – 250	None	Agreed
251	Amend Clause 251 to read :- “251. (1) Summary proceedings for an offence under this Act may, without prejudice to any jurisdiction exercisable apart from this subsection, be taken against a registrant including an unincorporated body, and a financial holding company in any place at which it has a place of business, and against an individual in any place at which he is for the time being located. (2) 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 or within eighteen months after the relevant date. (3) In this section, the “relevant date” means the date on which evidence sufficient in the opinion of the Central Bank of Trinidad and Tobago to justify the institution of summary proceedings comes to its knowledge. (4) For the purpose of subsection (3), a certificate as to the date on which evidence referred to in subsection (3) came to the knowledge of the Central Bank of Trinidad and Tobago shall be conclusive evidence of that fact.” - To treat in a consistent manner with the FIA (section 119) and with the SIA (section 156 B).	Deferred. CPC to improve on the language of the suggested draft of clause and definition of “relevant date”. Check the possible consequential amendments to the Financial Institutions Act and Securities Act.

Clause	Issue Raised	Decision Taken
252 – 253	None	Agreed
254	Clause 254 (1), (2), (3) and (5): - Align Insurance Bill with Canadian and UK legislation and the International Association of Insurance Supervisors. - In Clauses 254(1), (2) and (3) - The Bill is silent on whether this offence is summary or indictable. Offence should be indictable or a hybrid offence.	Deferred. CPC awaiting further clarification from CBTT. CPC to consider: - The qualification of mens rea be included in sub clause (2). - How the system may be abused.
255	Clause 255 (4) (a) and (b): whether to delete 255 4(b) as it is redundant and has led to ATTIC's misconception that an entity can perpetrate a financial fraud and that directors of such entities may be automatically presumed to have also committed the fraud	Agreed to delete Clause 255 (4) (b).

July 14, 2017



JOINT SELECT COMMITTEE ON THE INSURANCE BILL, 2016

MINUTES OF THE TENTH MEETING HELD IN THE A.N.R ROBINSON MEETING ROOM (WEST), LEVEL 9, OFFICE OF THE PARLIAMENT, TOWER D, IWFC, #1A WRIGHTSON ROAD, PORT OF SPAIN ON JULY 18th, 2017 at 10:30 a.m.

PRESENT

Committee Members

Mr. Colm Imbert, MP	-	Chairman
Mr. Faris Al-Rawi, MP	-	Vice Chairman
Mr. Fitzgerald Hinds, MP	-	Member
Dr. Surujrattan Rambachan, MP	-	Member
Mr. Daniel Dookie	-	Member
Mr. Stephen Creese	-	Member
Ms. Jennifer Raffoul	-	Member

Secretariat

Ms. Chantal La Roche	-	Secretary
Ms. Simone Yallery	-	Assistant Secretary

ABSENT/EXCUSED

Ms. Marlene McDonald, MP	-	Member
Mr. David Lee, MP	-	Member
Mr. Clarence Rambharat	-	Member
Mr. Wayne Sturge	-	Member
Dr. Lester Henry	-	Member

COMMENCEMENT

- 1.1 The meeting was called to order by the Chairman at 10:58 a.m.

ANNOUNCEMENTS

- 2.1 The Chairman advised that the following Members asked to be excused from the day's meeting:
- a) Mr. David Lee, MP.
 - b) Mr. Clarence Rambharat (conflicting engagement).
 - c) Mr. Wayne Sturge (conflicting engagement).

CONFIRMATION OF MINUTES

- 3.1 There being no corrections, the Minutes of the Ninth Meeting were confirmed on a motion moved by Mr. Fitzgerald Hinds and seconded by Mr. Daniel Dookie.

MATTERS ARISING FROM MINUTES

- 4.1 The Chairman brought the following matters to the attention of Members:

Per Items 5.1 and 5.2

- a) Submissions received from the Insurance Brokers' Association of Trinidad and Tobago were circulated to all Members via electronic mail.

Per Item 7.1

- b) Submission requested from the Chief Parliamentary Counsel's Department was received and circulated to all Members.

Per Item 7.2

- c) Matter to be discussed during clause by clause consideration of Bill.

CLAUSE BY CLAUSE EXAMINATION OF THE BILL

Representatives of Office of the Chief Parliamentary Counsel were invited to join the meeting at this time

- 5.1 The following officials from the Office of the Chief Parliamentary Counsel were present to assist the Committee:

Chief Parliamentary Counsel's Department

Ms. Lorraine John	Assistant Chief Parliamentary Counsel
Ms. Megan Doyle	Parliamentary Counsel I

- 5.2 The clause by clause consideration of the Bill continued as indicated in **Appendix I** to these Minutes.
- 5.3 The Committee examined the remaining Clauses of the Bill: Clauses 256 to 282, Schedules 1 to 13 and the deferred clauses, which completed the Committee's deliberation of the Bill.
- 5.4 The Chairman thanked the representatives of CPC's Department for their attendance and excused them from the meeting.

OTHER MATTERS

- 6.1 The Chairman informed the Committee that the final report will be circulated by the Secretariat to all Members.
- 6.2 The Chairman expressed his gratitude to Members for their commitment and the tremendous work done by the Committee.

ADJOURNMENT

- 7.1 There being no other business, the Chairman thanked Members and adjourned the meeting.

7.2 The adjournment was taken at 12:33 p.m.

I certify that these Minutes are true and correct.

Chairman

Secretary

July 24, 2016

Clause by Clause examination of the Insurance Bill, 2016

Tuesday July 18, 2017

Clause	Issue Raised	Decision Taken
256	Clause 256: whether to change the offence to indictable or hybrid?	Change offence to be an indictable offence .
257	Clause 257: whether to change offence to indictable or hybrid?	Change offence to be a hybrid offence .
258	Clause 258: whether to change offence to summary or hybrid?	Change offence to be a hybrid offence .
259-260	None	Agreed
261 (3)	Clause 261 (3): whether to change offence to summary or hybrid?	Change offence to be an indictable offence .
262-264	None	Agreed
265	Clause 265: Whether there should be an exemption to Stamp Duty?	Suggested change not accepted
	The transfer of and vesting in, the transferee of an undertaking by a Vesting Order or Scheme of Transfer as a result of a restructuring described in section 47 of this Bill shall not be subject to Stamp Duty.	Agreed
266	Clause 266: Regarding adherence to market conduct. Should confirm whether brokers are included? - Clause 266 is the enabling clause and brokers are included. The word 'registrant' is defined in the Bill to include an 'insurer' and an 'intermediary'. An 'intermediary' is defined in the Bill to include a broker.	Brokers are included. Clause to remain as drafted.
267-277	None	Agreed
278	Clause 278: whether to insurers should be given deadlines to remit claims payments recovered through subrogation to their insureds either through direct collection or contra payments? - Whether insurers should be given deadlines for the settlement of claims?	Agreed that CBTT will issue the requisite guidance as part of implementation and rollout prior to Proclamation of the Act to treat with the concerns of payment of claims.

Clause	Issue Raised	Decision Taken
	Include the provisions of the new section 215 of the Insurance Act (concerning issuing Guidelines under the TIEA. This is in keeping with the recent amendments to the Insurance Act by section 28 of the TIEA.	Agreed
	Clause 278(1) (a) - Include the words “and Regulations “after “this Act”.	Agreed
	279-282	Agreed
Schedules 1-5	None	Agreed
Schedule 6	Schedule 6: whether an administrative fine should be included to treat with breaches of Clauses 226(1) and 227(3)?	Agreed to include administrative fines in the offences. New fine to be: - Criminal Penalty: \$20,000.00 plus \$2,000.00 for each day the offence continues; and - Administrative Fine: \$5000.00
	Whether to create offences in Clauses 226 and 227?	Agreed that offence to be created in Clause 226 and 227.
	Whether to amend the level of fines which currently are \$17,000.00 and \$4,250.00?	Schedule 6: Part B: Change all fines which currently are \$17,000.000 and \$4,250.00 to: - Criminal Penalty: \$20,000.00 plus \$2,000.00 for each day the offence continues; and - Administrative Fine: \$5000.00
7	Schedule 7: whether to delete Schedule 7 which deals with the Life Insurance Disclosure Form?	Agreed that Schedule 7 will be deleted and that Guidelines

Clause	Issue Raised	Decision Taken
		will be issued by CBT'T on the form of disclosure.
Schedules 8 - 11	None	Agreed
Schedule 12	Schedule 12	
	• A. Sales and Marketing Materials: whether sales and marketing materials should include all intermediaries?	Agreed that sales and marketing material should include all intermediaries.
	• A.1. (f): whether the terms 'reasonable' and 'up to date' required clarification?	Suggested change not accepted.
	• A.1. (h): whether the term 'intermediary' requires a definition?	Agreed that the definition of 'intermediary' presently contained in the Bill also applied to the Schedule.
	• A. 1. (i): whether the term 'reasonable assumptions' requires clarification?	Suggested change not accepted and agreed that the CBT'T will provide guidelines.
	• A. 2. (a): consider changing the wording to " Investment into this product is solely at the risk of the investor"	Suggested changed not accepted.
Schedule 12	• B. Understanding Consumer's Needs: clarification of the term 'reasonable number of years'.	Agreed that CBT'T will issue the requisite guidance as part of implementation and rollout prior to Proclamation of the Act.
	• B.1: whether this section only applies to individuals?	Agreed that is section applies to both individual and commercial consumers.
	• B.1. (a) to (c): ○ Need to define when this information is considered relevant or not? ○ The insurer's responsibility to assess relevance in the context of its customer base and business model and to meet the goal of ensuring sufficiency of information so that an appropriate product is	No changes recommended to B (1) (a) to (c) . To remain as drafted.

Clause	Issue Raised	Decision Taken
	offered The requirements are to be outside of the norm of a professionally handled sales process.	
	B. 2. (a): - Subjectivity of provision - The requirements are to be outside of the norm of a professionally handled sales process.	Agreed that requirements are to be outside of the norm of a professionally handled sales process. No changes recommended to B(2) (a). To remain as drafted.
	B. 2. (b): - Subjectivity of provision - Standard of Market Conduct is considered to be a normal standard in assessing suitability.	Agreed that Standard of Market Conduct is considered to be a normal standard in assessing suitability No changes recommended to B (2) (b). To remain as drafted.
	B. 2. (c): - Whether the Bill provides for how information required under this section will be captured? - Suggestion of a ranking of attitude to risk.	Agreed that the insurer will categorise in accordance with insurance companies' policies and procedures and that there are internationally accepted approaches assess consumer risk attitudes. No changes recommended to B (2) (c). To remain as drafted.
	C.1 Privacy and Data Protection: - Whether there is a need for the inclusion of a requirement for appropriate disposal and/or destruction of consumer information? - Existence of guidelines on Security Systems for Safeguarding Customer Information.	Suggested change not accepted. Guidelines on Security Systems for Safeguarding Customer Information already exist.
	C. 1. (d):	Agreed that CBTT will issue the requisite guidance as part of implementation and rollout

Clause	Issue Raised	Decision Taken
	- Whether a specified time required for the lock of system inactivity and password changes? - Standards of Market Conduct are intended to provide requirements, specifications, guidelines or characteristics that can be used consistently to ensure that materials, products, processes and services are fit for their purpose. More specific guidance can be provided in the form of circular letters or guidelines along the lines of the guideline referenced above.	prior to Proclamation of the Act.
Schedule 12	D.3 Agent Training: whether the terms ‘point of sale’ and ‘proper needs analysis’ requires clarification?	No change recommended. Clause to remain as drafted.
	D. 4: whether the training programme and frequency of training should be specified?	Agreed that CBTT will issue the requisite guidance as part of implementation and rollout prior to Proclamation of the Act.
Schedule 13	None	Agreed.
Members of the Public		
	Sharon Lans: - Report of earthquake damage to Seismic Research Unit - Include requirement for insurance companies to share information where fraudulent claims can be identified but provide a protection for accidental breaches of consumer privacy. - Consider a number of measures to strengthen consumer protection.	Suggestions not agreed to by Committee.
	Roland Karim Losing one’s full comprehensive discount accrued over a 6 year period without a claim.	Suggested change not accepted.
Deferred Clauses		

Clause	Issue Raised	Decision Taken
4	Clause 4: whether the definition of the term ‘credit exposure’ should be amended to include the words “net of specific provision”?	Suggested change not accepted.
20 ²	Add “in or from Trinidad and Tobago,” at the beginning of the shoes of 20(1). New clause 20 (2) (c) : “the person solicits, negotiates or procures insurance business as a broker or agent”	Further amendments to Clause 20 required. Agreed by Committee.
21	Clause 21 (5): whether any further amendment is required to allow a broker to negotiate and procure insurance business, on behalf of a client directly from a foreign country?	Agreed that no further amendments were needed. Agreed to add “in or from Trinidad and Tobago,” at the beginning of the shoes of Clause 20 (1).
77(6)	Clause 77(6): whether Clause 76(6) needed to be redrafted given the concern that an individual would have a defence that it was the audit entity and so liability will be limited only to a fine under Clause 77 (6) (a), leaving the key personnel within the entity free from liability? - Reviewing the definition of ‘audit entity’.	Suggested redraft accepted with the addition of “knowingly and recklessly” to the sub clause. Further, it was agreed that the term ‘audit entity’ relates to a firm.
112	Clause 112: whether subsections (1) to (10) of Clause 112 should be offences?	Suggested change not accepted. Clause to remain as drafted.
140	Clause 140: whether the proposed amendments to include “complex claims” to subsection (1) and (2) and delete sub clauses (3), (4) and (5)?	Suggested change accepted.
	Clause 140: Request to define “major loss”.	Agreed.
197	Clause 197 (1) and (14): seven (7) years for endowment policies.	Agreed to accept the seven (7) year requirement.

² Change required as a result of additional review of Clause 21.

Clause	Issue Raised	Decision Taken
	If someone shows up 10 years later with a claim, what happens to the money? Can the person claim the money?	If a person shows up ten years after a claim becomes payable and the monies have been paid into the Consolidated Fund, this money is always claimable by the rightful owner and there is no time limit on claims. Clauses 197 (7) to (11) are referred.
	Clauses 197 (1) and (14): Change "...showing all policies in respect of which amounts remain payable by the insurer for a period of seven years..." to "showing all policies with unclaimed moneys..." and in clause 197(14) change "within seven years after the maturity date of the policy" to "within the time which proceedings may be taken for their recovery".	Agreed.
200	Clause 200: whether the offence was indictable or hybrid?	Change offence to be a hybrid offence.
254	Clause 254(2): whether to include the proposed redraft to the subsection to include "knowingly or recklessly"? “ (2) A person who knowingly or recklessly ~~[without reasonable cause]~~ 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.”	Suggested amendment accepted
136	Clause 136 (3): - Whether to delete sub clause? This requirement would more suitably be placed in Proceeds of Crime Act or related regulations.	Clause to remain as drafted.

Clause	Issue Raised	Decision Taken
	○ The “low risk” designation of general insurance business of agencies and brokerages for Anti Money Laundering/Combating Financing of Terrorism (AML/CFT) by the Central Bank of Trinidad and Tobago;	

July 24, 2017

Appendix II

SUBMISSIONS

3rd March 2017

ROLAND Kerim

PO Box 311

San Francisco Rd
Chin Rural

Secretary to the Committee
Insurance Bill 2016

Sirs,
My comment addresses
the loss of full comprehensive
discount" whilst one accrues over
a period of 6 years of paying a
policy without a claim.

I paid the full insurance in 2017
premium on a vehicle TAY 9428
which I had full discount over a
15 year driving period.

According to ZCWI my
insurer, one Losses the full

3/3/17

insurance discount after you cease insuring the vehicle after 12 months.

6 years to accumulate full premium discount,

12 months to loose it!

This behaviour lie squarely within the realm - "Law against natural justice."

The insurance^{co} has their cake and eat it too!

Correct this injustice devised upon the defenceless citizenry by the insurance act!

One can only loose the discount upon being involved in an accident and making a claim.

Ensure ICWZ give me my full accrued discount on TAY 9428.

Regards
R. M.

4 Holiday Court
St Lucien Road
Diego Martin

Chairman,
Joint Select Committee
Insurance Bill 2016

Dear Sir,

I wish to submit the following comments on the Insurance Bill.

1. Consumer Protection

The UK Insurance Act 2015 introduced a number of measures to strengthen consumer protection, one of which was the introduction of a provision that will allow insureds to claim damages actually suffered as a result of insurers' unjustified "late" payment of a claim.

The UK Act implies into every contract of insurance a requirement on an insurer to pay sums due within a "reasonable time". What amounts to "reasonable time" will depend on the specific circumstances but the Act provides a non-exhaustive list of factors including: (i) the type of insurance; (ii) the size and complexity of the claim; (iii) compliance with any relevant statutory or regulatory rules or guidance; and (iv) factors outside the insurer's control.

Locally, The Central Bank of T&T has issued "claims guidelines" to insurers with timeframes for claims payments, however there are no penalties for failure to conform with these guidelines. Some claimants, primarily individuals and small businesses have recourse to the Office of the Financial Services Ombudsman (OFSO) in specific instances where claims are delayed or denied, however the OFSO does not have the authority to direct damages for unjustified late payments of claims.

Unjustified delays are most common in motor insurance subrogation claims. The Insurer of a vehicle covered comprehensively will pay for the damage for his own's insured's vehicle, excluding 'the excess' and will recover his payment plus the excess from the third party's insurer. Even among 'good' insurance companies, the delays in recovering payments can average two (2) years or longer. The ability of the CBTT to assess penalties for unreasonable days in claims of this nature will greatly improve the payment times of insurers

2. Improving AML

In its 2016 Annual Report from the FIU stated a trend in the use of fraudulent certificates of insurance and false documentation to support claims arising from motor vehicle accidents from multiple insurance companies. For many years, Jamaica has been successfully using a shared motor claims database to help insurers identify possible fraudulent claims. Trinidad companies have been reluctant to join a similar shared database because of privacy concerns (among others). The Insurance Bill should require insurance companies to share information where fraudulent claims can be identified but provide a protection for accidental breaches of consumer privacy.

3. Reports of Earthquake Damage

There is no requirement for reporting earthquake damage to the Seismic Research Unit and any reporting to the Seismic Research Unit is purely voluntary. Insurers do get reports of earthquake

damage from their policyholders however they authorize their own investigations regarding the cause of damage. This leaves a significant gap in the information gathered by the Seismic Research Unit, since they can neither identify all the areas affected by the earthquake or assess whether the damage was directly as a result of the earthquake or deficiencies in construction. This restricts their ability to advise on the vulnerabilities of geographic areas to earthquake damage.

The Insurance Act should include a provision that all earthquake claims be reported to the Seismic Research Unit by the insurance company within 30 days of receipt whether or not they are ultimately paid.

.

Sharon Lans

Hon. Colm Imbert
Minister of Finance and the Economy
Joint Select Committee on the Insurance Bill, 2016
Office of the Parliament of Trinidad and Tobago
Levels G-9, Tower D
International Waterfront Centre
1A Wrightson Road
Port-of-Spain

14 March 2017

Via Email

Dear Mr. Imbert,

The Insurance Bill, 2016

Following the introduction of the Insurance Bill 2016 (the "Bill"), we write to request further clarity on the implementation of certain proposals currently under consideration before the Parliament.

Lloyd's has provided coverage for risks in the Caribbean for over 200 years and today Trinidad and Tobago remains an important pillar of Lloyd's presence in the region. In 2016, the Lloyd's market wrote approximately TTD 420m¹ gross premium in Trinidad and Tobago. The Lloyd's market has also supported the development of the Trinidad and Tobago insurance market by providing access to significant additional capacity and expertise that is unavailable locally. Lloyd's is conscious that our ability to continue providing coverage in Trinidad and Tobago is contingent upon a regulatory framework that remains fit for purpose and future-proof. We are therefore supportive of the government's ambition to modernise the country's insurance legislation.

Lloyd's Regulatory Philosophy

Lloyd's is not an insurance company but an insurance market, wherein capital providers, known as "Members", participate in syndicates that underwrite risks on a several liability basis. The Lloyd's market's legal and operational differences to conventional insurers mean that laws drafted in contemplation of such conventional insurers may not make sense when applied to the Lloyd's market. Lloyd's supports open and competitive markets worldwide and as such does not seek preferential treatment in relation to any other insurers, whether foreign or domestic. Lloyd's seeks a regulatory framework that provides for the unique aspects of Lloyd's and which delivers to regulators an equivalent level of comfort regarding

¹ USD 62.33m as of 14 March 2017

Lloyd's financial strength and policyholder protection as that provided by conventional insurers.

Lloyd's Comments on the Insurance Bill

Lloyd's previously commented upon the Insurance Bill 2015 (attached as **Appendix 1**) which was substantively similar to the Bill currently under consideration. Given the similarity, Lloyd's comment on the 2015 Bill continues to reflect Lloyd's view on necessary changes to the legislation. Lloyd's would, however, withdraw our suggested amendment in Annex 2 of Appendix 1.

In correspondence regarding Lloyd's 2015 comments, Carl Hiralal – the former Inspector of Financial Institutions at the Central Bank of Trinidad and Tobago – made suggestions as to how the legislation, as then drafted, could be interpreted in a way that accommodates the unique characteristics of Lloyd's (attached as **Appendix 2**). Lloyd's is grateful for the Central Bank's explication but believes that certain issues pertaining to associations of underwriters (e.g. Lloyd's), which are described below, warrant reconsideration and further clarification in legislation. To that end, please find below a summary of certain issues raised in Lloyd's 2015 comment. Further detail may be found in the Appendices.

Deposit

Our primary concern relates to a lack of clarity over the funding requirement for associations of underwriters, e.g. Lloyd's. As currently drafted the language of the Bill appears, in practice, to place an increased burden upon Lloyd's.

This is in excess of the requirements in similar territories in the region, typically 40% of premium, and in excess of Lloyd's funding level in a number of its largest sources of premium income globally, including the US. This has the potential to impact the appetite of underwriters at Lloyd's to allocate underwriting capacity to Trinidad and Tobago.

Lloyd's respectfully proposes to maintain its deposit in accordance with Section 233(1)(b). Lloyd's believes the deposit requirement set out under Section 233(1)(a) fails to recognise the regulated trust arrangements which already exist to ensure that members' liabilities are adequately reserved in accordance with UK PRA² requirements.

We further observe that the requirement appears at odds with the formulation of Section 233, which appears to contemplate the two methods of calculating a deposit level as being comparable, whereas in practice, where policyholder liabilities are calculated at the current level of 40% of annual premium, the level required by 233(1)(a) would exceed that determined by 233 (1)(b) in every circumstance.

² Prudential Regulation Authority

Reporting

In order to meet the reporting requirements stated in 244 (2)(f), we take note of the clarification produced by the Central Bank of Trinidad and Tobago, indicating that the geographical separation of Lloyd's business would not be required to calculate assets and liabilities. To comply with the audited financial and regulatory disclosures, the liabilities would be equivalent to the amount required for the deposit. In the case of Lloyd's, this is equivalent to 40% of premium income. Assets would be estimated to be the amount held in the deposit pursuant to Section 233 (1).

We also take due consideration and would welcome formalisation in the law that the mandatory provisions of actuarial reports under Section 244 (2)(f) are not mandatory. As noted by the Central Bank on the attached correspondence, the production of an actuarial report in respect to Lloyd's Trinidad and Tobago business "is not needed to support the calculation of liabilities".

Lloyd's would be grateful for an opportunity to provide further information or clarification on any of the points raised above.

Best regards,

A handwritten signature in black ink, appearing to read 'A. S. Gurney', with a large, stylized loop at the bottom.

Andrew Gurney
Senior Manager
International Regulatory Affairs

Telephone +44 (0)20 7327 6194
Fax +44 (0)20 7327 5255
Email Andrew.Gurney@lloyds.com

cc: Michelle Chong Tai-Bell, Central Bank of Trinidad and Tobago

March 13, 2017.

The Secretary

Joint Select Committee on the Insurance Bill, 2016

Office of the Parliament Republic of Trinidad and Tobago

Levels G-8, Tower D

The Port-of-Spain International Waterfront Centre

1A Wrightson Road

Port-of-Spain.

RE: IBATT's comments on the Revised Draft Insurance Bill 2016 (No. 9 of 2016).

We refer to the matter at caption and the recent version of the Bill as circulated on the Parliament website.

We have examined the Bill and while some of our recommendations were adopted, we are disappointed that the following concerns of our membership have not been addressed:

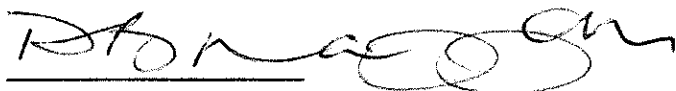
- (a) The requirements of continuous registration pursuant to section 141 (for all brokerage staff) and continuous education provisions, and
- (b) The need to examine whether insurers (like Brokers and all intermediaries) should also be subject to continuous education requirements.
- (c) The impracticality of some of the timelines and reporting requirements set out in the Bill, in particular section 135(3).
- (d) The need to mandate that brokers are paid by insurers within ten days of receipt of payment of the premium.
- (e) Consensus regarding the training requirements governing sales representatives and confirmation as to the staff positions that are or will be captured under this rubric.
- (f) The impracticality of monthly accounts as set out in section 137 and the establishment of separate consumer trust accounts under section 133.
- (g) The fact that many provisions in the Market Constitution Survey will result in a duplication of resources and is time consuming, since these matters are already adequately addressed in the FIU's "Knowing your Customer" requirements.
- (h) Insurance companies should be made to pay over claims under a contract of insurance no less than five (5) business days of same being agreed.
- (i) Section 136- The Auditor's Report/ Statement should be submitted within six (6) months and not four (4) months as stated in this version of the Bill.

Our disappointment is further compounded by the fact that IBATT has made extensive submissions on the implications of these issues to its members to: the last Joint Select Committee, the Former Minister of Finance and the Economy and the Central Bank, and to date these matters remain unresolved. For ease of reference these concerns are outlined in detail in the attached Appendix 1. Also, attached for your information, is a copy of our submission dated January 15, 2014.

We appreciate that this is a new Joint Select Committee and agree with the need to protect the interest of the policy holders. However, the Bill must also treat fairly with and address the concerns of other stakeholders in the industry including brokers and other intermediaries. Therefore, we trust that our concerns will not go unheeded but that it will be given due consideration. We are also kindly requesting that the items raised in our submission be addressed before the Bill is advanced for debate, as many of the provisions will have an adverse effect upon our membership from a financial, operational and administrative perspective.

We reiterate our willingness to meet and collaborate with the Committee and Government to ensure that the proposed bill is not only effective, practical and workable but addresses the concerns of all industry stakeholders.

Yours sincerely,
Insurance Brokers Association of Trinidad and Tobago



Mr. Prakash Bhaggan.
President

CC: Honourable Colm Imbert – Minister of Finance and the Economy
Dr. Alvin Hilaire - Governor, Central Bank of Trinidad & Tobago



APPENDIX 1

SECTION	COMMENT
4- Definitions	The definition of "insurance consultant" should be amended to specifically exclude brokers as it is recognized that a part of a broker's job entails providing advice on insurance. The definition of "insurance business" should be amended to include reinsurance.
21(5) Restrictions on carrying on Insurance business	This should be reconsidered as many local insurers cannot and do not provide full cover for marine and large industrial projects. These insurances are often placed abroad directly by a broker on behalf of the Client. The current wording of Section 21(5) prohibits a continuation of this practice unless the insurer is registered in Trinidad and Tobago (for example Lloyds). This section clearly states that a foreign insurer that is not registered can only treat with the acceptance of reinsurance ceded by a reinsurer. IBATT requested that this matter be reconsidered as many local insurers cannot and do not provide full cover for marine and large industrial projects. Therefore, these insurances are often placed abroad directly by a broker on behalf of the Client. The current wording of Section 21(5) prohibits a continuation of this practice unless the insurer is registered in Trinidad and Tobago (for example Lloyds). In our opinion it is retrograde step, impractical and unfair to prohibit the placement of insurance with these firms on the basis that the foreign insurer is not registered in Trinidad and Tobago and is providing insurance and not reinsurance, when there are not adequate local cover available and both parties to the transaction are willing to enter into a contract of insurance. We recommend that direct placement with a foreign insurance company should be allowed provided the Client signs a written acknowledgment that it is aware: (a) the insurance company is registered and operating in another territory (b) is not registered in Trinidad and Tobago, (c) of the risks associated therewith; and (d) that any and action on the policy must be taken in the foreign courts subject to the jurisdictional and legal requirements set out in the contract of insurance.

21(9) Restrictions on carrying on Insurance business.	We are concerned with the quantum of the fine and the duration of the sanction of imprisonment.
110(8) and (9)- Registration of Intermediaries	We are of the opinion the fine is excessive and request that consideration be given to reducing same.
113(2) Central Bank to Register persons under this Act.	We recommend that section 113(2)(d) be deleted and that the current conditions governing registration remain in force.
114(3) Provisional Certificates for Sales Representatives	(1) Central Bank should be required to consult with IBATT prior to imposing conditions for registration under 14(3)(b). (2) We repeat our recommendation to the JSC, Ministry of Finance and Central Bank that: (i) Removal of the requirement for brokerage staff to be registered, or alternatively the Central Bank should identify with specificity: (a) The staff/ positions to be so registered; (b) The rationale for same having regard to the fact that the brokerage will be registered and these persons are employed by and act on behalf of the brokerage in the exercise of their duties. (c) The cost of same (d) The framework for getting this in position and the agency responsible for administering and effecting same. (ii) That the items above should be agreed upon before this measure is contemplated. (iii) That sales representatives be exempted from the continuous education requirement.
115(a) Personal Liability.	We repeat our request that section 115(1)(a) be deleted.

116 Capital and Professional Indemnity Cover	Section 116(2)- we repeat our request for clarification as to how the quantum was derived and what constitutes approved securities for the purposes of this section.
119 Continuing education requirement	We repeat our request that persons with a certain level of experience and age in the business be exempted from this requirement. We also request that Central Bank should identify the level of training and education required for both registration and continuous registration before the Bill is advanced.
123 Notice of termination of intermediary to be given.	We are again recommending (1) that the penalties in 123(5) be set at \$50,000.00 as opposed to \$80,000.00 and imprisonment for ten years. (2) That the original penalties under 123(6) be reverted to. That is a fine of \$150,000 and each Executive Director or Officer be liable on summary conviction to a fine of \$80,000.00 and imprisonment of years. We would be grateful if consideration is given to our recommendations and or a valid explanation provided if same is unworkable.
125 Restriction on the payment of compensation for placing or negotiating insurance.	We recommended that insurance consultants are also captured under this section and we reiterate same.
126 Rebating	1. We repeat our calls for the following recommendations to be adopted. (a) The Central Bank should issue a "statement" with respect to brokerage fee basis presently ongoing with some state enterprises (with international and/or local brokers), multi-national and some private sector clients. (b) Insurers should not be allowed to rebate premiums to consumers.

	(c) Insurers should not be permitted to give credit to insureds or preferential premium payment terms. As premium financing can be construed as an unfair inducement to enter into a contract with their institution. (d) Insurers should not be permitted to “double quote” or offer conflicting terms and conditions to any intermediary or consumers. (e) Where an insured pays the premium directly to the Insurer, the latter should be directed to remit the commissions to the intermediary within ten days of the issuance of the receipt. (f) All refund premiums should be returned to the Insurer or his representative in the currency that the premium was paid and in the form of an Insurers cheques. (g) This section should be amended to also capture “insurance consultants”.
Section 130 Disclosure of preferential arrangements by brokerage	1. We reiterate our recommendation that the penalty set out in 130(2) be amended to reflect a fine of \$100,000 for breach of this section and that imprisonment be removed. 2. Subsection (1) -the Central Bank should specify the form and arrangements of the letter to be disclosed to the Customer or alternatively the matters that must be included or covered under same.
Section 132 Receipt of premium	We repeat our request for the inclusion of a sub-section mandating that “where a broker is to be paid by an insurer from the premium so collected that the insurers remit the payment due to the broker within ten business days of receipt of the said premium by the insurer.”
Section 133 Customer trust Account.	We repeat our request that: 1. Commissions be deducted prior to paying insurers and that the timeframe for payment of cheques to customers and or insurers by intermediaries be applied. 2: That the penalty set out in section 133(8) be reduced to the original amount of \$150,000.00.

	3. The requirement for a brokerage to establish a customer trust account for receipt and payment of customer funds, in respect of each type of insurance for which it is registered be removed. It is impractical from a cost and time perspective and there is a significant time lag in opening an account. Currently most brokerages have one customer trust account on which drawdowns are made. This account is administered and segregated in accordance with accounting best practices and audited on a regular basis. We ask that the current system remain in force. 4. Section 133(5) should be deleted. This section stipulates that the "<i>A brokerage conducting long term insurance business shall not be permitted to deduct from a customer trust account any commission and or other deductions</i>". This position is untenable and unfair especially when considering sections 134(3) and other sections aimed at protecting the policy holder. The reality is that the broker is paid via commissions deducted from the premium and once this section is in place there is no coverage or protection for the broker who has placed the insurance to be paid by either the client or the insurer when the latter receives the premium. Section 134(3) provides protection for the insurer only and exposes the broker. In the interest of equality all parties should be protected.
134 Payment of premium to the insurer	1. We recommend that the penalties under subsection (4) be removed as the fact remains that every insurer has a choice with regard to which brokers they choose to do business with and can recover its receivables from delinquent brokers. The system has been regulating itself and there is no need for this requirement and penalty. 2. We are not in agreement with subsection (3) and request that it be deleted.
135 Payment to the consumer	1 We are again recommending: (a) In section 135(1), that the words "and credited" be inserted after the word "received" (b) In subsection (3) the stipulated timeframe should be 10 days as opposed to 3 days. (c) That consideration be given to direct payment as the section only refers to payment by cheques. There are instances where payment is made via set off, direct deposit and transfers as opposed to cheques and a clarification should be made in this section or in the definition section to include same. 2. We also note that while protection is afforded with regard to timely payment to the policy holder and the insurer no such

	provision is made in relation to payments/ commissions due to the broker and this must be addressed.
136(3) Financial statement of intermediary.	We recommend that the report be submitted within six (6) months and not four (4) months.
137 Monthly Accounts	We recommend that this section be deleted or Central Bank should indicate the reason for monthly submissions.
139 Audit of accounts of Agencies and brokerages	While the amendment appears reasonable there is potential for same to be abused as it stands. As there is nothing to prevent an inspector from acting on a baseless accusation made against an auditor pursuant to (2) (c) above and having regard to (3) there is little or no recourse for the person. A more justiciable position may be that the inspector can so act if the person is found guilty of misconduct or the inspector has proof or a prima facie case to conclude that the person falls under the parameters set out in 2(c).
140 Persons may act as adjusters during a catastrophe	We recommend that this section be deleted. Alternatively, subsection (1) should be amended to include cases of major loss and not only catastrophe. The commercial reality is that several international reinsurers/ insurers under the policy of insurance will stipulate or be entitled to stipulate the adjuster and they tend to stipulate international adjusters with considerable experience and expertise in the area which our local adjusters may not have. This is usually the case in marine and large plants. Therefore, consideration should be given to allowing the foreign adjusters to work in these circumstances and a definition can be included to put a financial threshold as a guide for determining what will constitute a major loss.
Fair Claims Practice.	The Central Bank's guidelines for settlement of claims should be considered concurrently with the Bill and we repeat our recommendations that: 1. Insurers should be given a deadline to remit claims payments recovered through subrogation to their insureds either through direct collection or contra payments. 2. Insurers should be given deadlines for the settlement of claims. The following are our recommended timeframes:

	(a) Acknowledgement of notification of a claim within five (5) working days; (b) Appointment of an adjuster- within three (3) working days of notification of the Claim; (c) Adjustment timeline to the interim report – five (5) working days; (d) Adjustment timeline to final report- ten (10) working days; (e) Final settlement payment – five (5) working days from the date the settlement was reached.



January 15, 2014.

The Secretary
Joint Select Committee on the Insurance (No. 2) Bill, 2013
The Parliament of Trinidad and Tobago
Levels G-7, Tower D
1A Wrightson Road
PORT OF SPAIN.

Dear Sir/ Madam,

Re: *Comments of the Insurance Brokers Association of Trinidad and Tobago on the Insurance (No. 2) Bill, 2013.*

We refer to your advertisement in the daily newspapers inviting submissions from stakeholders and interested persons to submit written comments/ suggestions on the Insurance (No. 2) Bill, 2013. In pursuance thereof, please find enclosed herewith the written submission of the Insurance Brokers Association of Trinidad and Tobago (IBATT) in respect of the matter at caption.

We would be grateful if consideration is given to our comments and recommendations and we confirm that we are prepared to appear before the Committee to give an oral presentation in respect of same and/ or to provide any assistance that the Committee may require.

We look forward to hearing from you in this behalf and can be contacted at (868) 625 1091 and/or christian.low@rms.co.tt.

Sincerely,

Christian W. Low
President

copies: Mr. Carl Hiralal
Inspector of Financial Institutions
Central Bank of Trinidad & Tobago

Mr. Willard P. Harris
President
Association of Trinidad and Tobago Insurance Companies

Mr. Nizam Mohammed
Secretary
Insurance Brokers Association of Trinidad and Tobago

IBATT's SUBMISSION ON THE INSURANCE BILL

March 13, 2017.

EXECUTIVE SUMMARY

The Insurance Sector in Trinidad and Tobago is a major contributor to our domestic economy, which accounts for approximately 6 % of GDP. It provides tremendous economic and social value to both individuals and companies, by acting as a catalyst for private savings, covering of expected and unexpected risks and facilitating developments in both the private and public sector.

The key players in the sector are the Central Bank, registered insurance companies providing life and or general insurance products and services, insurance intermediaries, and policyholders/consumers. The list of insurance intermediaries includes registered insurance adjusters, brokers, salesmen and agents. There are approximately thirty-nine (39) Insurance Brokers licensed with the Central Bank and **Appendix A** contains a listing of the Registered Insurance Companies and Brokers as obtained from the website of the Central Bank.

As the voice of the Insurance Broking industry in Trinidad and Tobago, the Insurance Brokers Association of Trinidad and Tobago ("**IBATT**") has been in existence for over seventy-three (73) years. Representing thirty-eight (38) of the thirty-nine (39) registered Insurance Brokers in Trinidad and Tobago, our membership, handles a wide volume of insurance transactions undertaken in Trinidad and Tobago by both the man on the street and commercial enterprises, estimated at 80% (approximately \$4 Billion) of the premiums received by local insurance companies annually. Additionally, IBATT members also place a significant amount of insurance on the overseas market to cover Insured's large and special risks and employs over one thousand persons.

The existing legal and regulatory framework governing the registration, operation and activities of the main players in the sector are contained the Insurance Act, Chapter 84:01 and the Regulations thereto, other relevant legislation including but not limited to the Financial Institutions Act 2008, Proceeds of Crime Act, the Financial Obligations Regulations 2010 and the common law. Additionally members of the Insurance Brokers Association ("**IBATT**") are also subject to our Code of Practice, which had its genesis in our desire to improve the level and quality of services provided by Brokers and to regulate the conduct of Brokers in the performance of their duties. A copy of same is attached as Appendix B and governs the duties of our members to our client's and the Public, guidelines to be followed by our members with regard to specific matters, including but not limited to such matters as remuneration, conflicts of interest and disclosure.

It is a strong, independently administered and monitored code of Practice for all our members, and guides members and consumers as to what they can and should expect when dealing with one of our members and the options and recourse that is available to them in the event that the service provided is in contravention of the Code.

The regulation of the Insurance sector in Trinidad and Tobago was transferred from the Office of the Supervisor of Insurance in the Ministry of Finance to the Central Bank via the 2004 Amendment to the Insurance Act. Recognizing that the existing Insurance Act was outdated and in need of improvement to reflect and address developments in the international and domestic insurance sector, the legislature undertook the drafting of a new Insurance Act, to meet the current day to day needs of the Insurance sector and more particularly to ensure greater protection and coverage for policyholders. In articulating the rationale for the Bill, the former Governor of the Central Bank indicated that *"the most important reason for upgrading our insurance legislation is to protect the policy holder."*

The Bill itself was the subject of consultations with a number of the Industry stakeholders including ATTIC and IBATT and other local and overseas industry consultants. This Bill, which is currently before the Joint select Committee of Parliament will replace the existing Insurance Act and introduce a number of fundamental changes in the insurance landscape especially in the areas of improving the supervisory and regulatory framework, reporting requirements, the powers of the Inspector/ Regulator, the registration requirements for Insurers and other Intermediaries and the Statutory Fund requirements.

Recognizing the importance of our role and the value we add to consumers of life and or general insurance products, IBATT has always advocated and supported reform and improvements to the insurance and financial services framework to ensure adequate consumer protection, prevent the occurrence of another Clico scenario and to secure the livelihood and viability of the local insurance industry and the players therein. In pursuance thereof, we were involved in the consultation and drafting process for the Insurance Act of 1980 and the Bill.

US President Barack Obama stated *"A good compromise, a good piece of legislation is like a good sentence or a good piece of music. Everybody can recognize it. They say 'Huh. It works, it makes sense.'"* While we have and will always support legislative improvement, higher educational standards and proper monitoring in the brokerage sector, it is our submission that some of the clauses in the bill fail to achieve this harmony and compromise, but instead seeks to impose harsh punitive measures that will negatively hamper and adversely affect the growth of the sector and the players

therein and other measures that threaten the livelihood of our staff and families and pose a threat to the longevity of our business and its economic viability.

Notwithstanding our participation in the consultation process, we are duty bound to provide you with this formal submission as in our opinion the Bill should not be implemented unless certain specific areas of the Bill that requires amendment and or clarification are addressed and dealt with at the Committee stage or prior to proclamation. Of particular concern to our membership are the new measures with regard to continuous registration, the requirement for the registration of sales representatives, in the rationale and quantum of the professional indemnity requirement, delivery/payment of monies to policyholders/consumers, the impractical and onerous time frames for the remitting of funds to Insurers and the increased fines and penalties on brokers and their Directors and Officers. We are also concerned that a number of the measures specifically directed at intermediaries and brokers in particular should be revisited as some of them would have the indirect impact of crippling and or stymieing the long term growth of the sector and encouraging unfair competition. Furthermore, it is pointless to regulate the brokers in some areas such as rebating and not impose the regulations on the Insurance companies.

These concerns and comments of our membership are set out herein below and for ease of reference we have identified the implications of same and put forward our suggestions and or recommendations on their behalf.

AIM OF THIS SUBMISSION:

To assist the JSC, with regard to:

- (a) The identification of clauses in the Bill which require further clarification;
- (b) The provision of recommendations and or suggested amendments for improving the Bill and obtaining the support of relevant industry stake holders including IBATT.

SERVICE PROVIDED BY INSURANCE BROKERS:

The Insurance Act, defines a “broker” as any individual who or any firm or company which for compensation as an independent contractor in any manner solicits, negotiates or procures insurance or the renewal or continuance thereof on behalf of existing or prospective policyholders”.

The Bill expands the definition of a broker to cover the reinsurance on behalf of insurers, and a broker is defined as *"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;"* While "brokerage" refers to any company registered to carry on the business of insurance brokerage.

The traditional role of insurance brokers is to:

- ✓ assist customers to assess and manage their risks, and provide advice on what insurance is appropriate for the customer's needs;
- ✓ assist customers to arrange and acquire insurance; and
- ✓ assist the customer in relation to any claim that may be made by them under the insurance;
- ✓ assist consumers in the recovery of uninsured losses.

In some cases, insurance brokers may act as the agent of the insurer as opposed to the insured. However, where this relationship exists, the broker is under a duty to advise the customer of same up front.

In the performance of his duties, the insurance broker acts on behalf of the customer as their agent. Insurance brokers offer many benefits to customers and consumers including the provision of:

- (a) assistance with selecting and arranging appropriate, tailored made insurance policies and packages
- (b) detailed technical expertise including knowledge of prices, terms and conditions, benefits and pitfalls of the wide range of insurance policies on the market;
- (c) assistance in interpreting, arranging and completing insurance documentation;
- (d) experience in predicting, managing and reducing risks; and
- (e) assistance with claims and a higher success rate with settlements (about 10 per cent higher than claims made without a broker).

COMPARISON OF PROVISIONS IN THE INSURANCE ACT & THE BILL AS IT RELATES TO BROKERS:

The Current Act is divided into 8 sections, while the Bill has 12 distinct sections. Having regard to certain clauses in the Bill, which may be construed as impinging on enshrined constitutional rights set out in sections 4 and 5 of the Constitution, the Bill will require a special majority (see Preamble to the Bill). The Bill states that where there is an inconsistency with any other laws with the exception of the Central Bank Act, the Act (i.e. the Bill) will prevail.

Table 1- Showing the structure of the Insurance Act and the Insurance Bill

No.	SECTIONS OF INSURANCE ACT	SECTIONS OF THE INSURANCE BILL
1	Part I- Administration	Part I-Preliminary.
	Part II- Registration. - Statutory Funds. - Catastrophe Reserve Fund. - Accounts, Balance Sheet, Records and Audit. - Documents to be furnished to the Central Bank. - Suspension and Winding Up. - Transfer and Amalgamation.	Part -Administration.
2	Part III Agents, Brokers, Salesmen and Adjust	Part III – Insurers -Registration of Insurers -Statutory Deposits -Statutory Funds -Ownership of Insurers -Transfer and Amalgamation -Mutualization and Demutualization -Corporate Governance -Prudential requirements, restrictions and prohibitions -Judicial Management, Suspension and Winding Up.
3	Part IV – Long Term Insurance Business - Actuarial Investigation. - Issue of Policies. - Assignment and Mortgages of Policy. - Protection of Policies. - Paid Up Policies, Surrender values and Non Forfeiture. - Payment of Policy Moneys. - Provisions relating to Industrial Life Insurance Business. - Mutualisation. - Miscellaneous.	Part IV - Intermediaries
4	Part V – General Insurance	Part V – Financial Statements and Returns
5	Part VI – Pension Fund Plans	Part VI – Compliance Direction and Injunctive Relief
6.	Part VII – Association of Underwriters	Part VII – Long Terms Insurance Business - Actuarial Investigation. - Issue of Policies. - Assignment and Mortgage of Policies. - Paid up Policies, Surrender values and Non forfeiture - Payment of Policy monies. - Provisions relating to Industrial life Insurance Business. - Miscellaneous.

No.	SECTIONS OF INSURANCE ACT	SECTIONS OF THE INSURANCE BILL
7	Miscellaneous	Part VIII – General Insurance
8.	Schedules 1. Classes of Insurance Business. 2. Assets in which the Statutory fund may be invested. 3. Assignment Forms. 4. Requirements- Trust Deeds and Rules.	Part IX – Pension Fund Plans
9		Part X – Association of Underwriters
10		Part XI – Jurisdiction of courts, Appeals and Offences
11		Part XII – Miscellaneous
12		Schedules 1-8

The Bill introduces significant changes in the insurance landscape especially in relation to brokers, insurance companies and compliance and reporting requirements. Having regard to the fact that the focus of this submission is IBATT's concerns and recommendations with regard to the proposed Bill, we have concentrated on the sections in the Bill that will impact on Brokers and touched briefly on the other areas of the Insurance Act in so far as they are relevant and will have a direct or indirect impact on brokers.

1. Administration of the Act:

Pursuant to Act No 15 of 2004 and Section 4 of the Insurance Act, the Central Bank ("Bank") is charged with the administration of the Act. The Bill maintains this authority and sets out the objectives of the Bank with regard to registrants. The primary objective of the Bank, in respect of registrants, is to maintain confidence in, and promote the soundness and stability of, the financial system in Trinidad and Tobago. The other objectives include: promoting the existence of efficient and fair markets, maintaining an appropriate level of protection for policy holders and beneficiaries of insured's and ensuring compliance of insurers and intermediaries with legislation and regulation to combat money laundering and terrorist financing.

The Bill maintains the duty of the Bank to report to the Minister on the operations of the Act and its registrants and the duty of the Minister is to table the Report of the Bank in the Parliament.

2. Registration of Insurance Brokers:

Registration of Brokers, agents, salesmen and adjusters are covered in Part II of the Act, the Regulations to the Act and under Part IV of the Bill.

i. Mandatory Registration:

Both the Act and Bill makes it mandatory for brokers to be registered and makes it an offence for a person to carry on business as a broker unless he is registered. While Section 88 of the Insurance Act does not specifically address the issue of a brokerage but speaks to brokers and other intermediaries, Section 137 of the Bill specifically distinguishes between a brokerage and a broker and makes it an offence for a person to carry on business as a broker or brokerage unless that Person is registered under Part IV of the Bill.

Section 137 of the Bill also states that where a person or company was registered as a broker under the former Act, that the person or company will be deemed to have been registered as an agent, broker, agency or brokerage as the case may be.

The Bill like the Act makes it an offence for a person to carry on business as a Broker unless he is registered, and increases the penalties for a breach of same. Under the Act, the penalty for contravention of the Section on summary conviction is a fine not exceeding ten thousand dollars and imprisonment of twelve months. Whereas under the Bill, the penalty on summary conviction is a fine of one hundred and fifty thousand dollars and imprisonment for five years

ii. Application Process

Under the Act, the Application for Registration must be made to the Bank in the prescribed form and accompanied by evidence of payment of the fee and the relevant supporting documentation (see Section 89). A person cannot be registered as a broker if he is under the age of twenty one (21) years, is an undischarged bankrupt that has not been granted leave to carry on such business by the court that deemed him bankrupt; or is mentally ill. Additionally a member, director or controller of a company carrying on brokerage business cannot be registered as a salesman or agent nor can a member, director or controller of an insurance company be registered as a broker. The Act also prohibits brokers from carrying on business as a salesman or agent and vice versa.

Once the Bank is in receipt of the application, it can request the Applicant to provide such additional information as it considers necessary.

Under section 91 of the Act, the Bank can unconditionally register an Applicant as a broker or same can be subject to such conditions as the Bank considers necessary. The Bank can only register the person as a Broker, if it is satisfied that:

- (a) The Applicant is a person of good character;
- (b) Is competent to carry on the business as a broker;
- (c) That he has the required professional indemnity coverage required of brokers;
- (d) That the Applicant has complied with any requirement imposed by the Regulations made under the Act relating to the passing of any examination;
- (e) Where the Applicant is a body corporate, that (i) each of the persons managing or controlling the body or each of the partners is a fit and proper person to carry on such business; and (ii) the person managing or controlling the body or partners and staff is capable of carrying out the business efficiently in the capacity in which it seeks to be registered;
- (f) If the Applicant is a body corporate the business must be carried on under the management of an Executive Director who is a registered broker.

The Insurance (Agents, Brokers, Salesmen and Adjusters) (Registration) Regulations sets out the following relative to application for registration as a broker:

1. Application for registration must be made using Form 2 and must be accompanied by the receipt obtained from the Bank upon payment of the prescribed fees set out in the Second Schedule (Section 3).
2. The application for registration as a broker must be accompanied by
 - (a) the audited balance sheet, profit and loss account and revenue account of the Applicant for the financial year immediately preceding the date of application;
 - (b) Where the Applicant is a firm or a partnership, certified copies of the instrument constituting the firm or partnership as such, and a statement setting out the details of beneficial shareholding, in the case of a firm, or setting out full in respect of the name and business interests of all partners. (Section 4(1))
3. The Applicant must provide the Bank with proof that it has in force, professional indemnity coverage not less than TT\$5 Million placed with an insurer approved by the Bank and that the deductible to be applied in respect of any claim should not exceed TT\$15,000.00. Where the Applicant is a body corporate or a partnership, the Bank must be satisfied that at the date of the application, that the paid up capital in cash is not less than TT\$100,000.00 and if the Applicant is a partnership that the joint capital account of the Partners is not less than TT\$100,000.00.

4. Where the business of a broker is carried on by a partnership, each member of the partnership must be registered;
5. Where a body corporate applies for registration the company shall specify the managers and or controller of the company.

The Application requirements and process for registration as a Broker under the Bill is set out in sections 138 and 139. These sections do not impact or materially change the process and or requirements set out in the Act. However the Bill goes a step further than the Act by specifying that:-

- (a) a person cannot be registered as a broker with more than one brokerage.
- (b) a company shall not be registered to carry on the business of an insurance broker unless it has in its employ at least one broker.
- (c) 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-administered plans. Any brokerage who contravenes subsection (7) or (8) commits an offence and is liable on summary conviction to a fine of three hundred and fifty thousand dollars and every director and officer of such company is liable on summary conviction to a fine of one hundred and fifty thousand dollars and to imprisonment for five years
- (d) The Bank must be satisfied that 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 157. Under the Act, this only applied to Applicants who were carrying on business as a broker before commencement of the Part (see Section 91(2)(e) of the Act.
- (e) An increase in the level of professional indemnity cover and minimum stated capital as required under the Act. Under the Bill, each brokerage is required to maintain professional indemnity insurance of at least \$10,000,000.00, with a maximum deductible of \$50,000.00 or ten per cent of stated capital, whichever is greater. Additionally a brokerage must 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. A brokerage which immediately before the commencement of this Act is registered as a broker but does not have the required minimum stated capital set out in Section 143(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:

Amounts are:

End of Year 1	End of Year 2	End of Year 3
\$200,000.00	\$350,000.00	\$500,000.00

Within six months of the Bill becoming law, a brokerage that is subject to section 143 (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). 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 or appropriate until such time as the stated capital requirement is met.

A brokerage that contravenes Section 143(1) or (2) (i.e. professional indemnity and stated capital requirements) commits an offence and is liable on summary conviction to a fine of \$150,000.00 and in the case of a continuing offence, to a fine of \$15,000.00 per day for each day the offence continues and every director or officer is liable to a fine of \$80,000.00 eighty thousand dollars and imprisonment for five years and in the case of a continuing offence to a fine of \$8,000.00 for each day the offence continues.

Upon receipt of the Application, the Act states that the Bank, may either unconditionally register the Applicant or register the Applicant subject to terms and conditions that it deems necessary or refuse the application. Where the Application is refused, in accordance with section 91(4) of the Act, the Bank must notify the Applicant in writing of its refusal and give reasons for its refusal. Section 140(3) of the Bill stipulates that where the Bank has refused an application, that it must inform the Applicant in writing of same, provide reasons for its refusal and inform the Applicant of his right to appeal under section 151.

iii. Effect of Registration:

Section 92 of the Act and section 144 of the Bill states that the Bank shall issue a Certificate of Registration to every person registered under the Act. Both the Bill and the Act stipulate that the certificate must be in the prescribed form, valid for one year from the date of issue, renewable annually on the anniversary date of its issue and must be prominently displayed by brokers at their principal place of business and copies must be displayed at each of its branches in Trinidad and Tobago. The Bill however, also requires that the Certificate must specify the brokerage as applicable, in respect of which the person is registered and that the Bank must issue a schedule to every certificate of registration of brokerage, which shall list the names of the agents or brokers registered to such agency or brokerage, as applicable.

Under both the Bill and the Act, the Certificate is deemed to be *prima facie* evidence that the person named therein has been registered in the capacity stated therein and it is an offence to fail to display same in the manner set out under the Act and Bill respectively. Under the Act Brokers who do not display the Certificate in the manner set out in section 92(3) or displays a certificate that is not valid 68, is liable on summary conviction to a fine of TT\$500.00 and a further fine of TT\$50.00 for each day on which the offence continues after conviction. Under section 144(6) of the Bill, the fine is increased to TT\$150,000.00

Section 93 of the Act imposes a duty on a registered broker to produce his certificate when requested to do so by the Bank or any person authorised by it in writing, an insurance company in respect of which the person is a Broker and actual or prospective Client. In the event that the broker refuses to comply with same, he is guilty of an offence. The substance and form of Section 93 is repeated and contained in Section 147 of the Bill.

iv. Continuous of Registration:

The Act does not set out any new or additional requirements apart from those stated in section 91 and in the Regulations, for brokers that are seeking a renewal of their Certificate. However, Sections 145 and 146 of Bill imposes additional requirement on all intermediaries, that they must continuously meet all registration requirements, continuously comply with the terms and conditions of its registration and comply with the continuing education requirements as required by the Bank.

3. Reporting & Supervision:

(i) General information

The Bank supervises the conduct of all intermediaries under the Act and in accordance with section 91(3) brokers are required to prepare and submit to the Bank at prescribed intervals, balance sheets and profit and loss accounts as may be prescribed.

Section 11 of the Insurance (Agents, Brokers, Salesmen and Adjusters) (Registration) Regulations makes it mandatory for every registered broker to keep monthly accounts in relation to insurance business placed with him for each class or class of insurance. These accounts must show the receipts and expenses relating to each class of business and must be completed within twenty one days after the end of each month. Furthermore, within six months of the close of each financial year, a broker must submit to the Inspector three copies of the audited accounts, balance sheet, and profit and loss account for the year. These accounts must be audited by an auditor and the auditor must state in the certificate to the accounts whether or not: (a) the books have been properly kept, (b) if the balance sheet and profit and loss account present fairly the state of the broker's affairs at the end of the year; and (c) if the broker has satisfied the requirements of sections 11 and 12 of the Regulations and has paid over all monies received for an insurer or insured (as the case may be), for the relevant accounting period.

Under Section 155 (2) of the Bill, every brokerage shall make a return to the Bank within sixty days after the end of the financial year in such form and at such other times as the Bank requires, showing all persons registered as its brokers in Trinidad and Tobago and 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.

Section 163 states that every brokerage must submit to the Inspector within sixty 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. These financial statements must be signed by a director and an agent or broker, as the case may be and that the provisions of section 173 shall apply *mutatis mutandis* to this section

Section 164 makes it mandatory for every brokerage to keep monthly accounts in respect of every class or classes of insurance for which it is registered. The monthly accounts shall show all receipts and expenses relating to such insurance business and such accounts shall be completed no later than fifteen days after the end of the month in respect of which they are prepared. Furthermore, under section 166, the auditor of the brokerage must include in its opinion to the financial statement whether or not the brokerage has satisfied the requirements of sections 160, 161 and 162.

(ii) Notice of Termination

Section 99 of the Act provides that when either an agency or the contract of a sales representative has been terminated, both the insurance company and the person terminated must notify the Central Bank forthwith. However, the Act is silent with regard to the termination of a Broker.

The Insurance (Agents, Brokers, Salesmen and Adjusters) (Registration) Regulations provides that where the business of a broker is carried on by a partnership and the partnership is terminated before the certificate of registration expires, the Partners must immediately notify the Inspector who will cancel the registration.

The Bill adds clarity in this behalf and section 150 mandates that where a sales representative, brokerage or broker has been terminated that the Party which has terminated the contract must notify the Bank of the termination using the prescribed form, within five days of same. It also goes on to stipulate that if the broker enters into a new contract with another registrant he must reapply for registration under section 138 and he is prohibited from conducting any insurance business unless he has received a Certification of Registration.

Failure by a broker to adhere to same is an offence and a Broker is liable on summary conviction to a fine of TT\$80,000.00 and to imprisonment for ten years. While a brokerage that contravenes same is liable on summary conviction to a fine of TT\$150,000.00 and every director or officer is liable to a fine of TT\$80,000.00 and to imprisonment for five years.

(iii) Supervision:

The Act does not expressly set out the right of the Bank to conduct site inspections with regard to intermediaries and same may be inferred. However, the Bill expressly authorizes and empowers the Bank to conduct site inspections of brokers

Section 100 of the Act allows the Bank to request in writing from any person registered under this Act or their Employer, any information relating to the person's business as a broker and any person who does not comply with a request of him made pursuant this section is guilty of an offence.

4. Personal Liability

The Act imposes a personal liability on brokers for all contracts of insurance that has been unlawfully made by or through him directly or indirectly with any insurer not registered to carry on insurance business in Trinidad and Tobago in the same manner as if the broker had been the insurer.

Section 142 of the Bill provides that 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.

Furthermore, where the 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 Bank and comply with such reporting requirements as specified by the Bank. An intermediary who does not comply with the authorization and reporting requirement of this section, commits an offence and is liable on summary conviction to a fine of TT\$150,000.00 and every director or officer is liable on summary conviction to a fine of TT\$80,000.00 and to imprisonment for five years.

5. Revocation and cancellation of Registration:

(i) Notice of intention to revoke registration:

Before the Bank cancels the registration of an intermediary including a broker it may notify the aforesaid broker/ intermediary of its intention in writing, pursuant to Section 94 of the Act. Section 148(2) of the Bill imposes a duty on the Bank to give written notice to the person of its intention to revoke the Registration and provides that the Bank must specify the grounds upon which the Bank proposes to revoke the registration, the date on which such proposed revocation is to take effect, and requires the person to submit to the Bank within a specified period a written statement of any objections to the revocation of the registration.

(ii) Grounds for Revocation/ Cancellation of Registration

The grounds for the revocation of the registration of an intermediary under the Act and the Bill are set out in the table below. Under Section 148, the Bill sets out the general grounds and section 149 sets out the grounds for mandatory revocation.

Table 2- Indicating the grounds for revocation of registration

NO	ACT – SECTION 94	BILL – SECTION 148
a.	The registration was granted as a result of any misleading or false representation	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 become an undischarged bankrupt	The person has failed to comply with any obligation imposed on it by or under this Act and the Regulations.
c.	The person has become mentally ill.	The Central Bank has been provided with false, misleading or inaccurate information by or on behalf of the person or, in connection with any application for registration, by or on behalf of a person who is or is to be a director or officer of the person.
d.	The broker is not carrying on such business in accordance with sound insurance principles and practice.	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	That the person has demonstrated that he cannot carry on efficiently the class of insurance business which he is registered to carry on, in the case of a body, whether corporate or otherwise that all the persons managing or controlling the body or all the partners thereof have demonstrated that they cannot carry on efficiently the class of insurance business which they are registered to carry on.	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	That the person has been guilty of unreasonable or repeated delay in transmitting moneys received for the account of an insurer or a client to the person entitled thereto.	In the case of a person registered as an agency or a brokerage, a receiver, receiver-manager or liquidator has been appointed.

NO	ACT – SECTION 94	BILL – SECTION 148
g.	That one month has elapsed since the date by which such person was required under this Act to furnish information to the Bank and the person has without reasonable excuse failed to do so.	The person fails to comply with any requirement, prohibition, compliance direction or any other direction issued by the Central Bank.
h.	That the person is guilty of a fraudulent or dishonest practice or any other practice which is generally regarded in the insurance business as being undesirable	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 143.
i.	In the case of a person who is registered to carry on business as a broker, that he has entered into an agreement relating to the preferential offer of insurance business which is likely to impair his impartiality in placing insurance business or has been guilty of partiality or discrimination in placing insurance business.	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 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; or
n		The person requests that registration be revoked.

CANCELLATION OF REGISTRATION Section 95	MANATORY REVOCATION – Section 149
(a) where the Bank is satisfied that the person has not carried on business in Trinidad and Tobago as a broker within a year of being registered to do so or has not carried it on for a period of more than one year; or (b) the person requests that his resignation be cancelled.	(a) Where Bank has received notice under Section 150 (1) that the contract of a broker, has been terminated; or (b) the Bank has revoked the registration of the brokerage in respect of which a broker has been registered. In any of the foregoing case the Bank must immediately revoke the registration and give notice of same to the broker.

The *Insurance (Agents, Brokers, Salesmen and Adjusters) (Registration) Regulations* provides that where the business of a broker is carried on by a partnership and the partnership is terminated before the certificate of registration expires, the Partners must immediately notify the Inspector who will cancel the registration.

Once the Bank has made a decision to revoke or cancel the registration of a broker, it must notify the person of same, provide reasons and inform the person of its right to appeal against the decision. This is governed by section 148(3) of the Bill and section 94(3) of the Act. The Act also allows the Bank to suspend the registration of an Applicant pending the outcome of the appeal. If the person fails to exercise his appeal within the specified time and or loses on appeal, the Bank must cancel the registration and where the Bank has suspended or cancelled the registration, the person shall immediately surrender his registration certificate to the Bank and if he fails to do so he is liable on summary conviction to a fine of TT\$500.00 and a further fine of \$50.00 for every day the offence continues after conviction.

The Bill imposes a duty on the Bank to inform the person of its final decision in writing and provides that the notice of revocation must include the date on which the revocation takes effect and a statement as to the reasons for the decision and appeal process under section 151.

6. Money, Premiums and Payments:

(i) Collection of monies from Clients:

In the performance of his duties, a broker and its sales representatives may collect monies from existing and prospective clients for the purpose of placing insurance, remittance of initial and renewal premiums to the insurer. Section 111 of the Act, imposes a duty on the broker to pay to the insurer any amount which he receives from a Client or from an insurer for the insured, less his commission and any agreed deduction to which he is entitled, within 30 days from the date of receipt of same. A broker who does not comply with same is guilty of an offence.

The Bill places considerable emphasis on protection of the consumer and seeks to reduce instances, where an insurer can deny coverage on the basis that it has received the premiums on a timely basis. Additionally the Bill sets out the manner in which these funds must be dealt with by the brokers, so as to reduce instances of misappropriation of funds by intermediaries.

As a consequence, section 158 to 162 sets out certain conditions and requirements to be adhered to by brokers. The impact of same is as follows:

1. Section 158 of the Bill extends the conditions set out in Section 110 of the Act, which did not apply to brokers. Under Section 158 of the Bill a broker shall not :
 - (a) knowingly procure by fraudulent representations payment or the obligation for payment of any premium on an insurance policy;
 - (b) cause the policyholder to discontinue a policy without the policyholder being satisfied on reasonable grounds that the discontinuance of that policy is to the benefit of an insured; or
 - (c) cause the policyholder to replace a long- term insurance policy without first obtaining the customer's signature on the disclosure form as provided for in Schedule 7.
2. Brokers and sales representative who contravenes (1) above, commits an offence and is liable on summary conviction to a fine of TT\$150,000.00 and to imprisonment for 10 years, while the brokerage is liable on summary conviction to a fine of \$300,000.00 and every director or officer is liable to a fine of \$80,000.00 and to imprisonment for five years.
3. Premiums and payments received by a broker on behalf of the Insurer shall be deemed to have been received by the Insurer notwithstanding any stipulations or conditions to the contrary (section 159(1) of the Bill).
4. Upon receipt of any premium or other payment due from a consumer, the brokerage or sales representative shall issue to the consumer a receipt, which shall be considered to be a receipt of the insurer.
5. If a premium is paid to a brokerage, or sales representative then the insurer shall not avoid liability under the contract of insurance
6. Imposes a duty on a brokerage to maintain a consumer trust account for the receipt and payment of consumer funds.

(ii) Operation of the Consumer Trust Fund- Section160

1. A brokerage must establish and maintain a consumer account for the receipt and payment of consumer funds.
2. 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 the consumer account.

3. A brokerage transacting general insurance business shall be permitted to deduct from the consumer account any commission and other deduction to which it may by agreement be entitled.
4. A brokerage transacting long term insurance business shall not be permitted to deduct from the consumer account any commission and other deductions.
5. A brokerage shall not commingle the monies to be deposited in the consumer account with any other monies of the agency or the brokerage.
6. Each agency registered to carry on general insurance business and brokerage shall report to the Central Bank on such consumer trust account in accordance with the timing, form and content of such reports as the Bank may specify.
7. An agency or brokerage that contravenes subsection (1), (2), (4) or (5) commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and every director or officer is liable to a fine of one hundred and fifty thousand dollars and to imprisonment for five years.

(i) Payment of Premium to Insurer:

1. Pursuant to Section 161, where a brokerage 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, the brokerage must pay over such monies to the insurer within ten days after the end of the month in which the monies were received.
2. A brokerage 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 three 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 117(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. A brokerage that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of TT\$300,000.00 and every director or officer is liable to a fine of \$150,000.00 and to imprisonment for five years.

(i) Payment to consumers- Section 162

1. A brokerage 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 three days from the date on which the cheque was received.
2. Notwithstanding (1) above, 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 days from the date on which the cheque was received.
3. A brokerage that receives a cheque in its name from an insurer for the account of a consumer shall deposit such cheque in its consumer account within three days on which it was received.
4. A 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 days from the date on which such deposit was made.

(iv) Payments to Brokers & Premiums:

Section 104 of the Act prohibits officers, employees or agents of the Insurer from paying, agreeing to pay or allowing payment of compensation or anything of value to any unregistered broker, for placing, negotiating or attempting to place or negotiate insurance or for negotiating the continuance or renewal of insurance, other than reinsurance on lives, property or interests in Trinidad and Tobago. While Section 105, makes an offence for an insurer, its officers, employees or agent and a broker or salesman to 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 or give or offer or agree to pay, allow or give a rebate of the whole or part of the premium 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.

Any insurer or person that acts in contravention of section 105 is guilty of an offence. It must be noted that sections 104 and 105 does not apply to payment by way of dividend, bonus, profit or savings, which is provided for by the policy or which amounts compensation to a bona fide salaried employee of its head or branch office or the spouse or a child of such employee, in respect of insurance issued by the employing insurer upon the life or property of such person or so as to require such employee to be registered as an agent under this Part to effect such in Sections 152, 153 and 154 of the Bill maintain the aforementioned position as set out in the Act.

8. Temporary Cover

The Act stipulates that if an insurer at the request of a broker provides temporary cover on credit for a period not exceeding forty-five days, the broker 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 broker as a civil debt.

9. Disclosure of Preferential Arrangements to Clients:

Recognizing that Brokers place business with more than one insurer and that consumers have the right to expect that brokers act in the consumers' interests when recommending where business will be placed, the Bill seeks to implement measures to ensure that a Broker's relationship with an Insurer (as per a binder or contingent commission arrangement) does not compromise him and put the Client/ consumer at a disadvantage.

Under section 91(1)(e) of the Act, impartiality is advanced as a condition of registration and section 94(2)(i) empowers the Central Bank to cancel a broker's registration if this condition is breached.

The Bill takes this position further by:

- (a) Expressly providing that "preferential terms of commission or other compensation" as an example of an agreement that would be prohibited, while still permitting brokers to bind an insurer to coverage under specified conditions. A broker would thus be prohibited from entering into an agreement relating to the preferential offer of insurance business and which is likely to impair the broker's impartiality in placing insurance business, such as an agreement for preferential terms of commission or other compensation, with any other person carrying on insurance business, except that a broker may enter into an agreement under which the broker can commit an insurer to provide coverage to a consumer in accordance with such criteria as may be established by the insurer.
- (b) Where a broker has entered into such an arrangement as set out in (a) Section 157(1) requires the broker to disclose such arrangement to the consumer in writing in the manner specified by the Bank.
- (c) A brokerage that contravenes section 157(1) commits an offence and is liable on summary conviction to a fine of TT\$150,000.00 and every director or officer is liable to a fine of \$80,000.00 and to imprisonment

10. Offences:

The following is a list of offences as set out under the Act and Bill. :

(i) Under the Act:

Table showing various offences relating to brokers under the Act.

NO	OFFENCE	SECTION	PENALTY
1	To carry on business as a broker without being registered under Part III of the Act.	88(2)	Fine not exceeding \$10,000 and 12 months imprisonment.
2	(a) Failure by a Broker to prominently display the certificate at the principal place of business and copies thereof at each branch in Trinidad and Tobago, or (b) Displaying an invalid certificate of registration	92(5)	Fine of \$500.00 and further fine of \$50.00 for each day the offence continues.
3	Failure to produce a Certificate of Registration, when requested to do so by (a) the Bank, (b) insurance company of person in respect of which or whom he is registered to carry on business as an adjuster; and (c) an actual or prospective client	93(2)	Person is guilty of an offence no specifics provided on fine.
4	Failure to surrender a cancelled or suspended Certificate of Registration to the Bank	94(7)	Fine of \$500.00 and further fine of \$50.00 for each day the offence continues.
5	Failure to provide the Bank with information requested pursuant to Section 100(1)	100(2)	Person is guilty of an offence no specifics provided on the fine.
6	To make any oral statement or issue a permit to be issued any advertisement, statement circular, descriptive booklet or other document or make or permit to be made a statement, by means of broadcasting or other medium, which misleads or tends to mislead the public	103	Person is guilty of an offence no specifics provided on the fine.
7	To make or attempt an agreement as to the premium to be paid for the policy other than as specified in the policy; or To pay, allow, give, offer or allow to pay, or give a rebate of the whole or part of the premium stipulated in the policy or any consideration or thing of value intended to be in the nature of a rebate of premium.	105(1)(2)	Person is guilty of an offence no specifics provided on the fine
8	Failure to pay to a client or an insurer monies received from the client or insurer for payment of the other, within 30 days of receipt of the said payment.	111(1)	Person is guilty of an offence no specifics provided on the fine.

(ii) Under the Bill

Table showing various offences relating to brokers under the Bill:

NO	OFFENCE	SECTION	PENALTY
1	To carry on business as brokerage without being registered	137(1)	Fine - \$350,000 and 12 months imprisonment. Each Director / Officer a fine of \$150,000.00 and imprisonment for 5 years.
2	To carry on business of broker without being registered	137(2)	Fine - \$150,000.00 and imprisonment for 10 years
3	For a brokerage to 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-administered plans	139(8)	Fine - \$350,000.00 Each Director/Officer a fine of \$150,000.00 and imprisonment for 5 years.
4	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 Bank. If he fails to do so he commits an offence	142(2)	Fine-\$150,000.00 and Each Director is liable on summary conviction to a fine of \$80,000.00 and imprisonment for 5 years.
5	Where an intermediary places insurance business with a foreign insurance company he must comply with the reporting requirements of the Bank.	142(3)	Fine- \$150,000.00 and Each Director is liable on summary conviction to a fine of \$80,000.00 and imprisonment for 5 years.
6	Failure by a brokerage to maintain the professional indemnity coverage of \$10M, with a maximum deductible of \$50,000.00 or 10% of the stated capital, whichever is greater.	143(1)	Fine - \$150,000.00 and \$15,000.00 for each day that the offence continues. Each Director/ officer is liable to a fine of \$80,000.00 and imprisonment for 5 years and a fine of \$8,000.00 for each day the offence continues
7	Failure of a brokerage to 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	143(2)	Fine - \$150,000.00 and \$15,000.00 for each day that the offence continues. Each Director/ officer is liable to a fine of \$80,000.00 and imprisonment for 5 years and a fine of \$8,000.00 for each day the offence continues
8	(a) Failure by a broker to prominently display the certificate at the principal place of business and copies thereof at each branch in Trinidad and Tobago	144(6)	Fine of \$150,000.00

NO	OFFENCE	SECTION	PENALTY
9	Where a broker's contract is terminated under Section 150, it is an offence for a broker to conduct any insurance business unless he has received a new certification of registration.	150(5)	Fine - \$8,000.00 and imprisonment for 10 years.
10	An agency or brokerage 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.	150(4) 150(6)	Fine - \$150,000 and each director or officer is liable to a fine of \$80,000.00 and imprisonment for 5 years.
11.	Failure by a brokerage to disclose to a consumer in writing any preferential arrangements with an insurer	157(2)	Fine - \$150,000 and each director or officer is liable to a fine of \$80,000.00 and imprisonment for 5 years.
12.	A brokerage or broker shall not: (a) knowingly procure by fraudulent representations payment or the obligation for payment of any premium on an insurance policy; (b) cause the policyholder to discontinue a policy without the policyholder being satisfied on reasonable grounds that the discontinuance of that policy is to the benefit of an insured; or (c) cause the policy holder to replace a long term insurance policy without first obtaining the customer's signature on the disclosure form as provided for in Schedule 7.	158(2)	Where a broker commits the offence he is liable to a Fine \$150,000.00 and imprisonment for 10 years. Where the offence is committed by a brokerage, it is liable for a fine of \$300,000.00 and every director/officer is liable to a fine of \$80,000.00 and imprisonment for 5 years.
13.	Failure by a brokerage to establish and maintain a consumer trust account for the receipt and payment of consumer funds.	160(7)	Fine - \$300,000.00 every director or officer is liable to a fine of \$150,000.00 and to imprisonment for five years.
14.	Failure by a brokerage to deposit monies received from a consumer for the account of an insurer or from an insurer for the account of a consumer in the consumer trust account.	160(7)	Fine -\$300,000.00 every director or officer is liable to a fine of \$150,000.00 and to imprisonment for five years.
15	For a brokerage transacting long-term insurance business to deduct from the consumer trust account any commission and other deductions.	160(7)	Fine -\$300,000.00 every director or officer is liable to a fine of \$150,000.00 and to imprisonment for five years.
16.	Commingle the monies to be deposited in the consumer trust account with any other monies of the agency or the brokerage	160(7)	Fine -\$300,000.00 every director or officer is liable to a fine of \$150,000.00 and to imprisonment for five years.

NO	OFFENCE	SECTION	PENALTY
17.	Failure to pay monies received from a consumer for the account of an insurer (registered to carry on general insurance business or the accident and sickness class), within ten days after the end of the month in which monies were received.	161(1)	Fine -\$300,000.00 and every director or officer is liable to a fine of \$150,000.00 and to imprisonment for five years.
18	Failure by a brokerage or sales representative of an insurer that receives monies from a consumer for the account of an insurer registered to carry on a long-term insurance business shall pay over such monies to the insurer within three days from the date on which it received such monies.	161(2)	Fine -\$300,000.00 and every director or officer is liable to a fine of \$150,000.00 and to imprisonment for five years.
19	A person who contravenes any section of Part IV commits an offence and the offence is deemed to be continuing so long as the default continues.	168(1)	Where no offence or penalty is expressly provided the fines are: (a) Brokerage – fine not exceeding \$20,000.00 and an additional fine of \$2,000.00 for each day the offence continues; (b) Broker – A fine not exceeding \$10,000.00 and an additional fine of \$1,000.00 for each day the offence continues.

IMPACT OF THE PROPOSED BILL:

Proclamation of the Bill in its current form will have significant impact on the day to day operations of Brokers and brokerages. These range from the infringement of vested rights to financial and operational impacts. The following are some of the more salient impacts of the proposed Bill on brokers and brokerages:

1. The Bill infringes on sections 4 and 5 of the Constitution as it relates to property and due process.
2. Under the Bill brokerage staff is captured under the definition of “sales representatives”. As a consequence, they must be registered pursuant to 91(2)(f) and are required to pass examinations prior to registration. This is unacceptable position,;
 - (a) As the sales representatives are not conducting the business on their own accord but on behalf of the brokerages for which they are employed, and these brokerage houses would have already been registered.
 - (b) No specifics have been provided as the relevance of same, details on the examination, the curriculum to be covered under same, the cost and who is responsible for administering same.
 - (c) Implementing this measure will place an increased financial burden on brokers and brokerages, which cannot be quantified until we have the details in (b) above;
 - (d) The majority of sales representatives in the brokerages are mature women, who have worked in the industry for a considerable period of time and possess immense institutional and industry related industry experience, expertise and technical knowhow. In our feedback from a number of the brokerages, concern was expressed by the sales representatives and brokers alike that the impact of same is that many of these persons have indicated that at this stage in their life they don't see the relevance or requirement for same and that the net effect of this section is that it would have the effect of forcing a lot of these older experienced, skilled workers with considerable technical and industry knowledge into retirement. This is a position that we cannot allow to happen as it will have a negative impact on the various brokerage houses and the industry as a whole. As it is trite knowledge that book sense is not everything and cannot replace experience.

3. The rationale for the registration of brokerage staff in the category of “sales representatives” should be explained and understood as it is unclear what the mischief to be prevented is and how the registration of sales representatives protects against same. This is particularly relevant as in the exercise of their duties brokerage staff will be representing the brokerage and the latter would have already been registered. As such, the rationale for same must be carefully considered as once a person is registered as a sales representative, there is nothing to preclude them from operating on their own behalf. It is submitted that the party that would benefit from this measure is the person that is administering and undertaking the examination and no one else.
4. The Bill places an increased financial burden on brokers and brokerages. By:
 - (a) Increasing the professional indemnity coverage,
 - (b) Increasing the minimum stated capital;
 - (c) Increasing the penalties for offences (including administrative mistakes) and imposing onerous liabilities and fines on brokerages, brokers, Directors and officers of Brokerages. The direct result of this is a resultant increase in the premiums and or the level of professional indemnity and Directors liability insurance for brokers and brokerages ;
 - (d) Imposing continuous education requirements on brokers;
 - (e) Imposing a requirement for sales representatives to be registered and subject to the continuous registration requirements of section 146.
5. The increase penalties on Directors and officers is a retrograde step, as:
 - (a) It ignores accepted corporate governance practice as it relates to the separation of roles and responsibilities of management, the Board, Executive and Non-Executive Directors. The accepted practice is that the management is responsible for operational day to day matters, while the Board is there for policy and direction. The imposition of penalties and sanctions of imprisonment on Directors, for operational matters such as those under section 160, 161 and 162 is unfair and onerous to Directors.
 - (b) Will result in bureaucratic red tape and reduce operational efficiencies of the brokerages, as Directors will be well in their right to look into every matter in the brokerage to minimize their risk exposure.
 - (c) Will render it almost impossible for brokerages to attract quality directors and officers. As many of the offences under the Act will attract a fine and in some cases imprisonment for Brokers. Under the Bill in at least 14 of the offences, the directors are liable to fine and imprisonment for various matters including administrative matters outside of the purview of non- executive directors. This is a critical item as once a person is convicted of an offence; it hinders their ability to do a number of things including get a visa.

6. The bill reverses the common law position by deeming an agent or broker to be the agent of the insurer for the purpose of receiving any premium for a contract of insurance. This in itself is not necessary and complicates the issue by introducing the concept of agency. If the mischief that the Bill seeks to prevent is the Broker not passing the premium on to the client and or the Insurer, then same is already covered under the existing contractual relationships and can be recovered by a simple recovery action.
7. The imposition of registration and or further/continuous education requirements on sales representatives can and may have the impact of undermining the brokerage sector and allowing unregulated consultancies to create a new niche market. As it stands, consumers are not prohibited from negotiating and placing insurance directly with the insurance companies, the value that the broker adds is that he advises the client on the best option/ products in the market and proceeds to place the insurance on his behalf. There is nothing that prohibits a person knowledgeable in insurance from acting as a consultant and advising clients on the best option and having the Client place same directly. This means that these persons can offer a lot of or similar services to brokers at a cheaper rate, as they will in effect have a cheaper operating cost as they are not required to be registered or have paid up capital or a set professional indemnity coverage, also they can operate outside the ambit of the law and the draconian penalties imposed thereby. Furthermore, there is nothing prohibiting persons from seeking professional advice from a consultant on insurance business.
8. The Act does not make a distinction between mistakes and acts of criminal negligence. While once can appreciate the impact of the Clico situation and the need to regulate the players in the insurance industry, care must be taken that we do not over regulate and stifle legitimate business operations as Clico can and should be distinguished as a unique case. The first point to note is that Clico was an insurance company not a brokerage and the EFPA was not a traditional insurance product.
9. The time frames set out in the act for remitting of funds under sections 160 and 161 of the Bill is not practical from an administrative perspective. When one takes into account the time required to clear a cheque and that under the FIU the broker has to undertake a level of due diligence before he accepts the customer, it is unrealistic to expect brokers to remit the funds in some instances in three days. This increases the risk of the broker and creates a conundrum, to either short cut the due diligence or pay the premium itself and hope that the client's cheque does not bounce.

10. There is a failure to appreciate the role of the Brokers, and the service they provide as agent of the Clients, it is submitted that as agents of the Clients, brokers are subject to a contractual relationship.
11. There is a clear need for an explanation or rationale as to reasons for the increased in professional indemnity coverage, how the quantum was derived and the reason for making same mandatory, having regard to the fact that the relationship between the Broker and the client is covered under a contract, the broker is the Agent of the client and any client aggrieved by or through the actions of a broker, would have recourse under the law of contract, tort and agency. Furthermore, there is a clear need to ascertain why same is mandatory for brokers/ brokerages having regard to the fact that the broker is not selling a product, instead like any other professional (e.g. Consultant, Lawyer or a doctor) he is giving the client advice as to the best products that meets his specific needs in the market place and helps the Client with regard to accessing same.

RECOMMENDATIONS:

The following sets out our recommendations, comments and the areas that we would like to see addressed in the draft Bill:

(a) Specific areas:

1. **Section 137(7)** (Registration of Intermediaries) of the Bill makes it an offence for a person to carry on business as a brokerage or a broker unless that person is registered. When compared with the Act, the increased penalty, imposition of fine and imprisonment on Directors and officers of a brokerage is oppressive and draconian. While we have no objection to the impositions of a penalty we do not support the imposition of both a fine and imprisonment of Directors and Officers in the case of a brokerages.

Accordingly we recommend that:

- (a) Section 137(7) be deleted and replaced with the following *“(7) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of three hundred and fifty dollars and every director and officer of such company is liable to a maximum fine of one hundred and fifty dollars and to imprisonment for five years”*
- (b) Section 137(2) be amended by inserting a full stop after the word dollars and deleting the rest of the sentence.

2. Section 137(6), provides that *“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 20(6) shall apply”*. It should be confirmed whether this section applies to persons that give general advice related to insurance and the best insurance products available, in other words, will this capture consultants.

3. Section 139:

- (a) Clarification is required as to the scope and definition of self-administered plan under subsection (8);
- (b) We recommend that penalties imposed on Directors and officers be removed as we are confident that the matters set out therein are already covered under the FIU regulations. Furthermore, the penalties should not be extended to cover non- Executive directors.

4. **Sections 140(2) (d) and 143(1):** Clarification is required as to how the proposed quantum was derived and the specific rationale for same.

5. **Section 142:** provides as follows:

“142. (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 subsections (2) or (3) commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars and every director or officer is liable on summary conviction to a fine of eighty thousand dollars and to imprisonment for five years.”

Clarification is required on the extent of this personal liability and what it encompasses; especially having regard to the fact that the Client would have given written consent to same and the policy would be in the name of the Client. This is particularly relevant as for a number of reasons, various types of insurance policies (including marine and large plant and equipment) are placed overseas due to the considerable cost savings and lack of sufficiency of coverage on the local market. In light of the foregoing, we cannot agree to same until we have understood and appreciated the scope and impact of same.

6. **Sections 145 and 146-** The Bill sets out the need for continuous education as a condition for continuing registration, and states that same will be determined by the Bank after consulting the stakeholders.

(a) Clarification is needed on same and its scope, specifics, cost and administrative details (especially with regard to the body responsible for administration of same) should be provided to enable us to properly consider and comment on same and the relevance and related cost impact. In the absence of the aforementioned specifics, we cannot agree to or support same.

(b) We are recommending that consideration should be given to exempting persons with a certain number of years' experience in the industry from the requirements of this section, as failure to do so could have a negative long term impact on the sector and the various brokerages as a number of persons who have been providing this services for years and possess considerable experience have indicated that this will force a number of them into early retirement and deny them their fundamental right to earn a living in the only manner that they know how to do so.

7. Section 153 - The Bank should issue a "statement" with respect to brokerage fee basis presently ongoing with some government and state enterprises (with international and/or local brokers), multi-national and some private sector clients.

8. Section 160 - Commissions should be deducted prior to paying insurers similar to general insurance or insurers be stipulated the amount of time to issue the relevant commission payment to brokerage, agency, etc.

9. Section 161 - payment of long term business premium within three (3) days of receipt is time consuming, impractical and uneconomical. We recommend the adoption of a payment schedule similar to that under 161.(1), having regard to the time taken for cheques to clear and for brokers/ brokerage to undertake due diligence.

10. Section 162- The suggested time frames are impractical and should be extended.

11. Section 164 - the requirement of the brokerage to maintain monthly receipts and expenses for each class/classes of business for which it is registered is not necessary and to many brokerage companies impractical.

12. Section 167 -IBATT members represent many customers in the offshore energy, onshore heavy manufacturing an aviation fields. Each of these areas are deemed "special risks" and in the event of loss, insurers/ reinsurers asked for their overseas based specialized adjusters to attend.

IBATT asked that the term "special risk" above be included for foreign adjusters to be present.

13. The proposed penalties (fine and imprisonment) against Non-Executive Directors for matters of an operational nature as set out in the following sections: 137, 139(8), 142(2), 143(1), 143(3), 150(6), 158(2), 158(3), 160(7), 161(1), 162(2) and 161(8).

General Matters:

1. For the Bill to function efficiently and effectively, all players in the sector must do their job and adhere to the provisions of the Bill. It is noted that the Bill imposes significant penalties on Directors and Officers and Insurers relative to breaches and it is noted that no such penalties and or sanctions are placed on the Bank or its officers for failure to do their job, in fact under the Central Bank Act they have immunity from suit. We believe that there is need for a more equitable arrangement in this behalf.
2. The Bank should identify the level of training and education required for both registration and continuous registration before the Bill is proclaimed.
3. With regard to registration, it is recommended that the role of the TTII be reviewed. As it stands, the Trinidad and Tobago Insurance Institute has been authorized by the Bank to set, undertake and administer the licensing recommendations, we are of the opinion that situation needs to be revisited in conjunction with the IBATT/ATTIC/CBTT. As it stands we have received a number of complaints from our members in respect of same. With the majority of concerns centering on TTII's failure to understand and appreciate the roles, responsibilities and function of brokers. As such, we are recommending and insisting that with regard to the registration, examination and curriculum to be covered for the registration and continuous registration of Brokers that same be agreed upon by the Bank/ATTIC and IBATT prior to implementation of the Bill and or that all current recommendations and policies in this behalf be subject to consultation with IBATT.
4. The requirement for some of the brokerage staff to be registered should be removed or alternatively the Bank should identify with specificity, the staff/ positions to be so registered and why same is required having regard to the fact that brokerage will be registered and these persons are employed by and act on behalf of the brokerage in the exercise of their duties.
5. There must be a distinction between acts of mistake and criminal negligence especially as it relates to the imposition of penalties.

Rebating

6. Insurers should not be allowed to rebate premiums to consumers;
7. Insurers should not be permitted to give credit to Insureds or preferential premium payment terms. As premium financing can be construed as an unfair inducement to enter into a contract with their institution.
8. Insurers should not be permitted to "double quote" or offer conflicting terms and conditions to any intermediary or consumers.
9. Where an insured pays the premium directly to the Insurer, the latter should be directed to remit the commissions to the intermediary within ten days of the issuance of the receipt.
10. All refund premiums should be returned to the policyholder/consumer or his representative in the currency that the premium was paid and in the form of an Insurers cheque in three (3) days.
11. Insurers should be given a deadline to remit claims payments recovered through subrogation to their insureds, recoveries from third parties either through direct collection or contra payments.
12. Insurers should pay claims agreed with their policyholders/consumers in 3 days.

APPENDIX A

BROKERS REGISTERED AS AT SEPTEMBER 30, 2016

21st Century Insurance and Reinsurance Brokers Limited

Ace Insurance Brokers Limited

Agostini Insurance Brokers Limited

Amalgamated Insurance Brokers Limited

Anthony David Farah

Anthony Nigel Vere Slinger

AON Energy Caribbean Limited

Bell Insurance Services Limited

Bindranath Maharajh

Blaine Hosang

Brian Lewis

Camacho de Bruin Insurance Brokers Limited

Charlett & Gatcliffe Limited

Chateram Dabideen

Christian Low

CIC Insurance Brokers Limited

Comprehensive Insurance Brokers Limited

Craig Millar

Darryl Chung

Dave Patterson

Derek De Silva

E.P. Insurance Services Limited

BROKERS REGISTERED AS AT SEPTEMBER 30, 2016

Erickson Ramkhelawan

Errol Sooknanan

Farah Insurance Brokers Limited

Fazal Imtiaz Ali

Fidelity Insurance Brokers Limited

Garvin Anslem Manzano

Global Financial Brokers Limited

Gregory S. de Montrichard

Hardath General Insurance Consultants Limited

Horizon Insurance Services Limited

Insurance & Allied Services Limited

Insurance Brokers West Indies Limited

Islands Insurance Brokers Limited

L. Dereck Soobransingh

Lou-Anna Ferreira-Patterson

Legacy Brokerage Services Limited

M&M Insurance Broking Services Limited

Maibrol Insurance Brokers Limited

Mark Henderson

Matthew Peter Moses

Merchants and General Insurance and Reinsurance Brokers (W.I.) Limited

Michael Redhead t/a Pensurance Brokers

Millar Insurance Brokers Limited

Code of Practice

iBATT

Insurance Brokers of Trinidad & Tobago

Prepared by
Anthony D. Vieira
Mair and Company
Attorneys at Law
50 Richmond Street
Port of Spain

Monday 20 May 2013

Code of Practice

Insurance Brokers Association of Trinidad and Tobago

Contents

Part A: Introduction

Paragraph

1. Objectives of the Code
2. Scope of the Code

Part B: Core Duties

3. Core Duties
4. Duty to comply with the Code
5. Duty to comply with all relevant laws and regulations
6. Duties owed or arising in a fiduciary relationship
7. Duty to uphold and to perform contractual obligations
8. Duty to act with integrity and to observe the highest ethical standards
9. Duty to act in the best interests of each client
10. Duty to treat persons fairly regardless of their status
11. Duty to provide a high standard of service

Part C: Guidelines in relation to Specific Matters

12. Advertising and Marketing
13. Matching the Requirements of Clients and Policyholders
14. Information about Products and Services
15. Advice, Recommendations and Quotations
16. Duty of Disclosure
17. Confirming Cover
18. Documentation
19. Claims
20. Confidentiality, Security and Data Protection
21. Standards for Representatives and Employees
22. Conflicts of Interest
23. Information about Costs and Remuneration
24. Providing On-going and Associated Services
25. Responding to Catastrophes and Disasters
26. Combating Terrorism and the Financing of Terrorism
27. Countering Money-Laundering

Part D: General Administrative Provisions

28. Definitions
29. Resolving Complaints
30. Information and Education
31. Review and Development of the Code

BROKERS REGISTERED AS AT SEPTEMBER 30, 2016

Millennium Insurance Brokers Limited

Nautica Insurance Brokers Limited

Neil Colin Gosine

Nizam Mohammed

Norman Gabriel

Norman Gabriel Limited

Omah Seetahal

Palm Insurance Brokers Limited

Pan West Indian Insurance Brokers Limited

Personalised Insurance Brokers & Reinsurance Limited

Peter Malcolm George Farah

Pooran Carl Hardath

Prakash Bhaggan

PRFC Limited

Ramnarine Maharaj

Ravi Surjan

Richard Ramdwar

Risk Management Services Limited

Risk Research Limited

Robert Gordon Charlett

Robert Lazarri

Rodney B.D. Farah

Rosalind Gabriel

BROKERS REGISTERED AS AT SEPTEMBER 30, 2016

Samsoondar Surjan

Samtrin Insurance Brokers Limited

SDS Insurance Brokers Limited

Seunarine Hardath

Specialists Insurance Brokers Limited

Stephen Castagne

Sterling Insurance Services Limited

Surujdeo Mangaroo

Trevor Montoute

Trinidad & Tobago Insurance Consultants Limited

Trinity Insurance Brokers Limited

Troy Gabriel

Universal Insurance Brokers Limited

Walter De Bruin

Wayne Gosine

Winston Siriram

Yogendranath Ramsingh

Appendices

Appendix 1: List of legal provisions of particular relevance to brokers

Appendix 2: Key provisions under the Insurance Act

Appendix 3: Key provisions under the Financial Institutions Act

Appendix 4: Key provisions under the Central Bank Act and relevant regulations

Appendix 5: List of relevant guidelines put out by the Central Bank

Appendix 6: Summary of the key obligations imposed on brokers under the Proceeds of Crime Act, the Financial Obligations Regulations and the Anti-Terrorism Act

Insurance Brokers Association of Trinidad and Tobago

Code of Practice

Part A: Introduction

- a) Insurance brokers are skilled professional and independent intermediaries who assist their individual and business customers in designing and implementing appropriate insurance portfolios to match their particular needs.

Under the Insurance Act: 'Broker' means any individual who or any firm or company which for compensation as an independent contractor in any manner solicits, negotiates or procures insurance or the renewal or continuance thereof on behalf of existing or prospective policyholders.

Under the Insurance (Intermediaries Registration) Regulations: No person may, in respect of any class of insurance business, carry on business as broker, as salesman, an adjuster or an agent of an insurance company unless he is registered under Part III of the Insurance Act.

- b) The Insurance Brokers Association of Trinidad and Tobago ('the Association') is the voice of the insurance broking services industry, advising members, the relevant authorities, consumer bodies and other stakeholders on key insurance issues.
- c) The Association is dedicated to promoting the highest standards of professionalism in the insurance broking services industry. This Code of Practice (the 'Code') will provide members with the guiding principles of good and acceptable expected behaviour in all their business transactions and with their various stakeholders.
- d) An insurance broker's reputation for business integrity is one of his most valuable assets. That reputation is maintained by the care he takes to avoid any activity that may tarnish his reputation or image. Typically, an insurance broker places insurance cover on behalf of an insured and act upon his instructions. Brokers negotiate claims and act as a conduit for payment of premiums and for the communication of information between the insured and the insurer. Often, brokers fulfil many different functions and act in different capacities; the nature and extent of the duties which they owe is largely determined by the precise role which they fulfil.
- e) The activities of insurance brokers are also subject to a large number of complex and constantly evolving laws and regulations which all members of the Association are required to comply with, as well as the various rules, policies and guidelines from the relevant authorities wherever the members do business.
- f) All members of the Association are subject to this Code and are obliged to sign a form

Objectives of the Code

- 1.1 This Code sets out the standards of behaviour members are expected to uphold. These standards are important as they provide members with a recognised standard of professional conduct and clearly defined principles on how they should conduct themselves when providing insurance broking services.
- 1.2 The objectives outlined in this Code are to:
 - 1.2.1 Describe standards of professional practice, by identifying specific acts that must be either adhered to or avoided in the provision of insurance broking services and the level of service or standards of behaviour to be expected from members.
 - 1.2.2 Educate members and to clarify what needs to be done by members to comply with relevant laws and regulations and to prevent negligence and malpractice.
 - 1.2.3 Promote efficiency in insurance brokerage transactions between its members and their clients, insurers and other stakeholders in the insurance industry.
 - 1.2.4 Promote positive relationships between members and their clients, insurers, the relevant authorities and others involved in the insurance industry.
 - 1.2.5 Give guidance and serve as a reminder for members when faced with an ethically complex situation.
 - 1.2.6 Assist in the resolution of disputes and difficulties, including disputes between members and clients and disputes between members.
 - 1.2.7 Serve as a benchmark when deciding whether a member has contravened required conduct.

Scope of the Code

2.1 The 'insurance broking services' which come within the purview of this Code are:

- General insurance services
- Life insurance (as defined by the Insurance Act)
- Risk management services
- Inspections
- Valuations
- Arrangement of premium funding
- Training

2.2 The Code is intended to serve as a guide to members of the Association and other persons concerned with their conduct, but the mention or lack of mention in it of a particular act or omission shall not be taken as conclusive on any question of professional conduct.

2.3 Matters which might relate to acts or omissions amounting to negligence will be dealt with, if necessary, by the Courts, but the Association acknowledges that breaches of this Code may amount to unprofessional, undesirable conduct.

2.4 Whilst the Code does not create any legal or other right as between the member and any person other than the Association, any individual or business entity can make a complaint under the Code against any member for any breach of the relevant standards or provisions and seek to have the matter resolved in accordance with the provisions of the Code.

2.5 All members are required to comply with the standards and provisions of this Code and any orders made or sanctions imposed as a result of a member's breach of the Code. Failure to comply with the Code may result in termination of membership.

Part B: Core Duties

- 3. In the course of their insurance broking services members must:**
 - 3.1 Comply with this Code.**
 - 3.2 Comply with all relevant laws and regulations.**
 - 3.3 When acting as a fiduciary, observe all the duties owed or arising in a fiduciary relationship.**
 - 3.4 Comply with and uphold their contractual duties.**
 - 3.5 At all times act with integrity and observe the highest ethical standards.**
 - 3.6 Always act in the best interests of each client.**
 - 3.7 Provide a high standard of service.**
 - 3.8 Treat persons fairly regardless of their status i.e. sex, race, ethnicity, origin, religion, marital status or disability.**

The duty to comply with this Code

- 4. Members shall:**
 - 4.1 Comply with this Code.**
 - 4.2 Abide by their professional obligations, not just their legal ones.**
 - 4.3 Deal with the Association in an open, clear and cooperative manner.**
 - 4.4 Ensure that all correspondence to and from the Association are dealt with promptly, courteously and not in a vexatious or frivolous manner.**
 - 4.5 Only use or permit use of the description 'Insurance Broker' in connection with a business that is carried on in accordance with the requirements of the Insurance Act and the Insurance (Intermediaries) Regulations.**
 - 4.6 Prominently display the Registration Certificate of the Association at the principal place of business of the member to whom it was issued and copies of the certificate at each Branch Office in Trinidad and Tobago.**
 - 4.7 Report any breaches of this Code to the Association.**

The duty to comply with all relevant laws and regulations and how to deal with the Relevant Authorities (including regulators and government investigators)

- 5.1 Members shall:**
 - 5.1.1 At all times conform to the national laws and regulations, both in letter and in spirit, and those of the countries in which they conduct business. In addition to the laws and regulations governing the insurance brokers industry (in particular the Insurance Act and Regulations made under the Insurance Act), the Financial Obligations Regulations, the Financial Intelligence Unit of Trinidad and Tobago Act, the Proceeds of Crime Act, the Anti-Terrorism Act and other laws and regulations now require members to ensure that their organisations are suitably regulated and have effective compliance arrangement in place i.e. appropriate policies and procedures. Schedule 1 details some of legal provisions of particular relevance to members.**
 - 5.1.2 Never knowingly assist any third party in violating any law.**
 - 5.1.3 Procure ethical behaviour in all business transactions, reject and actively discourage corrupt behaviour and bribery by means of the exchange of cash, gifts or information.**

- 5.1.4 Deal with the Relevant Authorities in an open, clear and cooperative manner and never knowingly mislead them.
- 5.1.5 At all times provide truthful and accurate information about their performance to any government regulatory agency, inquiry or investigation.
- 5.1.6 Ensure that all correspondence and queries from the Relevant Authorities and others acting on their behalf are dealt with promptly, courteously and not in a vexatious or frivolous manner.
- 5.1.7 If within their control, ensure that their organisations are suitably regulated and have effective compliance arrangements (i.e. appropriate policies and procedures) in place.
- 5.1.8 Not provide or attempt to provide and procure commercial advantage by improper inducements, favours or benefits directly or indirectly so as to influence government officials and or public servants.
- 5.2 Compliance with laws is not just about working within the letter of the law but also about upholding the spirit of the law, and what the particular law is intended to achieve.
- 5.3 In the event of conflict between the law and the traditional or current practice of the industry (including this Code), the law will prevail i.e. the duty to comply with relevant laws and regulations will have priority over all other duties.

The duties owed or arising in a fiduciary relationship

- 6. As the agent of the insured, the broker is the insured's fiduciary and owes fiduciary duties to him. Thus, when acting as a fiduciary, members shall observe all the duties owed or arising in a fiduciary relationship, including:
 - 6.1 The duty to at all times conduct their business with utmost good faith and integrity and act for proper purposes.
 - 6.2 The duty to exercise fiduciary powers honestly.
 - 6.3 The duty to act in good faith in the principal's best interests.
 - 6.4 The duty to act loyally and to avoid conflicts of duties and conflicts of interest.
 - 6.5 The duty to account for any secret profits that are made.
 - 6.6 The duty to exercise due care, skill and diligence.
 - 6.7 The duty to deal fairly which, among other things, requires full disclosure and fully informed consent.

The duty to uphold and to perform contractual obligations

- 7.1 Contracts of insurance are significant commercial contracts that deserve to be treated as such.
- 7.2 The relationship of principal and agent between the insured and the broker means that they are in a binding contractual relationship.
- The general rule is that the broker is the agent of the insured (the contract is a contract of agency i.e. a relationship where the agent is authorised by the principal to act on his or her behalf and, typically, to make an agreement between the principal and a third party)
 - This rule does not mean that the broker acts only, and in every situation, as the agent of the insured. Brokers often fulfil several functions and act in different capacities; they may well find themselves acting on behalf of different principals in the course of the same transaction
 - However, even if, on the facts, a broker is held to owe duties to the insurer, any duties that he also owes to the insured are likely to prevail whenever there is a conflict. The broker's principal obligation is to the insured.
- 7.3 Where an agreement has not been reduced to writing, the terms of the contract are usually implied by law and will include obligations on the broker:
- a) To perform his principal's lawful instructions;
 - b) To exercise reasonable skill and care in the performance of such functions; and
 - c) To act loyally, faithfully and honestly in the best interests of his principal.
- Generally the terms to be implied by law are well-established.
- 7.4 A broker with an agency agreement with an insurer will owe contractual duties to the insurer as his principal, in accordance with the contract between them. However, even where he is an agent of an insurer, the broker may simultaneously owe duties to the insured. Whenever such duties arise, and if so to what extent, is governed by the facts of each case and, in particular, by whether it can properly be said that the broker has assumed responsibility to the insured for a particular task so as to cease to represent the insurer alone. Whether a broker is at any particular time acting on behalf of the insured or insurer requires careful analysis of the activity concerned against its factual background.
- 7.5 Where a broker acts in a dual capacity, there is the potential for conflicts of duty and interest to arise. In such a situation, the broker must make disclosure to the insured; and a broker accepting a binding authority should remind the insurer in question that his fundamental obligation is to the insured rather than to that insurer. A broker who acts where there are conflicts of interest risks being held to have acted in breach of fiduciary duty as well as to have acted in breach of his contractual duties.

-
8. In the course of their insurance broking services members must at all times observe high standards of integrity and deal openly and fairly with their clients, insurers, the relevant authorities and other stakeholders in the insurance industry. This includes, but is not limited to:
- 8.1 Acting fairly and reasonably.
 - 8.2 Being honest, trustworthy and open.
 - 8.3 Being reliable, dependable and respectful.
 - 8.4 Not taking unfair advantage of a client, a colleague or a third party.
 - 8.5 Not bringing the insurance broking services industry or the Association into disrepute.
 - 8.6 Handling claims fairly and quickly.
 - 8.7 Seeking to avoid conflicts of interests, but where a conflict is unavoidable or does arise, managing it in such a way as to avoid prejudice to any party.
 - 8.8 Not offering or accepting gifts, inducements, favours, benefits, hospitality or services (whether directly or indirectly) which could, or might appear to, imply an improper obligation.
 - 8.9 Conducting business and organising affairs in a prudent manner and, in particular, operating both professionally and in a financially responsible manner so as to avoid becoming insolvent.
 - 8.10 Making sure all services meet the required standards.
 - 8.11 Countering money-laundering and terrorist-funding activity.
 - 8.12 Implementing secure methods of gathering, handling, storing, processing and transferring data.
 - 8.13 Giving advice on how to complain, where necessary.
 - 8.12 Correcting mistakes and handling complaints quickly.

The duty to act in the best interests of each client

- 9.1 Acting in the best interests of the client requires knowledge about the client and his or her needs; it requires giving the client necessary information and support; and it means putting the client's interests first. This includes, but is not limited to:**
 - 9.1.1 Seeking from the client such information about his or her circumstances and objectives as might reasonably be expected to be relevant in enabling the member to fulfil his responsibilities to the client.**
 - 9.1.2 Making reasonable steps to give the client sufficient information in a comprehensible and timely way to ensure that all the information that is given is clear, fair and not misleading.**
 - 9.1.3 Making sure the client has all the documents he or she needs.**
 - 9.1.4 Protecting any personal information, money and property held or handled for the client.**
 - 9.1.5 Basing decisions on a clear understanding of the client's needs, priorities, concerns and circumstances.**
 - 9.1.6 Making sure that promises made to the client about a product's performance and the after sale service are true.**
 - 9.1.7 Respecting confidential information of the client, former clients and potential clients.**
 - 9.1.8 Not using client information improperly and or to personal or business advantage.**
 - 9.1.9 Seeking to avoid conflicts of interests, but where a conflict is unavoidable or does arise, managing it in such a way as to avoid prejudice to any party.**

The duty to treat persons fairly regardless of their status

10. The Association adopts the national motto that in Trinidad and Tobago every creed and race has an equal place. Under the Equal Opportunity Act a person discriminates against another person if he or she treats the aggrieved person, in circumstances that are the same or are not materially different, less favourably than he or she treats another person of a different status. 'Status' in relation to a person means: (a) the sex; (b) the race; (c) the ethnicity; (d) the origin, including geographical origin; (e) the religion; (f) the marital status; or (g) any disability of that person. Further, under the Constitution of the Republic of Trinidad and Tobago it is recognised and declared that there shall be no discrimination by reason of race, origin, colour, religion or sex. Accordingly, the duty to treat persons fairly regardless of their status includes, but is not limited to:
 - 10.1 Obeying the Equal Opportunity Act and the constitutional provisions regarding the recognition and protection of fundamental human rights and freedoms.
 - 10.2 Treating each person as an individual.
 - 10.3 Treating everyone with equal respect and with equality of opportunity.
 - 10.4 Challenging and reporting unlawful or otherwise unfair discriminatory behaviour and practice.
 - 10.5 Always acting openly and fairly and treating employers, employees, colleagues, clients, potential clients and suppliers with equal respect and opportunity.
 - 10.6 Making reasonable adjustments to assist people with disabilities or particular needs.
 - 10.7 If within the member's control, making sure processes and procedures do not discriminate.

The duty to provide a high standard of service

11. Customer service is an everyday activity connected with everything that happens in insurance: how policies are underwritten, how claims are settled and how members engage with their clients, colleagues, insurers, the Relevant Authorities and other stakeholders. This includes, but is not limited to:
 - 11.1 Providing advice objectively and independently.
 - 11.2 Although the choice of an insurer is a matter of judgment, members must use their skills objectively in the best interests of the client.
 - 11.3 Having proper regard for the wishes of a policyholder or client who seeks to terminate any agreement.
 - 11.4 Not seeking quotations or information on any policyholder's business or place such business without proper written authorization from that policyholder.
 - 11.5 Making every endeavour to ensure prompt and fair loss settlements under such insurance contracts instituted by the member.
 - 11.6 Assisting with any variation, reinstatement, replacement, renewal or cancellation of the client's policies.
 - 11.7 Communicating with each client in a way that is accurate and straightforward and expressed in a way that the individual client can understand.
 - 11.8 Being transparent about fees and other costs.
 - 11.9 Making sure reasonable steps are taken to ensure that all advice is accurate and suitable for the individual client.
 - 11.10 Obtaining and providing clear information before, during and after the point of sale.
 - 11.11 Ensuring adequate and correct records are kept.
 - 11.12 Acting only within the member's ability and with the necessary authorisation.
 - 11.13 Ensuring that the member's knowledge and expertise is up-to-date and relevant for the particular area of work.
 - 11.14 If within the member's control, having a clear written complaints procedure that is followed.

Part C: Guidelines in relation to Specific Matters

12. Advertising and Marketing

- 12.1** Members shall familiarise themselves with the Trinidad and Tobago Standard for Advertising published by the Trinidad and Tobago Bureau of Standards (TTS 94-1:2010) and, as far as possible, use their best endeavours to comply with this Standard for Advertising.
- 12.2** Without prejudice to the requirements to the Trinidad and Tobago Standard for Advertising, members will ensure that all their advertising and promotional material is clear, fair and not misleading.
- 12.3** Advertisements made by or on behalf of members shall distinguish between: (a) contractual benefits i.e. those that the contract of insurance is bound to provide; and (b) non-contractual benefits i.e. the amount of benefits which it might provide assuming the insurer's particular forecast is correct. Where such advertisements include a forecast of non-contractual benefits, members shall restrict the forecast to that provided by the insurer concerned.
- 12.4** Advertisements made by or on behalf of members shall not be restricted to the policies of one insurer except where the reasons for such restriction are fully explained in the advertisement, the insurer named therein, and the prior approval of that insurer obtained.
- 12.5** When advertising their services directly or indirectly either in person or in writing members shall disclose their identity, occupation and purpose before seeking information or before giving advice.

13. Matching the Requirements of Clients and Policyholders

- 13.1 Members shall, on request from the client, explain the differences in, and the relative costs of, the principal types of insurance which in the opinion of the member might suit a client's needs.
- 13.2 Members shall ensure the use of a sufficient number of insurers to satisfy the insurance requirements of their clients.
- 13.3 Members shall ensure, as far as possible, that the products and services they offer will match the client's requirements. In this regard:
- a) If it is practical, members will identify the client's needs by getting relevant information from the client;
 - b) Members will provide advice that is appropriate for the client's needs;
 - c) If the member cannot match the client's requirements, the member will explain the differences in the product or service that the member can offer the client; and
 - d) If it is not practical to match all the client's requirements, the member will give the client enough information so that he can make an informed decision about his insurance.
- 13.4 The member will promptly provide proposal information to the insurer.
- 13.5 The member will promptly advise the client if policy coverage is accepted, declined, cancelled or lapsed.

14. Information about Products and Services

14.1 Before any work involving a charge is undertaken or an agreement to carry out business is concluded, members shall disclose and identify any amount they propose to charge to the client or policyholder which will be in addition to the premium payable to the insurer.

14.2 Members will explain the service they can offer and their relationship with the policy holder and or client, including:

- a) The type of service offered;**
- b) Whether the member acts for an insurer or acts independently for the client as an intermediary;**
- c) Whether the member acts as an agent of another intermediary or agent;**
- d) The choice of product and services the member can offer;**
- e) All the important details of cover and benefits;**
- f) Any significant or unusual conditions or obligations which the client must meet; and**
- g) The period of cover.**

15. Advice, Recommendations and Quotations

15.1 Where members give any advice or recommendation, they will:

- a) Only discuss or advise on matters that they have knowledge of;
- b) Make sure that any advice they give or recommendations they make are aimed at meeting the client's interests; and
- c) Not make any misleading claims for the products or services they offer or make any unfair criticisms about products and services that are offered by anyone else.

15.2 When giving a quotation, members will take due care to ensure its accuracy and their ability to place the insurance at the quoted terms.

16. Duty of Disclosure

- 16.1** Members shall, upon request, disclose to any client who is, or is contemplating becoming, the holder of a policy of insurance, the amount of commission paid by the insurer under any relevant policy of insurance.
- 16.2** Members shall not withhold from the policyholder any written evidence or documentation relating to the contract of insurance without adequate and justifiable reasons being disclosed in writing and without delay to the policyholder. If a member withholds a document from a policyholder by way of a lien for money due from that policyholder the member shall provide the reasons in the manner required above.
- 16.3** Members shall, if requested, inform a client of the name of all insurers with whom a contract of insurance is placed. This information shall be given at the inception of the contract and any changes thereafter shall be advised, if requested, at the earliest opportunity to the client.
- 16.4** Members shall disclose to a client upon request any payment which they receive as a result of securing on behalf of that client any service additional to the arrangement of a contract of insurance.
- 16.5** In the completion of the Proposal Form, Claim Form, or any other material document, members shall make it clear that all the answers or statements given are the client's own responsibility. The client should always be asked to check the details and told that the inclusion of incorrect information may result in a claim being repudiated.

17. Confirming Cover

- 17.1 Members will provide customers with prompt written confirmation and details of the insurance that has been effected on their behalf.**
- 17.2 Members will identify the insurer and advise any changes once the contract has commenced at the earliest opportunity.**
- 17.3 Members will forward full documentation without avoidable delay where this is not included with the confirmation of cover.**

18. Documentation

- 18.1 Members will reply promptly or use their best endeavours to obtain a prompt reply to all correspondence.**
- 18.2 Members will ensure that the client has proof that the member has paid the premiums, fees and charges.**
- 18.3 Members will send the client full policy documentation promptly.**
- 18.4 Members will take all reasonable steps to promptly make available to the client copies of any relevant insurance documentation such as policy wordings, schedules, certificates and endorsements;**

19. Claims

19.1 When the client or policy-holder first becomes a customer, he should be advised of how he can make a claim and told what his responsibilities are in relation to making claims.

19.2 When members act on a client's behalf in relation to an insurance claim, they will:

- a)** On request, give the client reasonable guidance in pursuing the claim;
- b)** Handle the claims fairly and promptly and keep the client informed of progress;
- d)** Assist the client in the event of the claim being disputed or rejected;
- e)** Inform the client in writing, with an explanation, if they are unable to deal with any part of a claim; and
- e)** Forward settlement of a claim, without avoidable delay once it has been agreed.

19.3 When members handle and or settle insurance claims on behalf of an insurer, they will:

- a)** Inform the client or policy-holder that they are acting for the insurer and not for the client or policy holder;
- b)** Conduct their services in a professional, honest, efficient and fair manner; and
- c)** Comply with any claims-handling standards that apply to the insurer under any code or practice it subscribes to, where it is relevant to the members conduct.

20. Confidentiality, Security and Data Protection

- 20.1** Any information acquired by a member from his client shall not be used or disclosed except in the normal course of negotiating, maintaining, or renewing a contract of insurance for that client or unless the consent of the client has been obtained or the information is required by a court of competent jurisdiction.
- 20.2** Members will take appropriate steps to ensure the security of any money, documents, other property or information handled or held on behalf of clients.
- 20.3** Members must familiarise themselves with the Data Protection Act and institute appropriate technical and organisational measures appropriate to the risks associated with:
- a) The handling, storing and processing of data, such as against unauthorised or unlawful processing of personal information; and
 - b) Accidental loss or destruction of, or damage to, personal information data.
- 20.4** Personal information must be protected by such appropriate safeguards having regard to the sensitivity of the information. Individuals must:
- a) Have a right of access to all data relating to them and, as appropriate, the right to have data rectified, erased or redacted where it is incomplete or inaccurate;
 - b) Be able to object, on compelling legitimate grounds relating to their particular circumstances, to the processing of data relating to them.
- 20.5** Personal information should not be transferred or shared:
- a) Other than for the purpose of collection, without the prior consent of the individual; and
 - b) To any country outside of Trinidad and Tobago unless the importing country ensures an adequate level of privacy protection.
- 20.6** Where sensitive personal information and data is processed (i.e. data revealing racial or ethnic origins, political affiliations or trade union membership, religious beliefs or other beliefs of a similar nature, health or sex life, or relating to criminal or financial records) additional safeguards will be required. If it is within the member's control, sensitive personal information shall not be processed without first obtaining the consent of the person to whom that sensitive personal information relates.
- 20.7** If it is within the member's control, the organisation shall: (a) train its staff (taking such reasonable steps to ensure the reliability of any employees who have access to personal information; (b) establish an appropriate data protection policy; (c) limit access and prioritise its information security; (d) provide for clear accountability; and (e) use appropriate technical and organisational protective measures.

21. Standards for Representatives and Employees

- 21.1** Members shall ensure that all work carried out in connection with their insurance broking business shall be under the control and day-to-day supervision of competent employees and they shall do everything possible to ensure that their employees are made aware of the Code.
- 21.2** Members will require their representatives (that is, those who act on their behalf, including their employees) when providing insurance services to:
- a) Conduct those services competently with integrity and honesty;
 - b) Comply with all relevant laws, regulations, procedures and this Code; and
 - c) To inform clients when they are acting on the member's behalf and in what capacity.
- 21.3** Members will ensure that they do not authorise representatives to provide insurance services that do not match their competencies.
- 21.4** Members will ensure their representatives receive adequate training to competently provide insurance services.
- 21.5** If it is within the member's control, the member must utilise best practices in recruiting staff and making arrangements for the training of all members of staff to ensure:
- a) Proper compliance with the anti-money laundering laws, regulations and procedures;
 - b) Proper compliance with the anti-terrorism laws, regulations and procedures; and
 - c) Proper compliance with the data-protection laws, regulations and procedures.

22. Conflicts of Interest

22.1 A conflict of interest is a situation in which someone has competing professional or personal interests. Depending on the circumstances, there may be a perceived rather than an actual conflict of interest. Both perceived and actual conflicts must be dealt with appropriately.

22.2 Conflicts of interest may arise:

- a) Where the member owes separate duties to two or more clients in relation to the same or related matters and those duties conflict or there is a significant risk they may conflict;
- b) Where the member's duty to act in the best interests of the client conflicts, or there is a significant risk it may conflict, with the member's own interests;
- c) When a member's interests may be inconsistent with the client's interests; for example, a conflict of interest may arise if, while acting for the client in arranging insurance, the member is remunerated by the insurer, or if the member were to have an association with the insurer.

22.3 Members must seek to avoid conflicts of interests, but where a conflict is unavoidable or does arise, they should manage it in such a way as to avoid prejudice to any party. This includes, but is not limited to:

- a) Having procedures in place to adequately manage conflicts of interest;
- b) Informing clients of any material conflicts of interest that they may have; and
- c) Refusing to act where a conflict of interest exists, unless those circumstances are expressly permitted.

22.4 Members shall not put their own interests above their duty to any client or policy-holder on whose behalf they act.

23. Information about Costs and Remuneration

23.1 Members can be remunerated for providing their insurance broking services by:

- a) Commission and or other remuneration, benefits and rewards from insurers and others involved in the provision of insurance services;
- b) Fees paid by the client and or policy-holder; and
- c) A combination of the above.

23.2 Members shall let clients and policy-holders know, prior to providing their insurance broking services, how that service is to be paid for and whether there will be any charge in addition to the insurance premium. Members must also inform clients and policy-holders about any relevant taxes, fees or other charges that may be applicable.

23.3 Unless indicated otherwise, a member will be remunerated by commission from the relevant insurer whenever a client enters into an insurance policy arranged by the member (including renewals and variations). The commission is a percentage of the insurer's premium. It is included in the premium set out in the member's invoice and is received by the member when the client pays the premium or at such other time as may be agreed with the insurer.

23.4 Members undertake to answer any questions clients and or policy-holders may have about the members' remuneration to ensure that they are clearly informed.

23.5 Members will provide details of the costs of the insurance products or related services offered.

23.6 Members will not impose any fees or charges in addition to the premium required by the insurer without first disclosing the amount and purpose of the charge. This will include charges for policy amendments, claims, handling or cancellation.

23.7 Members will disclose to clients and policy-holders any payment they receive for providing to, or securing on behalf of, their clients and policy-holders any additional insurance.

24. Providing On-going and Associated Services

- 24.1 Members will respond promptly to the queries and correspondence of clients and policy-holders.**
- 24.2 Members will deal promptly with requests from clients and policy-holders for amendments to cover and provide them with full details of any premium or charges to be paid or returned.**
- 24.3 Members will provide written confirmation when amendments are made.**
- 24.4 Members will notify clients and policy-holders of the renewal or expiry of their policy in time to allow them to consider and arrange any continuing cover they may need.**
- 24.5 Members will remind clients and policy-holders at renewal of their duty to disclose all circumstances material to the insurance.**
- 24.6 On expiry or cancellation of the insurance, at the written request of the client or policy-holder, members will promptly make available all documentation and information to which the client or policy-holder is entitled.**
- 24.7 Members may provide clients and policy-holders with services that are related to insurance services such as risk management, inspection, valuation and the arrangement of premium funding. If members do so, they will inform the client and or policy-holder of their role in providing the services and the method of remuneration for such services.**

25. Responding to Catastrophes and Disasters

- 25.1** Catastrophes and disasters are widespread natural events such as floods, earthquakes, bush fires and severe storms which result in a large number of claims.
- 25.2** Members will respond to catastrophes and disasters in a timely, professional and practical way and in a compassionate manner.
- 25.3** Members will co-operate with and assist the Relevant Authorities (including the Office of Disaster Preparedness and Management) and other applicable agencies and organisations in providing an industry wide response to disasters and catastrophes.

26. Combating Terrorism and the Financing of Terrorism

26.1 Each member must familiarise himself with the Anti-Terrorism Act, as amended and, if within the member's power, implement appropriate technical and organisational measures so that the organisation does not unwittingly hide or move terrorists' funds. This includes, but is not limited to:

- a) Becoming familiar with the Guidance Note and the Terrorist Funds Report Form (which may be sourced on the Financial Intelligence Units Website);**
- b) Checking the UN 1267 Security Council List of designated entities and the Consolidated List;**
- c) Conducting Customer Due Diligence and ascertaining whether a customer or potential customer is a politically exposed person and or a designated or listed entity;**
- d) Submitting Suspicious Transaction/Activity Reports to the Financial Intelligence Unit as required;**
- e) Providing awareness sessions and training for staff;**
- f) Implementing safeguards against tipping-off; and**
- g) Adopting a risk-based approach to dealing with the financing of terrorism.**

27. Countering Money-Laundering

27.1 Each member must familiarise himself with the anti-money laundering laws and regulations and comply with the applicable requirements and procedures under the Financial Obligations Regulations; the Financial Intelligence Unit of Trinidad and Tobago Act, and the Proceeds of Crime Act, as amended. If it is within the member's power, this includes but is not limited to:

- a) Developing and implementing a written compliance programme/manual (to be approved by the Financial Intelligence Unit) and appointing a compliance officer;
- b) Keeping and retaining records relating to financial activities;
- c) Establishing internal reporting rules that will ensure the compliance officer and other employees have timely access to customer identification data and other records to enable them to produce reports in a timely manner;
- d) Paying special attention to all business transactions; in particular: complex, unusual or large transactions, whether completed or not, unusual patterns of transactions, and to insignificant but periodic transactions which have no apparent economic or visible lawful purpose;
- e) Undertaking Customer Due Diligence, among other things, with a view to establishing satisfactory evidence of identity, ascertaining whether a customer or potential customer is a politically exposed person and or a designated or listed entity, and having customer policies in place to deal with non-face-to-face transactions or business relationships ;
- f) Submitting Suspicious Transaction/Activity Reports to the Financial Intelligence Unit as required;
- g) Utilising best practices in recruiting staff and making arrangements for the training of all members of staff to ensure proper money-laundering compliance;
- h) Implementing safeguards against tipping-off;
- i) Adopting, reporting and control procedures; and
- j) Adopting a risk-based approach to dealing with the countering of money laundering.

27.2 Members must know their clients and satisfy themselves about their client's:

- a) Identity;
- b) Source of money;
- c) Good intentions; and
- d) That there is nothing improper or illegal in the transaction under consideration.

Part D: General Administrative Provisions

28. Definitions

28.1 In this Code 'he' 'him' or 'his' includes 'she' or 'her' and 'it' or 'its'

29. Resolving Complaints

29.1 The Association will have an internal complaints and disputes handling process in relation to matters covered by the Code and any act or omission which in the opinion of the Association falls below the standards of good practice and service to be expected of members.

29.2 The principal purpose of the Association's jurisdiction when treating with complaints will be to maintain standards and public confidence in the profession of insurance brokers. In this regard the Association shall have at their disposal the full range of techniques which can display flexibility according to the circumstances of the case, the wishes and personalities of those involved and the state of the relationship between them. When handling complaints the Association can make use of any Alternative Dispute Resolution procedure or facility deemed necessary or expedient.

29.3 When holding inquiries or disciplining members, the overarching purposes of the Association shall be:

- a) To satisfy the reasonable needs of the complainant;
- b) To promote the highest standards of professionalism in the insurance broking industry;
- c) To maintain the reputation of insurance brokers as a profession;
- d) To find ways to improve client service; and
- e) To reduce the number of complaints.

29.4 All complaints regarding the behaviour of members should be submitted in writing to the Secretary.

30. Information and Education

30.1 The Association will support industry education initiatives aimed at explaining insurance to consumers and the community.

31. Review and Development of the Code

31.1 From time to time the Association will formally review the Code. In conducting such reviews the Association will consult with the Relevant Authorities, in particular the Central Bank and the Director of Consumer Affairs, as well as others involved in the insurance industry.

31.2 The Association may, where necessary or required, modify or amend the Code and issue

Schedule 1

Insurance Brokers Association of Trinidad and Tobago

List of legal provisions of particular relevance to Brokers

Members should be aware of the following statutes and regulations and familiarise themselves with the relevant provisions, in particular but not limited to:

- Insurance Act as amended, and Regulations under the Insurance Act, including the Insurance (Intermediaries Registration) Regulations
- Companies Act
- Financial Institutions Act
- Equal Opportunity Act as amended
- Adverse Trade Practices Order 2000
- Unfair Contract Terms Act
- Trade Descriptions Act
- Protection against Unfair Competition Act
- Misrepresentation Act
- Proceeds of Crime Act as amended, and the Financial Obligations Regulations
- Anti-Terrorism Act as amended
- Financial Intelligence Unit of Trinidad and Tobago Act
- Marine Insurance Act
- Occupational Safety and Health Act
- Workmen's Compensation Act
- Central Bank Act as amended, and Relevant Regulations
- Guidelines of the Central Bank, in particular
 - Fit and Proper Guideline
 - Corporate Governance Guideline
 - Consolidated Prudential Reporting Guideline
 - Guidelines for the Licensing of Financial Institutions in Trinidad and Tobago under the Financial Institutions Act
 - Guideline for the Approval of New or Significantly Amended Insurance Policies under the Insurance Act

All the Laws of Trinidad and Tobago are accessible on-line under the Ministry of Legal Affairs website.

The Insurance Act

Section 3 (Definitions and Interpretation)

'Agent' means any individual, firm or company appointed by an insurer to solicit applications for insurance or negotiate insurance business on its behalf and, where authorised to do so by the insurer, to effectuate and countersign insurance contracts, but does not include an individual who is an employee of the insurer.

'Broker' means any individual who or any firm or company which for compensation as an independent contractor in any manner solicits, negotiates or procures insurance or the renewal or continuance thereof on behalf of existing or prospective policyholders.

'Carrying on insurance business' includes the receipt of proposals for or the issuing of policies of insurance in Trinidad and Tobago or the collection or receipt in Trinidad and Tobago of renewal premiums on policies issued in Trinidad and Tobago by an insurer or through an agent or as an agent but does not include:

- a) the collection or receipt in Trinidad and Tobago of renewal premiums under a policy issued outside of Trinidad and Tobago to a person who is temporarily resident in Trinidad and Tobago but at the date of issue of the policy was resident outside of that country; or
- b) the making of payments due under any such policy.

'Insurance business' means the business of or in relation to the issue of or the undertaking of liability under policies to 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 in the currency in which the premium had been paid, but does not include:

- a) business in relation to the benefits provided by a friendly society or a trade union for its members or their dependents; or
- b) business in relation to a scheme under which superannuation benefits, pensions or payments to employees or their dependents on retirement, disability or death are provided by an employer, or his employees, or by both, wholly through an organisation established solely for those purposes by the employer or his employees, or by both.

'Insurer' means a company registered to carry on insurance business in Trinidad and Tobago and includes an underwriter and an association of underwriters, but does not include an insurance agent as such nor, where an insurance agent is also an insurer, it does not refer to that part of his business done as an insurance agent.

'Policyholder' means the person who for the time being has the legal title to the policy and includes any person to whom a policy is for the time being assigned.

Section 88 (Registration of agents and brokers)

- (1) No person may, in respect of any class of insurance business, carry on business as a broker, a salesman, an adjuster or an agent of an insurance company unless he is registered under Part III of the Insurance Act.
- (2) A person who contravenes the provisions of this section is liable on summary conviction to a fine not exceeding \$10,000.00 and to imprisonment for 12 months.

Section 90 (Restrictions on Registrations)

- (1) No person may be registered under this Part to carry on business as a broker, salesman, an agent or an adjuster if he is –
 - (a) under the age of eighteen years in the case of a salesman;
 - (b) under the age of twenty-one years in the case of a broker or an agent;
 - (c) an undischarged bankrupt, unless he has been granted leave to carry on such business by the Court by which he was adjudged bankrupt; or
 - (d) mentally ill.
- (2) No person may be registered to carry on business as a salesman in respect of any particular class of insurance business where the insurance company by which or the agent by whom he is employed or contracted at the time of his application for registration as a salesman –
 - (a) is not registered under this Act; or
 - (b) is carrying on the particular class of insurance business in contravention of this Act.
- (3) No member, director or controller of a company carrying on brokerage business may be registered as a salesman or an agent.
- (4) No director, officer or employee of an insurance company may apply for registration as a broker.
- (5) No person registered to carry on business as a salesman or an agent may be registered to carry on business as a broker and no person registered to carry on business as a broker may be registered to carry on business as a salesman or an agent.

Section 91 (Central Bank to register person as salesman, agent, broker or adjuster)

- (1) Subject to this Part, the Central Bank may either unconditionally or subject to such conditions as the Bank considers necessary, register an applicant as a salesman or an agent of the company by which he was employed or contracted or as a broker or an adjuster in respect of such class of insurance business as may be specified.
- (2) The Central Bank may subject to sections 89 and 90 register an applicant as a salesman, an agent, a broker or an adjuster where the Bank is satisfied –
 - (a) that the applicant is a person of good character;
 - (b) that the applicant is competent to carry on business as a salesman, an agent, a broker or an adjuster in the particular class of insurance business in which he applied to be registered;
 - (c) in the case of a person applying to carry on business as a broker, that he has such professional indemnity cover as may be prescribed;
 - (d) in the case of an applicant who, before the commencement of this Part, was carrying on business in Trinidad and Tobago as a broker, a salesman, an agent or an adjuster for a period of not less than three years, that he carried on such business in an efficient manner;
 - (e) in the case of an applicant who, before the commencement of this Part was carrying on business as a broker, 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 has been made between the applicant and any other person carrying on insurance business;
 - (f) that the applicant has complied with any requirement imposed by Regulations made under this Act relating to the passing of any examination;
 - (g) where the application is for registration to carry on business as a broker, an agent, or an adjuster and the applicant is a body, whether incorporated or not –
 - (i) that each of the persons managing or controlling the body or each of the partners is a fit and proper person to carry on such business;

- (ii) that having regard to the competence of the person managing or controlling the body or of the partners and such staff as the body may employ, the body is in relation to any class of insurance business in respect of which the application is made, capable of carrying on business efficiently in the capacity in which it seeks to be registered;
- (h) In the case of a body corporate applying for registration as a broker that the business will be carried on under the management of an executive director who is a registered insurance broker.
- (3) For the purpose of giving a true account of the state of his business the Central Bank shall require a broker to prepare and submit to the Bank at such intervals as may be prescribed, balance sheets and profit and loss accounts containing such information as may be prescribed.
- (4) 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 and give reasons for its refusal.

Section 101 (Agent or Salesman deemed to be agent of insurer)

An agent, a broker or a salesman is personally liable to the insured on all contracts of insurance unlawfully made by or through him directly or indirectly with any insurer not registered to carry on insurance business in Trinidad and Tobago in the same manner as if such agent, broker or salesman had been the insurer.

Section 102 (Liability for unlawful contracts)

An agent, a broker or a salesman is personally liable to the insured on all contracts of insurance unlawfully made by or through him directly or indirectly with any insurer not registered to carry on insurance business in Trinidad and Tobago in the same manner as if such agent, broker or salesman had been the insurer.

Section 103 (Misleading advertisements)

- (1) No agent salesman or broker may make any oral statement or issue or permit to be issued any advertisement, statement, circular, descriptive booklet or other document, or make or permit to be made a statement, by means of any broadcasting or other medium, which misleads or tends to mislead the public.
- (2) A person who contravenes this provision is guilty of an offence.

Section 104 (Restriction on payment of compensation for placing or negotiating insurance)

Where, at the date of placing or negotiating insurance a person is not registered as an agent, a broker or a salesman, 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 on lives, property or interests in Trinidad and Tobago.

Section 105 (Rebating)

- (1) 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 or give or offer or agree to pay, allow or give a rebate of the whole or part of the premium 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.

- (2) An insurer or any other person who contravenes the provisions of this section is guilty of an offence.

Section 108 (Authority of agents)

- (1) No agent shall
 - a) be an agent for more than one insurer;
 - b) act or purport to act on behalf of more than one insurer;
 - c) represent himself to the public by advertisement or otherwise as the agent of more than one insurer.
- (2) Where an agent 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 (in this section referred to as "the principal") the agent may procure the insurance from another insurer if that insurer obtains in each case the consent in writing of the principal and files a copy of such consent with the Central Bank within seven days of its receipt.
- (3) Notwithstanding the provisions of subsection (1), an agent may with the approval of the Bank act on behalf of more than one insurer where he is acting on behalf of each insurer -
 - a) in respect of a different and separate class of insurance business; or
 - b) in respect of a different and separate type of insurance business within any one class 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.

Section 109 (Minister to specify maximum rate of commission)

The Minister may on the recommendation of the Central Bank by Order specify the maximum rate of commission payable by an insurer to a person in respect of a particular class or risk.

Section 110 (Offence to procure payment of premium by fraudulent representations)

- (1) An agent or a salesman is guilty of an offence where he:
 - a) knowingly procures by fraudulent representations payment or the obligation for payment of any premium on an insurance policy; or
 - b) without being satisfied on reasonable grounds that the discontinuance of a policy is to the benefit of an insured, causes the insured to discontinue that policy.

Section 111 (Offence to fail to pay premium to insurer)

- (1) An agent, a salesman or a broker is guilty of an offence where he receives money from an insurer for the account of an insured or from a client for the account of an insurer and fails to pay over the same less any commission and other deduction to which he may by agreement be entitled, to the person entitled thereto within thirty days from the date on which he receives such money.
- (2) Where an insurer at the request of a broker provides temporary cover on credit for a period not exceeding forty-five days, the broker 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 broker as a civil debt.

Other Provisions of Note

Financial Institutions Act 2008

The definition of "financial holding company" and "financial services"

Section 55: Information not to be disclosed

Section 86: Compliance Directions

Section 44F: Duty to assist where Central Bank assumes control

Proceeds of Crime Act

'Financial institution' is defined as including an insurance company registered under the Insurance Act

Section 55: Record Keeping and Retention Duties

Section 55(2): Requirement to pay special attention to certain business transactions

Section 55(3): Requirement to make suspicious transaction or suspicious activity reports

Section 55(5): Requirement to develop and implement a written compliance programme

Financial Obligations Regulations 2010

Regulation 3: The requirement to appoint a compliance officer

Regulations 5 and 6: Recruitment and training of staff

Regulations 11 to 23: The requirement to undertake customer due diligence and to have appropriate policies

APPENDIX II

1. ATTIC's letter of March 7th, 2017 and attachments addressed to the Secretary to the Joint Select Committee (Insurance Bill 2016)
2. IBATT's letter of March 13th, 2017 and attachments addressed to the Secretary to the Joint Select Committee (Insurance Bill 2016)
3. IBATT's presentation on the Insurance Bill 2016 at the Fourth meeting of the JSC
4. ATTIC's presentation on the Insurance Bill 2016 at the Fifth meeting of the JSC
5. LLOYD'S letter dated March 14, 2017 addressed to the Honourable Minister of Finance and the Economy



ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES

8 Stanmore Avenue, Port of Spain, P.O. Box 208, Port of Spain, Trinidad, W.I.

Phone: 1 (868) 624-2817, 1 (868) 625-2940, 1 (868) 624-9905 Fax: 1 (868) 625-5132, E-mail: mail@attic.org.tt

March 7th, 2017

Ms Chantal La Roche
Secretary to the Joint Select Committee (Insurance Bill 2016)
Parliament of the Republic of Trinidad and Tobago
Levels G-8 Tower D
The Port of Spain Waterfront Centre
1A Wrightson Road
Port of Spain

Dear Ms La Roche,

Insurance Bill 2016 & Insurance (Capital Adequacy) Regulations 2015

Thank you for allowing ATTIC to share its views on the Insurance Bill 2016 and Insurance (Capital Adequacy) Regulations 2015. We have attached our proposals for amendments to specific sections of the Insurance Bill 2016 and Regulations 2015 with our comments on Schedule 12 (Section 266) of the Bill "Standards of Market Conduct" to follow on March 7th, 2017.

We are greatly encouraged by the opportunity you have given to the industry to share its concerns on this important piece of legislation which in our opinion will protect the interests of policyholders, strengthen corporate governance, raise the standards of professionalism within the industry and improve accountability.

We look forward to your invitation to appear before the committee and ask that you give us a few days' notice to prepare for this important meeting. Thank you once again for allowing us to be a part of this process and look forward to the early passage of the legislation.

Sincerely,

Association of Trinidad and Tobago Insurance Companies

.....
James Camacho

President

c.;

Minister of Finance, The Honourable Colm Imbert, Member of Parliament

Senator Dr. Dhanayshar Mahabir, Member of Parliament

Dr. David Lee, Member of Parliament

Ms. Michelle Chong-Tai-Bell, Inspector of Financial Institutions, CBTT

Board of Directors: James Camacho - President, Paul Traboulay - Vice President (General), Andrew Ferguson - Vice President (Life), Sookdeo Beepath, Chip Sa Gomes, Baliram Sawh, Jason Clarke, Anand Pascal, Robert Soverall, Sean Jack.



ATTIC'S COMMENTS ON INSURANCE BILL 2016 & INSURANCE (CAPITAL ADEQUACY) REGULATIONS, 2015

PROVISIONS			ATTIC SUGGESTED AMENDMENTS & COMMENTS			REASONS		
1	OFFENCES							
	Example: Section 254 (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 a fine of sixty thousand dollars for each day the offence continues. (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. 255 (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 – (a) every director or officer of such entity is liable to a fine of ten million dollars and to imprisonment for ten years; and (b) the entity is liable to a fine in an amount of twenty million dollars.		1. We prudently recommend that the Insurance Bill be in closer alignment with the Canadian legislation which demonstrates three notable differences. These are as follows: (i) All offences require proof that the contravention of the regulations governing insurance should be without reasonable cause before the conduct is criminalised. (ii) A mental element of knowingly or wilfully violating the requirements of the regulations is written into the legislation. Natural persons, directors and officers are rendered guilty on the basis of knowingly providing false or misleading information, or wilfully providing any fraudulent undue or unfair preference. (iii) The penalties for breach of the requirements of the Canadian insurance regime are far more modest and the maximum sentence of imprisonment allowed even in cases where mens rea is proved and the offence is committed without reasonable cause is one of twelve months in prison. 2. We recommend that 254 (5) be amended as follows: (a) A failure by any person to comply with a requirement, direction or prohibition under this Act or the Regulations shall not be an offence unless it is proved that the person acted without reasonable <u>excuse</u>. (b) An officer, director or agent of an insurer shall not be guilty of an offence unless it is shown that he personally directed, authorized, assented to, acquiesced in or participated in the commission of the offence. Entire Bill: replace references to "summary conviction" to "conviction on indictment". 3. We recognize that the Insurance Bill section on Offences mirrors the Financial Institutions Act 2008, which we believe to be in incongruent to modern legislation. The current FIA 2008, removes an individual's right to be innocent until proven guilty, which we consider to be bad law. Accordingly, it is our position that the Insurance Bill should remain in line with Trinidad and Tobago's Constitution and maintain an individual's right to be innocent until proven guilty. Respectively, the FIA 2008, should be amended to ensure this right is maintained.			1. The proportionality of the fines and penalties imposed by Sections 254 and 255 in the Insurance Bill 2016 should be reviewed. The respective sections of the Insurance Bill indicate that a person contravening these sections would be subject to a fine and imprisonment where there is no reference to being liable on summary conviction under Section 254 (3). 255 (4) (a) & (b) - Liability for substantial penalties should be on the basis of some personal responsibility beyond the mere status of an individual as a director. To do otherwise is to proceed by way of strict liability in an area of criminal liability where the severity of the penalties make such an approach wholly unjust.		
2	AUDIT COMMITTEES							
	Section 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. Section 68. (5) (c) an “independent director” means a director who – (ii) is not a current officer of the insurer or of a connected party of the insurer;		We recommend that the appropriate wording be composed incorporating the following: 1. Reducing the requirement for the number of independent directors for purposes of the Audit Committee (as the definition of independence is currently laid out in the Bill) to one. 2. Further, the term of this Director and any other director who is otherwise independent at the parent company Board level be limited to eight (8) years for purposes of the Audit committee of the licensee. 3. Any such directors will not be considered as connected (as an affiliate) to another subsidiary licensee of the parent. Therefore these directors can serve on other subsidiary audit committees subject to a limited period as determined by (2) above.			1. There is no definition of independence in the Bill; rather there is an extensive definition of connectedness. Once a parent company Board member is by definition deemed to be connected for purposes of the subsidiary Board audit committees, then 68 (1) (a) above sets the minimum number of independents to be two while the insertion of the new section 68 (1) (c) would appear to be irrelevant and almost misleading. 2. Currently, there is a very limited available and willing talent pool to fulfil the Regulator’s requirements as well as meet Insurers expectations of appropriate experience and maturity. 3. At a micro-prudential level, the regulation of subsidiary licensees as proposed in the Bill is very structured and comprehensive particularly as regards certification of solvency, governance roles and payments of dividends. Accordingly consideration should be given as to whether this provision substantially strengthens the level of corporate governance of Insurance licensees.		
3	EXEMPTIONS FROM STAMP DUTY FOR RESTRUCTURING AND INCORPORATION OF BRANCH OPERATIONS							



ATTIC'S COMMENTS ON INSURANCE BILL 2016 & INSURANCE (CAPITAL ADEQUACY) REGULATIONS, 2015

ATTIC SUGGESTED AMENDMENTS & COMMENTS		
PROVISIONS	ATTIC SUGGESTED AMENDMENTS & COMMENTS	REASONS
1. Section 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. Section 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). 3. Section 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.”	1. We propose that a new Section 46B be inserted in the Stamp Duty Act Chap 76:01 as follows: 46B. Notwithstanding anything in the Act, stamp duty and other statutory charges shall not be chargeable on any instrument made for the purposes of or in connection with ensuring compliance with the requirements of the Insurance Act. This amendment could be achieved by amending clause 278 of the Insurance Bill (“The Proceeds of Crime Act, the Financial Institutions Act and the Stamp Duty Act are amended to the extent as specified in Schedule 10.”) and by inserting the text of section 46B of the Stamp Duty Act in schedule 10 of the Insurance Bill. 2. We suggest a new clause 61(3) be incorporated in the Insurance Bill as follows: 61 (3). Where the Central Bank approves the proposed transfer or amalgamation, stamp duty shall not be chargeable on any instrument made for the purposes of or in connection with the transfer or amalgamation. 3. We propose that Section 265, which deals with transfers via vesting orders be changed to: 265. “The transfer of and vesting in, the transferee of an undertaking by a Vesting Order or Scheme of Transfer shall, unless as a result of a restructuring described in section 47 of this Bill viz: (restructuring of ownership may be required), 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.”	1. There will be other circumstances in which the new regulatory regime will require existing insurers to rearrange their operations and structures. For instance, foreign insurers are permitted to conduct branch operations in Trinidad and Tobago under the current Insurance Act, but this is not permitted under the regime envisaged in the Insurance Bill. New local insurance entities will therefore have to be created, with potential liability for stamp duty and/or other statutory charges. 2. Clause 47(1) and the other compliance requirements of the proposed Act will impose a significant burden for insurers. In addition to the internal administrative costs of the restructuring process, there may be ambiguity in existing statutes resulting in delays by statutory bodies. Insurers will also face the imposition of substantial and unbudgeted costs by way of additional taxes and charges, with stamp duty being possibly the most onerous. It is agreed among all parties that restructuring with no material change of the ultimate shareholders should not incur stamp duty or other charges. It is therefore important to clarify the legislative position so that insurers are not left paying a heavy price for facilitating the Bill’s regulatory objectives. To this end it is proposed that a new section 46B is inserted in the Stamp Duty Act which also covers the provisions cited in Clauses 57(1) and 61 of the Insurance Bill.
4	BRANCHES AND REPRESENTATIVE OFFICES	
Section 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 (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	We suggest that the Regulations include the information required to open or close a Branch upon submission of the application to Central Bank.	The present Regulations do not specify the information required.
5	ASSETS	



ATTIC'S COMMENTS ON INSURANCE BILL 2016 & INSURANCE (CAPITAL ADEQUACY) REGULATIONS, 2015

PROVISIONS	ATTIC SUGGESTED AMENDMENTS & COMMENTS	REASONS
Section 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. Section 85 (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.	We suggest that Section 85. (1) be amended to read: An insurer shall invest in assets in Trinidad and Tobago an amount equal to at least sixty 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. We suggest the following wording for section 84. (4): Where any liability in respect of policies originating in <u>Trinidad and Tobago</u> 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.	1. There is a paucity of domestic investment opportunity; the outlook for which is not encouraging given the current and foreseeable economic forecasts. The existing limitation on investment opportunities creates a degree of concentration risk which is compounded by the potential for sovereign downgrades and its impact on credit and debt ratings of entities domiciled locally. 2. The degree of concentration has the potential to increase systemic risk. 3. Institutions registered under the FIA are not subject to geographic / currency investment limitations. Therefore the playing field for offering competitive savings and related type products does not favour the Insurance Industry. 4. As a further example, the National Heritage and Stabilization fund is also not limited, which begs the question why should nationals who are the primary customers of local insurance companies be disproportionately exposed to value depreciation because of this limitation. 5. The consideration for Caricom origin assets is illusory given that the sovereign ratings of most of the Caricom region are below investment grade. Caricom is therefore not an appropriate option for securing the interests of domestic policy holders. The definition of foreign in the Insurance Bill references non Trinidad & Tobago entities while the fact that the EPA agreements enshrined in domestic legislation liberalizes trade in financials services with the EU (in the face of CSME draft protocols) would appear to compound this issue.
6		
APPROVAL OF DEADLINES		
Section 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 (iii) received the prior written approval from the Central Bank. Section 30 (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.	1. We would like to suggest that consideration be given to establishing a timeframe by which such approvals should be given. 2. A schedule of response /approval timeframes must be provided for in the Act. Recommendation: Notwithstanding any other section in the Act, Central Bank, should respond to all requests or approvals under this Act within 20 working days. If the Inspector does not raise any objections or requests further information by the end of 20 working days from the submission of all required documents, the licensee can proceed as if the request is approved.	In these cases the timely response of the CBTT may be critical to the final outcome.
7		
TRANSFER AND AMALGAMATIONS		



ATTIC'S COMMENTS ON INSURANCE BILL 2016 & INSURANCE (CAPITAL ADEQUACY) REGULATIONS, 2015

			PROVISIONS	ATTIC SUGGESTED AMENDMENTS & COMMENTS	REASONS
8			Sections 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.	It is suggested that under this section the documents and reports required by the CBTT would be better dealt with in Regulations as Transfers and Amalgamations can cover a wide range of transactions.	1. Section 97 (1) requires submission of “the scheme of transfer” without defining that term. It may therefore be appropriate for the CBTT to issue or at least have the power to issue regulations as to the content of an agreement for the transfer or amalgamation of insurance business. This will provide greater clarity to the relevant parties as to the content. 2. Section 97 (3) requires an application for approval of amalgamation to be accompanied by an agreement under section 221 of the Companies Act. This ignores the possibility of a “short form” amalgamation under sections 223 and 224 by a holding company and subsidiaries or among subsidiaries of the same holding company which is a more likely means of corporate amalgamation. There is no requirement for an agreement under sections 223 and 224 and it would therefore be an unnecessary formality to require this, which may also put the companies to greater expense. Furthermore, an amalgamation under section 221 requires approval by resolution of the shareholders whereas amalgamations under sections 223 and 224 are effected through approval by the directors.
			DEFINITION OF CREDIT EXPOSURE		
			Definition of "credit exposure" - " <i>credit exposure</i> " means - the amount at risk arising through 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; (c) contingent liabilities arising in the normal course of business; (d) reinsurance placed with connected parties; and (e) deposits placed with connected parties;	Definition of "credit exposure" - "credit exposure" means - the amount at risk, net of specific provisions , arising through 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; (c) contingent liabilities arising in the normal course of business; (d) reinsurance placed with connected parties; and (e) deposits placed with connected parties;	The inclusion of "depreciation or provision for diminution of value and inclusive of any investment income due and accrued" establishes the true value of the entity's credit exposure.
9			REBATING		
			Section 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.	We suggest that Section 126 be amended as follows: " <i>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 those classes prescribed in Schedule 1 .</i> "	Schedule 1 which specifies the Classes of Insurance Business does not have Person or Life as a Class of Insurance.
			RECEIPT OF PREMIUM		
10					



ATTIC'S COMMENTS ON INSURANCE BILL 2016 & INSURANCE (CAPITAL ADEQUACY) REGULATIONS, 2015

PROVISIONS

ATTIC SUGGESTED AMENDMENTS & COMMENTS

REASONS

Section 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.	We suggest the following amendment: "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 from the date on which it received such monies. "	This would ensure that premiums collected by insurance intermediaries on behalf of insurers are dealt with in a consistent manner regardless of the Class of insurance. (See section 134.(2))

11CAPTIAL ADEQUACY

Capital Adequacy Regulations	We attach a schedule of our comments on the Capital Adequacy Regulations which we submitted during the passage of the previous Bill.	

12STANDARD OF BUSINESS CONDUCT

Standards of Business Conduct	We attach a schedule of our comments on the Standards of Business Conduct which we submitted during the passage of the previous Bill.	

13ASSOCIATION OF UNDERWRITERS

Section 230 (4) provides that: An association of underwriters may be registered to carry on any class of general insurance business listed in Schedule 1 and the accident amd sickness class of insurance business	We recommend that this section should be amended to provide for those risks currently accepted through Insurance brokers acting as Lloyds Coverholders as a recognised Association of Underwriters to be first offered on the local insurance market.	It will ensure that risks which local insurers are capable of underwriting are not leaked to foreign entities there by contributing to continued growth and development of the local insurance industry, optimising the premium tax take locally and limiting the extent of demand for foreign exchange. This provides major benefits to the local economy by the industry since the profits are retained locally. See appendix 1 - Commentary on Association of

ATTIC'S COMMENTS ON THE INSURANCE (CAPITAL ADEQUACY) REGULATIONS, 2015

	<u>CLAUSE/SECTION</u>	<u>ISSUE/SUGGESTION</u>
1.	12. (7) and 13. (3) vs. 15. and 16.	Sections 12 (7) and 13 (3) which relate to reducing the capital required due to Unit Linked business for the Asset Default Risk and Investment Volatility Risk charges respectively, is not repeated for the Foreign Currency Mismatch Risk and the Asset Liability Mismatch Risk, this should be addressed in any new Insurance Bill.
2.	12. (5)	We would suggest that all directions should be directed at the industry as a whole rather than to any single insurer and that guidance be given as to which Agency is considered the primary reference in determining a rating. This is especially important where there may be more than one agency and/or more than one rating, and in instances where one particular rating agency may have adjusted their rating and others have not.
3.	13. (2)	States that the factor for income producing real estate shall only be used if the yield on the real estate is at least 4% of the carrying value. We would recommend the factor which should be used if the return is less than 4% be clarified or why the reference to yield is required. Reference is also made to "the factor for income-producing rental properties" but there is no such reference in the applicable Schedule 4, which refers to Income producing Real Estate.
4.	Schedule 2 and Schedule 13	There is need to define what will qualify as unrated and fully collateralized.
5.	Schedule 12 – Asset Limits	The limit on maximum aggregate value of mutual funds including unit trusts and other collective investment schemes not including money market funds is 20% of adjusted assets. The limit should be removed/ consideration should be given to specific exemptions such as strip/bond type structure and income funds. We recommend increasing the limit for unrated securities from 5% to 10% of adjusted assets. Many local bonds are unrated which limits consideration under the proposed regulations and effectively constrains the development of the local capital markets. Further consider self-rating of bonds where issuer/agent possesses a rating agency template license and where rating can be validated by external auditors. Consider the inclusion of a specific limit for investment in private equity/start-ups. – similar to a venture capital fund for development, subject to a limit of 10% of adjusted assets. Sections 87 and 88 of the Bill should be amended to include provision for these types of investments subject to the above limit.

6.	Schedule 16	Liquidity risk factor applicable to investment linked business calls for a charge of 1% for this type of business. We acknowledge the reduction from 80% to 100% in the asset default risk charge applicable to investment linked business, however this liquidity risk charge penalises portfolios that have high concentrations in GOTT securities or other investment grade securities. We recommend that the 1% liquidity charge be applied only on non GOTT issued instruments and those issued by multi-lateral agencies, which currently carry a zero Capital Adequacy factor.

RELATED ISSUES:

1. **Definition of “joint venture”** in the Bill **reference should be to 87 (4) (c)(based on December 5th, 2014 version)**
2. **Definition of “look through method”** in the Bill, should not include the reference to asset backed securities.
3. **Definition of “collective investment scheme” should be included. Align with definitions in TTSEC Act 2012 and references in Schedule 8 of the Insurance Bill 2016.**

“Collective Investment Scheme [Securities Act 2012, s4] *means any arrangement with respect to property of any description including money*

- a. *the purpose or effect of which is to enable persons taking part in the arrangement, whether by becoming owners of the property or any part of it, or otherwise to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income; and*
- b. *that does not invest—*
 - i. *for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is itself a collective investment scheme; or*
 - ii. *for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is itself a collective investment scheme;”*

4. **There should be certainty that repos will be treated similar to “money market funds” for Capital Adequacy requirements.**

OTHER GENERAL COMMENTS ON REGULATIONS

1. Asset Default Risk Charges

We are still of the view that some of the asset default charges are unreasonably high and continue to recommend that these charges be reviewed. Recommendations are laid out in the table below.

If the suggested changes are not implemented, it is proposed that with regard to the recent changes for Asset Back Securities (ASB), that grandfather provisions for these types of investment presently on our books prior to the passing of the Bill be instituted. For non-qualifying ASB's we are recommending the same grandfather charge as unrated bonds i.e. 10%. We acknowledge the recent amendment to allow for grandfathering of quoted common shares at 15%.

Insurance companies will be less likely to invest in assets that have higher asset default and volatility risk charges. Over-regulation via increasing capital requirements for insurance companies may have negative effects on the financial system and capital markets, as the elimination of the free market proponents breaks down the efficiencies of the markets and causes imbalances of demand and supply. A side-effect of these regulations is the potential to cause insurers to act in a highly coordinated fashion, particularly as regards the management of investment portfolios. The herding effect i.e insurers' coordination of investment strategies induced by regulatory rules can have potentially damaging consequences from a systemic risk perspective.

Regulatory rules interacting with market developments can suddenly cause insurers as a group to have strong regulatory reasons to sell specific assets or types of assets. This was evident in 2004 with the implementation of the limits on equity investments for insurance portfolios causing a marked decrease in share prices and composite values. This is also well supported by international evidence – see **Journal of Financial Economics** - Ellul, Jotikasthira, & Christian T. Lundblad, *Regulatory Pressure and Fire Sales in the Corporate Bond Market* (regulatory pressure on insurers' behaviour between 2001 and 2005).

Asset	As per TT Capital Adequacy Regs Schedule 4	As per Canada's MCCSR	Comments
Income Producing Real Estate	10%	7%	
Owner Occupied real estate	5%	4%	
Unrated Asset Backed Security	20%	8%	Canadian guidelines state: "Where the underlying pool of assets is comprised of assets having different capital charges, the charge for the security will be the highest charge associated with the pool of assets."
Equities	20%	15%	
Furniture & Fixtures	10%	8%	

2. Equivalence Ratings for Credit Rating Agencies (Schedule 3)

With each of the ratings agencies listed in the Schedule, there needs to be clarity/uniformity in stating what category of rating is being referred to. For instance, does AM Best rating refer to the issuer credit rating or debt rating? Does the S&P 500 rating refer to long-term insurer financial strength ratings or long-term issuer credit ratings?

Let us assume for example that an insurer owns some Validus debt (NYSE: VR). Validus has an AM Best Financial Strength rating of 'A' (first row of schedule); an AM Best Long-Term Issuer Credit Rating of 'bbb' (third row of schedule), actual AM Best security rating for senior unsecured is 'bbb', preferred stock is 'bb+' and subordinated debt is 'bbb-'. Which one does the insurer choose?

There also needs to be clear guidance as to how to choose the appropriate rating agency from the list, e.g. do we look at the one giving the highest rating, lowest rating, or do we average the ratings?

How this table is aligned will be extremely important as it is likely to make asset default risk factors quite sensitive to it.

	DEPOSIT	REPORTING REQUIREMENTS	RESTRICTIONS
INDIA	Clause 37. An annual fee of a) 500,000.00 (50,000.00 TTD) rupees, or b) 1/20 of 1 % of the total premium in respect of facultative reinsurance accepted in India during the financial year preceding the year in which the annual fees is required to be paid subject to a maximum of 100,000,000.00 rupees. (10,000,000.00 TTD)	Clause 14. Lloyd's India submits reports on the following: i. Financial reporting ii. Actuarial reporting iii. Business Reporting iv. Downgrading Reporting: Any downgrade in rating by any internationally renowned credit rating agency. v. Erosion of Net Owned Fund: More than 5% erosion in the Net Owned Fund of the applicant. Note: Net Owned Fund (NOF) includes: Paid up equity capital, free reserves, securities premium account sum of which is reduced by accumulated losses and book value of intangible assets.	Licence Lloyd's underwriters are authorised to write reinsurance originating from India on a cross-border basis only. Under the present licencing structure Lloyd's underwriters are not licenced to write insurance in or from India. Exceptions: 1. Residents in India may remit funds for securing healthcare insurance with an overseas insurer 2. Risks situated in Special Economic Zones (SEZ) 3. Special approval by the Insurance Regulatory and Development Authority (IRDA) 4. The cover holder model is not currently recognised in India.
BARBADOS	Clause 23 2b General insurance business deposit: an amount equal to 40 % of the premium income of the company but not less than \$250 000 (842,500.00 TTD) and not more than \$1 000 000 (3,370,000.00 TTD). \$1 BBD=3.37 TTD	Clause 43(2) Every company is to submit the actuarial report within 4 months of the end of the financial year.	Clause 77 (1) Ultimate power rests with the Supervisor by his/her discretion to prohibit any registered association from writing new business in the interest of policy-holders.
JAMAICA	Clause 9. To be registered companies must have: - paid-up capital and surplus of the prescribed amount (not given) - it has deposited the prescribed amount with the Commission referred to in section 21 (not given).	Clause 64. Associations internal and external to Jamaica, required reports and documents are to be submitted within 3 months after the end of the financial year. Documents include certified copy of returns, signed certificate of legislative compliance, annual list of members and statement of receipt of expenditure.	Clause 61. (1) Subject to section 150: - All associations of underwriters Must be registered to conduct business. - An association of underwriters cannot be registered to carry on both long term business and general insurance business, unless such general insurance business consists exclusively of accident insurance business

TRINIDAD & TOBAGO	Associations of Underwriters Clause 233. 1 (a) and (b) The deposit required is 20% plus an amount equivalent to cover all policyholder liabilities or 40% of the premium income of its members the form of which can be cash or approved securities. General Insurers Clause 22. Increase its stated capital within five years starting with 3 million dollars in the first year and in increments of 3 million amounting to 15 million at the end of the fifth year.	Association of Underwriters Clause 244. (2)-(4) 1. Associations external to Trinidad and Tobago are required to submit reports and documents within six months of the end of each financial year. Documents include certified copy of returns, signed certificate of legislative compliance, annual list of members, committee members or other governing body, names and addresses of its members operating in Trinidad and Tobago and persons appointed as its agents and brokers, statement of receipt of expenditure for preceding year, a calculation of its assets and liabilities including an actuarial certificate. 2. Within one month after each quarter, they are to submit: statement of receipt of expenditure for preceding quarter and a calculation of its assets and liabilities. 3. Within six months of the end of its financial year publish in at least two daily newspapers the statement of receipt. General Insurers: Clause 215. General insurers are to submit an actuarial report to the Inspector within 60 business days after the end of its financial year.	Clause 230. (1), (4) -All associations of underwriters must be registered and compliant with provisions to conduct business. -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.
	ANALYSIS		
	Deposit Requirements The data indicates a similarity in the deposit requirements for Barbados and Trinidad and Tobago. However, a vast difference can be seen with India due to the exchange rate and the percentage requirement of the total premium. A prescribed amount is not stated in the Jamaican Legislation. It should be noted that for the Trinidad	Reporting Regarding the time frame for reporting for underwriters, none was stipulated for India. The data shows that Trinidad and Tobago provide the longest period for submission at 6 months as compared with Jamaica and Barbados who are 3 and 4 respectively. It appears that there is a similarity in the requirements for some documentation between Jamaica and	Restrictions Lloyd's is not licensed to write insurance in or from India and as such is restricted to conducting business outside of India with minor exceptions noted. Jamaica and Trinidad again share similarities in the registration for certain classes of

	market, deposit requirements for general insurers should not exceed the percentage required by associations of underwriters.	Trinidad which seems to be more comprehensive than Barbados. With respect to General insurers in Trinidad, an imbalance is noted as the actuarial report is to be submitted in 3 months, half the time as provided for the Associations of underwriters. On the other hand, it can be seen that the stipulated reporting requirements are more rigorous for underwriters than for general insurers.	business. Contrary to Barbados, discretionary power belongs to the authority there.

LLOYD’S COVERHOLDERS IN BRAZIL ARGENTINA CANADA AND THE USA

Country	Parameters	Restrictions
Brazil	Lloyd’s is licensed by SUSEP (the Brazilian regulatory authority) as an Admitted Reinsurer through the ‘reinsurance law’ (Complementary Law n. 126/07). An Admitted Reinsurer status means a foreign reinsurer making business with Brazilian companies (Brazilian Insurance Companies or Local Reinsurers). All business is written in London on a cross-border basis Lloyd's underwriters do not generally deal directly with policyholders. Instead, business is accepted by Lloyd's underwriters through the following entities: 1. Lloyd's brokers 2. Coverholders or Underwriting Agencies 3. Open Market Correspondents (OMC)	Lloyd’s can write all classes of reinsurance, except for endowment life insurance and supplementary pension plans.
Argentina	Lloyd’s underwriters are authorised by the Superintendencia de Seguros de la Nación (SSN) to write all Argentinean reinsurance business (facultative, treaty and XOL) as Admitted reinsurers.	Admitted reinsurers will only be permitted to:- 1. reinsure the portion of each risk in excess of US\$50 million;

	As of 1st September 2011 it is compulsory for the first US\$50 million of each risk to be reinsured by Local reinsurers.	2. reinsure ‘exceptional’ risks that cannot be underwritten in the local market due to their magnitude or characteristics, where approval has been granted by the SSN on a case-by-case basis, as defined in Article 19 of SSN Resolution 35,615; and 3. write retrocession business The new framework’s implications on Lloyd’s 1. Deterioration in their trading rights 2. Possible loss of underwriters’ existing business 3. Constrain ability to provide capacity to the Argentinean market.
Canada	In Canada, Lloyd’s is known as a market for commercial risks in respect of property, casualty and specialty classes of business. They operate as Open Market Correspondents (OMC) or Coverholders. Lloyd’s underwriters work closely with brokers and local underwriting agents (coverholders) and are able to offer tailor-made insurance products for large risks as well as for the small and medium enterprise market. Lloyd’s covers more than 60 lines of insurance and reinsurance and can develop tailor-made policies for customers across sectors Accident & Health/ Agriculture & Hail/ Aviation/BBB/ Crime/ Cargo/Casualty/ Contingency/ Cyber/Difference in Conditions/ Directors & Officers/Employers Liability/	

	Energy/ Engineering/ ExtendedWarranty/ Financial Institutions/ Fine Art/ Legal Expenses/ Livestock & Bloodstock/ Marine/ Medical Expenses/ Medical Malpractice/ Motor/ Genera lLiability/Nuclear/ Pecuniary/ Personal Accident XL/Political Risks, Credit & Financial Guarantee/ Power Generation/ Professional Indemnity/ Property/ Space/Specie/ Term Life/ Terrorism/ Yacht	
USA	Underwriters at Lloyd’s have licenses in Illinois, Kentucky, and the US Virgin Islands and are approved surplus lines insurers in all US states and territories. Lloyd’s is also an accredited reinsurer in all 50 states. Types of risks Lloyd’s covers in the USA: 1. Surplus lines 2. Reinsurance 3. Exempt business 4. Licensed Business is placed through: 1. Lloyd’s brokers 2. Surplus lines brokers 3. Coverholders 4. Open Market Correspondents (OMCs) 5. Service companies	US surplus lines risk placed at Lloyd's can only be underwritten by Lloyd's syndicates that are approved by the National Association of Insurance Commissioners and appear on the NAIC Quarterly Listing of Alien Insurers.

APPENDIX 1

INSURANCE BILL 2016 COMMENTS ON ASSOCIATION OF UNDERWRITERS (LLOYDS)

HISTORY IN TRINIDAD

The Trinidad and Tobago insurance market, in the early years consisted of agents for and branch offices of foreign insurers. These operations were controlled by the foreign head office and in most cases the local operations were headed by an expatriate technocrat.

The names of Royal, NEM, Sun Alliance, Lloyds, Sunlife, Guardian were common at that time.

The Insurance Act 1966 had its genesis in the desire to move the industry to a more locally owned and operated industry. The drafters of that legislation, many provisions of which form part of the current 1980 Insurance Act, appear to envision an industry in transition.

The desired transition being from a foreign owned and controlled industry, operating via agents and branches, to one which would initially consist of a combination of local and foreign insurers thus driving the development of our local industry, expertise and consequently the national economy. The vision being one of an industry forming an integral part of the local economy through local ownership and control. The local ownership and control leading to the development of a cadre of local professionals in whose hands the future of the industry was entrusted.

This was facilitated by the inclusion of the relevant sections and clauses in the 1966 Insurance Bill with one of the most notable sections being Section 151, Associations of Underwriters.

The legislation was revised and updated in via the passage of the Insurance Act 1980. The critical provisions for Association of Underwriters and also the allowance of the export of business, provided the intermediary was held personally responsible if the claim was unpaid, remained in its original form. This was exploited for the export of simple risks and not the technical energy sector or aviation risks for which the local expertise and capacity did not exist or any risks which was too large to be written on the local market.

The 1980 Act sought to update the legislation bringing it more in sync with the practices and needs at that time while also increasing the capital requirements thus improving the industry's security and capitalisation.

The revised legislation did not make any significant amendments reflecting the local markets ***development of expertise and*** capacity and the resultant reduced dependence on foreign insurers operating in the market.

The result of the retention of many of the provisions in the 1966 legislation being unchanged has resulted in relatively easy access to our market by foreign insurers and Association of Underwriters. This has led to a high level of risk selection and in a

competitive environment, a default to a market which can produce more competitive rates than a local insurer.

Prior to 1993 the activity and penetration of these companies and associations was tempered by the existing exchange control regime then in place. The liberalisation of our foreign exchange regime in 1993 created a lot of positive benefits to the local economy but had the unintended consequence of removing the main block to the export of insurance on risks which could have been easily underwritten and kept in the Trinidad and Tobago insurance market. The effectiveness of the exchange control was demonstrated at one of the most challenging times in our local economy during the decade of the 80s. At this time, in an effort to preserve scarce foreign exchange and promote the development of the local economy the CBTT made it mandatory for local insurers to decline business prior to approval being granted for the purchase of foreign exchange for the settlement of reinsurers billings on facultative placements. This measure coupled with the proviso that a company could only export 24 times the amount it retained had a very positive impact on stemming the outflow of foreign exchange and the retention of the profitable accounts to the benefit of the local economy. One of the highlights of this period was the development of a local energy insurance pool to allow participation by local insurers in the energy sector business. Unfortunately this initiative was short lived.

The period of the 80s provided challenges via the critical shortage of foreign exchange, a situation far worse than that being experienced today. The controls implemented by the CBTT resulted in the termination of Lloyds' binder arrangements, the reduction of the export of relatively simple risks and the return to our market of business previously placed overseas. The positive impact was seen via:

- Reduced forex exports
- Improved taxation income as the profits on the business was kept locally by insurers registered and operating locally
- Benefits to the local economy via employment and economic activity

The liberalised forex regime coupled with the deficiencies in the present legislation has contributed significantly to the haemorrhaging of simple business to external Insurance markets. This has been to the detriment of the local industry and has added to the drain on our forex reserves. This situation remains unchanged in the most recent version of the Insurance Bill 2016. This is contrary to what was envisioned in the 1966 legislation i.e. foreign insurers and Association of Underwriters being complementary to domestic market development and not direct sources of competition. This is consistent with one of the objectives stated in Lloyds' strategic plan 2015 to 2017 -

Lloyd's will be an international, London-based market, built on trusted relationships and focused on specialist property and casualty business requiring bespoke underwriting and broking

The negative impact of this deficiency in our proposed legislation is now highlighted further due the changed economic circumstances. At the time discussions began on this legislation our economy was much stronger with a steady inflow of foreign exchange. At that time Attic, as the industry's representative made recommendations for the control of the export of local business. This effort was stymied due to varying positions being adopted by specific stakeholders on the matter of trade liberalisation,

the need for policy holder continuity and the general belief that this leakage was being exaggerated by the domestic Industry. The current crisis demands that this position be revisited given the current publicly acknowledged imperative to build the resilience of our local economy and protect our limited foreign exchange reserves. Further the management of our national economy must be enabled by a robust tax collection system, premium tax being another source of leakage and an accurate and reliable system for national income accounting which measures all sources of Insurance outflows.

The export of simple local risks are being done via:

- Overseas brokers working in collaboration with the local brokers
- Lloyds' cover holder arrangements – delegated authority to domestic Insurance Brokers in the form of binders and line slip arrangements. This is a growing segment facilitated by side agreements.
- Direct placements via overseas brokers
- Agents
- Online purchases

These foreign options are not regulated in the same manner as the local insurers or branch offices operating in our local market. The proposed bill does not address the issue of online purchase of insurance.

An insurer operating in Trinidad and Tobago will be registered under the Insurance Act 1980 Ch 84:01 either as:

- An insurance company
- A branch office of a foreign company
- An Association of Underwriters

The operation of these three entities contributes in varying degrees to the local economy.

An insurance company operating locally contributes to the local economy in many aspects:

- Provision of office and other space for their operation
- Employment of locals for the operations of the company
- Collection of taxes on the governments behalf – IPT and VAT
- Retention of profits and it's reinvestment in the local economy
- Retention of scarce foreign exchange via the retained portion of written business
- Retention of profits locally and investment into local assets e.g. Government and other securities 80/20 foreign investment rules

Additionally the administrative work needed by the regulator is far simpler for these companies compared to Lloyds or another entity operating outside our shores.

- access to companies locally for onsite examinations
- contribution via corporate social responsibility
- accessibility to clients in order to resolve claims issues
- mind of management and management control sits within easy reach
- availability and registration as a member of OFSO

The operation and market access of Lloyds is controlled in most markets except the Caribbean which has historically depended on Lloyd's syndicates as part of its commonwealth membership. In other jurisdictions this is not typically the case. The following provides some examples in various jurisdictions:

- Most Latin America countries do not allow Lloyds access except as a reinsurer – Brazil, Costa Rica.
- Some countries allow risks over a certain size to be accessible to foreign insurers e.g. US\$50M in Argentina
- Some countries only allow access for certain types of risks for which the local market does not have the capacity e.g. Surety and Agribusiness in Brazil
- Approved Surplus lines insurer and a reinsurer in all US states
- Approved insurer in only three US states – Illinois, USVI and Kentucky

The primary objective stated in the Insurance Bill 2016:

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.

Consistent with this objective, the Association of Trinidad and Tobago Insurance Companies recommends:

1. All Insurers whether Lloyds or other foreign market participants must be admitted carriers.
2. Such admitted carriers should be restricted to writing risks which cannot be written by the domestic market. In the case of Lloyd's, this is consistent with the stated strategy as outlined earlier. A provision such as this will allow the simple risks to remain onshore while providing foreign market support for the complex risks.
 - Lloyds and foreign companies will continue to benefit via their participation on the treaties of the local insurers and participation on the large complex risks which need foreign capacity and expertise for their placement
 - Lloyds and foreign insurers presently enjoy twofold benefits at present by virtue of a primary insurer and reinsurer
3. Controls be implemented to limit the export of business to risks which cannot be written locally. This can be controlled using previously utilised requirements for decline slips as evidence of legitimate foreign exchange purchases.
4. Decline slips are effectively placement slips which should bear the stamp, signature and date of declinature of domestic insurers, with one counter signature by the client.
5. Quarterly reporting of risks placed overseas and the reasons for so doing evidenced by originals of decline slips.
6. Publication on the CBTT website of all domestic Lloyds cover holders.
7. Enquiry from the CBTT as to the performance and related financial condition and audits of the specific syndicates with domestic cover holders



CENTRAL BANK OF TRINIDAD & TOBAGO

Eric Williams Plaza, Independence Square, Port-of-Spain, Trinidad, Trinidad and Tobago
Postal Address: P.O. Box 1250
Telephone: (868) 625-4835; 4921; 5028; Fax: (868) 627-4696
E-Mail Address: info@central-bank.org.tt
Website: www.central-bank.org.tt

May 2, 2017

Ms. Chantal La Roche
Secretary to the Committee
Parliament
Level G-8, Tower D
The Port of Spain International Waterfront Centre
1A Wrightson Road
Port of Spain

REF: CB-IOFI-1173/2017

Dear Ms. La Roche

**Joint Select Committee appointed to consider and report on the Insurance Bill, 2016 -
Initial comments from the Central Bank of Trinidad and Tobago (the Central Bank)**

Reference is made to your letter dated March 16, 2017 with attachments extending an invitation to attend the fourth meeting of the Joint Select Committee (JSC) appointed to consider and report on the Insurance Bill, 2016. Regretfully, due to its time constraints, the JSC was unable to meet with us at the fourth meeting held on March 28th 2017.

Accordingly, we are now pleased to submit for consideration by the JSC, our written comments on the submissions and presentations made to the JSC by various stakeholders. These are set out in tabular format in Appendix I. The Central Bank's views are consistent with the broad policy framework of the Insurance Bill, 2016. Appendix II contains a list of the documents we have relied upon as representing the views of each of the Association of Trinidad and Tobago Insurance Companies (ATTIC), the Insurance Brokers Association of Trinidad and Tobago (IBATT) and Lloyd's.

Additionally, the Central Bank wishes to propose certain amendments, for clarity, to specific clauses of the Insurance Bill, 2016. These will be provided shortly under separate cover.

Yours sincerely

Michelle Chong Tai-Bell
Inspector of Financial Institutions (Ag.)

Attachments



APPENDIX I

THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO’S FEEDBACK TO THE JSC

SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

Ref.	Provision	ATTIC’s Recommendation	ATTIC’s Rationale	Central Bank’s (Central Bank/Bank) comments
Cl. 254 , 255	254 (5): Reverse Burden of Proof, creating strict liability for offences that carry large fines and/or long sentences of imprisonment	Align Insurance Bill with Canadian and UK legislation and the International Association of Insurance Supervisors— all utilise strict liability in rare cases and in cases that the penalty is imprisonment, requires there to be personal culpability and knowledge	- UK and Canadian legislation and the International Association of Insurance Supervisors support this position - Penalties should involve personal culpability	Background The Canadian Insurance Companies Act states inter. alia.: “1023. Every person who, without reasonable cause, contravenes any provision of this Act or the regulations is guilty of an offence. 1028. If an entity commits an offence under this Act, any officer, director or agent of the entity who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and liable on summary conviction or on conviction on indictment to the punishment provided under paragraph 1027(1)(a) for the offence, whether or not the entity has been prosecuted or convicted.” The Constitution of the Republic of Trinidad and Tobago specifically states that laws which place a burden on the accused to prove certain facts are not invalid (section 5(2)(f)(i) of the Constitution). The Courts in Canada have expressly opined that a shift of the evidential burden to an accused, in a regulatory environment, does not offend that person’s Charter Rights. R v Wholesale Travel Group Inc. [1991] 3 SCR 154 wherein the court said “<i>The</i>

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

		Amend wording of 254 (5) We recommend that 254 (5) be amended as follows: <i>(a) A failure by any person to comply with a requirement, direction or prohibition under this Act or the Regulations shall not be an offence unless it is proved that the person acted without reasonable excuse. (b) An officer, director or agent of an insurer shall not be guilty</i>	<i>reasons for ascribing a different content to the presumption of innocence in the regulatory context are persuasive and compelling. As with the mens rea issue, if regulatory mechanisms are to operate effectively, the Crown cannot be required to disprove due diligence beyond a reasonable doubt. Such a requirement would make it virtually impossible for the Crown to prove regulatory offences and would effectively prevent governments from seeking to implement public policy through regulatory means... The means of proof of reasonable care will be peculiarly within the knowledge and ability of the regulated accused. Only the accused will be in a position to bring forward evidence relevant to the question of due diligence."</i> Central Bank's views: The Central Bank wholeheartedly concurs with the position espoused by the Canadian Court cited above. The Bank does not support ATTIC's proposed amendment to Clause 254(5) as it shifts the evidential burden much further than the Canadian legislation and in so doing would undermine the very purposes of the legislation. However the Bank would not object to an approach akin to Section 1028 of the Canadian Insurance Act.

APPENDIX I

THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC

SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

		<i>of an offence unless it is shown that he personally directed, authorized, assented to, acquiesced in or participated in the commission of the offence.</i> • Replace references of "summary conviction" to "conviction on indictment" • Align with Constitution and amend FIA 2008 accordingly.		The Central Bank does not agree that all offences should be indictable offences akin to murder, manslaughter and money laundering. However the Central Bank would recommend an approach akin to the Section 1028 of the Canadian Insurance Act where offences are created as hybrid offences. As stated above, it is incorrect to state that the burden on the accused to prove certain facts in certain circumstances is unconstitutional. ATTIC's suggestion to amend the Financial Institutions Act, 2008 (FIA) recognizes that the Insurance Bill sought to harmonize the treatment of comparable offences under the FIA. Clause 254(5) is similarly worded to Section 117(3) of the FIA.
All offences in the Bill		255 (4) (a) & (b) - Liability for substantial penalties should be on the basis of some personal responsibility beyond the mere status of an individual as a director. To do otherwise is to proceed by way of strict liability in an area of criminal		• Clause 255 applies to financial fraud actually perpetrated by either a director, officer or sales representative • The presumption of the offence under 254 (8) does not apply in this case. Recommendation: Delete 255 4(b) as it is redundant and has led to

APPENDIX I

THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC

SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

		liability where the severity of the penalties make such an approach wholly unjust.		ATTIC's misconception that an entity can perpetrate a financial fraud and that directors of such entities may be automatically presumed to have also committed the fraud. The Bank also clarifies that for other offences, under Clause 254(8), a director or officer would not be liable simply by virtue of his office, but due to his acquiescence, consent, connivance or neglect. As such, some fault is required on the part of the officer or director and Clause 254(8), therefore, does not impose strict liability.
Cl. 68	68(1) Composition of audit committee 68 (5) Independent Director	• Reduce the number of independent directors to one. • Limit term of Director to eight (8) years • Director connectivity be addressed.	• No definition of independence in the Bill • Limited available and willing talent pool • Provision may not strengthen corporate governance	The Bill contains provisions relating to meaning of an independent director in 68(5)(c). The provisions relating to the independence of the audit committee are: a. Consistent with the FIA b. In keeping with Insurance Core Principle 7.3 of the International Association of Insurance Supervisors on the structure and Governance of the Board which states: "7.3.8 Besides policies on conflicts of interests, the insurer should ensure objectivity in decision making by establishing clear and objective independence criteria which should be met by an adequate number of members of the Board (i.e. non-executive Board members). <i>For this purpose, the independence criteria should also</i>

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

				<i>take account of group structures and other applicable factors.</i> Meeting such criteria is particularly important for those Board members undertaking specific roles (such as members of the remuneration and audit committees) in which conflicts of interests are more likely to arise. 7.3.9 Objectivity in decision making is also promoted by independence of mind of the individual Board members. This means that a Board member should act without favour; provide constructive and robust challenge of proposals and decisions; ask for information when the member judges it necessary in the light of the issues; and avoid “group-think”. c. In keeping with the Basel Committee on Banking Supervision’s guidelines on Corporate Governance Principles for Banks which states that an audit committee should: • be required for systemically important banks and is strongly recommended for other banks based on an organisation’s size, risk profile or complexity; • be distinct from other committees; • have a chair who is independent and is not the chair of the board or of any other committee; • be made up entirely of independent or non-executive board members; and • include members who have experience in audit practices, financial reporting and accounting.

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

				The recommendation by ATTIC to reduce the required number of independent directors on the audit committee to one (1) falls far short of these international standards. Furthermore, the current wording of clause 68 of the Bill is the result of amendments made by the Senate in May 26 2015. The amendments were intended to address ATTIC's concerns about the requirements to qualify as an independent person on the Audit committee. In the Bank's view, the amendments made by the Senate go a long way in addressing ATTIC's concerns while at the same time promoting independence and objectivity of decision making. No changes are recommended to the current wording of the Insurance Bill, 2016 as it is in keeping with the FIA, Basel Principles, the International Insurance Core Principles and Corporate Governance best practices
Cl. 47, 263 and 265	Section 47. (1) Direction by CBTT for restructuring.	• Insertion of new clause 46 B in the Stamp Duty Act Chap 76:01 Or a new clause in the Insurance Bill • "Notwithstanding anything in the Act, stamp duty and other statutory charges	• Principle in law is that reconstructions and reorganizations are not subject to Stamp Duty (sec 46 Stamp Duty Act)	Not all forms of reorganization meet the Board of Inland Revenue's criteria for stamp duty exemption. Clause 47 of the Bill gives the regulator the power to direct the restructuring of a financial group and establish a financial holding company in order to protect licensees from group risk and contagion and

APPENDIX I

THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC

SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

	Section 265 Transfers via vesting order	shall not be chargeable on any instrument made for the purposes of or in connection with ensuring compliance with the requirements of the Insurance Act.” Amend section 265. "The transfer of and vesting in, the transferee of an undertaking by a Vesting Order or Scheme of Transfer as a result of a restructuring described in section 47 of this Bill shall not be subject to Stamp Duty”	- However, the application for the waiver of Stamp Duty can take months or years to process - It is ATTIC's position that a compulsory reconstruction as required by the Insurance Bill should not be subject to Stamp Duty and accordingly should be explicit in the Act	to separate financial from the non-financial entities in a conglomerate structure. The mechanism of the Vesting order (Clauses 262 to 265), identical to the equivalent clauses in the FIA, is intended to facilitate restructuring in manner that could meet the BIR's criteria for stamp duty exemption. It must be recognized that the insurer may elect to restructure in a manner that meets the regulators goals but may not necessarily meet the BIR's criteria for exemption. The consideration of an automatic exemption from stamp duty in this circumstance is a matter of tax policy to be decided by the BIR and the Minister of Finance.

APPENDIX I

THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC

SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

General	Section 27. (1): Establishment of foreign branch (2): CBTT approval (3): Notice to CBTT	Regulations should specify the information required.	Present Regulations do not specify this.	It is the Central Bank's practice to make such information requirements and other procedural matters known by issuance of guidelines, circular letters and forms to the industry and readily available by posting on its website. Also in the case of documents required for transfers or amalgamations, or establishment or closure of a branch, each situation is unique, and information may be required that is specific to the circumstances of the companies involved.
	Sections 97 (1), (2), (3), (4) & (5) Transfer of business	Specify applicable documents and reports in Regulations	Provides greater clarity to the relevant parties as to the content. Ignores possibility of "short form" under sections 223 and 224 No requirement for an agreement under sections 223 and 224 which can be costly Section 221 requires approval by resolution n of shareholders	The Central does not recommend dealing with these procedural matters via legislation. The Bank will issue the requisite guidance as part of the implementation and rollout prior to Proclamation of the Act.
Cl. 85	85 (1): Investment in T&T assets	Reduce investment in assets in T&T from 75% to 60%.	- Paucity of domestic investment opportunity - Potential of increased systemic risk - Uneven playing field with	The requirement to match liabilities with a specific percentage of local assets is historically a policy position of the Government to encourage local investment. The maximum permissible share of foreign assets has been 20% for many years. The Bill

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

	85(4): Liability in respect of foreign currency policies.	Investment in foreign assets to be no less than 75% of foreign currency liability.	respect to investments Investments in assets of CARICOM origin to be reviewed.	increases this proportion to 25% and ATTIC proposes to increase it to 40%. There are provisions within the risk based capital regulation whereby the insurer is required to hold capital as a buffer against foreign exchange mismatch risks. Accordingly the Central Bank does not object to ATTIC's proposal to further increase the permissible foreign assets and/or to eliminate the CARICOM exception if the JSC is so minded.
General	Ex. Section 27 (1) Establishment of foreign branch Ex. 30 (2) CBTT approval	Consider establishing a timeframe for approvals to be given CBTT to respond to request/approvals within 20 working days. Recommended Clause: <i>"Notwithstanding any other section in the Act, Central Bank, should respond to all requests or approvals under this Act within 20 working days. If the Inspector does not raise any objections or requests further information by the end of</i>	The Bill places significant requirements on licensees to respond to requests and submit filings on certain deadlines yet no accountability is placed on the Central Bank. These include but not limited to: - Clarification on the treatment of assets - Requests for decisions on amalgamation - Request for Central Bank reports (Insurance and Pensions Report last published 2007).	- This is not an unreasonable request but the Bank proposes to implement agreed timelines in a Service Standard. - The Central Bank's Service Standards published on its website will be updated after consultation with the industry and before Proclamation of the Act.

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

		<i>20 working days from the submission of all required documents, the licensee can proceed as if the request is approved."</i>		
Cl. 4 Definition of credit exposure	Definition of Credit Exposure	Include "net of specific provision in definition". Note: It is our understanding "net of specific provisions" was included in the 2015 Bill and was submitted to the House but was changed in the Senate to remove "net of specific provisions"	• Current definition being used in the FIA 2008 has already created varying interpretations • It is our understanding that CBTT is not against the inclusion • Provisions as per section 89 of the Bill is a remedy for addressing credit exposures	ATTIC's proposal is inconsistent with the FIA. The removal of "net of specific provisions" from the definition of credit exposure was made by the former Joint Select Committee and the Central Bank supports the consistency of approach with the FIA.
Cl. 126	Section 126 (a) &(b) Agreement as to premium to be paid.	Amend section to state: "in those classes prescribed in Schedule 1."	Schedule 1 does not have Person or Life as a Class of Insurance	The clause relating to rebating is applicable to any person who is applying for insurance in respect of life, person or property in T&T. ATTIC proposes that it should apply to all classes of insurance business. The Central Bank does not object to this suggestion from ATTIC.
Cl. 134(1)	Section 134. (1) Payment of monies received.	Amend section to "within ten business days from the date on which it received such monies. "	Ensure premiums are dealt with in a consistent manner.	The Central Bank does not object to a shorter time period along the lines advocated by ATTIC.

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

Capital Adequacy Regulations	12 (7)& 13 (3): Investment linked Insurance Business 12 (5): CBTT to provide criteria for credit ratings	Repeat requirement for foreign currency and asset liability mismatched risk charge. S 15 & 16 Directions to be disseminated to industry as a whole		BACKGROUND The risk based capital adequacy framework codified in the Regulations is in keeping with Insurance Core Principle 17 of the International Association of Insurance Supervisors which states: ICP 17 Capital Adequacy The supervisor establishes capital adequacy requirements for solvency purposes so that insurers can absorb significant unforeseen losses and to provide for degrees of supervisory intervention.
Capital Adequacy Regulations	13(2): Income producing real estate Sch.2: Asset Default Risk Factor & Sch13: Counterparty Risk Factors Sch.16 Liquidity and Operational Risk Factor	Factor to be clarified where return less than 4% Definition required for what qualifies for unrated & fully collateralized Application of 1% liquidity charge only on non GOTT instruments.		The capital regime is built on a system that places a risk factors on exposures and risks that an insurer faces. Properly designed, these risk weights put the right prices on risk taking, prices that give insurers an incentive to properly manage their risk profile. At the same time, a well-designed system with well calibrated risk factors ensures that insurers need to add to their loss-absorbing capacity commensurate with any decisions to take on more risk.
Capital Adequacy Regulations	Sch. 12 Asset Limits	Limit on mutual funds and CIS should be reconsidered Increase limit on unrated securities from 5% to 10%		Additionally, owners/shareholders with capital at risk, have a stake in the outcome, "skin in the game". Currently there are companies doing billions of dollars in business and they are only required to hold \$3 million dollars in capital.
Capital Adequacy Regulations	• Asset Default Risk Charge	• Charge on non-qualifying ABS-10%		The risk factors and the requirements of the Capital

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

	Credit Rating Agencies	- Clarity/uniformity of ratings used - Guidance on Agency to be used.		Adequacy Regulations were calibrated by the Bank after extensive consultation with the industry through a Technical Working Group¹ and after five Quantitative Impact Studies. Insurers are being afforded a five year transition period to achieve the minimum requirements (per Schedule 9 of the Bill). The calibration approach looks at the impact of each of the factors and ratings criteria in totality on each insurer and on the industry as a whole. The Bank will provide comments on the specific points raised by the industry on the Capital Adequacy Regulation in a separate submission when the regulation is being considered.
Cl. 4 Definitions	Definitions	Required for: - Joint venture - Look through method - Collective investment scheme		
Capital Adequacy Regulations	Definitions	Asset default risk charge		
Cl. 230-249	230 (4) Registration of Assoc. of U/Writers.	Prioritization of risks ceded to local insurance market.	- Prevent leakage to foreign entities - Growth & development of local industry - Limit demand for foreign exchange - Profits retained locally	- The Joint Select Committee would need to carefully consider the significant policy change from the position under the current legislation as proposed by ATTTIC. - There are implications for consumer choice and access to global insurance capacity. - The business and strategy of Lloyd's is concentrated on large and unusual risks, along with reinsurance business. While there is no prohibition on Lloyd's writing 'vanilla' insurance business such as private motor, it is not very common. Some insureds need and value cover from Lloyd's.

¹ Including representatives from ATTIC, the Institute of Chartered Accountants of Trinidad & Tobago (ICATT) and the Caribbean Actuarial Association (CAA)

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

Cl. 266	Sec.266 of the Insurance Bill - Adherence to market conduct	Should confirm whether brokers are included		- Cl. 266 states as follows “266. <i>Registrants and insurance consultants shall comply with the standards on market conduct as prescribed in Schedule 12.</i>” - Clause 266 is the enabling clause and brokers are included. The word ‘registrant’ is defined in the Bill to include an ‘insurer’ and an ‘intermediary’. An ‘intermediary’ is defined in the Bill to include a broker.
Schedule 12	A. Sales &Marketing	Scope should include all intermediaries		- Although agents are not specifically mentioned in Cl 266, agents of insurers are indirectly covered as it is the responsibility of the insurer to ensure that the marketing material and sales practices accord with the Standards of Market Conduct. - Further, paragraph 1(h) of this Part of Schedule 12 refers to intermediaries and will thus extend to agents.
Schedule 12	A. 1. (f)	Clarify ‘reasonable’ and ‘up to date’ – Wording suggested		1 (f) states “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” - The Standards of Market Conduct are intended to provide general guidance that can be used consistently to ensure that materials, products, processes and services are fit for their purpose. - Internationally, more specific requirements governing illustrations are provided through guidelines which are regularly updated to ensure

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

				that they keep pace with new products and innovations in distribution. The Central Bank intends to adopt this practice.
Schedule 12	A. 1. (h)	Intermediary to be defined and clarification of whether the name of the provider is to be included	A. 1. (h)	Definition of intermediary is in the Bill and will thus apply to the Schedules. The provider's name must be included in the promotional material. The intermediary must disclose the fact that it/he is tied to a single provider and also name that provider.
Schedule 12	A. 1. (i)	Clarify 'reasonable assumptions'	A. 1. (i)	The Central Bank will provide specific guidance through either guidelines or circular letters.
	A. 2. (a)	Change wording to "Investment into this product is solely at the risk of the investor."	A. 2. (a)	The Central Bank does not recommend any changes to A 2 (a) which states as follows:- <i>" 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; "</i>
Schedule 12	B. Understanding Consumers' Needs	Under General Principles, clarify 'reasonable number of years'		Central Bank will issue guidance in this area as the appropriate time period will depend on the duration of the product or service.
Schedule 12	B. 1. Knowing the Policyholder	This covers only individuals. What are the requirements for businesses. Clarification of what information is appropriate and hence should be gathered.		B. 1. Knowing the Consumer. This section applies to both individual consumers and commercial consumers.

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

Schedule 12	B. 1. (a) –(c)	It needs to be defined when this information is considered relevant or not.		• It is the insurer's responsibility to assess relevance in the context of its customer base and business model and to meet the goal of ensuring sufficiency of information so that an appropriate product is offered. Insurers are expected to develop policies, systems and procedures in this area that codify the results of these assessments and are fit for purpose. . • The Central Bank does not recommend any changes to B. 1. (a) – (c).
Schedule 12	B. 2. (a)	The provisions appear subjective.		• The Central Bank does not consider these requirements to be outside of the norm of a professionally handled sales process. • B 2 (a) The Central Bank does not recommend that any changes be made to the current wording.
Schedule 12	B. 2. (b)	The provisions appear subjective.		• The Central Bank does not consider these requirements to be outside of the norm of a professionally handled sales process. • B. 2. (b). This Standard of Market Conduct is considered to be a normal standard in assessing suitability.
Schedule 12	B. 2. (c)	How information is captured should be specified – Suggested ranking of attitude to risk		• B 2 (c) The Central Bank expects the insurer to categorize in accordance with the insurance companies policies and procedures.

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

Schedule 12	B. 2. (c)(second paragraph)	Information to be specified. How is suitable defined?		• B.2. (c) Second Paragraph The information obtained in B1(a) to (c) would inform what is suitable. • There are many internationally accepted approaches that are available to assess consumers' attitudes towards risk.
Schedule 12	C Privacy and Data Protection C1	Include requirement for appropriate disposal and/or destruction of customer information		• C.1. The Central Bank disagrees with ATTIC's suggestion. • Because of the long term nature of life insurance contracts, customer information should be kept well beyond normal timeframes for destruction of customer information. The insurers' policies and procedures should reflect this. The Central Bank issued a guideline in 2005 on Security Systems for Safeguarding Customer Information which is intended to set out a standardized framework for an effective customer information security programme intent on preserving the integrity and confidentiality of customer records and information and ATTIC should be referred to this guideline.
Schedule 12	C. 1. (d)	Specify period of time to lock the system for inactivity and changing passwords		• C.1. (d) The Standards of Market Conduct are intended to provide requirements, specifications, guidelines or characteristics that can be used consistently to ensure that materials, products, processes and services are fit for their purpose. • More specific guidance can be provided in the form of circular letters or guidelines along the lines of the guideline referenced above.

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 1 - COMMENTS FROM THE ASSOCIATION OF TRINIDAD AND TOBAGO INSURANCE COMPANIES (ATTIC)

Schedule 12	D. Agent Training D. 3.	Clarify what is meant by 'point of sale' and "proper needs analysis"		• D. 3. The Central Bank expects that all communications to customers either pre-sale or post-sale are done in a clear, fair and balanced way and should not omit anything material from any comparisons or contrasts. There is no reference to "point of sale" in section D3. Sections B1 and B2 require the intermediary to know the consumer and to assess the suitability of a product or service for the consumer. A proper needs analysis would document whether the requirements of B1 and B2 were met.
Schedule 12	D. 4	Specify content of training program and frequency of training		• The Central Bank does not agree with ATTIC that section D4 needs to be more prescriptive.

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO’S FEEDBACK TO THE JSC
SECTION 2 - COMMENTS FROM LLOYD’S

Ref.	Provision	Recommendation	Rationale	Central Bank’s comments
Cl. 233		Deposit Our primary concern relates to a lack of clarity over the funding requirement for associations of underwriters, e.g. Lloyd’s. As currently drafted the language of the Bill appears, in practice, to place an increased burden upon Lloyd’s. This in excess of the requirements in similar territories in the region, typically 40% of premium, and in excess of Lloyd’s funding level in a number of its largest sources of premium income globally, including the US. This has the potential to impact the appetite of underwriters at Lloyd’s to allocate underwriting capacity to Trinidad and Tobago. Lloyd’s respectfully proposes to maintain its deposit in accordance with Section 233(1)(b). Lloyd’s believes the deposit requirement set out under Section 233(1)(a) fails to recognise the regulated trust arrangements which already exist to ensure that members’ liabilities are adequately reserved in accordance with UK PRA2 requirements. We further observe that the requirement appears at odds with the formulation of Section 233, which appears to contemplate the two methods of calculating a deposit level as being comparable, whereas in practice, where policyholder liabilities are calculated at the current level of 40% of annual premium, the level required by 233(1)(a) would exceed that determined by 233 (1)(b) in every circumstance.		The Central Bank has no objection to this proposal. It maintains the status quo of the current legislation.

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO’S FEEDBACK TO THE JSC
SECTION 2 - COMMENTS FROM LLOYD’S

Cl. 244 (f)		Reporting In order to meet the reporting requirements stated in 244 (2)(f), we take note of the clarification produced by the Central Bank of Trinidad and Tobago, indicating that the geographical separation of Lloyd’s business would not be required to calculate assets and liabilities. To comply with the audited financial and regulatory disclosures, the liabilities would be equivalent to the amount required for the deposit. In the case of Lloyd’s, this is equivalent to 40% of premium income. Assets would be estimated to be the amount held in the deposit pursuant to Section 233 (1). We also take due consideration and would welcome formalisation in the law that the mandatory provisions of actuarial reports under Section 244 (2)(f) are not mandatory. As noted by the Central Bank on the attached correspondence, the production of an actuarial report in respect to Lloyd’s Trinidad and Tobago business “is not needed to support the calculation of liabilities”.		The Central Bank clarifies that the requirement for an actuarial certificate is not mandatory and Clause 244(2)(f) can be deleted from the Bill.

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 3 - COMMENTS FROM THE INSURANCE BROKERS ASSOCIATION OF TRINIDAD & TOBAGO (IBATT)

Ref.	Provision	Recommendation	Rationale	Central Bank's comments
Cl. 4 Definition	4-Definitions	Amend "insurance consultant" to specifically exclude brokers.		The Central Bank has no objection to this proposal.
Cl. 4 Definition	4-Definitions	Amend "insurance business" to include reinsurance.		- The definition of 'insurance business' includes issuing contracts of insurance. 'Contracts of insurance' is defined to include reinsurance agreements. - Therefore, no change to this definition is required
	21(5) Restrictions on carrying on Insurance business	Direct placement of insurance with foreign providers should be allowed especially for marine and large plants and for specialty policies not available locally, and may be subject to the Client signing a written acknowledgment that it is aware: (a)the insurance company is registered and operating in another territory; (b) is not registered in Trinidad and Tobago, (c) of the risks associated therewith; and (d) that any and action on the policy must be taken in the foreign courts subject to the jurisdictional and legal requirements set out in the contract of insurance.		Clause 20 defines carrying on insurance business in and from Trinidad and Tobago and Clause 20(2) is referred. The prohibition in Clause 21(5) does not apply to a situation where an insurance broker places business directly abroad with a foreign insurance company. This activity does not fall within the definition of carrying on insurance business in Trinidad and Tobago.. Furthermore, 115(2) states as follows:- <i>115 (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.</i> No change is recommended.

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 3 - COMMENTS FROM THE INSURANCE BROKERS ASSOCIATION OF TRINIDAD & TOBAGO (IBATT)

The entire Bill	• 110(8) and (9)-Registration of Intermediaries • 21(9) Restrictions on carrying on Insurance business. • 123 Notice of termination of Intermediary to be given. • Section 130 Disclosure of preferential arrangements by brokerage • Section 133 Customer trust Account.	• A reduction in the quantum of the fines. • That the fine and duration of the sanction for imprisonment be reduced • That the fine and duration of the sanction for imprisonment be reduced • The penalty should be removed. • The penalty in 133(8) be reduced to the original amount of \$150,000.00.		• The Central Bank defers to the JSC on this matter of fines penalties and terms of imprisonment. • However the Bank reiterates the need to ensure that the level of penalties serves as an effective deterrent.
Cl. 113(2)(d)	113(2) Central Bank to Register persons under this Act.	We recommend that section 113(2)(d) be deleted and that the current conditions governing registration remain in force.		The imposition of professional indemnity coverage and minimum capital as registration requirements is not new. Under regulation 4 of the <i>_Insurance (Agents, Brokers, Salesmen and Adjusters) (Registration) Regulations_</i> of the Insurance Act 1980, the requirements are: • professional indemnity insurance cover of not less than five million dollars • and paid up capital must not be less than one hundred thousand dollars Under the Bill the minimum stated capital has been

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 3 - COMMENTS FROM THE INSURANCE BROKERS ASSOCIATION OF TRINIDAD & TOBAGO (IBATT)

				increased from one hundred thousand to five hundred thousand dollars. The professional indemnity cover remains at five million dollars. These requirements for the protection of consumers are in keeping with ICP 18 which treats with Intermediaries and ICP 18.1.6 states as follows:- “18.1.6 The supervisor may decide to set minimum financial resource requirements, for example to discourage market entrants with insufficient financial resources to withstand shocks. Where this is the case, such requirements might take into account risk factors such as the nature of the business to be intermediated, whether the intermediary operates client accounts, the level of professional indemnity insurance and the level of operating expenses, to ensure that an appropriately risk-based financial resource requirement is set.”
Cl. 114(3)	114(3) Provisional Certificates for Sales Representatives	• CBTT should consult before imposing conditions for registration. • Removal of the requirement for brokerage staff to be registered, or CBTT identify with specificity: (a) The staff/ positions to be so registered; (b) The rationale as the brokerage is registered as there is a cost ; (c) The framework for getting this in position and the agency responsible for administering and		• No change is recommended. • If a member of staff of the brokerage is carrying out the duties of a sales representative then he/she must be registered to do so and comply with the relevant registration requirements. • Under the Bill, a sales representative is defined as “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”

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 3 - COMMENTS FROM THE INSURANCE BROKERS ASSOCIATION OF TRINIDAD & TOBAGO (IBATT)

		effecting same. Sales representatives in brokerages be exempted from the continuous education requirement		
Cl. 115	115(a) Personal Liability.	That the section 115(1)(a) be deleted.		- Under the Bill as drafted, there is no prohibition against an intermediary placing business with a foreign insurance company. - However an intermediary who facilitates the placement of the business with the foreign insurance company is subject to the provisions of Clause 115, must disclose , is personally liable, and receive signed authorization from the consumer. - The personal liability of the intermediary is a critical aspect of protecting policyholders against errant intermediaries. A similar provision is present in the current Insurance Act [sec 102].
Cl. 116	116 Capital and Professional Indemnity Cover	We require clarification on how the quantum was derived and what constitutes approved securities for the purposes of this section.		- The minimum stated capital for brokers has been increased from \$100,000 to \$500,000 in the Bill. We consider this increase to be reasonable given inflation over a period of thirty-five years. Furthermore, the sums assured on policies sold by brokers would have significantly increased over this period of time. - In addition, brokerages will have a transition period of three years after the commencement of the Act within which to reach the minimum capital requirement of \$500,000 . - Approved securities are described in the Insurance (Approved Securities) Regulations.

APPENDIX I

THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC

SECTION 3 - COMMENTS FROM THE INSURANCE BROKERS ASSOCIATION OF TRINIDAD & TOBAGO (IBATT)

Cl. 119	119 Continuing education requirement	Persons with a certain level of experience and age in the business should be exempted from this requirement CBTT should identify the level of training and education required for both registration and continuous registration before the Bill is advanced. • Consensus regarding the training requirements governing sales representatives, and also	The Continuing Education Requirements are fundamental requirements of ICP 18 which states inter. alia: “ICP 18 Intermediaries The supervisor sets and enforces requirements for the conduct of insurance intermediaries, to ensure that they conduct business in a professional and transparent manner. ICP - 18.3 The supervisor requires insurance intermediaries to possess appropriate levels of professional knowledge and experience, integrity and competence.” The ICP also reiterates of individuals who continue to work as insurance intermediaries to keep their professional knowledge up to date. The Central Bank does not agree that age and experience should automatically exempt an intermediary from the CPD requirements. ICP - 18.3.3 goes on to state that “More complex products or customer needs will require higher or more specialised qualification and experience. The qualifications and experience of individuals should also be appropriate for the type of intermediation being carried out, whether as agent for a specific insurer or acting as a broker primarily on behalf of the customer. “ An approved educational institution will in consultation with the Central Bank determine the scope and form of the examinations in keeping with the objectives of the

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 3 - COMMENTS FROM THE INSURANCE BROKERS ASSOCIATION OF TRINIDAD & TOBAGO (IBATT)

		confirmation as to the staff positions that are or will be captured under this rubric		abovementioned core principles and regulation 9 of the Insurance (Intermediaries) Registration Regulations, 2015.
Cl. 125	125 Restriction on the payment of compensation for placing or negotiating insurance.	Insurance consultants should also be captured.		• This clause seeks to prohibit insurance companies from compensating unregistered persons for the placement or negotiation of insurance on their behalf. • Insurance consultants are remunerated by the client for a fee and not by the insurer. Therefore this clause is not applicable to them.
Cl. 126	126 Rebating	(a) CBTT should issue a "statement" with respect to brokerage fee basis presently ongoing with some state enterprises.		The Central Bank is not a party to these arrangements.
Cl. 126	126 Rebating	(b) Insurers should not be allowed to: (i) rebate premiums to consumers. (ii) give credit to insureds or preferential premium payment terms e.g. premium financing.		• The provision on rebating covers insurers. Clause 126 does not allow insurers to rebate premiums to the customer other than as specified in the policy. Therefore this clause is not intended to constrain the latitude of an insurer: ○ to appropriately price products or individual risks; or ○ to market and distribute its products in innovative ways. • Both the current legislation (Section 48 (1) (c)) and the Bill (clause 92) place restrictions on the credit which insurers can provide.

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 3 - COMMENTS FROM THE INSURANCE BROKERS ASSOCIATION OF TRINIDAD & TOBAGO (IBATT)

		(iii) "double quote" or offer conflicting terms and conditions to any intermediary or consumers.		- Insurers market their products either through intermediaries or by selling directly to the consumer. The insurer's pricing and costs vary depending on the way the product is marketed. The suggestion from IBATT would impinge on the insurers ability to sell their products directly and would restrict consumer choice. No amendment is recommended.
Cl. 126	126 Rebating	(c) If a premium is paid directly to the insurer, then the insurer should remit the commission to the intermediary within ten days of the issuance of the receipt. (f) Refund premiums should be in the currency in which it was paid and in the form of an Insurers cheques. (g) Insurance consultants should also be subject to this section.		- This is a contractual issue between the insurer and the broker - Premiums are refunded to the consumer based on the policy contract - Insurance consultants provide advice. If the activities of an insurance consultant also meet the definition of "business of an insurance brokerage" then that insurance consultant is required to register as a broker and would be subject to this section.
Cl. 130	Section 130 Disclosure of preferential arrangements by brokerage	CBTT should specify the form and arrangements of the letter to be disclosed to the Customer or alternatively the matters that must be included or covered under same.		Clause 130(1) states that " the brokerage shall disclose such arrangements to the consumer in writing in such manner as may be specified by the Central Bank." The Bank will issue the requisite guidance as part of the implementation and rollout prior to Proclamation of the Act.

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 3 - COMMENTS FROM THE INSURANCE BROKERS ASSOCIATION OF TRINIDAD & TOBAGO (IBATT)

Cl. 132	Section 132 Receipt of premium	Please include a sub-section mandating that "where a broker is to be paid by an insurer from the premium so collected that the insurers remit the payment due to the broker within ten business days of receipt of the said premium by the insurer"		This would best be addressed through the contractual arrangements between the broker and the insurer and not via the legislation.
Cl. 133	Section 133 Customer trust Account.	• Commissions be deducted prior to paying insurers and that the timeframe for payment of cheques to customers and or insurers by intermediaries be applied. • Removal of the requirement for a brokerage to establish a customer trust account for receipt and payment of customer funds, in respect of each type of insurance for which it is registered. • Implementing Separate Customer Trust Accounts (section 133) is impractical, adds unnecessary cost with no additional real consumer protection and will take an inordinate amount time to implement and manage. Established best practices worldwide do not require separate customer trust accounts.		• The requirements for brokers and agencies to establish and maintain consumer trust accounts ensures that policyholders' funds are not co-mingled with the funds of the broker or agency. This is for the protection of consumer. • The Central Bank does not agree that the requirement to implement separate Customer Trust Accounts for each of the two types of insurance business would be impractical to implement. • No change is recommended.

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 3 - COMMENTS FROM THE INSURANCE BROKERS ASSOCIATION OF TRINIDAD & TOBAGO (IBATT)

Cl. 133(5)	Section 133 Customer trust Account.	Section 133(5) should be deleted		- Long term insurance contracts provide that coverage by the insurer only takes place when the risk has been accepted by the insurer and the full premium is paid to the insurer. The customer must complete the underwriting process - eg. medical examinations, etc. Therefore, the brokerage is not entitled to a commission until the insurer accepts the risk and the full premium must be paid to the insurer. This is in keeping with long term insurance contractual provisions and normal market practice. No change is required.
Cl. 134(3)	134 Payment of premium to the insurer	We request the deletion of 134(3) and (4)		- Clause 134(3) makes provision where a brokerage an insurer at the request of the brokerage provides temporary cover in respect of general insurance on credit that the brokerage is liable to the insurer for the premium due. This is not an unreasonable requirement. No change is recommended and no rationale has been provided by IBATT.
Cl. 135	135 Payment to the consumer	- Section 135(1) , that the words “and credited” be inserted after the word received - Subsection (3) the stipulated timeframe should be 10 days as opposed to 3 days		- The term “and credited” is not necessary as Clause 135(1) speaks to cheques in the name of the consumer, not in the name of the agency, brokerage or sales representative - The purpose of this clause is to ensure that the funds from the insurer to the broker are not used for any purpose other than to pay claims to the insured. The Central Bank would not object to an increase in the timeframe but no more than five (5) business days.

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 3 - COMMENTS FROM THE INSURANCE BROKERS ASSOCIATION OF TRINIDAD & TOBAGO (IBATT)

		3. Consideration be given to direct payment as the section only refers to payment by cheques. Payments are sometimes made via set off, direct deposit and transfers as opposed to cheques. 4. The Section must address timely payment of commissions due to the broker.		3. No change is recommended as all transfers and direct deposits should be made directly by the insurer to the consumer trust account. Clause 135(3) is intended to avoid any potential unreasonable delay in the delivery of funds to consumers. 4. This would best be addressed through the contractual arrangements between the broker and the insurer and not via the legislation.
Cl. 136	136(3) Financial statement of intermediary.	the report be submitted within six (6) months and not sixty business days.		Six months is too long a period to receive confirmation of the financial position of a company. No change is recommended.
Cl. 137	137 Monthly Accounts	- This section be deleted or CBTT should indicate the reason for monthly submissions. - Monthly Accounts (section 137) is impractical and time consuming. Established best practices worldwide do not require monthly reporting in this vein.		- Monthly accounts are an existing requirement under the current Insurance (Agents, Brokers, Salesmen and Adjusters)(Registration) Regulations (regulation 11). - This is not a requirement to provide monthly financial reports to the Central Bank. - The requirement to keep monthly accounts is a requirement to keep reasonably up to date financial accounting books and records.
Cl. 139	139 Audit of accounts of Agencies and brokerages	This section can be abused and the Inspector's ability to act should be limited to where the person is found guilty of misconduct or the Inspector has proof or a prima facie case to conclude that the person falls under the parameters set out in 2(c).		The requirement is for the Inspector to have reasonable belief before making a report under Clause 139(2). By law, a 'reasonable belief' of the Inspector must be one based on the evidence presented before him and is judged in an objective sense, i.e., the conclusion reached by the Inspector must not be illogical (Nakkuda Ali v Jayatne [1951] AC 66; Registrar

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 3 - COMMENTS FROM THE INSURANCE BROKERS ASSOCIATION OF TRINIDAD & TOBAGO (IBATT)

				of Restrictive Trading Agreements v W.H.Smith & Son Ltd [1969] 1 WLR 1460 and Ridge v Baldwin [1964] AC 40 73; and Associated Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1 KB 223). The Inspector must, therefore, have some objective basis for forming the reasonable belief. Given this standard, there are limits on the ability of the Inspector to abuse the process under Clause 139. The proposal that the report should be made only when the auditor is found guilty does not appear workable. This is because the issue at hand is the professional misconduct of the auditor and the body to make a finding on this point is ICATT which must first have a report or information before it.
Cl. 140	140 Persons may act as adjusters during a catastrophe	We recommend that this section be deleted. Alternatively, subsection (1) should be amended to include cases of major loss and not only catastrophe. The commercial reality is that several international reinsurers/ insurers under the policy of insurance will stipulate or be entitled to stipulate the adjuster and they tend to stipulate international adjusters with considerable experience and expertise in the area which our local adjusters may not have.		The Central Bank agrees with the principle put forward by IBATT. There are circumstances in relation to large or complex losses, in addition to catastrophes, where engagement of a foreign adjuster would be appropriate for insurer and insured alike. Recommendation: • Amend Clause 140(1) by inserting the words “or complex claim” after the word “catastrophe”. • Amend “catastrophe” to “complex claim or catastrophe” in Clause 140(2). • Consider deleting Clauses 140(3) to 140(6) and place the onus on the insurer to assess the bona fides of the foreign adjuster in keeping with Guidelines to be issued by the Central Bank.

APPENDIX I
THE INSURANCE BILL, 2016 - THE CENTRAL BANK OF TRINIDAD AND TOBAGO'S FEEDBACK TO THE JSC
SECTION 3 - COMMENTS FROM THE INSURANCE BROKERS ASSOCIATION OF TRINIDAD & TOBAGO (IBATT)

general	Fair Claims Practice.	We recommend that this be settled by CBTT together with the Bill and propose Insurers should be given a deadline to remit claims payments recovered through subrogation to their insureds either through direct collection or contra payments. 2. Insurers should be given deadlines for the settlement of claims. The following are our recommended timeframes: (a) Acknowledgement of notification of a claim within five (5) working days; (b) Appointment of an adjuster-within three (3) working days of notification of the Claim; (c) Adjustment timeline to the interim report –five (5) working days; (d) Adjustment timeline to final report-ten (10) working days; (e) Final settlement payment –five (5) working days from the date the settlement was reached.		The Central Bank has issued a Guideline² to treat with the payment of claims. The purpose of this Guideline is to provide the Board of Directors and management of insurers, brokers or agents with a framework for the establishment of policies and procedures for effective claims management.to facilitate prompt and fair settlement of claims to policyholders. Clause 278 of the Bill gives the Central Bank the power to issue Guidelines to facilitate compliance with the Act and enable the Bank to meet its objectives. A Claims Guideline will be re-issued after consultation and as part of the implementation and rollout prior to Proclamation of the Act.

² <http://www.central-bank.org.tt/pdf/Other/Claims%20Guideline.pdf>

MINISTRY OF THE ATTORNEY GENERAL AND LEGAL AFFAIRS

LEGISLATIVE DRAFTING DEPARTMENT

Cabildo Chambers
23-27 St. Vincent Street
Port of Spain
Republic of Trinidad and Tobago

Phone: (868) 623-5886
Fax : (868) 625-8121
e-mail : imacintyre@ag.gov.tt

June 2, 2017

Ms. Chantal La Roche,
Secretary to the Committee
Parliament
Level G-8 Tower D
Port-of-Spain International Waterfront Centre
1A Wrightson Road
PORT-OF-SPAIN

Dear Ms. La- Roche,

Re: Joint Select Committee on the Insurance Bill, 2016

Reference is made to the Meeting of the captioned Committee on May 24, 2017 during which the Honourable Chairman requested the comments of our office in relation to submissions from the Central Bank of Trinidad and Tobago, dated May 2, 2017 on points of law in the Insurance Bill, 2016.

Clause 254(5)

Clause 254(5) provides a defence of due diligence. The accused will be the only person who would be able to establish evidentially that due diligence was exercised, thus the burden of proof must be shifted. This provision does not offend section 5(2)(f) (i) of the Constitution.

Reference was made to section 1028 of the Canadian Insurance Companies Act. The question of whether a similar provision should be included in the Insurance Bill is entirely a policy decision.

We concur with the CBTT and ATTIC that clause 255(4) (b) can be deleted.

Clause 254 creates general offences, however, there is no statement of the type of offences created.

It is recommended that clause 254(2) be amended to include summary conviction or conviction on indictment based on the final decision of the JSC.

Whether the offences should be indictable or summary offences?

Statutory offences may be indictable, summary or hybrid offences. Indictable offences normally have higher penalties than summary offences.

According to Seetahal, *"As a general rule all offences for which the maximum punishment is six months ' imprisonment or less will be summary. A good rule of thumb is that all 'serious ' offences are indictable. "* Commonwealth Caribbean Criminal Practice and Procedure p.85

The prevailing practice in the UK is as follows:

" Generally offences are made indictable only, either because they are of such exceptional gravity or because other reasons, such as anticipated complexity of issues, make them unsuitable for summary trial..... The trend has been to reserve indictable only offences for the most serious circumstances and most new offences are triable either way or summarily. " Smith and Hogan Criminal Law, 11th ed, p. 29

Summary offences have a limitation period of months to initiate the prosecution in accordance with section 33(2) of the Summary Courts Act, Chap. 4:20. The limitation period to lay the charge was extended to seven (7) years in the Securities Act. Seven (7) years is proposed in this Bill (clause 251) and there is a consequential amendment to the FIA in Schedule 13 of this Bill to amend the limitation period from 3 to 7 years.

The Financial Institutions Act, Chap. 79:09 and the Securities Act, Chap. 83:02 contain summary offences. There are two sections in the Securities Act that create indictable offences: section 70 which deals with misrepresentation by reporting issuers and section 107 (4) which penalises impropriety from broker-dealers with client accounts.

The decision as to the type of offences which should be created is one of policy.

The JSC may wish to consider the following in relation to this issue:

- (a) current legislative proposals before the Parliament to reform the criminal justice system;
- (b) the existing Jury Act allows for special juries in financial matters also; and
- (c) the Bill also proposes administrative fines. (Schedule 6).

Yours sincerely,


Lorraine N. J. Im
Assistant Chief Parliamentary Counsel
/f/ Chief Parliamentary Counsel

Clause	JSC Query	Response from CBTT	Comments from CPC
21	Clause 21(5) CBTT: - Change to "19. (1) This Part does not apply to a privately administered pension fund plan. (2) Except for sections 20 to 21 and 52 to 54, this Part does not apply to an intermediary or an insurance consultant. " (3) Except for section 20, this Part does not apply to an association of underwriters" - Clause 21(5) - "its activities relate only to" should be changed to "its activities in Trinidad and Tobago relate only to". This clarifies that if the foreign company only does reinsurance business in Trinidad and Tobago registration is not required, whether or not it does business other than reinsurance outside of Trinidad and Tobago. - Clause 21(9) – Change the offences to be indictable or hybrid IBATT: - Clause 21(5)- Direct placement of insurance with foreign providers should be allowed especially for marine and large plants and for specialty policies not available locally, and may be subject to the Client signing a written acknowledgment that it is aware:	No amendment is required to allow a broker to negotiate and procure insurance business, on behalf of his/her client, directly from a foreign insurance company. The Insurance Bill, 2016 does not prohibit registered brokers from placing business with foreign insurers. In fact Clause 115 sets out the reporting requirements to the consumer and to the Central Bank for an intermediary that places business with a foreign insurance company. By way of further explanation: - Clause 20(1) sets out the activities that would require registration as an insurer under 21 (1). - The act of a foreign insurance company accepting business from a registered broker acting on behalf of his client (i.e. not as an agent of the foreign insurance company) is not a breach clause 20(1). - Furthermore, Clause 20(2) would allow for a foreign insurance company to insure a risk situated in Trinidad and Tobago since the mere location of the risk in Trinidad and Tobago is not a grounds for holding that the company is carrying on insurance business in Trinidad and Tobago. - On the other hand, if the foreign insurance company were to actively market/solicitor/negotiate contracts of insurance through its	Agreed.

Clause	JSC Query	Response from CBTT	Comments from CPC
	(a) the insurance company is registered and operating in another territory; (b) is not registered in Trinidad and Tobago, (c) of the risks associated therewith; and (d) that any and action on the policy must be taken in the foreign courts subject to the jurisdictional and legal requirements set out in the contract of insurance. <u>JSC Query:</u> What, if any, amendment is required to clause 21(5) to deal with the direct placement of insurance?	agent in and from Trinidad and Tobago, such actions would be considered <i>carrying on insurance business</i> and the foreign insurance company is required to register under the Bill (Clause 20(1)). 5. Also if the foreign insurance company were to market or solicit contracts of insurance through direct means in or from Trinidad and Tobago, such actions would also be considered <i>carrying on insurance business</i> and the foreign insurance company is required to register under the Bill (Clause 20(1)). 6. A foreign insurance company who does not solicit the business but accepts business directly from a consumer who has requested the coverage, is not captured by the definition of “carrying on insurance business in or from Trinidad and Tobago” 7. Clause 21(5) applies to reinsurance business placed/ceded by an insurer with an overseas reinsurer. Clause 21(5) should not be read to mean that a foreign insurance company may not carry on insurance business since the exception of 21(2) applies. The Central Bank understands that the local insurance industry is unable to cover all risks in Trinidad and Tobago and if risks are being placed with foreign insurance companies then it is necessary that the consumer	Further amendments to clause 20 accepted.

Clause	JSC Query	Response from CBTT	Comments from CPC
		should be made aware that insurance business is being placed with an insurer that is not registered under our local legislation, and does not fall under the oversight of the regulator in Trinidad and Tobago, hence the wording of clause 115. Having reviewed the effect of the change to 19(1) recommended by way of letter June 7th 2017, i.e <i>"19. (1) This Part does not apply to a privately administered pension fund plan.</i> <i>(2) Except for sections 20 to 21 and 52 to 54, this Part does not apply to an intermediary or an insurance consultant. "</i> <i>(3) Except for section 20, this Part does not apply to an association of underwriters"</i> the Central Bank wishes to point out the need for further amendment as follows: • Add "in or from Trinidad and Tobago," at the beginning of the shoes of 20(1). • New clause 20 (2) (c) : "the person solicits, negotiates or procures insurance business as a broker or agent"	
<u>77</u>	There was another question that AG asked in relation to clause 77 (6), he was concerned that an	We agree that the Bill as currently worded may not capture key personnel within the audit entity who	<u>Section 70</u> <u>Interpretation Act,</u> <u>Chap. 3:01 -</u>

Clause	JSC Query	Response from CBTT	Comments from CPC
	individual would have a defence that it was the audit entity and so liability would only be limited to the fine under 77(6) (a). AG did acknowledge section 70 of the Interpretation Act that addresses corporate liability. He requested that we examine the clause to ensure that it will be effective in terms of enforcement.	may have contributed or been responsible for the breach. The Central would wish for the Partners, Directors, Engagement Partners and Group Engagement Partners to be held responsible. POINTS TO NOTE ICATT's revised rules and regulations which take effect from January 1st 2018 define Auditor to mean a firm or individual which signs or holds itself or himself out as being available to sign an audit report whether or not that report is required by statute. Section 6.2 of the Practicing Regulations in Schedule 1 of ICATT's revised rules and regulations states that "Where an audit report is issued in the name of a firm, the Member in Practice signing the report must have overall control in the conduct of the audit and the issuance of the audit report." Also the Standards of the International Auditing and Assurance Standards Board defines Auditor, Engagement Partner and Group Engagement Partner. These documents are attached for ease of reference.	"Where an offence committed after 31st December 1979 [that is, the date of commencement of the Law Revision (Miscellaneous Amendments) (No.1) Act 1979] by a body corporate under a written law is proved to have been committed with the consent or connivance of a director or other officer concerned in the management of the body corporate or any person who is purporting to act in any such capacity, he as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly." Proposed redraft of clause 77(6) of the Insurance Bill- (6) Any person who contravenes this section commits an offence and is liable on <u>conviction on indictment</u> ~~summary conviction-~~ (a) in the case

Clause	JSC Query	Response from CBTT	Comments from CPC
			of the audit entity, to a fine of ten million dollars; and (b) in the case of an individual <u>auditor who signs a report on behalf of the audit entity</u>, to a fine of five million dollars and to imprisonment for five years.
<u>112</u>	<u>JSC Query:</u> Whether subsections (1) to (10) of section 112 should be offences? How would a breach of these subsections be treated?	Clause 112 sets out the restrictions on the registration of insurance intermediaries. The Central Bank is the entity that has the authority to register insurance intermediaries and the onus is on the Central Bank to ensure that its registration processes consider the factors outlined in Clause 112. Clause 112 (13) correctly omits subsections (1) to (10) as offences as these subsections, with the exception of subsection (5) are intended to set out certain circumstances when the Central Bank would not register a person. Subsection (5) is procedural in nature and ought not to attract a criminal sanction if breached. If an individual proceeds to act in the capacity of a sales representative for an insurer/agency for which he is not registered, he will be in breach of clause 110(2). Similarly, with respect to sub-clause (4), if an insurance consultant proceeds to carry on the business of a broker, sales representative, agent,	Agreed

Clause	JSC Query	Response from CBTT	Comments from CPC
		adjuster, insurance agency/brokerage without being so registered, he will be in breach of clause 110(2). In light of the foregoing, no further amendment is recommended to clause 112.	
140	Clause 140 The JSC accepted the proposed amendments to include “complex claims” to subsections (1) and (2). They agreed to delete subclauses (3), (4) and (5). They decided to retain subclause (6). JSC requested CBTT’s view on the following proposal: 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 or complex claim. (2) In the event of a catastrophe or complex claim, 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~~	We note that the JSC has accepted most of the changes to clause 140 outlined by the Central Bank in our submission of May 2nd, 2017 as follows:- • <i>Amend Clause 140(1) by inserting the words “or complex claim” after the word “catastrophe”.</i> • <i>Amend “catastrophe” to “complex claim or catastrophe” in Clause 140(2).</i> • <i>Consider deleting Clauses 140(3) to 140(6) and place the onus on the insurer to assess the bona fides of the foreign adjuster in keeping with Guidelines to be issued by the Central Bank.</i> We have no objection to the wording of clause 140 as proposed by the JSC.	Agreed

Clause	JSC Query	Response from CBTT	Comments from CPC
	~~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 and five hundred thousand dollars and to imprisonment for two years.~~ (3) ~~(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 and five hundred thousand dollars and to imprisonment for two years.		
197	<u>Clause 197 (1) and (14)</u> Questions from the JSC-	1. The Central Bank recommended that Clause 197 (1) and (14) be	Agreed. No further amendment required.

Clause	JSC Query	Response from CBTT	Comments from CPC
	1. What is the rationale for the 7 years for endowment policies in section 144 of the Insurance Act? 2. If someone shows up 10 years later with a claim, what happens to the money? Can the person claim the money?	amended in its letter to the CPC dated June 7th 2017 as follows:- <i>change "...showing all policies in respect of which amounts remain payable by the insurer for a period of seven years..." to "showing all policies with unclaimed moneys..." and 197 (14) change "within seven years after the maturity date of the policy" to "within the time which proceedings may be taken for their recovery".</i> The definition of unclaimed monies can be found in section 113(9) of the Insurance Act, 1966 and in section 144(9) of the Insurance Act, 1980. Unclaimed monies is defined as:- <i>"all sums of money which, after the commencement of this Act, become legally payable by a company in respect of policies but in respect of which the time within which proceedings may be taken for their recovery has expired, and includes sums of money payable on the maturity, after the commencement of this Act, of an endowment policy or an endowment insurance policy which are not claimed within seven years after the maturity date of the policy"</i> in both pieces of legislation. While we are not certain of the rationale for the seven year period the Insurance Act 1966 was based on the Australian insurance legislation at that time. Rules could have existed at that time whereby if the policies were not claimed after 7 years of their maturity date the policies would be deemed	

Clause	JSC Query	Response from CBTT	Comments from CPC
		unclaimed policies and the proceeds of the policy would have to be paid over to the Consolidated Revenue Fund. 2. If a person shows up ten years after a claim becomes payable and the monies have been paid into the Consolidated Fund, this money is always claimable by the rightful owner and there is no time limit on claims. Clauses 197 (7) to (11) are referred.	
254 (2)	The subclause should be redrafted to avoid strict liability offences.		Proposed redraft of clause 254 (2)- (2) A person who <u>knowingly or recklessly [without reasonable cause]</u> 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.

**LIST OF RECOMMENDED
AMENDMENTS TO THE
INSURANCE BILL, 2016**

THE INSURANCE BILL, 2016

List of Amendments to be moved in the Senate by the Honourable Minister of Finance at the Committee Stage of the Insurance Bill, 2016

First Column Clause	Second Column Extent of Amendment
4	In subsection (1)- (a) Delete the definition of “annuity contract” and substitute the following definition: “ “annuity contract" means a contract whereby one party undertakes in return for a consideration from another party to provide an annuity, or what would be an annuity except that the periodic payments may be unequal in amount, for a term dependent solely or partly on the life of a person;”; (b) Insert after the definition of “Board” the following definition: “Chap. 75:01 “Board of Inland Revenue” means the Board of Inland Revenue established by section 3 of the Income Tax Act;”; (c) Insert after the definition of “cohabitant” the following definition: “collective investment scheme” means any arrangement with respect to property of any description including money— (a) the purpose or effect of which is to enable persons taking part in the arrangement, whether by becoming owners of the property or any part of it, or otherwise to participate in or receive profits or income arising from the

First Column Clause	Second Column Extent of Amendment
	acquisition, holding, management or disposal of the property or sums paid out of such profits or income; and (b) that does not invest— (i) for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is itself a collective investment scheme; or (ii) for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is itself a collective investment scheme;”; (d) delete the definition of “control” and substitute the following definition: ““control” means the power of a person, either alone or with an affiliate or relative or connected party or other person, or by an agreement or otherwise, to— (a) exercise more than fifty per cent of the voting rights at any meeting of shareholders of an entity; (b) elect a majority of the directors of an entity;

First Column Clause	Second Column Extent of Amendment
	(c) secure that the business and affairs of an entity are conducted in accordance with his wishes; or (d) directly or indirectly exercise dominant influence over the conduct of the business and affairs of an entity;”; (e) in the definition of “credit exposure” delete the words “Schedule 11” and substitute the words “Schedule 10”; (f) insert after the definition of “credit facilities” the following definition: “Act No. 4 of 2017 “declared agreement” has the meaning assigned in section 4 of the Tax Information Exchange Agreements (United States of America) Act, 2017;”; (g) in the definition of “financial group” delete paragraph (h) and substitute the following: “(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 (g);”; (h) delete the definition of “financial holding company” and substitute the following definition: ““financial holding company” means a company required to obtain a permit in accordance with section 51;”; (i) in the definition of “privately administered pension fund plan” delete the words “pension plan offered by employers in the private sector and approved in accordance with the Income Tax Act” and substitute the words “plan referred to in section 217”; and (j) delete the definition of “self-insurance” and substitute the following definition:

First Column Clause	Second Column Extent of Amendment
	“Chap. 32:50 Chap. 88:02 "self-insurance" means the practice of- (a) a company to provide benefits, other than for profit, for its employees or their dependants; or (b) a society registered under the Friendly Societies Act or a trade union registered under the Trade Unions Act to provide benefits to its members or their dependants, other than for profit, and to assume responsibility for certain of its own losses including losses arising from the provision of such benefits;”;
6	Delete and substitute the following clause: “Meaning of “control” 6. For the purposes of this Act, “control” means the power of a person, either alone or with an affiliate or relative or connected party or other person, or by an agreement or otherwise, to— (a) exercise more than fifty per cent of the voting rights at any meeting of shareholders of an entity; (b) elect a majority of the directors of an entity; (c) secure that the business and affairs of an entity are conducted in accordance with his wishes; or (d) directly or indirectly exercise dominant influence over the conduct of the business and affairs of an entity.”.
10	A. In subclause (5) delete the words “that referred to in section 26” and substitute the words “applicable to a representative office under this Act”. B. Delete subclause (8) and substitute the following: “ (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- (a) on conviction on indictment 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; or (b) on summary conviction to a fine of three hundred thousand dollars and in the case of a continuing offence to a fine of thirty thousand dollars for each day that the offence continues.”.

First Column Clause	Second Column Extent of Amendment
	C. In subclause (11) delete paragraph (b) and the closing words “to determine whether the registrant or financial holding company is complying with this Act or any Regulations made thereunder.” and substitute the following paragraph: “(b) to inquire, to determine whether the registrant or financial holding company is complying with this Act or any Regulations made thereunder.”. D. In subclause (14) delete the word “caused” and substitute the word “cause”.
16	A. Insert after subclause (2) the following subclauses: “Act No. 4 of 2017 (2A) The Central Bank may disclose information referred in subsection (1) to the Board of Inland Revenue in order to give effect to the Tax Information Exchange Agreements (United States of America) Act, 2017. (2B) The information referred to in subsection (1) may be utilized by the Central Bank as required to give effect to its powers under the Tax Information Exchange Agreements (United States of America) Act, 2017.”. B. In subclause (4) delete the words “subsection (2)” and substitute the words “subsections (2) and (2A)”.
19	Delete and substitute the following clause: “Non-application of this Part 19. (1) This Part does not apply to a privately administered pension fund plan. (2) Except for sections 20 to 21 and 52 to 54, this Part does not apply to an intermediary or an insurance consultant. (3) Except for section 20, this Part does not apply to an association of underwriters.”.
21	A. In subclause (5) delete the words “its activities relate only to” and substitute the words “its activities in Trinidad and Tobago relate only to”. B. In subclause (9) delete the words “summary conviction” and substitute the words “conviction on indictment”.

First Column Clause	Second Column Extent of Amendment
24(5)	Delete the words “summary conviction” and substitute the words “conviction on indictment”.
27	A. In subclause (1)- (a) in paragraph (a), insert after the word “branch” the words “or agency”; (b) in paragraph (b), insert after the word “branch” the words “or agency”. B. Insert after subclause (3) the following new clauses: “(4) The Central Bank shall respond to a request or decide whether to grant approval under this section within a reasonable time. (5) Where in relation to an application under subsection (1), the Inspector does not raise an objection or requests further information within a reasonable time from the submission of all required documents, the insurer may proceed as if the request has been approved.”.
35(5)	Delete the words “-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” and substitute the words “(a) on conviction on indictment- (i) in the case of an insurer, to a fine of six hundred thousand dollars; or (ii) in the case of a director or officer, to a fine of six hundred thousand dollars and to imprisonment for two years; or (b) on summary conviction- (i) in the case of an insurer, to a fine of three hundred thousand dollars; or (ii) in the case of a director or officer, to a fine of three hundred

First Column Clause	Second Column Extent of Amendment
	thousand dollars and to imprisonment for one year”.
38(3)	Delete the words “summary conviction” and substitute the words “conviction on indictment”.
42(5)	Delete the words “Schedule 10” and substitute the words “Schedule 9”.
44(6)	Delete the words “summary conviction” and substitute the words “conviction on indictment”.
47	A. In subclause (1) delete the word “shall” and substitute the word “may”. B. In subclause (3) delete the word “shall” and substitute the word “may”.
50	A. Delete subclause (1) and substitute the following clause: “(1) A financial holding company shall not engage in or carry on any business other than- (a) establishing or acquiring of financial entities and administering the holdings of the financial group; or (b) providing management, advisory, financing, accounting, or information processing services to entities in the financial group as well as such other services approved by the Central Bank.”. B. In subclause (4) delete the words “summary conviction” and substitute the words “conviction on indictment”.
51	A. Delete subclause (1) and substitute the following clause: “ (1) A financial holding company required under section 47 or a holding company that only controls, whether directly or indirectly financial entities and is not itself an insurer shall apply for a permit under this section.”.

First Column Clause	Second Column Extent of Amendment
	B. Delete subclause (8) and substitute the following subclause: “(8) A financial holding company that fails to comply with any condition of its permit commits an offence and is liable- (a) on conviction on indictment 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; or (b) on summary conviction to a fine of three hundred thousand dollars and in the case of a continuing offence to a fine of thirty thousand dollars for each day that the offence continues.”.
52	A. Delete subclauses (1) and (2) and substitute the following subclauses: “(1) Notwithstanding any other law, 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) In the circumstances where a proposed controlling shareholder is an acquirer, the provisions of section 74 shall prevail over this section. (2A) 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.”. B. In subclause (8) delete the words “subsection (2)” and substitute the words “subsection (2A)”. C. In subclause (15) delete paragraph (b) and substitute the following paragraph: “(b) contravenes any other provision of this section commits an offence and is liable- (i) on conviction on indictment 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; or (ii) on summary conviction to a fine of three hundred thousand dollars and to imprisonment for one year and

First Column Clause	Second Column Extent of Amendment
	in the case of a continuing offence, to a fine of thirty thousand dollars for each day that the offence continues.”.
53	A. Delete subclauses (1) and (2) and substitute the following subclauses: “(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 significant shareholder of an insurer without first obtaining a written permit from the Central Bank. (2) In the circumstances where a proposed significant shareholder is an acquirer, the provisions of section 74 shall prevail over this section. (2A) 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.”. B. In subclause (6) (b) delete the words “subsection (2)” and substitute the words “subsection (2A)”. C. In subclause (13) delete the words “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”.
54	A. Delete subclause (2) and renumber subclauses (3) to (14) as (2) to (13) respectively. B. In renumbered subclause (2) delete the words “subsection (5)” and substitute the words “subsection (4)”. C. In renumbered subclause (5) delete the words “subsection (5) (b)” and substitute the words “subsection (4) (b)”. D. In renumbered subclause (6) delete the words “subsection (8)” and substitute the words “subsection (7)”.

First Column Clause	Second Column Extent of Amendment
	E. In renumbered subclause (7) delete the words “subsection (4)” and substitute the words “subsection (3)”. F. In renumbered subclause (9) delete the words “subsection (9)” and substitute the words “subsection (8)”. G. In renumbered subclause (10) delete the words “subsection (7)(b) or (10) (b)” and substitute the words “subsection (6)(b) or (9) (b)”. H. In renumbered subclause (13) delete the words “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”.
63 (3)	Delete the words “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”.
65	A. In subclause (1) delete paragraphs (c) and (d) and substitute the following paragraphs: “(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 another company; (ii) the voluntary winding up of the former insurer, pursuant to section 40(1)(c) of this Act or the former licensee pursuant to section 66 of the Financial Institutions Act; or (iii) the former insurer not carrying on business, pursuant to section 34(1)(g) of this Act or the former licensee not accepting a deposit in Trinidad and Tobago pursuant to section 23(1)(e) of the Financial Institutions Act; or

First Column Clause	Second Column Extent of Amendment
	(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; (ii) its voluntary winding up; or (iii) or for any other reasons under the applicable laws,”. B. Delete subclause (3) and substitute the following subclause: “(3) A local insurer shall seek a permit from the Central Bank where a director or officer of the local insurer proposes to be appointed as a director or officer of another financial entity outside the financial group.”. C. In subclause (12) delete the words “summary conviction” and substitute the words “conviction on indictment”. D. In subclause (13) delete the words “summary conviction” and substitute the words “conviction on indictment”.
67(3)	Delete the words “that pose material risks to the insurer or financial holding company” and substitute the words “that in the opinion of the directors have material adverse effects on the financial condition of the insurer or financial holding company and require prompt rectification”.
77(6)	A. Delete the words “summary conviction” and substitute the words “conviction on indictment”. B. In paragraph (b) insert after the word “individual” the words “auditor who signs a report on behalf of the audit entity”.

First Column Clause	Second Column Extent of Amendment
79	A. In subclause (3) (b) by inserting before the word “actuary” in the second place it occurs, the word “appointed”. B. In subclause (4) by inserting before the word “actuary” the word “appointed”. C. Delete subclause (5) and substitute the following subclause: “ (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 appointed actuary who has resigned or whose appointment as the appointed actuary has been revoked, a written statement of the circumstances and reasons for such resignation or why, in the opinion of the former appointed actuary, his appointment was revoked.”. D. In subclause (6) delete the words “former actuary” and substitute the words “former appointed actuary”.
82	A. In subclause (1) delete the words “Schedule 9” and substitute the words “Schedule 8”. B. In subclause (2) delete the words “Schedule 9” and substitute the words “Schedule 8”. C. In subclause (5) delete and substitute the following subclause: “(5) Where an insurer does not comply with its requirements under this section, the insurer commits an offence and is liable on conviction on indictment to a fine of five million dollars.”.
84(2)	A. Delete the words “catastrophe reserve fund” and substitute the words “Catastrophe Reserve Fund”. B. Delete subclause (3) and substitute the following subclause: “(3) An insurer, holding company or financial holding company which contravenes this section commits an offence and is liable on conviction on indictment to a fine of five million dollars.”.
85	A. In subclause (4) delete the word “seventy-five” and substitute the word “seventy”. B. In subclause (6) delete the words “its assets” and substitute the words “the assets of the insurer”.

First Column Clause	Second Column Extent of Amendment
86	A. In subclause (1), delete the word “and” at the end of paragraph (a) and substitute the word “or”. B. In subclause (6) delete the words “summary conviction” and substitute the words “conviction on indictment”.
87(4)	Delete the words “subsection (1)” and substitute the words “subsections (1) and (3)”.
89(4)	Delete the words “increase its stated capital pursuant to section 22(7)” and substitute the words “increase its capital pursuant to section 82(3)”.
91	A. Delete subclause (2). B. Renumber subclause (3) as subclause (2).
95 (1) (a)	Delete the words “sections 73 to 80” and substitute the words “sections 57 to 64”.
101	A. In subclause (1) insert after the words “capital ratio” the words “as defined in the Regulations”. B. In subclause (8) delete the words “summary conviction” and substitute the words “conviction on indictment”.
103(5)	Delete the words “or receiver-manager” and substitute the words “, receiver manager or special manager”.
110	A. In subclause (4) insert after the word “Part” the words “and such registration shall be valid up to the end of the period stated in the certificate of registration issued under the former Act”. B. Delete subclause (7) and substitute the following subclause: “ (7) Where the Central Bank has reasonable grounds to believe that a person is carrying on business in contravention of subsections (1), (2) or (3), the provisions of section 21(6) shall apply with the necessary modifications.”. C. In subclause (8) delete the words “summary conviction” and substitute the words “conviction on indictment”. D. In subclause (9) delete the words “summary conviction” and substitute the words

First Column Clause	Second Column Extent of Amendment
	“conviction on indictment”.
112(6)	Delete the words “an agency” and substitute the words “or as an agency”.
115	A. In subclause (1) delete paragraph (b) and substitute the following: “(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.”. B. In subclause (2) delete the word “places” and substitute the words “proposes to place”.
123	A. In subclause (1) (a) delete the words “it, or”. B. In subclause (5) delete the words “summary conviction” and substitute the words “conviction on indictment”. C. In subclause (6) delete the words “summary conviction” and substitute the words “conviction on indictment”.
126	Delete the word “salesman” and substitute the word “sales representative”.
131	A. In subclause (1) (c) delete the words “and obtaining the policyholder’s signature on the disclosure form set out in Schedule 7” and substitute the words “and shall comply with the standards on post sale communication as prescribed in Schedule 11 and the form of disclosure set out in Guidelines”. B. In subclause (2) delete the words “summary conviction” and substitute the words “conviction on indictment”. C. In subclause (3) delete the words “summary conviction” and substitute the words “conviction on indictment”.
134(1)	Delete the words “after the end of the month in which the monies were received” and substitute the words “from the date on which it received such monies”.

First Column Clause	Second Column Extent of Amendment
135 (3)	Delete the word “three” and substitute the word “five”.
140	A. In subclause (1) insert after the word “catastrophe” the words “or where there is a complex claim or major loss”. B. In subclause (2) insert after the word “catastrophe” the words “or where there is a complex claim or major loss”. C. Delete subclauses (3), (4) and (5). D. Renumber subclause (6) as subclause (3). E. In the renumbered subclause (3) delete the words “summary conviction” and substitute the words “conviction on indictment”. F. Insert after the renumbered subclause (3) the following subclause: “(4) For the purposes of this section- (a) a “complex claim” means a claim that satisfies the criteria set out in Guidelines issued by the Central Bank; and (b) “major loss” means any loss that satisfies the criteria set out in Guidelines issued by the Central Bank.”.
143	A. In subclause (5) delete the word “property” and substitute the words “real estate”. B. In subclause (6) delete the word “property” and substitute the words “real estate”.
144	A. In subclause (5) (b) insert after the words “financial holding company” the words “where such company has credit exposures with the insurer or financial holding company”. B. In subclause (6)- (a) delete the words “subsection (4)” and substitute the words “the requirements of the Inspector pursuant to subsection (5)”; (b) delete the words “summary conviction” and substitute the words “conviction on indictment”.
145	A. In subclause (7) delete paragraphs (a) and (b) and substitute the following paragraphs:

First Column Clause	Second Column Extent of Amendment
	“(a) who hold five per cent or more of its issued share capital; or (b) are parties to any agreement with respect to the voting of five per cent or more of the issued shares of the insurer or financial holding company.”. B. In subclause (8) delete the words “stated capital” and substitute the words “issued share capital”.
155	A. In subclause (1) (b) insert after the word “policyholder” the words “or a person beneficially interested in a privately administered pension fund plan”. B. Insert after subclause (1) the following subclause: “(1A) Notwithstanding any other action or remedy available under this Act, if the Board of Inland Revenue indicates to the Inspector, that a registrant or an officer, other employee or agent of the registrant has breached any requirement or failed to comply with Guidelines related to a declared agreement, the Inspector may direct a registrant or an officer, other employee or agent of the registrant to give effect, comply with or perform such acts as may be necessary for compliance with a declared agreement.”. C. In subclause (10)- (a) In the chapeau delete the words “on summary conviction”; (b) In paragraph (a) insert after the words “significant shareholder” the words “on conviction on indictment”; (c) In paragraph (b) insert after the words “financial holding company,” the words “on conviction on indictment”; (d) In paragraph (c) insert after the word “brokerage,” the words “on summary conviction”; (e) In paragraph (d) insert after the word “brokerage,” the words “on summary conviction”;

First Column Clause	Second Column Extent of Amendment
	(f) In paragraph (e) insert after the word “person,” the words “on summary conviction”.
157(3)	Delete the word “199” and substitute the word “197”.
158(4)	A. In paragraph (d) (iii) delete the words “section 30(7),” and substitute the words “section 30 (6).”. B. Delete the closing words “net of reinsurance recoverables or other relevant deductions.”.
160 (9)	Delete the words “summary conviction” and substitute the words “conviction on indictment”.
183 (2) (c)	Delete the words “section 184 (3) (b)” and substitute the words “section 184(2) (b)”.
198(1)	Delete paragraph (b) and the closing words and substitute the following paragraph: “(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.”.
208	A. In subclause (1)- (a) In paragraph (a) delete the words “holder of a policy” and substitute the words “policyholder”; (b) In paragraph (b) delete the words “section 191 or 193” and substitute the words “sections 191, 193 or 195”. B. In subclause (7) delete the words “or beneficiary” and substitute the words “, beneficiary or any person claiming the benefit pursuant to sections 191, 193 or 195”.
212(4)	In paragraph (a) delete the word “reserve”.

First Column Clause	Second Column Extent of Amendment
216 (1)	Delete the words “a pension fund plan” and substitute the words “a privately administered pension fund plan”.
225(4)	A. Delete the words “five thousand dollars” and substitute the words “twenty thousand dollars”. B. Delete the words “one hundred dollars” and substitute the words “two thousand dollars”.
228(1)	In paragraph (a) delete the words “Schedule 8” and substitute the words “Schedule 7”.
230(7)	Delete the words “summary conviction” and substitute the words “conviction on indictment”.
233 (1)	Delete paragraph (a) and substitute the following paragraph: “(a) the minimum stated capital that would be required of an insurer that is carrying on the class or classes of business it intends to carry on;”.
240 (2)	Delete the words “summary conviction” and substitute the words “conviction on indictment”.
243(2)	Delete the words “summary conviction” and substitute the words “conviction on indictment”.
244(2)	A. Insert the word “and” at the end of paragraph (e). B. Delete paragraph (f). C. Renumber paragraph (g) as paragraph (f).

First Column Clause	Second Column Extent of Amendment
251	Delete and substitute the following clause: “Jurisdiction and limitation 251. (1) Summary proceedings for an offence under this Act may, without prejudice to any jurisdiction exercisable apart from this subsection, be taken against a registrant including an unincorporated body, and a financial holding company in any place at which it has a place of business, and against an individual in any place at which he is for the time being located. (2) 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 or within eighteen months after the relevant date. (3) In this section, the “relevant date” means the date on which evidence sufficient in the opinion of the Central Bank of Trinidad and Tobago to justify the institution of summary proceedings comes to its knowledge. (4) For the purpose of subsection (3), a certificate as to the date on which evidence referred to in subsection (3) came to the knowledge of the Central Bank of Trinidad and Tobago shall be conclusive evidence of that fact.”.
254	A. In subclause (2) in the chapeau, insert after the words “A person who” the words “knowingly or recklessly”. B. Delete subclause (3) and substitute the following subclause: “(3) Any person who contravenes this Act or the Regulations for which no other penalty is expressly provided, commits an offence and is liable- (a) on conviction on indictment to a fine of six hundred thousand dollars and to imprisonment for two years and in the case of a continuous offence, to a fine of sixty thousand dollars for each day the offence

First Column Clause	Second Column Extent of Amendment
	continues; (b) on summary conviction to a fine of three hundred and fifty thousand dollars and to imprisonment for one year and in the case of a continuous offence, to a fine of thirty thousand dollars for each day the offence continues.”.
255(4)	Delete and substitute the following subclause: “(4) Any person who commits an offence under this section is liable on conviction on indictment to a fine of ten million dollars and to imprisonment for ten years.”.
256	Delete the words “summary conviction” and substitute the words “conviction on indictment”.
257	A. Insert after subclause (2) the following subclause: “(3) Any person who contravenes this section commits an offence.”. B. Renumber subclause (3) as subclause (4).
259	A. Delete subclause (2). B. Renumber subclauses (3), (4) and (5) as subclauses (2), (3) and (4) respectively.
261(3)	Delete the words “summary conviction” and substitute the words “conviction on indictment”.
266	Delete the words “Schedule 12” and substitute the words “Schedule 11”.
278(1)	In paragraph (a) insert after the words “this Act” the words “and Regulations”.
282	Delete the words “Schedule 13” and substitute the words “Schedule 12”.

First Column Clause	Second Column Extent of Amendment
New clause 278A	Insert after clause 278 the following new clause: “Central Bank to issue guidelines for declared agreements 278A. (1) The Central Bank may issue Guidelines on any matter it considers necessary to give effect to a declared agreement. (2) Where Guidelines are issued under subsection (1), a declared agreement shall have the meaning assigned to it under section 3 of the Tax Information Exchange Agreements (United States of America) Act, 2017. (3) Where a person has failed to comply with Guidelines issued by the Central Bank under subsection (1), the Central Bank shall direct that person to- (a) to cease and or refrain from committing the act, pursuing the course of conduct, or committing a violation; or (b) perform such acts as in the opinion of the Central Bank are necessary to remedy the situation; and (c) perform such acts as are required to give effect to a declared agreement. (4) Guidelines under this section shall be subject to the approval of the Minister and laid in Parliament at the earliest opportunity.”. Act No. 4 of 2017
Schedule 1	A. In TYPE A-GENERAL INSURANCE BUSINESS, under the heading “Incidental Business” – (a) Delete the word “Class” and substitute the word “class”; (b) Delete the word “Classes” and substitute the word “classes”. B. In TYPE A-GENERAL INSURANCE BUSINESS, under the heading “Markey Practice” delete the word “Class” and substitute the word “class”.

First Column Clause	Second Column Extent of Amendment
Schedule 3	In Form A delete the words “interest in and to the” and substitute the words “interest in the”.
Schedule 4	A. In Part I delete clauses 2, 3 and 4. B. In Part III insert after clause 1 the following clauses: “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 purpose of the valuation; 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.”.
Schedule 6	A. In Part A- (a) Delete the word “17(2)” and substitute the word “18(2)”; (b) Delete the word “67 (5)” and substitute the word “67 (3)”;

First Column Clause	Second Column Extent of Amendment												
	(c) In the row beginning with the renumbered 67(3), delete the words “material risks” and substitute the words “material adverse effects on the financial condition of the insurer or financial holding company”; (d) Delete the word “67 (6)” and substitute the word “67 (4)”; (e) Delete the word “67 (7)” and substitute the word “67 (5)”; (f) Delete the word “67 (8)” and substitute the word “67 (6)”; (g) Delete the word “67 (9)” and substitute the word “67 (7)”. B. In Part B- (a) Delete the words “17,000” and “1,700” wherever they occur and substitute the words “20,000” and “2,000” respectively; (b) Delete the word “4,250” wherever it occurs and substitute the word “5,000”. C. Insert after Part C the following: “PART D TRUSTEES OF PENSION FUND PLANS <table><tr><th>Section</th><th>General Description of Offence</th><th>Criminal Penalty (applicable only on summary</th><th>Administrative Fine</th></tr><tr><td>226(1)</td><td>Failure of trustees to submit annual accounts and balance sheets to the Central Bank</td><td>20,000 plus 2,000 for each day the offence continues</td><td>5,000</td></tr><tr><td>227(3)</td><td>Failure of trustees to submit report of actuarial investigation to the Central Bank</td><td>20,000 plus 2,000 for each day the offence continues</td><td>5,000”.</td></tr></table>	Section	General Description of Offence	Criminal Penalty (applicable only on summary	Administrative Fine	226(1)	Failure of trustees to submit annual accounts and balance sheets to the Central Bank	20,000 plus 2,000 for each day the offence continues	5,000	227(3)	Failure of trustees to submit report of actuarial investigation to the Central Bank	20,000 plus 2,000 for each day the offence continues	5,000”.
Section	General Description of Offence	Criminal Penalty (applicable only on summary	Administrative Fine										
226(1)	Failure of trustees to submit annual accounts and balance sheets to the Central Bank	20,000 plus 2,000 for each day the offence continues	5,000										
227(3)	Failure of trustees to submit report of actuarial investigation to the Central Bank	20,000 plus 2,000 for each day the offence continues	5,000”.										
Schedule 7	Delete and renumber Schedules 8, 9, 10, 11, 12 and 13 as Schedules 7, 8, 9, 10, 11 and 12 respectively.												

First Column Clause	Second Column Extent of Amendment
Renumb- ered Schedule 7	A. In clause 1(d) delete the words “the Minister” and substitute the words “the Central Bank”. B. Insert after clause 8 the following new clauses: “9. The total accepted value of the assets of the plan invested in unit certificates, shares or other evidence of participation in financial assets shall not exceed ten per cent of the total accepted value of the assets of the plan. 10. The total accepted value of the assets of the plan invested in real estate or leaseholds shall not exceed twenty per cent of the total accepted value of the assets of the plan.”.

August 4, 2017

CONSOLIDATED VERSION
OF
THE INSURANCE BILL, 2016

A 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

WHEREAS it is enacted by section 13(1) of the 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:
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.
Interpretation	4. (1) In this Act ,unless the context otherwise 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 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; or

(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;~~

“annuity contract” means a contract whereby one party undertakes in return for a consideration from another party to provide an annuity, or what would be an annuity except that the periodic payments may be unequal in amount, for a term dependent solely or partly on the life of a person;

“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” 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;

Chap. 75:01

“Board of Inland Revenue” means the Board of Inland Revenue established by section 3 of the Income Tax 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 Cohabital Relationships Act;

“collective investment scheme” means any arrangement with respect to property of any description including money—

(a) the purpose or effect of which is to enable persons taking part in the arrangement, whether by becoming owners of the property or any part of it, or otherwise to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income; and

(b) that does not invest—

(i) for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is itself a collective investment scheme; or

(ii) for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is itself a collective investment scheme;

“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;~~

“control” means the power of a person, either alone or with an affiliate or relative or connected party or other person, or by an agreement or otherwise, to—

(a) exercise more than fifty per cent of the voting rights at any meeting of shareholders of an entity;

(b) elect a majority of the directors of an entity;

(c) secure that the business and affairs of an entity are conducted in accordance with his wishes; or

(d) directly or indirectly exercise dominant influence over the conduct of the business and affairs of an entity;

“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~~ **Schedule 10** 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;

Act No. 4 of
2017

“declared agreement” has the meaning assigned in section 4 of the Tax Information Exchange Agreements (United States of America) Act, 2017;

“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);~~

(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 (g);

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

“financial holding company” means a company required to obtain a permit in accordance with section 51;

“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;

Chap. 84:01

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

“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;

“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 plan referred to in section 217 ~~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 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;~~

“self insurance” means the practice of-

- (a) a company to provide benefits, other than for profit, for its employees or their dependents; or**
- (b) a society registered under the Friendly Societies Act or a trade union registered under the Trade Unions Act to provide benefits to its members or their**

**dependants, other than for profit,
and to assume responsibility for certain of its own losses
including losses arising from the provision of such benefits;**

“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 in 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.~~

6. For the purposes of this Act, “control” means the power of a person, either alone or with an affiliate or relative or connected party or other person, or by an agreement or otherwise, to—

(a) exercise more than fifty per cent of the voting rights at any meeting of shareholders of an entity;

(b) elect a majority of the directors of an entity;

(c) secure that the business and affairs of an entity are conducted in accordance with his wishes; or

(d) directly or indirectly exercise dominant influence over the conduct of the business and affairs of an entity.

PART II

ADMINISTRATION

Central Bank
to administer
Act

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.

(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 **applicable to a representative office under this Act.**

(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.~~

(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-

- (a) on conviction on indictment 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; or
- (b) on summary conviction to a fine of three hundred thousand dollars and in the case of a continuing offence to a fine of thirty 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.

~~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~~ cause 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.

Schedule 5

(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.

Central Bank to maintain registers

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.

Information to be published by Central Bank

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.

Act No. 4 of
2017

(2A) The Central Bank may disclose information referred in subsection (1) to the Board of Inland Revenue in order to give effect to the Tax Information Exchange Agreements (United States of America) Act, 2017.

(2B) The information referred to in subsection (1) may be utilized by the Central Bank as required to give effect to its powers under the Tax Information Exchange Agreements (United States of America) Act, 2017.

(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)~~ **subsections (2) or (2A)** 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).

Supervisory
information

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.

Application
and annual
fees
Schedule 2

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

Non-
application
of this Part

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

19. (1) This Part does not apply to a privately administered pension fund plan.

(2) Except for sections 20 to 21 and 52 to 54, this Part does not apply to an intermediary or an insurance consultant.

(3) Except for section 20, this Part does not apply to an association of underwriters.

Carrying on
insurance
business

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~~ **its activities in Trinidad and Tobago 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~~ **conviction on indictment** 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.

Companies
registered
under former
Act

23. (1) An insurer which at the commencement of this Act is registered as an insurer under the 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 conviction on indictment 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.

Branches
and
representative
offices

27. (1) An insurer shall not –

(a) establish a branch **or agency** 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

(iii) received the prior written approval from the Central Bank; or

(b) close or relocate a branch **or agency** 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.

(4) The Central Bank shall respond to a request or decide whether to grant approval under this section within a reasonable time.

(5) Where in relation to an application under subsection (1), the Inspector does not raise an objection or requests further information within a reasonable time from the submission of all required documents, the insurer may proceed as if the request has been approved.

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, 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 to 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

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

specified in the company's application

- (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.

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

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;

or
application

- (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.

(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 request 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.

Revocation
of
registration

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.

Restriction
of
registration

35. (1) Subject to section 101, 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 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.~~

(a) **on conviction on indictment-**

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

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

(b) on summary conviction-

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

(ii) in the case of a director or officer, to a fine of three hundred thousand dollars and to imprisonment for one year.

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.

Withdrawal
of a
restriction

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

Directions to
insurers

38. (1) The Board may give an insurer directions –

- (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~~ **conviction on indictment** 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.

Mandatory
revocation
and
restriction in
cases of
emergency

40. (1) The Board shall revoke the registration of an insurer if –

- (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.

Voluntary
revocation
and
restriction

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.

(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.

PART 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~~ **Schedule 9**.

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
- (d) “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 (a) or (b), is more than one hundred and twenty percent 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 percent 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~~ **conviction on indictment** to a fine of five million dollars.

Insurer to submit statements relating to Catastrophe Reserve Fund

45. (1) The insurer shall submit to the Inspector 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

Restructurin
g 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~~ **may**, 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~~ **may** 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.

Restructurin
g of group
where
entities are

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

engaged in both financial and non-financial activities

the 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, insurer registered under this Act or licensee under the Financial Institutions Act.

Restructuring not required in certain cases

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

(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).~~

(1) A financial holding company shall not engage in or carry on any business other than-

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

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

(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~~ **conviction on indictment**—

- (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.

Requirement
for a permit

~~51. (1) A holding company that does not carry on any activity other than—~~

~~(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.~~

(1) A financial holding company required under section 47 or a holding company that 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.~~

(8) A financial holding company that fails to comply with any condition of its permit commits an offence and is liable-

(a) on conviction on indictment 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; or

(b) on summary conviction to a fine of three hundred thousand dollars and in the case of a continuing offence to a fine of thirty 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.~~

(1) Notwithstanding any other law, 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) In the circumstances where a proposed controlling shareholder is an acquirer, the provisions of section 74 shall prevail over this section.

(2A) 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)~~ **subsection (2A)** 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.~~

(b) contravenes any other provision of this section commits an offence and is liable-

(i) on conviction on indictment 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; or

(ii) on summary conviction to a fine of three hundred thousand dollars and to imprisonment for one year and in the case of a continuing offence, to a fine of thirty thousand dollars for each day that the offence continues.

Requirement
s of
significant
shareholder

~~53. (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 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)-

(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 significant shareholder of an insurer without first obtaining a written permit from the Central Bank.

(2) In the circumstances where a proposed significant shareholder is an acquirer, the provisions of section 74 shall prevail over this section.

(2A) 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)~~ **subsection (2A)** 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)~~ **(2)** 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)~~ **subsection (4)** and the provisions of this section shall apply *mutatis mutandis* to section 52 or 53.

(4) **(3)** 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)~~ **(4)** 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)~~ **(5)** In considering the criteria referred to in ~~subsection (5)(b)~~ **subsection (4)(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)~~ **(6)** Subject to ~~subsection (8)~~ **subsection (7)**, 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)~~ **(7)** 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)~~ **subsection (3)**, together with its
recommendation and any other relevant information.

~~(9)~~ **(8)** 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)~~ **(9)** After due consideration of the matters referred to in ~~subsection (9)~~
subsection (8), 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)~~ **(10)** Where the issuance of a permit is refused, pursuant to ~~subsection (7)(b) or (10)(b)~~ **subsection (6)(b) or (9)(b)**, the reasons for the refusal shall be sent to the applicant.

~~(12)~~ **(11)** The provisions of section 52(2) and (4) to (13) shall apply *mutatis mutandis* to this section.

~~(13)~~ **(12)** 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)~~ **(13)** 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.~~

Revocation
of permits

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.

(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.

Submission
of scheme of
transfer or
amalgamation

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.

(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 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.

Confirmation of scheme of transfer or amalgamation

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.

(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.

Approval of
transfer or
amalgamation
by
Minister

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 section 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.

Return to be made in case of transfer or

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 –

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 another company, pursuant to~~
~~_____ section 34(1)(f);~~
~~_____ (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)(f);~~
- ~~_____ (ii) its voluntary winding up, pursuant to section~~
~~_____ 40(1)(c); or~~
- ~~_____ (iii) the company not carrying on business, pursuant section~~
~~_____ 34(1)(g);~~

(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 another company;**
- _____ (ii) the voluntary winding up of the former insurer, pursuant to section 40(1)(c) of this Act or the former licensee pursuant to section 66 of the Financial Institutions Act; or**
- _____ (iii) the former insurer not carrying on business, pursuant to section 34(1)(g) of this Act or the former licensee not accepting a deposit in Trinidad and Tobago pursuant to section 23(1)(e) of the Financial Institutions Act; 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;**
- _____ (ii) its voluntary winding up; or**
- _____ (iii) or for any other reasons under the applicable laws,**

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.~~

(3) A local insurer shall seek a permit from the Central Bank where a director or officer of the local insurer proposes to be appointed as a director or officer of another financial entity outside the financial group.

(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~~ **conviction on indictment** 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~~ **conviction on indictment** 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.

Duties of
directors

67. (1) For the purpose of discharging his duty to act 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~~ **that in the opinion of the directors have material adverse effects on the financial condition of the insurer or financial holding company and require prompt rectification.**

(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; and
 - (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.

Reports on
responsibilities

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;
internal	(ii) establishing and maintaining an adequate control structure and procedures for financial reporting and maintenance of separate accounts;
	(iii) establishing and maintaining adequate procedures for the settlement of claims; and
Central	(iv) complying with this Act and any Regulations made hereunder and Guidelines issued by the 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.

Central Bank may require directors or shareholders meeting

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 **conviction on indictment** ~~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 **auditor who signs a report on behalf of the audit entity**, 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.

Notification
in respect of
actuary

79. (1) An insurer, shall forthwith give written notice 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 **appointed** 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 **appointed** 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.~~

(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 appointed actuary who has resigned or whose appointment as the appointed actuary has been revoked, a written statement of the circumstances and reasons for such resignation or why, in the opinion of the former appointed 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~~ **former appointed actuary** is received.

Protection
for
whistleblowers

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.

Referring matters to the professional association for auditors and actuaries

81. (1) Where the Inspector has reasonable grounds to believe that the auditor or actuary of an insurer or financial holding company –

- (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, 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~~ **Schedule 8** 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~~ **Schedule 8.**

(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.~~

(5) Where an insurer does not comply with its requirements under this section the insurer commits an offence and is liable on conviction on indictment to a fine of five million dollars.

Adequate
assets

83. (1) An insurer which carries on insurance 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.

Restriction
on payment
of dividend

84. (1) An insurer or financial holding company shall 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 **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.~~

(3) An insurer, holding company or financial holding company which contravenes this section commits an offence and is liable on conviction on indictment 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;

(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~~ **seventy** 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~~ **the assets of the insurer**.

(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~~ **or**
- (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~~ **conviction on indictment** to a fine of five million dollars.

Limits on
acquisition
of shares or
ownership
interests by
an insurer

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 –

- (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 subsection (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)~~ **subsections (1) and (3)** 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 subsections (4)(a); or
- (b) require the insurer to dispose of any of the shares or ownership interests in an entity referred to in subsections (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.

Approval for
certain
transactions

88. (1) An insurer shall not without the prior approval of the Central Bank –

- (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)~~ increase its capital pursuant to section 82(3), 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.

Reporting
contravention
of credit
exposure
limits

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)~~ **(2)** 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.

Prohibitions
with respect
to acquiring
shares,
borrowing or
lending
funds

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;

(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

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.

i. 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.

(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~~ **sections 57 to 64** (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).

Decision of
High Court
on judicial
manager

96. (1) The High Court shall on the hearing of an application made under section 95(2) -

- (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.

Indemnity

99. The judicial manager 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.

Cancellation
of judicial
management

100. (1) The judicial manager, the Central Bank or any interested person may at any time apply to the High Court for the cancellation of an order made by the High 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.

Suspension
of operations

101. (1) Subject to subsections (11) and (12), where the Inspector is satisfied that an insurer has a regulatory capital ratio **as defined in the Regulations** 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~~ **conviction on indictment** 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 provisions 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~~ **,receiver manager or special 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.

Procedure
on winding
up

104. (1) An order of the High Court for the winding up of an insurer or financial holding company shall be 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.

Ascertainment of value of liability under policies

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.

(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.

Winding up of part of business of insurer

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.

(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 sections 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.

Voluntary
winding up

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.

Protection of
receiver,
receiver-
manager and
liquidator

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.

(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

Registratio
n of
intermediar
ies

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 **and such registration shall be valid up to the end of the period stated in the certificate of registration issued under the former Act.**

(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.~~

(7) Where the Central Bank has reasonable grounds to believe that a person is carrying on business in contravention of subsections (1), (2) or (3), the provisions of section 21(6) shall apply with the necessary modifications.

(8) A person who contravenes subsection (1) commits an offence and is liable on ~~summary conviction~~ **conviction on indictment** 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~~ **conviction on indictment** to a fine of one million and five hundred thousand dollars and to imprisonment for two years.

Application
for
registration

111. (1) An application for registration under this Part 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.

Restrictions
on
registration

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 as 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.

Central Bank
to register
person under
this Part

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.

(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

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

representatives

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 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.~~

(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 proposes to place ~~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.

Capital and
professional
indemnity
cover

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.

(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.

(3) 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.

Continuous
registration
requirement

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.

Continuous
professional
requirement

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 ~~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 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.

(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.

Mandatory
revocation

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.

Notice of
termination
of
intermediary
to be given

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,

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~~ **conviction on indictment** to a fine of one million and five hundred thousand 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~~ **conviction on indictment** 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 acting
or

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.

negotiating
insurance

Rebating

126. No insurer and no officer, employee or agent of an insurer and no broker or salesman **sales representative** 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.

Exemption
for payment
of dividend
to salaried
employee

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.

(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.

Company to
make return
to the
Central Bank

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-

- (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.

Disclosure
of
preferential
arrangements
by
brokerage

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.

(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.

Offence to
procure
payment of
premium by
fraudulent
misrepresent
ation

- 131.** (1) An agent, agency, broker, brokerage or a sales representative shall not –
- (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~~ **and shall comply with the standards on post sale communication as prescribed in Schedule 11 and the form of disclosure set out in Guidelines.**

(2) An agent, broker, or sales representative who contravenes subsection (1) commits an offence and is liable on ~~summary conviction~~ **conviction on indictment** to a fine of one million and five hundred thousand dollars and to imprisonment for two years.

(3) An agency or brokerage who contravenes subsection (1) commits an offence and is liable on ~~summary conviction~~ **conviction on indictment** to a fine of three million dollars.

Receipt of
premium

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.

Payment of
premium to
insurer

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~~ **from the date on which it received such monies.**

(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~~ **five** 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).

Monthly
accounts

137. Every brokerage shall keep, in relation to 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.

Monthly records of agencies

138. Every agency shall keep, with respect to policies 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.

Audit of accounts of agencies and brokerages

139. (1) The auditor of an agency or brokerage shall 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 **or where there is a complex claim or major loss.**

(2) In the event of a catastrophe **or where there is a complex claim or major loss,** 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 and five hundred thousand dollars and to imprisonment for two years.~~

(3) ~~(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~~ **conviction on indictment** to a fine of one million and five hundred thousand dollars and to imprisonment for two years.

(4) For the purposes of this section-

(a) a “complex claim” means a claim that satisfies the criteria set out in Guidelines issued by the Central Bank; and

(b) “major loss” means any loss that satisfies the criteria set out in Guidelines issued by the Central Bank.

Offences for
intermediaries

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.

(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

Non-
application
of Part

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

Duty of
company to
keep books,
vouchers,
and

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.

valuation of
assets

(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~~ real estate 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~~ real estate 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) the 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) the insurer or financial holding company where such company has credit exposures with the 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)~~ the requirements of the Inspector pursuant to subsection (5) commits an offence and is liable on ~~summary conviction~~ conviction on indictment 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;
- and (c) the reports of the auditor as required by section 147(1) (a);
- (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.~~

(a) **who hold five per cent or more if its issued share capital;**

or

(b) are parties to any agreement with respect to the voting of five percent or more of the issued 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~~ **issued share 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.

Unsatisfactor
y 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.

No
commingling
of funds

150. An insurer shall not commingle the funds of its insurance business with the funds of any other business.

Apportionmen
t
of receipts
and
payments
between
various
classes of
insurance
business

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.

(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.

Publication
of financial
statements

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).

(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

Compliance
directions

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 or a person beneficially interested in a privately administered pension fund plan;
- (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.

(1A) Notwithstanding any other action or remedy available under this Act, if the Board of Inland Revenue indicates to the Inspector, that a registrant or an officer, other employee or agent of the registrant has breached any requirement or failed to comply with Guidelines related to a declared agreement, the Inspector may direct a registrant or an officer, other employee or agent of the registrant to give effect, comply with or perform such acts as may be necessary for compliance with a declared agreement.

(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 on conviction on indictment 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, on conviction on indictment 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, 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 for each day the offence continues;
- (d) a director, officer or other employee of an agency or brokerage, on summary conviction 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, on summary conviction 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.

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

Application
of this Part

157. (1) This Part shall apply to all insurers carrying 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 499 **197** shall also apply to insurers which carry on general insurance business.

Actuarial
reports

158. (1) Every insurer carrying on long-term 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)~~**section 30(6) .**

~~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.

Distribution
of surplus

160. (1) An insurer may, from a participating account, 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).

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) An insurer who contravenes subsection (3) commits an offence and is liable on ~~summary conviction~~ **conviction on indictment** 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.

Restriction
on
commission
to
be paid or
reduction of
premium to
be
allowed

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.

Annuity contract for the benefit of an employee

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.

Form of proposal to be approved by the Inspector

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.

Policy not to
be
void by
reason
only of
misstatement
of
age of the
life
insured or
other
incorrect
statement

167. (1) A policy is not void by reason only of a misstatement of the age of the life insured.

(2) Where there is proof of the true age of the life 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 –

life in (a) may effect a policy upon his own life or upon another
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;

security (c) validate a receipt, a discharge or a surrender of, or
section over a policy given by a minor which, but for this
would not be valid; or

(d) validate any assignment of a policy which, but for this section, would not be valid.

Persons who
are deemed
to have an
insurable
interest

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
Schedule 3

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.

(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.

Effects of
notice

171. (1) Notwithstanding anything contained in 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.

Assignment
of policy to
insurer not to
extinguish
rights and
liabilities

172. (1) The rights and liabilities arising under a 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
Schedule 3

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.

(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

Application to class of policy

176. (1) Sections 177 to 181 shall not apply to –

- (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.

Paid-up policies

177. (1) A policyholder who desires to discontinue 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.

Non-
forfeiture
of
ordinary
policies
in certain
cases
of non-
payment
of
premiums

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.

(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.

Designation
of
beneficiarie
s
generally

183. (1) A policyholder may designate his legal personal representative, trustee or beneficiary as the person to receive the proceeds of the insurance policy –

(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)~~ **section 184 (2) (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.

(4) 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.

Alteration or revocation of designation on cessation of marriage

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 –

- (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.

Policyholder entitled to dividends

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.

(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.
Right to enforce payment of proceeds	191. A beneficiary may, on the death of a life insured, enforce for his own benefit, and a trustee appointed 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.
Power of group life insured to sue insurer	192. A life insured under a group policy may, in his own name, enforce a right given to him under the group policy.
Payment of policy monies without production of grant of probate or letters of administration	193. (1) Notwithstanding section 183, where under a policy, money is payable by an insurer to the legal personal representative of a deceased person the insurer may, without requiring the production of any grant of probate or letters of administration, pay the money together with any bonuses, which have been 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

n in certain
cases

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.

Insurer may
pay money
to the
Central Bank

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.

(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.

Unclaimed
money

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 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.~~

(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

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

after inspection 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.

Falsification **200.** A person who wilfully makes or orders or allows 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.

Voidance of policy **201.** (1) Where an agent or sales representative of an 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.

Particulars to be specified on policies **202.** Every industrial policy issued by an insurer 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.

Premium
receipt
book to
show
date to
which
premiums
have
been paid

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 –

- (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

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

premi
ums 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

Lost policy

208. (1) Where -

(a) the holder of a policy ~~policyholder~~; or

(b) a person claiming the benefit of the provisions of ~~section 191~~

~~or 193~~ **sections 191, 193 or 195** 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~~, **beneficiary or any person claiming the benefit pursuant to sections 191, 193 or 195** 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.

Effect of
Capital
punishment
or suicide on
policy

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.

Conditions
as to war
risk void

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.

PART VIII

GENERAL INSURANCE

Application
of this Part

211. Except as explicitly provided otherwise, this Part shall apply to all insurers carrying on general insurance business.

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.

(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.

Reports for
general
insurance
business

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.

(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.

(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 ~~a privately administered 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.

Qualification
s for
registration
of plan

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
of

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.

Amendment
not valid
until
registered
Chap. 32:01

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.

(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.

Fees to be
prescribed

222. (1) The fees payable in respect of –

(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.

Power to delete provisions for avoiding the rule against perpetuities

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 –

- (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~~ **twenty thousand dollars** and in the case of a continuing offence to a fine of ~~one hundred dollars~~ **two thousand dollars** for every day during which the offence is committed after conviction thereof.

Annual
accounts and
balance sheet
to be
submitted

226. (1) The trustees of each plan registered under this Part shall –

- (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 –

Schedule 87 (a) in such securities as may be allowed in ~~Schedule 8~~
Schedule 7; and
(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.

Rules of law against perpetuities not to apply **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.

PART X

ASSOCIATIONS OF UNDERWRITERS

Registration of 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*.

(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~~ **conviction on indictment** to a fine of five million dollars.

Applicant to be informed of Central Bank's decision with respect to application

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.

(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.

Restriction
on
registration

232. An association of underwriters may carry on its insurance business through brokerages registered under this Act.

Deposit by
association
of
underwriters

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 –

- (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~~ **the minimum stated capital that would be required of an insurer that is carrying on the class or classes of business it intends to carry on;** 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
asset
s
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.

Release of
deposit upon
revocation

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.

(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

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.

concern

(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.

Deposit to
be
increased
where in
deficit

240. (1) Where the Inspector is satisfied that by 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~~ **conviction on indictment** to a fine of five million dollars.

Responsibility
for lost
securities

241. Where any monies or approved securities, or 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.

Substitution
of statutory
deposit

242. An association of underwriters may at any time 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~~ **conviction on indictment** 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; **and**
- ~~(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)~~ **(f)** 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).

Additional
powers of
the Inspector

245. (1) The Inspector may make or cause to be made 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.

Registered
association
of
underwriters
may be
prohibited
from writing
business

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.

(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.

Product
approval

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.

Revocation
of
registration

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.

(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

Jurisdiction of local courts

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 and limitation

~~**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.~~

251. (1) Summary proceedings for an offence under this Act may, without prejudice to any jurisdiction exercisable apart from this subsection, be taken against a registrant including an unincorporated body, and a

financial holding company in any place at which it has a place of business, and against an individual in any place at which he is for the time being located.

(2) 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 or within eighteen months after the relevant date.

(3) In this section, the "relevant date" means the date on which evidence sufficient in the opinion of the Central Bank of Trinidad and Tobago to justify the institution of summary proceedings comes to its knowledge.

(4) For the purpose of subsection (3), a certificate as to the date on which evidence referred to in subsection (3) came to the knowledge of the Central Bank of Trinidad and Tobago shall be conclusive evidence of that fact.

Documents to
be received in
evidence

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 –

- (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.

Appeals

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.

Offences

254. (1) Any person who, in purported compliance 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 **knowingly or recklessly** 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.~~

(3) Any person who contravenes this Act or the Regulations for which no other penalty is expressly provided, commits an offence and is liable-

(a) on conviction on indictment to a fine of 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;

(b) on summary conviction to a fine of three hundred and fifty thousand dollars and to imprisonment for one year and in the case of a continuous offence, to fine of thirty 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, Board or 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 paragraphs (a) or (b) shall be presumed to have also committed the offence.

Financial
fraud on
policyholder
s

255. (1) A person who perpetrates a financial fraud on 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—~~

~~(c) every director or officer of such entity is liable to a fine of ten million dollars and to imprisonment for ten years; and~~

~~(d) the entity is liable to a fine in an amount of twenty million dollars.~~

(4) Any person who commits an offence under this section is liable on conviction on indictment to a fine of ten million dollars and to imprisonment for ten years.

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~~ **conviction on indictment** to fine of five million dollars and to imprisonment for five years.

Restriction on issuing insurance advertisement

257. (1) A person other than a registrant shall not 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) Any person who contravenes this section commits an offence.

~~(3)~~**(4)** 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.

Advertiseme
nt

258. (1) Where a person alleges that or where in the 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)~~ **(2)** 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)~~ **(3)** 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)~~ **(4)** 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.

Administrative fines
Schedule 6

260. (1) The Central Bank may issue to any person who, there is reasonable cause to believe, has committed an offence referred to in Schedule 6, a notice offering the 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).

Offence to
suppress
information

261. (1) A person who without reasonable excuse 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~~ **conviction on indictment** to a fine of ten million dollars and to imprisonment for ten years.

Definitions

PART XII

FACILITATION OF TRANSFERS AND UNDERTAKINGS

262. In this Part—

“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.

Supplementa
ry provisions
as to
transfers

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 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;
- (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~~**11**

266. Registrants and insurance consultants shall comply with the standards on market conduct as prescribed in ~~Schedule 12~~ **Schedule 11**.

Settlement of
judgment
claims

267. An insurer shall fully settle all judgment claims within forty business days of a judgment order, unless there is a stay of execution.

Proof of
policy

268. (1) In the case of an individual life policy, upon 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.

Issue of
capital by
company

Act No. 17
of 2012

269. (1) A person shall not publish in respect of an 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 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.

Register to
be kept

270. (1) An insurer shall keep in accordance with this 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.

Serving of
notice

272. (1) Where a notice is required or permitted by 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.

Authority to
sign
documents

273. Any document required by or under this Act to 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

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.

in certain cases

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.

Guidelines **278.** (1) The Central Bank may issue Guidelines to –
(a) facilitate compliance with this Act **and Regulations;**
(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.

Central Bank to issue guidelines for declared agreements

Act No. 4 of 2017

278A. (1) The Central Bank may issue Guidelines on any matter it considers necessary to give effect to a declared agreement.

(2) Where Guidelines are issued under subsection (1), a declared agreement shall have the meaning assigned to it under section 3 of the Tax Information Exchange Agreements (United States of America) Act, 2017.

(3) Where a person has failed to comply with Guidelines issued by the Central Bank under subsection (1), the Central Bank shall direct that person to-

- (a) cease and or refrain from committing the act, pursuing the course of conduct, or committing a violation; or**
- (b) perform such acts as in the opinion of the Central Bank are necessary to remedy the situation; and**
- (c) perform such acts as are required to give effect to a declared agreement.**

(4) Guidelines under this section shall be subject to the approval of the Minister and laid in Parliament at the earliest opportunity.

Regulations and amendment of Schedules

279. (1) The Minister may, upon recommendation by 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 subsections (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.

Consequential
amendments
Schedule
12

282. The Proceeds of Crime Act, the Central Bank Act, the Married Persons Act and the Financial Institutions Act are amended to the extent as specified in ~~Schedule 13~~ **Schedule 12**.

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 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 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~~ 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 –

- (ii) insurance against loss resulting from bodily injury to, or the death of, a person caused by an accident; or
- (iii) 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
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~~ **interest in 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.

(section 170)

FORM B

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.

(section 174)

FORM C

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 217,226,227)

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:

1. the whole of the objects for which the plan is established;
2. the appointment and removal of trustees;
3. the vesting in the trustees of all property belonging to the plan;
4. 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;

5. 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;

6. the contributions payable to and the rates of benefits payable from the

fund or the method of calculating benefits so payable;

7. the conditions on which persons may become and may cease to be

contributors to and entitled to benefits from the fund;

8. the protection of the vested rights of contributors to the plan;

9. the preparation of all statements of accounts, balance sheets and reports

required by this Act to be prepared;

10. 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;

11. 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
12. 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 purpose of the valuation;~~
- ~~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

Revenue Account for the period..... to
.....

Pension Fund Plan

Revenue	\$	Expenditure	\$
1. Amount of the Fund at the beginning of the period*		1. Superannuation Benefits- (a) pension to retired employees; (b) widows' pensions; (c) orphans' pensions; (d) retirement gratuities.	
2. Contributions by employees		2. Death grants	
3. Contributions by employer		3. Return on contributions on withdrawal	
4. Any additional contribution by employer to meet deficiency or back service liabilities		4. Other expenditure (to be specified)	
5. Interest dividend and rents		5. Amount of the Fund at the end of the period*	
6. Other income (to be specified)			

*May be omitted for an insured pension fund plan.

Form B

(Note to be completed for an insured pension fund plan)

Balance Sheet as at
20.....for.....

Pension Fund Plan

Liabilities	\$	Assets	\$
Amount of fund as at		Mortgage	
Pensions due but not yet paid		Stock Exchange	
Other benefits (to be		Securities	
specified) due but not yet paid		Other assets (to be	
		specified)	

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

[Section 227(3) and (5)]

PART III

Actuarial Valuation

1. The first part of the report shall contain statistics as at the valuation date in respect of the following:

(a) Changes in the membership of the fund during the intervaluation period as well as the membership of the fund on the valuation date as follows:

Age Group	Number of members at beginning of period	Number of new entrants	Number of Cessations of Membership				Number of members at the end of the period
			Transfer or on deferred pensions	Withdrawal	Death	Retirement	
Under 25							
25-30							
30-35							
35-40							
40-45							
45-50							
50-55							
55-60							
60-65							
Total							

(a) Changes in the number of pensioners of the fund during the intervaluation period as follows:

Number Age Group	Number of pensioners at beginning of period		Number of pensioners at pension during		Number of pensioners died during		Number of pensioners ceasing to receive pensions for other causes		Number pensioners at end of period	
	Ill Health	Age	Ill Health	Age	Ill Health	Age	Ill Health	Age	Ill Health	Age
Under 35										
35-45										
45-55										
55-65										
65-75										
75 and Over										
Total										

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 purpose of the valuation;
- 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.

SCHEDULE 5

(Sections 11, 24,26, 28, 29,34,36,40,51,
52,53,54,61,65,78,93,113, 121and 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, 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;

- or
- (b) credit concentration or proposed credit concentration and risk exposures 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 three months, 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 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)~~ 18(2)	Failure to pay annual fees not later than the thirty-first 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 in writing 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

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)~~ 67(3)	Failure of a director of an insurer or of a financial holding company to notify the Inspector of ~~material risks~~ <u>material adverse effects on the financial condition of the insurer or financial holding company</u>	\$600,000 plus \$60,000 for each day the offence continues	\$10,000 for each day the offence continues

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
~~67(6)~~ 67(4)	Failure of a director of an insurer to submit <u>within five business days</u> to the Inspector reasons for resignation, removal or departure from office or the reasons why he opposes his	\$600,000 plus \$60,000 for each day the offence continues	\$10,000 for each day the offence continues
~~67(7)~~ 67(5)	Failure of a director of an insurer or of a financial holding company to establish and maintain procedures for remuneration	\$600,000 plus \$60,000 for each day the offence continues	\$10,000 for each day the offence continues
~~67(8)~~ 67(6)	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 year	\$600,000 plus \$60,000 for each day the offence continues	\$10,000 for each day the offence continues
~~67(9)~~ 67(7)	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
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

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
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
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	\$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
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

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
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
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	\$125,000

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
		for each day the offence continues	

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
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	\$500,000 plus \$50,000 for each day the offence	\$125,000
Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
	connected parties and connected party groups which are in excess of the limits prescribed under this section	continues	

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
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 – (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	\$500,000 plus \$50,000 for each day the offence continues	\$10,000 for each day the offence continues

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
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

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
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
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	\$500,000	\$10,000 for each

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
	underwriters established outside of Trinidad and Tobago to submit documents and information as required by this section		day the offence continues
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

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

Section	General Description of Offence	Criminal Penalty (applicable only on summary conviction)	Administrative Fine
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

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~~ <u>20,000</u> plus 1,700 <u>2,000</u> for each day the offence continues	~~4,250~~ <u>5,000</u>
115 (3)	Failure of an agency or brokerage to comply with reporting requirements as may be specified by the Central Bank	~~17,000~~ <u>20,000</u> plus 1,700 <u>2,000</u> for each day the offence continues	~~4,250~~ <u>5,000</u>
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~~ <u>20,000</u> plus 1,700 <u>2,000</u> for each day the offence continues	~~4,250~~ <u>5,000</u>
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
132(2)	Failure of an agency or brokerage to issue a receipt to a consumer	~~17,000~~ <u>20,000</u> plus 1,700 <u>2,000</u> for each day the offence continues	~~4,250~~ <u>5,000</u>

133(7)	Failure to submit reports to the Central Bank on the consumer trust account within the specified time in this section	~~17,000~~ 20,000 plus 1,700 2,000 for each day the offence continues	~~4,250~~ 5,000
136	Failure of an agency or brokerage to submit financial statements within the time prescribed in this section	~~17,000~~ 20,000 plus 1,700 2,000 for each day the offence continues	~~4,250~~ 5,000

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

PART D

TRUSTEES OF PENSION FUND PLANS

<u>Section</u>	<u>General Description of Offence</u>	<u>Criminal Penalty (applicable only on summary conviction)</u>	<u>Administrative Fine</u>
<u>226(1)</u>	<u>Failure of trustees to submit annual accounts and balance sheets to the Central Bank</u>	<u>20,000 plus 2,000 for each day the offence continues</u>	<u>5,000</u>

<u>227(3)</u>	<u>Failure of trustees to submit report of actuarial investigation to the Central Bank</u>	<u>20,000 plus 2,000 for each day the offence continues</u>	<u>5,000</u>

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:~~

- | |
|--|
| <p>(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.~~</p> <p>(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.~~</p> <p>(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.~~</p> |
| <p>(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.~~</p> <p>(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.~~</p> <p>(6) ~~Does your new policy let you borrow money at attractive interest rates? Your current policy may do this.~~</p> <p>(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.~~</p> |

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		

Please print	Your current policy	Proposed replacement policy
or accidental death and dismemberment?		
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 \$1000 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)		

Please print	Your current policy	Proposed replacement policy
What is the maximum cost of insurance at: Age 50? Age 55? Age 60? Age 65? Age 70?		
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

Please print	~~Your current~~ policy	Proposed replacement policy
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)		
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)	Agent's Statement 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.
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 8-7

(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 any international financial institution approved by the Minister the Central Bank;
- (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; (i) Commonwealth country; or (ii) 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 exceed 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.
9. The total accepted value of the assets of the plan invested in unit certificates, shares or other evidence of participation in financial assets shall not exceed ten per cent of the total accepted value of the assets of the plan.
10. The total accepted value of the assets of the plan invested in real estate or leaseholds shall not exceed twenty per cent of the total accepted value of the assets of the plan.

SCHEDULE 9 **8**

(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~~⁹

(Section 42)

SEPARATE ACCOUNTING

1. Assets vested in trust in overseas jurisdictions shall not be held in the Trinidad and Tobago policy account.

SCHEDULE ~~11~~10

DETERMINATION OF CREDIT EXPOSURE

(Section 4)

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.

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:

- the **insurer’s** ability to provide the product or service being marketed or sold;
- the scale of the **insurer’s** activities;
- the extent of the resources of the **insurer**;
- the nature of the **insurer’s** or any other **person’s** involvement in the product or service;
- the scarcity of the product or service;
- 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:

- the length of time for which the consumer wishes to hold a product,
- need for access to funds (including emergency funds),
- need for accumulation of funds.

(b) Personal circumstances including, where relevant:

- age,
- health,
- knowledge and experience of financial products,
- dependents,
- employment status,
- known future changes to his/her circumstances.

(c) Financial situation including, where relevant:

- income,
- savings,
- financial products and other assets,
- 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 B1a-c:

(a) the product or service meets that consumer's needs and objectives;

(b) the consumer:

- is likely to be able to meet the financial commitment associated with the product on an ongoing basis;

- 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:

- (I) 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
- (II) 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.

CONSEQUENTIAL AMENDMENTS

First Column	Second Column
The Proceeds of Crime Act, Chap. 11:27	In section 2(1), in the definition of the term “financial institution”, delete paragraph (e) and substitute the following: “(e) an insurance company or an agency or brokerage registered under the Insurance Act, 2015;”
The Married Persons Act, Chap. 45:50	Repeal section 11
The Central Bank Act Chap. 79:02	In section 44D(1) (c)- (a) delete the full stop at the end of subparagraph (viii) and substitute a semicolon; and (b) insert after subparagraph (viii) the following new subparagraph: “(ix) in the case of an insurance company, to make an 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

First Column	Second Column
The Financial Institutions Act, Chap. 79:09	policyholders and the financial condition of the insurance company.”. A. In section 2(1), insert before the definition of “acquirer”, the following : “ “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.” B. In section 5 (3) - (a) in paragraph (b), delete the word “and”; (b) in paragraph (c), delete the full stop and substitute the words “; and” ; and (c) insert after paragraph (c), the following: “(d) ensure compliance of licensees with legislation to combat money laundering and terrorist financing.”. C. In section 8- (a) in subsection (2)(a), delete the words “for purposes related to that regulation” and substitute the words “for regulatory purposes”;

First Column	Second Column
	(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 Intelligence Unit of Trinidad and Tobago Act”; (c) in subsection (3), (i) delete the words “the designated authority” and substitute the words “the Financial Intelligence Unit”; (ii) delete the words “regulatory authority” and substitute the word “person”. D. In section 23- (a) in subsection (1)(b), insert after the word “Act”, the words “or any other written law”; (b) in subsection (1)(l), delete the full-stop and substitute the words “; and”; (c) after subsection (1)(l), insert the following paragraph- “(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.” E. Insert after section 51(4), the following - “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.” F. In section 62, insert after subsection (18), the following

First Column	Second Column
	paragraph- “(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.” G. In section 72, delete subsection (11) and substitute the following - “(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”. H. In section 78, delete the words “, by notice,” wherever they occur. I. Insert after section 80(1), the following – (a) “(80)(1A) The Central Bank may consult with licensees to create abridged financial statements for the purpose of publication.”; (b) “(80)(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).”; J. In section 119 (2), delete the words “three years” and substitute the words “seven years”.

Passed in the House of Representatives this day of , 2016.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say by the votes of members of the House.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2016.

Clerk of the Senate

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.