



MONTSERRAT

CHAPTER 11.20

INSURANCE ACT

Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

INSURANCE ACT

- Act 5 of 2001 .. in force 26 June 2003 (S.R.O. 28/2003)
- Amended by Act 6 of 2005 .. in force 1 May, 2005 (S.R.O. 75/2005)
- Amended by S.R.O. 22/2004 .. in force 4 June 2004
- Amended by Act 3 of 2008 .. in force 29 October 2008
- Amended by S.R.O. 60/2010 .. in force 1 January 2011
- Amended by Act 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)
- Amended by S.R.O. 6/2012 .. in force 17 February 2012

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CHAPTER 11.20

INSURANCE ACT

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CHAPTER 11.20

INSURANCE ACT

(Acts 5 of 2001, 6 of 2005, 3 of 2008, 9 of 2011, S.R.Os. 22/2004, 60/2010 and 6/2012)

AN ACT TO MAKE PROVISION FOR REGULATING THE CARRYING ON OF INSURANCE BUSINESS AND REGULATING THE OPERATION OF PENSION FUND PLANS IN MONTSEERRAT AND FOR RELATED MATTERS.

Commencement

[26 June 2003]

PART 1

PRELIMINARY

Short title

1. This Act may be cited as the Insurance Act.

Interpretation

2. (1) In this Act—

“**actuary**” means a person who satisfies the Supervisor that he—

- (a) is a Fellow of a professional body of actuaries that is internationally recognised; or
- (b) is a person of equivalent status to that of a Fellow mentioned in paragraph (a); or
- (c) a person recognised by the Minister as having actuarial knowledge and experience;

“**admissible assets**” means such assets as may from time to time be prescribed to be admissible assets;

“**assets**” does not include goodwill;

“**association of underwriters**” means either—

- (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 secured by each policy subscribed to by that syndicate, limited or proportionate to the whole sum thereby secured;

“carrying on insurance business” includes the receipt of proposals for or the issuing of policies of insurance in Montserrat or the collection or receipt in Montserrat of premiums on policies issued in Montserrat by an insurer but does not include—

- (a) the collection or receipt in Montserrat of premiums under a policy issued outside of Montserrat to a person resident outside of Montserrat at the date of issue of the policy and who is temporarily resident in Montserrat; or
- (b) the making of payments due under any such policy;

“chief executive officer” means a person employed by an insurance company, who, subject to any directions of the directors of the company, is responsible for the conduct of the insurance business of the company;

“class of insurance business” means any class of insurance business specified in the First Schedule;

“company” means a body corporate which carries on or proposes to carry on insurance business in Montserrat;

“director” means any person occupying the position of director, by whatever name called, of a company;

“financial year”, in relation to an insurer, means each period not exceeding twelve months at the end of which the balance of the accounts of the insurer is struck;

“foreign company” means a company which is not a local company;

“foreign insurance broker” means an insurance broker that is not a local insurance broker;

“foreign insurer” means an insurer that is not a local insurer;

“general insurance business” means any class of insurance business other than long-term insurance business;

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

- (a) a policy that has at any time been such a policy; and
- (b) a paid-up policy (not being a policy expressed to be a non-industrial policy) granted in lieu of an industrial policy or of a policy referred to in paragraph (a);

“insurance adjuster” means any person who, as an independent insurance professional, for compensation, a fee, a commission or a salary investigates and negotiates settlement of claims under insurance contracts solely on behalf of either the insurer or the insured but does not include—

- (a) a salaried employee of an insurer or an insurance agent while acting on behalf of such insurer or insurance agent in the adjustment of losses; or
- (b) an insurance agent who is authorised to settle claims on behalf of that insurer;

“insurance agent” means any individual, firm, partnership or body corporate appointed by an insurer or an insurance agent to solicit applications for insurance or negotiate insurance on its behalf and if 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;

“insurance broker” means any individual who, or any firm, partnership or body corporate 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 policy-holders;

“insurance business” means the assumption of the obligations of an insurer to pay a certain sum on the happening of a particular event and includes re-insurance business;

“insurance fund” in relation to a company means a fund maintained by a company in accordance with section 29;

“insurance intermediary” means any insurance adjuster, insurance agent, insurance broker or sales representative,

“insurer” means a company carrying on insurance business and, except where otherwise stated, includes an association of underwriters;

“local company” means—

- (a) a company incorporated under the Companies Act, with not less than 51% of its issued share capital held by citizens of Montserrat; or
- (b) any company incorporated in a country other than Montserrat, which country the Minister has specified by Order published in the *Gazette*;

“local insurance broker” means an insurance broker that is either—

- (a) an individual who is a citizen of Montserrat;
- (b) a firm (partnership) in which the partners holding the majority interest are citizens of Montserrat; or
- (c) a local company;

“local policy” means in relation to—

- (a) long-term insurance business, a policy issued or effected by a company registered under this Act, on the life of a person for the time being resident in Montserrat;

- (b) property insurance business, a policy issued or effected by a company registered under this Act upon property situated in Montserrat; and
- (c) any other class of insurance business, a policy issued or effected by a company registered under this Act where the risks covered by the policy are ordinarily situated in Montserrat at the time the policy was issued;

“long-term insurance business” includes insurance business of all or any of the following classes—

- (a) ordinary long-term insurance business;
- (b) industrial life insurance business;
- (c) in relation to any insurer, insurance business carried on by the insurer as incidental only to any of the classes of business referred to in paragraphs (a) and (b);

“Minister” means the Minister to whom responsibility for the subject of Finance is assigned;

“mutual company” means a company whose capital is owned by the policyholders of that company;

“officer” includes the chief executive officer, the manager, secretary, treasurer, actuary of that body or any other person designated as an officer of a company by its articles of incorporation, its by-laws or any rules regulating its operation;

“paid-up value” means the reduced face amount of insurance which the insured buys with the cash surrender value;

“paid-up policy” means a policy on which no further premium payments are to be made;

“policy” means a valid insurance contract, whatever the form, in which the rights and obligations of the parties to the contract are expressed and includes a sinking fund policy;

“policy-holder” 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;

“premium income” means the gross premiums less refunds collected by an insurer in Montserrat during its financial year;

“prescribed securities” means the securities listed in the Second Schedule;

“principal office” means the office notified to the Supervisor in accordance with section 16;

“principal representative” means a person appointed by a foreign company pursuant to section 16;

“sales representative” means an individual who is contracted by an insurer or an insurance agent to solicit applications for insurance or negotiate

insurance on behalf of an insurer or an insurance agent, but shall not include a *bona fide* salaried employee of an insurer, insurance agent or insurance broker who is employed at its principal office or branch of it;

“**spouse**” includes—

- (a) a single woman who was living together with a single man as his wife for a period of not less than five consecutive years;
- (b) a single man who was living together with a single woman as her husband for a period of not less than five consecutive years;

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

“**Supervisor**” means the Supervisor of Insurance designated under section 4;

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

“**underwriting liabilities**”, in relation to a member of an association of underwriters, means the liabilities of the insurance business of the member calculated in accordance with formulae fixed by the governing body of the association and approved—

- (a) in the case of an association constituted in Montserrat by the Minister; and
- (b) in the case of an association constituted in a country outside Montserrat, by the authority in whom is vested the administration of the law relating to associations of underwriters in that country.

(2) For the purpose of this Act, a person shall not be treated as carrying on insurance business in Montserrat if the only reason for so treating such a person is the fact that the risk covered by a policy of insurance issued by such person is situated in Montserrat.

(3) For the purposes of this Act, the re-insurance of liabilities under insurance policies shall be treated as insurance business of the class and type to which the policies would have belonged if they had been issued by the reinsurer, and all the provisions of this Act shall apply to such re-insurance save that a company or an association of underwriters carrying on such re-insurance shall not be required to make in respect of such re-insurance any deposit as required by section 22.

Application of Act

3. (1) This Act applies to—

- (a) all insurers, whether or not incorporated in Montserrat, which carry on in Montserrat any class of insurance business;
- (b) privately administered pension fund plans whether administered by individual trustees or by trust corporations.

(2) A body corporate incorporated under the Companies Act which carries on insurance business in any part of the world other than Montserrat shall, for the purposes of this Act, be deemed to be a company carrying on such business within Montserrat.

(3) For the purposes of this Act, the re-insurance of liabilities under insurance policies shall be treated as insurance business of the class and type to which the policies would have belonged if they had been issued by the reinsurer, and all the provisions of this Act shall apply to such re-insurance save that a company or an association of underwriters carrying on such re-insurance shall not be required to make in respect of such re-insurance any deposit as required by section 22.

PART 2

ADMINISTRATION

Supervisor of Insurance

4. (1) For the purposes of this Act there shall be a Supervisor of Insurance who shall be responsible for the general administration of this Act.

(2) The Minister shall designate an officer in the Ministry of Finance to be the Supervisor of Insurance.

(3) In the exercise of his powers and the performance of his duties, the Supervisor shall comply with any special directions given to him in writing by the Minister.

Supervisor may secure services of persons

5. The Supervisor may obtain the services of, an actuary or any competent person for the purpose of carrying out any survey, investigation, inquiry or functions under this Act.

Delegation by Supervisor

6. (1) The Supervisor may delegate on such terms and conditions as he deems fit, to any person employed in the Ministry of Finance, all or any of his powers or duties under this Act except the power conferred on him by this section.

(2) Any delegation under subsection (1) shall be revocable at any time by the Supervisor and no delegation shall prevent the exercise of such powers or duties by the Supervisor himself.

Registers to be maintained

7. The Supervisor shall maintain separate registers of the following—

- (a) companies registered to carry on in Montserrat the various classes of insurance business specified in the First Schedule;

- (b) associations of underwriters; and
- (c) such other registers as may be required to be maintained under this Act or any regulations made thereunder.

Annual report

8. (1) The Supervisor shall on or before the last day of June in each year or such later date as the Minister may specify, prepare and submit to the Minister a report containing—

- (a) statements on the working of this Act during the previous year; and
- (b) printed copies or summaries of the documents lodged with the Supervisor under sections 38, 39, 74, 162, 183 and 184.

(2) The Supervisor may attach to any printed copies or summaries furnished pursuant to paragraph (1)(b) such comments on the document as the Supervisor considers necessary, together with a copy of any correspondence relating to the document.

(3) The Minister shall, as soon as practicable after the receipt of the Supervisor's report, cause a copy of the report to be laid before the Legislative Assembly. (*Amended by Act 9 of 2011*)

PART 3

REGULATION OF INSURANCE COMPANIES

Registration

Restriction on carrying on insurance business

9. (1) Subject to this Act, no person may carry on or purport to carry on, insurance business in Montserrat, unless that person—

- (a) is a company, or an association of underwriters, and registered under this Act; and
- (b) has—
 - (i) made the deposit required by section 22; and
 - (ii) filed with the Supervisor the names and addresses of one or more persons resident in Montserrat and authorised to accept on behalf of the company service of process in legal proceedings.

(Amended by Act 3 of 2008)

(2) A company which contravenes this section is guilty of an offence and is liable on summary conviction to a fine of \$100,000.

Company deemed registered

10. Every company registered to carry on insurance business in Montserrat immediately before the commencement of this Act, shall be deemed to have been registered under this Act.

Contracts with non-registered insurers

11. (1) The Supervisor may, in special circumstances, grant approval for insurance to be placed with non-registered insurers where he is satisfied that it is not possible to obtain similar protection from an insurer registered under this Act.

(2) Any person who desires to enter into an insurance contract with a non-registered insurer (except a contract relating to re-insurance), shall apply to the Supervisor for permission to do so.

Share capital necessary for registration

¹12. (1) Subject to this Act, no company may be registered to carry on long-term insurance business unless, if a local company it has a paid-up share capital of not less than \$2,000,000, or if a foreign company it has a paid-up share capital of not less than \$5,000,000, such capital to be fully paid up in cash, or in the case of a mutual company unless it has uncommitted reserves of at least \$5,000,000.

(2) No company may be registered to carry on any class of insurance business other than long-term insurance business unless, if a local company it has a paid-up share capital of not less than \$2,000,000, or if a foreign company it has a paid-up share capital of not less than \$5,000,000, such capital to be fully paid-up in cash, or in the case of a mutual company unless it has uncommitted reserves of at least \$5,000,000.

(3) Notwithstanding subsections (1) and (2), the Supervisor may, if it appears to him necessary, require a company seeking registration under this Act to increase its paid-up share capital beyond the minimum level stated in subsections (1) or (2), as the case may be.

(4) A company which immediately before the commencement of this Act is registered to carry on any class of insurance business, shall within five years of the commencement of this Act, increase its paid-up share capital or its uncommitted reserves to the level required in subsection (1) or (2), as the case may be.

Application for registration

13. (1) An application for registration under this Part shall be made to the Supervisor in the prescribed form and shall be accompanied by evidence of payment of the fee prescribed in the Third Schedule and by such other documents as may be prescribed or as may be required by this Act.

¹ Cuna Insurance Mutual Group exempted from Registration Fee – S.R.O. 27/2005
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(2) The Supervisor may, upon receipt of an application under this section, request the applicant insurance company to furnish such additional information as he may consider to be relevant in relation to the application and the company shall comply with the request.

Conditions for registration

14. (1) Where the Supervisor, after appropriate enquiry, is satisfied in respect of the applicant insurance company that—

- (a) the requirements of sections 9, 12 and 13 in so far as they are applicable, have been complied with;
- (b) the company is solvent under the provisions of section 46;
- (c) the company is likely to be able to comply with such of the provisions of this Act as would be applicable to it;
- (d) the company has made adequate arrangements for re-insurance of that class of business or that there is no justification for making such arrangements;
- (e) the managing director or chief executive officer of the company is a fit and proper person to be the manager or controller thereof;
- (f) in the case of a company that carries on, or proposes to carry on, some other form of business in addition to insurance business, the carrying on of both insurance and that other business is not contrary to the public interest;
- (g) the name of the company is not identical with or does not so closely resemble the name of an insurance company already registered under this Act as to be likely to deceive; and
- (h) being a foreign company, it—
 - (i) is lawfully constituted in accordance with the laws of the country in which it is incorporated and has undertaken insurance business in that country for at least three years before the date of the application; and
 - (ii) has appointed some person resident in Montserrat to be its principal representative in Montserrat and has informed the Supervisor in writing of the name and address of that person,

the Supervisor shall, either unconditionally or subject to such conditions as he may specify, register the insurance company in respect of such class or classes of insurance business and shall notify the applicant accordingly.

(2) Notwithstanding subsection (1)(h)(i) where a company is the subsidiary of, or is the parent of, or is the subsidiary of the parent of an existing registered company, or where a new company has been created as a result of a merger of 2 or more companies involving at least one registered insurance company, the Supervisor may, provided he is satisfied as to the other conditions set out in subsection (1), register the company notwithstanding that the applicant company has not undertaken insurance business in its country of incorporation for at least three years.

(3) Where the Supervisor is not satisfied, in relation to all or any of the classes of insurance business in respect of which the application is made, as to one or more of the conditions set out in subsection (1), he shall notify the insurance company in writing that he proposes to refuse to register it in respect of one or more of the classes of insurance business for which application is made, giving his reasons for so doing and shall notify it of its right of appeal under section 202.

Certificate of registration

15. (1) The Supervisor shall furnish to every company registered under this Act a certificate in the prescribed form that the company has been so registered, and the certificate shall contain a statement of the class or classes of insurance business for which the company is registered and is *prima facie* evidence that the insurance company specified in the certificate has been so registered.

(2) Every company registered under this Part shall prominently display its registration certificate at its principal place of business in Montserrat, in a part thereof to which the public have access, and a copy thereof shall be similarly displayed at each of its branches in Montserrat.

(3) On the notification to an insurance company that its registration has been cancelled, that company shall forthwith surrender the registration certificate and every copy thereof to the Supervisor.

(4) Every person who without lawful excuse fails to comply with subsections (2) and (3), or displays a certificate of registration or a copy of it that is not currently valid commits an offence and is liable on summary conviction to a fine of \$1,000.

Obligations of foreign companies

16. (1) A registered foreign company shall maintain a principal office in Montserrat and shall appoint a principal representative in Montserrat.

(2) The principal representative of a registered foreign company shall have a power of attorney sufficient to satisfy the Supervisor that the representative is authorised to act for such company in all matters to secure compliance by that foreign company with this Act, and a copy of such power of attorney shall be lodged with the Supervisor immediately after the appointment of the principal representative.

(3) Service of any notice, writ, summons or other document or process on a principal representative shall be deemed to be service on the foreign company concerned.

(4) If a registered foreign company changes the address of its principal office in Montserrat or appoints a new principal representative, it shall within twenty one days of the change or the new appointment, give notice thereof to the Supervisor in writing.

Notification of change in particulars of registration

17. Where subsequent to the registration of a company under this Act there is any change in the particulars specified in the application for the registration of the company, or in the documents submitted with the application, the company shall, within thirty days of such change, notify the Supervisor in writing of the change.

Application and policy forms

18. (1) Every company registered under this Act to carry on any class of insurance business shall, at least one month prior to the date of issue of any standard form of policy, or of the use of any standard form of application for a policy, furnish the Supervisor with a copy of such form of policy or form of application.

(2) The Supervisor may prohibit a company from issuing any form of policy, form of endorsement or form of application for a policy the issue or use of which, in his opinion is fraudulent, unjust or not in the public interest.

(3) A company which continues to issue or continues to use a form of policy or a form of endorsement or a form of application for a policy the issue or use of which is prohibited by the Supervisor under subsection (2) is guilty of an offence.

Cancellation of registration

19. (1) The Supervisor may cancel the registration of a company registered under this Act—

- (a) if he is satisfied that the company has ceased to carry on insurance business in Montserrat for more than 1 year;
- (b) if he is satisfied that the company has not commenced business in Montserrat within two years of registration;
- (c) at the request of the company or its liquidator or trustee;
- (d) if he is satisfied that the company obtained registration as a result of any misleading or false representation or in consequence of any incorrect information;
- (e) if the company is insolvent within the meaning of section 46;
- (f) if he is satisfied that there is unreasonable delay in the settlement of claims payable under policies issued by it;

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- (g) if one month has elapsed since the date by which the company was required under this Act to furnish information to the Supervisor and the company has, without reasonable excuse, failed to furnish the information or failed to do so in the manner specified in this Act;
- (h) if any of the re-insurance arrangements of the company is not satisfactory;
- (i) if he is satisfied that the company has contravened or is in contravention of the Regulations made under section 182 of the Proceeds of Crime Act or of such other Acts, Regulations, Guidelines or Codes relating to money laundering or the financing of terrorism as may be prescribed. (*Inserted by Act 6 of 2005*)

(2) Before exercising the power of cancellation under subsection (1) the Supervisor shall notify the company of such intended cancellation giving reasons therefor and the company shall have the right to be heard within any period stipulated by the Supervisor in the notice.

(3) The Supervisor shall, when the registration of a company is cancelled—

- (a) give notice of cancellation to the company; and
- (b) require the company to deliver its certificate of registration to him within twenty eight days of the cancellation or such shorter period as may be specified in the notice.

Reasons for refusal to register

20. The Supervisor shall, where he refuses to register a company or where he cancels the registration of a company, after the refusal or the cancellation within fourteen days notify the company in writing of his reasons for so doing and of its right of appeal under section 202.

Effect of cancellation of registration

21. (1) Where the registration of a company is cancelled the company shall not, after the date on which it was notified of the cancellation, enter into any new contract of insurance in Montserrat.

(2) For the purpose of subsection (1) a company shall be treated as having entered into a new contract of insurance where a contract of insurance entered into prior to the date of the notification under section 19 is renewed or varied after that date.

(3) Nothing in this section shall be construed as relieving an insurance company, the registration of which has been cancelled under this Act or any other Act, of the obligation to maintain the deposit required to be made under section 22 and the insurance funds required to be maintained under section 29.

(4) A company which contravenes subsection (1) is guilty of an offence.

Deposits

Amount of deposits

²22. (1) No insurer shall be registered under this Act to carry on and may not carry on any class of insurance business unless the appropriate amount specified in subsection (2) has been deposited with the Supervisor.

(2) Where—

- (a) a foreign company carries on or intends to carry on long-term insurance business the deposit shall be \$100,000;
- (b) a foreign company carries on or intends to carry on motor vehicle insurance business, the deposit shall be either \$100,000 or an amount equal to 40% of the premium income net of re-insurance premium in respect of motor vehicle insurance business transacted in Montserrat during the financial year last preceding the date of deposit, whichever is the greater;
- (c) a local company carries on or intends to carry on insurance business other than long term insurance or motor vehicle insurance business, the deposit shall be either \$25,000 or an amount equal to 40% of its premium income net of re-insurance with respect to motor vehicle insurance transacted in Montserrat during the financial year last preceding the date of deposit whichever is the greater;
- (d) a foreign company carries on or intends to carry on insurance business other than long-term insurance or motor vehicle insurance business, the deposit shall be \$50,000 or an amount equal to 40% of its premium income net of re-insurance premium with respect to its insurance business other than long-term insurance or motor vehicle insurance business transacted in Montserrat during the financial year last preceding the date of deposit, whichever is the greater.

(3) At the end of each subsequent financial year a company who made a deposit required to be made under subsection (2) shall, where necessary deposit or be refunded an amount equal to the difference between the last preceding deposit and the new amount required to be deposited, subject to the retention of the minimum amount stated in subsection (2).

(4) Every such deposit shall be in the form of cash or prescribed securities or partly in one and partly in the other.

(5) All deposits made by a company under this section shall be deemed to form part of the assets of the insurer and all interest accruing on any securities deposited under this section shall be paid to the depositor concerned.

² Cuna Insurance Mutual Group exempted from Deposit – S.R.O. 27/2005

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(6) For the purposes of this Act, the several securities listed in the Second Schedule shall be “**prescribed securities**”.

Variation of form of deposits

23. The Supervisor may from time to time by notice in writing require or on application permit any company to vary the form of its deposit with the Supervisor.

Failure to make deposits

24. Any company which fails to comply with sections 22 and 29 shall be guilty of an offence and liable on summary conviction to a fine of \$10,000, and in addition to any other punishment, shall be liable to have its certificate cancelled by the Supervisor.

Release of deposits

25. (1) When a company has ceased to transact business and has given notice to that effect to the Supervisor or where the registration of a company has been cancelled, the deposits made under section 22 shall be retained by the Supervisor and shall not be delivered to the insurer until all the outstanding risks of the company have been provided for or have been surrendered to the satisfaction of the Supervisor.

(2) Upon making application for the release of its deposits, a company shall file with the Supervisor in respect of all policies issued locally, a list of all policy-holders who have not been provided for, or who have not surrendered their policies, and the company shall at the same time publish, and continue the publication at least once a week for six consecutive weeks in the *Gazette* and in at least one newspaper circulating in Montserrat and approved by the Supervisor, a notice that it will apply to the Supervisor for the release of its deposits on a certain day not less than three months after the date on which the notice is first published in the *Gazette* and calling upon the policy-holders opposing such release to file their opposition with the Supervisor on or before the day so specified.

(3) After the day so specified in the said notice, if the Supervisor is satisfied that the deposits of the company are substantially in excess of the requirements under this Act governing the same in respect of continuing policy-holders, he may, from time to time, release to the insurer such portion of the excess as he thinks proper in the circumstances, and shall continue to hold the remainder of the deposits for the protection of the continuing policy-holders as is provided by this Act, and thereafter from time to time as such policies lapse or proof is adduced to the satisfaction of the Supervisor that they have been satisfied, further amounts may be released on the authority aforesaid.

(4) Notwithstanding this section if a company is in liquidation or is under judicial management, the deposits or a part thereof may, on an order of the court having jurisdiction under this Act, be released by the Supervisor to the liquidator or Judicial Manager:

Provided that, the liquidator or Judicial Manager shall first satisfy in full the claims of policy-holders before making any other payment

Refund of deposits

26. Notwithstanding section 25, where the registration of a company that has not commenced to carry on business in Montserrat is cancelled in pursuance of this Act, the Supervisor shall refund and deliver to the company any monies or securities, or both, deposited by him in pursuance of section 22.

Deposits to be increased

27. (1) Where the Supervisor is satisfied that by reason of depreciation in the value of securities or for any other cause the value of monies and prescribed securities deposited by or on behalf of a company falls short of the value required by this Act, he shall, by notice in writing, require within a period not exceeding three months, the company to deposit with him monies or approved securities or both to the value deemed by him to be sufficient to bring the amount of the deposit to the value required.

(2) A notice under subsection (1) shall not be issued until the Supervisor has given an opportunity to the insurer to be heard in connection with the matter.

Lost securities

28. If any monies or securities held on, or as part of, any deposit required to be made by a company under this Act are, while so deposited, lost, stolen, damaged or destroyed the injury occasioned to all persons interested in such monies or securities shall be made good out of monies to be appropriated by Legislative Assembly for the purpose. (*Amended by Act 9 of 2011*)

Insurance Funds

Establishment of insurance funds

29. (1) Notwithstanding section 22, every company shall, in respect of each class of insurance business being transacted, establish an insurance fund equal to its liability and contingency reserves in respect of policies in Montserrat in that class of business as established by the revenue account of the company, less the amounts held on deposit with the Supervisor.

(2) Within four months of the end of each financial year a company shall place in trust the assets of its long-term insurance fund and of its motor vehicle insurance fund, as the case may be.

Restriction on the use of assets in a fund

30. (1) The assets representing the long-term insurance fund or the motor vehicle insurance fund shall not be applied directly or indirectly to any class of

insurance business other than that in respect of which the fund was established and is maintained.

(2) Where the value of the assets in an insurance fund exceeds the amount of the liabilities attributable to the classes of insurance business referred to in subsection 29(2) the trustee, may, with the approval of the Supervisor, release the assets held in excess of the requirement of the fund.

(3) Nothing in subsection (1) shall be construed as precluding a company from exchanging at fair market value, assets representing each insurance fund for other assets belonging to the insurer.

(4) No company incorporated in Montserrat carrying on long-term insurance business or motor vehicle insurance business shall declare a dividend at any time when the value of the assets of a long-term insurance fund or a motor vehicle insurance fund, as the case may be, is less than the liabilities attributable to such business.

Creating a trust

31. (1) A trust referred to in section 29(2) shall be created by trust deed the contents and the trustees of which shall be approved by the Supervisor before the trust is created.

(2) The Supervisor may, for the purpose of this section, allow the assets required to be placed in trust to be held by a bank in Montserrat or a financial institution approved by the Supervisor to the order of or on behalf of the Supervisor and such assets shall be deemed to be placed in trust and the bank or financial institution shall be deemed to be a trustee.

Restrictions on trustee

32. (1) A trustee may not deal with any assets held in trust by him without the prior general or specific approval of the Supervisor.

(2) A trustee shall, as required by the Supervisor, submit a list of the assets held in trust pursuant to section 31.

(3) A trustee who contravenes subsection (1) shall be under the same liability as if the appropriate policy-holders had been the beneficiaries of the trust.

Maintaining particulars of fund

33. (1) Every company transacting more than one class of insurance business shall maintain such records as are necessary for the purpose of identifying the assets representing each insurance fund.

(2) A company shall, within four months of the expiration of each financial year, furnish to the Supervisor a statement showing particulars of—

- (a) the liabilities in respect of each fund; and
- (b) the assets comprising each fund.

Investment of assets of fund

34. (1) The assets of an insurance fund shall be invested only in the securities specified in the Fourth Schedule.

(2) The Governor acting on the advice of Cabinet may, from time to time, by Order published in the *Gazette* amend the Fourth Schedule.

(Amended by Act 9 of 2011)

Accounting Requirements

Company to keep records

35. (1) Every company shall keep at its head office or at the office of its principal representative in Montserrat, as the case may be, such books, vouchers, records, receipts and other documents as may be necessary to enable it to prepare for transmission to the Supervisor a statement of the insurance business carried on by it in Montserrat.

(2) The Supervisor may request in writing a company to furnish such statement referred to in subsection (1) and it shall be in such form as the Supervisor may require.

Information in order to ascertain ability of company to meet obligations

36. (1) The Supervisor may require any company registered under this Act or the director, manager, auditor, actuary or secretary thereof to furnish him, within such time as he may specify, with such information as may be necessary to ascertain the ability of the company to meet its obligations under policies issued by it.

(2) A company or any director, manager, auditor, actuary or secretary thereof who without reasonable excuse fails to comply with the requirements of subsection (1) is guilty of an offence.

Company to keep separate accounts

37. (1) A company which carries on besides insurance any other business shall keep separate accounts in respect of its insurance business.

(2) A company which carries on general insurance business in addition to its long-term insurance business, shall keep separate accounts in respect of its long-term insurance business.

Annual accounts

38. (1) Subject to subsection (3) a company shall, within four months of each financial year, or within such extended period not exceeding two months as the Supervisor may allow, submit to the Supervisor three copies of—

- (a) a balance sheet showing the financial position of all insurance business of the company at the close of that year;
- (b) a profit and loss account in respect of all its insurance business in that year;
- (c) separate revenue accounts in respect of each class of insurance business carried on by it;
- (d) an analysis of long-term insurance policies in force at the end of that year; and
- (e) such other documents and information as may be required by the Supervisor.

(2) A company shall furnish the Supervisor with a copy of any report on the affairs of the insurer submitted to the policy-holders or shareholders of the insurer in respect of the financial year to which those documents relate.

(3) All the documents required to be furnished under subsection (1) shall separately provide information on the world wide business of the company as well as the business in Montserrat, and such documents shall be prepared in such form as may be prescribed.

(4) A company incorporated outside of Montserrat carrying on business in Montserrat shall submit to the Supervisor a copy of the statement of accounts submitted to the regulatory authority in its country of incorporation.

(5) If, in the opinion of the Supervisor, a document furnished by a company under subsection (1) is incorrect or incomplete or is not prepared in accordance with this Act, he may, by notice in writing, call upon the company to amend the document or to furnish a correct document, as the case may be.

(6) If a company fails to comply with a notice referred to in subsection (5) to the satisfaction of the Supervisor, the Supervisor may himself amend the document in question, giving the company particulars of the amendments, or reject the document.

(7) A document amended by the Supervisor or by a company under this section shall be treated as having been submitted to the Supervisor in its amended form.

(8) If a document has been rejected by the Supervisor under subsection (6) the company shall be treated as having failed to comply with subsection (1) in relation to that document, unless it has furnished within the time specified another document in accordance with the directions of the Supervisor.

(9) A company which fails to submit any account, statement or other document required under this section, shall pay a fee of \$200 for every day that the account, financial statement or other document remains not submitted after the due date or the date extended by the Supervisor, and such fee shall be payable by the company on such date as may be fixed by the Supervisor and if not paid the company is guilty of an offence and liable on summary conviction to a fine of \$40,000 together with any fee incurred for not submitting the

statements or other documents on the due date or on the date extended by the Supervisor.

(10) A company shall, at the request of a policy-holder make available to that policy-holder a copy of the relevant revenue account, profit and loss account and balance sheet prepared by the company under subsection (1) in respect of its last preceding financial year.

(11) The documents required to be furnished under subsection (1) shall be certified by an independent auditor, and the secretary or the principal representative and a director of the company, and if long-term insurance business, by the actuary of the company.

Actuarial reports

39. (1) Every company carrying on long-term insurance business shall, every three years or at such shorter intervals as the company notifies the Supervisor to be the intervals adopted by it for the purposes of this section—

(a) cause its actuary to make an investigation into its financial condition including a valuation of its liabilities in respect of every class of long-term insurance business and to furnish the Supervisor with a report of the result of the investigation; and

(b) cause an abstract of the report of the actuary and a statement of its long-term insurance business to be prepared.

(2) A valuation balance sheet shall be annexed to every abstract prepared under this section.

(3) The basis of valuation adopted shall be such as to place a proper value on the liabilities, having regard to the average rate of interest from investments and to expenses of management, including commissions, and shall be such as to ensure that no policy shall be treated as an asset.

Group Accounts

40. Where two or more insurance companies, that operate as separate entities that can be wound up in accordance with the law under which they are incorporated, are associated together in a group, then, in addition to the separate accounts required by section 37, the parent company of the group shall submit, at the end of its financial year—

(a) a consolidated balance-sheet showing at the close of that year the financial position as a group of the parent company and all its subsidiary companies;

(b) a consolidated profit and loss account showing the profit or loss as a group of the parent company and all its subsidiary companies during that year; and

(c) such other documents as may be prescribed, and the balance-sheet and profit and loss account shall bear a certificate by an auditor approved by the Supervisor as to whether in his opinion

it gives a true and fair view of the financial position as a group at the close of the year or, as the case may be, of the profit and loss as a group during that year, of the parent company and all its subsidiary companies.

Appreciation and depreciation of assets

41. Where a company treats any asset as having appreciated or depreciated in value, the company shall regard the amount of the appreciation or depreciation as an item of income or expenditure as the case may be.

Supervisor may request appraisal of property of company

42. (1) Where on perusal of any information furnished to the Supervisor under this Act it appears—

- (a) that the value placed by the company on any real (immoveable) property owned by it in Montserrat is too great; or
- (b) that the property is not adequate security for any loan secured by mortgage on such property and the interest thereon,

the Supervisor may request the company to have the real (immoveable) property appraised by a valuer approved by him, and failing compliance with such request, the Supervisor may cause an appraisal of the real (immoveable) property to be done at the expense of the company.

(2) Where the appraised value of the real (immoveable) property of a company is substantially less than the value disclosed in the information furnished pursuant to section 38(1), the Supervisor may, in order to ascertain the ability of the company to meet its obligations, substitute the appraised value for the value disclosed.

(3) Where the appraised value of the real (immoveable) property of a company is not adequate security for a loan secured by mortgage on such property and the interest thereon, the Supervisor may write off from the loan and the interest a sum sufficient to reduce them to such amount as may be fairly realisable from the sale of the real property; but the reduced sum shall in no case exceed the appraised value of such property.

Audit

43. (1) The accounts of every company shall be audited annually by its auditors, and every revenue account and balance sheet required to be prepared by the company under section 38(1) shall be accompanied by a report of the auditors addressed to the Supervisor stating whether in their opinion—

- (a) the accounts have been prepared in accordance with this Act;
- (b) the revenue account and the profit and loss account present fairly the results of the company's operations for the financial period to which they relate;

- (c) the balance sheet presents fairly the state of the company's affairs at the end of the financial period to which it relates;
- (d) adequate records of account have been maintained by the company and are reasonably up to date;
- (e) the reserves relating to unexpired policies have been calculated in accordance with section 168; and
- (f) the provisions regarding the settlement of outstanding claims are adequate, having regard to the latest estimated costs of settlement of such claims.

(2) Subsection (1)(e) and (f) shall apply only to a company carrying on general insurance business in Montserrat.

(3) Where the auditors, for the purpose of exercising the powers conferred on them by subsection (1)—

- (a) are unable to obtain all the information they require; or
- (b) are not completely satisfied with the information contained in the accounts on which they are reporting,

they shall in their report specify the matters in respect of which they were unable to obtain all the information or matters about which they were not completely satisfied.

Appointment of auditors

44. No person may be appointed auditor of a company incorporated in Montserrat unless—

- (a) he is a member of an Institute of Chartered Accountants or such other professional accounting association as may be prescribed; or
- (b) (i) the company has served on the Supervisor written notice of its intention to make such appointment; and
(ii) the Supervisor has failed to serve on the company a written notice of objection to the appointment within one month of the date on which the company served notice of the appointment on him.

Prohibitions

45. (1) A company shall not after the commencement of this Act directly or indirectly—

- (a) acquire or deal in its own shares or lend money or make advances on the security of its own shares;
- (b) lend any of its funds to a director or an officer of the company or to the spouse or a child of a director or an officer except on the security of the company's own policies or on some other adequate security;

- (c) lend any of its funds to a company where more than one-half of the shares of that other company is owned either jointly or severally by a director or an officer of the company or by the spouse or a child of a director or an officer or by any combination of such persons;
- (d) grant unsecured credit to any person;
- (e) pay any dividend on its shares until all its capitalised expenditure (including preliminary expenses, organisational expenses, share-selling commission and brokerage) not represented by tangible assets, has been completely written off; and
- (f) enter into any guarantee or provide any security in connection with a loan by any other person to any such person or company as is mentioned in paragraph (b) or (c).

(2) A company which contravenes this section shall be guilty of an offence.

Solvency and Intervention

Solvency

46. (1) A company shall be deemed to be insolvent—

- (a) in the case of a company carrying on only long-term insurance business, if the value of its liabilities exceeds its assets;
- (b) in the case of a company carrying on only general insurance business, if the excess of assets over liabilities is less than the greater of the following amounts, namely—
 - (i) \$5,000; or
 - (ii) 20% of its premium income in respect of its general insurance business in its last preceding financial year;
- (c) in the case of a company carrying on both long-term insurance business and general insurance business, if the excess of its total assets over its total liabilities is less than the amount specified in subparagraph (b).

(2) For the purpose of subsection (1)—

- (a) in computing the amount of the liabilities of a company, all contingent and prospective liabilities of the company in respect of policies including adequate provision for unexpired policies and outstanding claims, but not liabilities in respect of share capital, shall be taken into account; and
- (b) the premium income of a company in any financial year shall be assessed as the net amount, after deduction of any premiums

paid by the company for re-insurance in that year in respect of all general insurance business carried on by it.

- (c) assets have been valued in accordance with any rules prescribed for the valuation of assets and only admissible assets shall be included in determining the solvency of a company.

Power to request information

47. (1) The Supervisor may require a company registered under this Act to carry on insurance business—

- (a) to furnish him at such time and in such manner as he may determine with such information in connection with its insurance business as he may specify;
- (b) to produce at such time and place as he may determine such securities, books, accounts papers, documents or statistics appearing to be in connection with its insurance business as he may specify; or
- (c) to produce to any person authorised in writing by the Supervisor such books or papers as the Supervisor may specify.

(2) A person who is authorised by the Supervisor pursuant to subsection (1)(c) shall, where requested to do so, produce evidence of his authority to the company.

(3) The power conferred under subsection (1) on the Supervisor or on a person authorised by him may be exercised even where the books, papers, or other documents are in the possession of another person, except that where the person who is in possession claims a lien on the books, papers or other documents the production shall be without prejudice to the lien.

(4) The power conferred under subsection (1) on the Supervisor or on a person authorised by him includes a power—

- (a) to take copies of or extracts from the books, papers or other documents which have been produced; and
- (b) to require the company or the person in whose possession the books, papers or other documents were, or any other person who is or was a director or auditor of the company or who is or was employed by the company to explain any of the contents thereof; or
- (c) where the books, papers or other documents have not been produced, to require the company which or the person who was requested to produce them to give reasons for failing to do so.

Entry and search of premises

48. (1) If a Magistrate is satisfied on information on oath laid by the Supervisor or by any person authorised in that behalf by the Supervisor that there are reasonable grounds for suspecting that there are on any premises any

securities, books, accounts, documents or statistics of which production has been required by virtue of section 35 and which have not been produced in compliance with that requirement, the Magistrate may issue a warrant authorising any member of the police service, together with any other persons named in the warrant to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises and seize and remove any securities, books, accounts, documents or statistics as aforesaid, or to take, in relation to any securities, books, accounts, documents or statistics so appearing, any other steps that may appear necessary for preserving them and preventing interference with them. (*Amended by Act 9 of 2011*)

(2) Every warrant issued under this section shall continue in force until the expiration of one month after the date on which it is issued.

(3) Any securities, books, accounts, documents or statistics that have been seized under this section may be retained for a period of three months or, if within that period criminal proceedings have been brought in respect of the seizure, until the conclusion of those proceedings.

(4) A person who obstructs the exercise of a right of entry or search conferred by virtue of a warrant issued under this section, or obstructs the exercise of a right of seizure so conferred is guilty of an offence.

Power of intervention

49. (1) Subject to subsection (2) and to section 51, the Supervisor may at any time intervene in the affairs of a company registered under this Act to carry on insurance business.

(2) The power of intervention conferred by subsection (1) shall be exercisable where the Supervisor is satisfied that—

- (a) the exercise of the power is essential in order to protect policy-holders or potential policy-holders of the company against the risk of the company's inability to meet its liabilities or, where a company is carrying on long-term insurance business, to fulfil the reasonable expectations of policy-holders or potential policy-holders;
- (b) the company has failed to submit financial returns within six months of the end of its financial year;
- (c) the company has failed to satisfy any obligation imposed on it by this Act;
- (d) the company has furnished misleading or inaccurate information to the Supervisor under or for the purposes of this Act;
- (e) adequate arrangements have not been or will not be made for the re-insurance of risks against which persons are insured by

the insurer and in respect of which he considers such arrangements to be necessary;

- (f) an application for registration would be refused if such an application were made at the time of the proposed intervention;
- (g) a company is deemed to be insolvent in accordance with section 46; (*Amended by Act 6 of 2005*)
- (h) after liability has been established there has been unreasonable delay in the settlement of claims under policies issued by the company; or (*Amended by Act 6 of 2005*)
- (i) the company has contravened or is in contravention of the Regulations made under section 182 of the Proceeds of Crime Act or of such other Acts, Regulations, Guidelines or Codes relating to money laundering or the financing of terrorism as may be prescribed. (*Inserted by Act 6 of 2005*)

Notice of intervention

50. The Supervisor shall, before exercising the power conferred on him by section 49, serve on the company a written notice that he is exercising the power of intervention and the grounds on which it is being exercised.

Supervisor may impose requirements

51. (1) In exercising the power of intervention, the Supervisor may require the company by instrument in writing to perform any or all of the following—

- (a) to refrain from the date specified in the instrument—
 - (i) from effecting any contracts of insurance either generally or with respect to a specified class whether or not the effecting of the contract falls within a class of insurance business which the company is authorised to carry on; or
 - (ii) from varying any existing contracts;
- (b) to limit to a specified amount the aggregate amount of premiums to be written by the company whether the aggregate relates to premiums to be received by the company or to the aggregate after deducting any premiums payable by the company for re-insuring the liabilities in consideration of which premiums are to be received;
- (c) to refrain from making investments of a specified class or description;
- (d) to realise, before the expiration of the period specified in the instrument, the whole or a specified portion of investments of a specified class or description held by the company;

- (e) to prepare and submit at earlier dates and with greater frequency the documents required to be prepared and furnished under section 38;
- (f) to have an actuary or any other person appointed by the Supervisor investigate the financial position of the company in respect of its insurance business or any part thereof and to submit to the Supervisor a report of the investigation on or before a specified date;
- (g) to take such action as appears to him to be necessary for the purpose of protecting policy-holders or potential policy-holders of the company against the risk that the company is or is likely to be unable to meet its liabilities or, in the case of an insurer carrying on long-term insurance business, to fulfil the reasonable expectations of policy-holders or potential policy-holders;
- (h) to take such action as appears to him necessary for the proper administration of the Act.

(2) The Supervisor may request any company within five years of its registration under this Act, to comply with any or all of the requirements of subsection (1) whether or not the power to intervene is exercisable under section 49(2).

(3) The Supervisor may, where he considers it desirable so to do rescind or vary any requirement imposed by him on a company pursuant to subsection (1).

(4) Notice of the imposition of a requirement or the rescission or variation thereof may be published in the *Gazette* and in a newspaper circulating in Montserrat.

(5) No direction issued to a company under this section shall remain in force for more than twelve months, but nothing in this subsection prevents the Supervisor from issuing any further directions to the company.

Guaranteed companies

52. (1) Where on the application of an insurance company carrying on general business, the Supervisor is satisfied that the company is guaranteed by another insurance company satisfying the requirements of a guarantor set out in subsection (2), the Supervisor may direct in writing that, subject to such conditions as may be specified, section 46 shall not apply to the first-mentioned insurance company.

(2) For the purposes of this section a guarantor shall be—

- (a) a body corporate that which complies with such of the requirements of section 12 as are applicable thereto and the value of whose assets exceeds the value of its liabilities by the amount required by section 46;

- (b) a member of an association of underwriters approved by the Supervisor;
- (c) an insurance company which, being itself guaranteed by another insurance company, is the subject of a directive under this section,

and, for the purposes of this section, an insurance company shall be deemed to be guaranteed by another insurance company if, but only if, all its liabilities to policy-holders in respect of insurance business of any class specified in the First Schedule are re-insured with or guaranteed by the other insurance company.

(3) Any directive made under this section may be revoked by the Supervisor—

- (a) if he ceases to be satisfied of the matters on the basis of which the directive was made; or
- (b) if he is satisfied that any condition in the directive has not been complied with.

Judicial Management and Winding-up

Application for judicial management

53. (1) The Supervisor may apply to the Court for an Order that a company or any part of the business of a company be placed under judicial management where, after exercising his power of intervention under section 49(1), he is of the opinion that it is necessary or proper to apply for such an Order.

(2) A company may after giving the Supervisor one month's notice in writing of its intention so to do, apply to the Court for an Order that it or any part of its business be placed under judicial management.

(3) The company and the Supervisor are both entitled to be heard on any application made to the Court for an Order under this section.

(4) Where an application is made under this section for an Order in respect of any company, all actions and the execution of all writs, summonses and other processes against the company shall, by virtue of this section, be stayed and shall not be proceeded with, without the prior leave of the Court unless the Court directs otherwise.

Order for judicial management.

54. (1) An Order for the judicial management of a company or any part of the business of a company shall be subject to this section and sections 55 to 60.

(2) The Court shall appoint a Judicial Manager who shall receive such remuneration from the company as it directs and it may at any time cancel the appointment and appoint some other person as the Judicial Manager.

(3) The Court may, if it thinks fit, charge the remuneration, charges and expenses of the Judicial Manager on the property of the company in such order of priority, in relation to any existing charges on that property, as it thinks fit.

(4) Where the Court by Order directs that a company or any part of the business of a company be placed under judicial management, the management of the 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, who shall have complete control of the management of the company notwithstanding any appointment of a receiver prior or subsequent to the appointment of the Judicial Manager.

(5) A person who is appointed Judicial Manager shall not, except with the leave of the Court, issue any new policies except paid-up policies.

(6) The Court shall 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 Court and may at any time apply to the 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 the Supervisor such information as the Supervisor may, from time to time, require and shall report to the Supervisor whenever he intends to apply to the Court for instructions and shall, at the same time furnish the Supervisor with particulars of the application.

(9) The Supervisor is entitled to be heard on any application made pursuant to subsection (7) and may himself make an application to the Court to be heard on any matter relating to the conduct of the judicial management.

Report of Judicial Manager

55. (1) The Judicial Manager shall conduct the management with the greatest economy compatible with efficiency, and shall as soon as possible after his appointment, file with the Court a report stating which of the following courses is in the circumstances, in his opinion most advantageous to the general interests of the policy-holders of the company—

- (a) the transfer of the business of the company to some other company in pursuance of a scheme to be prepared in accordance with this Act (whether the policies of the business continue for the original sums insured, with the addition of bonuses that are attached to the policies, or for reduced amounts);
- (b) the carrying on of its business by the company (whether the policies of the business continue for the original sums insured, with the addition of bonuses that attach to the policies, or for reduced amounts);

- (c) the winding up of the company or of any part of the business of the company; or
 - (d) the dealing with part of the business of the 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 of it to the Supervisor and make a written application to the Court for an Order to give effect to the course of action stated in the report.
- (3) The report or a copy of it shall be open for inspection by any person during official hours at the registry of the Court in which the report is filed or at such other place as the Supervisor determines.

Decision of court on report of Judicial Manager

56. (1) The Court shall on the hearing of an application made under section 55(2)—

- (a) after hearing the Supervisor, the Judicial Manager, and any other person who in the opinion of the 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 policy-holders of the company.
- (2) The Order of the Court shall be binding on all persons, and shall have effect notwithstanding anything in the instruments constituting the company or in the articles of incorporation or other rules of the company.

Transfer of business to another company

57. Where an Order is made by the Court for the transfer of the business of a company to some other company, the Judicial Manager shall prepare a scheme for the transfer in accordance with this Act and until the scheme is confirmed by the Court in accordance with this Act, the management of the company shall continue to be vested in the Judicial Manager.

Cancellation of contracts or agreements

58. The Court may, either of its own motion or on the application of the Judicial Manager or Supervisor, at any time while an Order made under section 54 is in force with respect to a company, after hearing all persons who, in the opinion of the Court, are entitled to be heard, cancel or vary, either unconditionally or subject to such conditions as the Court thinks just, any contract or agreement other than a policy between the company and any other person, which the Court is satisfied is detrimental to the interests of the policy-holders.

Indemnity of Judicial Manager

59. 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 Order

60. (1) The Judicial Manager or any interested person may at any time apply to the Court for the cancellation of an Order made by the Court under section 56(1).

(2) Where an application is made under subsection (1) the 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 or other governing body of the company.

Court may order winding up

61. (1) The Court may order the winding up of a company in accordance with such legislation for the time being in force with respect to companies, and that legislation shall apply accordingly, subject to this section, sections 62 to 68 and to the modification that the company may be ordered to be wound up—

- (a)* on the petition of ten or more policy-holders owning policies of an aggregate sum assured of not less than \$10,000,000; or
- (b)* on the petition of the Supervisor.

(2) A petition referred to in subsection (1) shall not be presented except by leave of the Court, and such leave shall not be granted unless—

- (a)* a *prima facie* case has been established to the satisfaction of the Court; and
- (b)* until security for costs for such amount as the Court may think reasonable has been given.

(3) The Supervisor shall be a party to any proceedings relating to the winding up of a company and the liquidator in such a winding up shall give the Supervisor such information about the affairs of the company as he may, from time to time, require.

(4) Reference in this section to a company shall extend also to a company which has ceased to be registered under this Act, but remains under any liability in respect of local policies.

Procedure on winding up

62. (1) An Order of the Court for the winding up of a company shall be subject to sections 63 to 68.

(2) On making an Order for the winding up of a company, the Court shall appoint a liquidator.

(3) Subject to subsections (4) and (6), the liquidator shall act under the control of the Court and may apply to the 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.

(4) The liquidator may, in the case of a company 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 insurance company, whether in existence or being formed for that purpose.

(5) For the purpose of exercising his functions under subsection (4), 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 contracts of insurance.

(6) Where the liquidator is satisfied that the interests of the creditors in respect of liabilities of the company attributable to its long-term insurance business require the appointment of a special manager, he may apply to the Court for such an appointment.

(7) The Court may on an application under subsection (6), appoint a special manager to act during such time and with such powers as the Court may direct.

(8) The Court shall give to the liquidator such directions as may appear necessary or desirable for the purpose of the winding up.

(9) The liquidator shall furnish the Supervisor with such information as the Supervisor may from time to time require and shall report to him whenever he intends to apply to the Court for instructions and particulars of the application shall be furnished simultaneously with the report.

(10) The Supervisor is entitled to be heard on an application under subsection (9) and may himself make an application to the Court to be heard on any matter relating to the conduct of the winding up.

(11) A liquidator or a special manager, or both, shall receive such remuneration as the Court directs and the Court may, at any time, cancel the appointment of a liquidator or a special manager or both and appoint some other person as such.

Value of liability under policies

63. (1) The liquidator shall ascertain, in such manner and on such basis as the Court may approve, the value of the liability of the company to every person who, according to the books of the company, is entitled to or is interested in a policy issued by the company 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, within fourteen days of receipt of the notice, he gives notice of his intention to dispute the value.

Application of certain assets

64. (1) The value of the liabilities and of the assets of an insurance fund of a company shall, on the winding up of the company, be ascertained separately from the value of any other liabilities or from the value of any other assets of the company, and no assets of the insurance fund shall be applied to the discharge of any liabilities other than those in respect of that fund except in so far as those assets exceed the liabilities of that insurance fund.

(2) Where, on the winding up of a company the liabilities and assets of an insurance fund of the company have been ascertained and there is a surplus of the assets over the liabilities, there shall be added to the liabilities of that insurance fund an amount equal to the proportion of the surplus equivalent to the proportion of the profits, if any, in the class of insurance business to which the insurance fund relates, which was allocated to shareholders and policyholders during the ten years immediately preceding the commencement of the winding up.

(3) The assets of an insurance fund referred to in subsection (2) shall be deemed to exceed the liabilities of that fund only in so far as the assets exceed the liabilities after the addition referred to in that subsection, but where it appears to the Court that by reason of special circumstances it would be inequitable for the amount specified to be added to the liabilities of the insurance fund, the amount to be added shall be such amount as the Court directs.

Reduction of contracts as alternative to winding up

65. In the case of an insurance company that has been proved to be unable to pay its debts, the Court may, if it thinks fit, reduce the amounts due under the contracts of the company upon such terms and subject to such conditions as the Court thinks just, in place of making a winding up order.

Liability of directors and officers

66. (1) Where in the course of the winding up of a company, the Court is satisfied that the amount of an insurance fund has been diminished by reason of any contravention of this Act, every person who at the time of the contravention was a director, the principal representative or an officer of the company, shall be deemed in respect of the contravention to have been guilty of misfeasance unless he proves that the contravention occurred without his knowledge and that he used all due diligence to prevent the occurrence.

(2) The Court may assess the sum by which the amount of the insurance fund has been diminished by reason of the misfeasance and may order any person found guilty of misfeasance to contribute to the insurance fund the whole or any part of that sum by way of compensation.

Application of deposits

67. On the winding-up of a company the Supervisor shall pay to the liquidator all moneys and securities held as a deposit in respect of that company and the liquidator shall, in accordance with this Act, apply such moneys and securities towards discharging the liabilities of the company in respect of policies issued by it.

Winding up part of business

68. (1) Where the Court makes an Order for the winding up of part of the business of a company a scheme for the purpose of the winding up shall be prepared and submitted for the confirmation of the Court—

- (a) by the person who made the application, where an Order is made after the hearing of an application under section 62; or
 - (b) by the Judicial Manager appointed in respect of the company, where the Order is made pursuant to section 56.
- (2)** Any scheme prepared under this section shall provide—
- (a) for the allocation and distribution of the assets and liabilities of the company 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 policy-holders in respect of their policies; and
 - (c) for the manner in which any part of the business of the company may be wound up,

and may contain such provisions as are expedient for giving effect to the scheme.

(3) Sections 62 to 67 shall apply with such adaptations as are necessary, on a winding up in accordance with a scheme under this section.

PART 4

ASSOCIATION OF UNDERWRITERS

Registration of association of underwriters

69. (1) No association of underwriters may carry on insurance business in Montserrat unless it is registered in accordance with this Part, but an association which was carrying on insurance business in Montserrat before the commencement of this Act shall be deemed to have been so registered.

(2) No association of underwriters which is constituted outside Montserrat may be registered under this Act unless there are one or more persons resident in Montserrat who are authorised to accept on behalf of the

members of the association service of process in any legal proceedings, being persons nominated for that purpose by the association.

Application for registration of association of underwriters

70. An application by an association of underwriters for registration shall be made to the Supervisor and shall be accompanied by evidence of payment of the prescribed fee and the following documents and information—

- (a) a copy of its statute or deed of association;
- (b) in the case of an association constituted outside Montserrat, a certificate that—
 - (i) it has been established for at least five years,
 - (ii) the laws of the country in which it is constituted provides for the regulation of an association of underwriters, and
 - (iii) the association is operating in accordance with that law;
- (c) the names of the members of the associations of underwriter;
- (d) the name and address of every person who is nominated pursuant to section 69(2);
- (e) the name and address of the insurance brokers through whom insurance may be placed as brokers in Montserrat; and
- (f) such further information as the Supervisor may require.

Conditions for registration

71. (1) Where the Supervisor, after appropriate enquiry or after the production of documentary evidence, or both, is satisfied in respect of the applicant association of underwriters that—

- (a) the relevant requirements of this Part have been complied with;
- (b) the association is likely to be able to comply with such of the provisions of this Act as would be applicable to it;
- (c) being an association of underwriters constituted outside Montserrat;
 - (i) it has made or has caused to be made with the Supervisor the deposit required by section 72;
 - (ii) there are one or more persons resident in Montserrat who are authorised to accept on behalf of the members of the association service of process in any legal proceedings, being persons authorised for that purpose by the association;
- (d) the persons who manage the association of underwriters are of good character and are otherwise fit and proper persons to manage the association; and

(e) the staff, the applicant employs is, in relation to any class of insurance business in respect of which the application is made, capable of carrying on that business in an efficient manner, the Supervisor shall, either unconditionally or subject to such conditions as he may specify, register the association of underwriters and notify the applicant accordingly.

(2) Where the Supervisor is not satisfied, in respect of the applicant association of underwriters, as to one or more of the conditions set out in subsection (1), he shall notify the association of underwriters in writing that he proposes to refuse to register it, giving his reasons for so doing, and shall notify it of its right of appeal under section 202.

Deposits by association of underwriters³

72. Subject to this Act, an association of underwriters may not be registered under this Act to carry on, and may not carry on, any class of insurance business unless it has deposited with the Supervisor in cash or in prescribed securities or partly in cash and partly in prescribed securities an amount equal to \$100,000.

Premiums to be held in trust

73. All premiums received by each member of an association of underwriters shall be held in trust in the names of trustees for the payment of the underwriting liabilities attached thereto of each member and the expenses of its insurance business.

Documents to be supplied to Supervisor

74. (1) An association of underwriters registered in accordance with this Part shall within four months of the end of each financial year or within such extended period not exceeding two months as the Supervisor may allow furnish to the Supervisor a statement of receipt and expenditure in Montserrat by its members during the preceding year.

(2) In the case of an association constituted outside Montserrat the following documents shall be submitted—

- (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 responsible Minister or other public authority in the country in which the association is constituted;
- (b) a certificate signed by the Chairman or other Presiding Officer of the association and a certificate by or on behalf of the public authority in the country in which it is constituted, stating whether the association has complied with the requirements of

³ The amount of \$1,000 was inadvertently inserted in 2002 Revised Edition but corrected to \$100,000 by S.R.O. 6/2012

the law for the regulation of associations of underwriters in that country;

- (c) the latest annual list of members and the names of the members of its committee or other governing body and including any change in the particulars specified in section 70;
- (d) such documents and information as the Supervisor may require.

(3) The documents indicated in subsection (2) shall be submitted as soon as possible after the certificate from the public authority in the country in which it is constituted is made available.

(4) In the case of an association constituted within Montserrat the following documents shall be submitted within four months of the end of each financial year, or within such extended period not exceeding two months as the Supervisor may allow—

- (a) an audited statement of its accounts for that year;
- (b) such returns relating to the insurance business carried on by each of the members of the association as the Supervisor may require; and
- (c) such documents and information as the Supervisor may require.

(5) An association which fails to submit the statement required by subsection (1) shall pay a fee of \$200 for every day that the statement remains not submitted after the due date or the date extended by the Supervisor.

Supervisor may prohibit writing new policies

75. (1) The Supervisor may prohibit a registered association of underwriters from writing new policies in any class of insurance business if he is satisfied that it is in the interest of the policy-holders or prospective policy-holders to do so.

(2) Where the Supervisor exercises the power conferred by subsection (1) the Supervisor shall notify the registered association in writing, and shall state the reasons for his decision. The Supervisor shall also notify the association of its right of appeal under section 202.

Cancellation of registration of association

76. (1) The Supervisor may cancel the registration of an association of underwriters—

- (a) if he is not satisfied that the insurance business of its members is being conducted in accordance with sound insurance principles;
- (b) if he is satisfied that the association obtained registration as a result of misleading or false representation or in consequence of any incorrect information;

- (c) if the association has failed to comply with any requirement imposed upon it in accordance with this Part;
- (d) if he is satisfied that the members of the association have not commenced business within one year of registration or have ceased to carry on business within Montserrat; (*Amended by Act 6 of 2005*)
- (e) at the request of the association; or (*Amended by Act 6 of 2005*)
- (f) if he is satisfied that the association has contravened or is in contravention of the Regulations made under section 182 of the Proceeds of Crime Act or of such other Acts, Regulations, Guidelines or Codes relating to money laundering or the financing of terrorism as may be prescribed. (*Inserted by Act 6 of 2005*)

(2) Where the Supervisor cancels the registration of an association, he shall state in writing his reasons for so doing, and shall notify the association of its right of appeal under section 202.

Obligations of association

77. An association of underwriters whose registration has been cancelled in accordance with this Part shall continue to carry on business relating to policies issued by it before the date on which it was notified of such cancellation, unless the Supervisor is satisfied that it has made suitable arrangements for its obligations under those policies to be met.

PART 5

INSURANCE INTERMEDIARIES

Requirement for registration

78. (1) After one year from the commencement of this Act, no person may, in respect of any class of insurance business, carry on or purport to carry on business as or act as an insurance adjuster, insurance agent, insurance broker or sales representative unless that person is registered under this Part.

(2) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for twelve months or to both.

Application for registration

79. (1) An application for registration shall be made to the Supervisor on the prescribed form and shall be accompanied by evidence of payment of the registration fee specified in the Third Schedule and by such documents as may be prescribed or required by the Supervisor.

(2) On receipt of an application the Supervisor may request the applicant to furnish such additional information as the Supervisor may

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consider to be relevant in relation to the application, and the applicant shall comply with any such request.

(3) Where a person wishes to be registered as an insurance agent or as a sales representative, the application shall be endorsed by the registered insurer (in this Part referred to as “**the principal**”) with whom that agent or sales representative is contracted.

Restrictions on Registration

80. (1) No individual may be registered under this Part to carry on business as an insurance intermediary if that person is—

- (a) under the age of eighteen years in the case of a sales representative;
- (b) under the age of twenty one years in the case of an insurance agent, an insurance broker or an insurance adjuster;
- (c) an undischarged bankrupt, unless that individual has been granted leave to carry on such business by the court by which he was adjudged bankrupt; or
- (d) a person who has been found by a court to be of unsound mind or is so certified under the law relating to mental health.

(2) No director or officer of a company carrying on business as an insurance broker may be registered as a sales representative or as an insurance agent, or be a director of an insurance company or of a company carrying on business as an insurance agent or insurance adjuster.

(3) No director, officer or employee of an insurance company may be registered as an insurance broker, or be a director of a company carrying on the business of an insurance broker.

(4) No person registered to carry on business as a sales representative or an insurance agent may be registered to carry on business as an insurance broker or as an insurance adjuster and no person registered to carry on business as an insurance broker may be registered to carry on business as a sales representative or an insurance agent.

(5) No person and no director of a company carrying on business as an insurance adjuster may be registered as a sales representative, an insurance agent or an insurance broker.

(6) No person may be registered as an insurance broker if the name under which the applicant desires to be registered is likely to suggest that the applicant is an insurer.

(7) No person may be registered as an insurance agent if the name under which the applicant desires to be registered is likely to suggest that the applicant is an insurer or an insurance broker.

Conditions for registration

81. (1) Subject to this Part, the Supervisor may either unconditionally or subject to such conditions as he considers necessary, register an applicant as a sales representative or an insurance agent of the company by which he was employed or contracted or as an insurance adjuster or insurance broker in respect of such class of insurance business as may be specified.

(2) The Supervisor may subject to sections 79 and 80 register an applicant as a sales representative, an insurance agent, an insurance broker, or an insurance adjuster, where he is satisfied—

- (a) that the applicant is a person of good character and is otherwise a fit and proper person;
- (b) that the applicant is competent to carry on business as a sales representative, an insurance agent, an insurance broker, or an insurance 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 an insurance broker, that he has such professional indemnity insurance cover as may be prescribed;
- (d) in the case of an applicant who, before the commencement of this Part, was carrying on business in Montserrat as an insurance adjuster, an insurance broker, a sales representative, or an insurance agent for a period of not less than three years, that he carried on such business in an efficient manner;
- (e) that the applicant has complied with any requirement relating to the passing of any examination;
- (f) where the application is for registration to carry on business as an insurance broker, or an insurance agent and the applicant is a body, whether incorporated or not, that having regard to the competence of the person managing 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 the business efficiently in the capacity in which it seeks to be registered.

(3) The Supervisor shall, where he refuses an application for registration under this Part, notify the applicant in writing of his refusal either generally or in respect of a particular class of insurance business and give reasons for his refusal, and notify the applicant of his right of appeal under section 202.

Certificate of Registration

82. (1) The Supervisor shall issue a Certificate of registration (in this Part referred to as “**a Certificate**”) to every person registered under this Part as an insurance agent, insurance broker, sales representative, insurance adjuster, as the case may be.

(2) A Certificate shall—

- (a) be valid for the period not exceeding 1 year stated on the Certificate, and shall be renewable before the expiry of the original certificate.
- (b) state the effective and expiry dates, the category and each class of insurance business in respect of which the person is registered; and
- (c) where the person is registered as an insurance agent or as a sales representative specify the insurance company in respect of which the person is so registered.

(3) Notwithstanding subsection (2), where a person seeks to renew a Certificate or seeks a new Certificate after the expiry of the original certificate, the applicant shall pay an additional registration fee of 5% of the original registration fee for each month or part thereof after the expiry of the original Certificate.

(4) A Certificate shall be *prima facie* evidence that the person named therein has been registered in the capacity stated therein.

(5) A person who displays a Certificate which is not valid, is guilty of an offence and liable on summary conviction to a fine of \$500 and to a further fine of \$50 for each day on which the offence continues after conviction thereof.

Certificate to be produced on request

83. (1) Every person registered under this Part shall produce his Certificate when requested so to do by—

- (a) the Supervisor or any other person authorised by him;
- (b) the insurance company or a person in respect of which or whom he is registered to carry on business as a sales representative, or an insurance agent;
- (c) in the case of an insurance broker or an insurance adjuster, by the insurance company with which he proposes to transact business;
- (d) an actual or a prospective client.

(2) A person who fails to comply with subsection (1) is guilty of an offence.

Intention to cancel registration

84. (1) The Supervisor may, by instrument in writing, notify a person who is registered under this Part that he proposes to cancel the registration of the person in respect of all or any of the classes of insurance business he was registered to carry on.

(2) The power of cancellation conferred on the Supervisor under subsection (1) shall be exercisable where he is satisfied—

- (a) that registration was granted as a result of any misleading or false representation;
- (b) that the person has become an undischarged bankrupt;
- (c) that the person is not carrying on such business in accordance with sound insurance principles and practice;
- (d) that the person has demonstrated that he cannot carry on efficiently the class of insurance business which he is registered to carry on, or in the case of a body, whether incorporate or not that all the persons managing the body or the partners thereof have demonstrated that they cannot carry on efficiently the class of insurance business which they are registered to carry on;
- (e) that the person has repeatedly and unreasonably delayed transmitting moneys received for the account of an insurer or a client to the person entitled thereto;
- (f) that one month has elapsed since the date by which such person was required under this Act to furnish financial statements or other information to the Supervisor and the person has without reasonable excuse failed to do so;
- (g) that the person has pursued a fraudulent or dishonest practice or any other practice which is generally regarded in the insurance business as being undesirable; or (*Amended by Act 6 of 2005*)
- (h) that the person has contravened or is in contravention of the Regulations made under section 182 of the Proceeds of Crime Act or of such other Acts, Regulations, Guidelines or Codes relating to money laundering or the financing of terrorism as may be prescribed. (*Inserted by Act 6 of 2005*)

(3) The Supervisor shall, on notifying a person that he proposes to cancel his registration, inform him of the reason for taking the action contemplated by him, and notify him of his right of appeal under section 202.

(4) The Supervisor shall cancel the registration of a person—

- (a) where the person fails to exercise his right of appeal within the time specified in section 202(1);
- (b) where on an appeal the decision of the Supervisor to cancel the registration is upheld.

(5) Where the Supervisor cancels the registration of a person registered under this Part the person shall forthwith surrender to the Supervisor his Certificate and every copy thereof.

(6) A person who has had his registration cancelled under subsection (2)(f) may apply to the Supervisor for reinstatement of his registration and the

Supervisor may reinstate his registration if he is satisfied that such person has complied with the requirements of this Act.

(7) Section 79 shall apply to reinstatement of registration as it does to registration.

(8) A person who fails to comply with subsection (6) is guilty of an offence and is liable on summary conviction to a fine of \$500 and to a further fine of \$50 for each day on which the offence continues after conviction thereof.

Cancellation of registration

85. The Supervisor may at any time cancel the registration of a person registered under this Part—

- (a) where he is satisfied that the person has not carried on business in Montserrat as an insurance intermediary after 1 year of his being registered to carry on such business or has not carried on such business in Montserrat for a period of more than 1 year;
- (b) where he is satisfied that the person obtained registration as a result of any misleading or false representation;
- (c) in the case of a person registered as an insurance agent or a sales representative, where the Supervisor is satisfied that the registration of the insurance company or the person in respect of which or whom the person was registered to carry on business as an insurance agent or a sales representative has been cancelled or that the contract of the agency or of the sales representative contract has been terminated; or
- (d) where the person requests that his registration be cancelled.

Submission of information

86. (1) Every insurance broker registered under this Act shall within four months of the end of its financial year submit to the Supervisor such information regarding the business placed with insurers as may be prescribed.

(2) Every insurance agent and every insurance broker registered under this Act shall within four months of the end of its financial year submit an analysis of premiums due but not paid to its principal or to each insurer, as the case may be, listing the aging of the sums outstanding.

Notice of termination of agency

87. (1) Where the contract of a registered insurance agent, or a registered sales representative is terminated or amended, notice in writing shall forthwith be given to the Supervisor by the insurance agent or the sales representative as the case may be, and by the principal with whom he is contracted.

(2) A person who fails to comply with this section is guilty of an offence.

Supervisor may request information

88. (1) The Supervisor may request in writing from any person registered under this Part or from the person's employer or principal any information relating to the person's business as an insurance intermediary.

(2) The Supervisor may require any person to produce to himself or to any person designated by him in writing at such time and place as he may determine, such books, papers or other documents in connection with the business as he may specify.

(3) A person who fails to comply with a request or a requirement under this section is guilty of an offence.

Miscellaneous Provisions Relating to Insurance Intermediaries

Agent of the insurer

89. An insurance agent or a sales representative shall for the purpose of receiving any premium for a contract of insurance, be deemed to be the agent of the insurer notwithstanding any conditions or stipulations to the contrary.

Liability for unlawful contracts

90. An insurance agent, an insurance broker or a sales representative 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 Montserrat in the same manner as if such insurance agent, insurance broker or sales representative had been the insurer.

Misleading advertisements

91. (1) No insurer, and no insurance agent, insurance broker, or sales representative 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 subsection (1) is guilty of an offence.

Restriction on compensation to unregistered agents etc.

92. (1) Where, at the date of placing or negotiating insurance a person is not registered as an insurance agent, an insurance broker or a sales representative, no insurance broker, insurance agent, or 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 re-insurance, on lives, property or interests in Montserrat.

(2) A person who fails to comply with this section is guilty of an offence.

Rebating

93. (1) No insurer and no officer, employee or agent of an insurer and no insurance broker, or 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 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, property or interest in Montserrat.

(2) An insurer or any other person who contravenes subsection (1) is guilty of an offence.

Bona fide salaried employees

94. Nothing in sections 92 and 93 shall affect any payment by way of dividend, bonus, profit or savings that is provided for by a policy, or shall be construed so as to prevent an insurer compensating a bona fide salaried employee of its head or branch office or a spouse or child thereof, in respect of insurance issued by the employing insurer upon the life or property of that person or so as to require that the person be licensed as an insurance intermediary under this Part to effect the insurance.

Returns to the Supervisor

95. Every insurer and every insurance agent who has appointed insurance agents or sales representatives, shall make a return to the Supervisor in such form and at such times as he requires, showing all persons, firms, partnerships and companies—

- (a) registered as its insurance agents or sales representatives in Montserrat;
- (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 insurance on lives, property or interests in Montserrat or negotiating the continuance or renewal of such insurance or for attempting to do so.

Keeping of records by registered insurance brokers

96. Every insurance broker registered in accordance with this Part shall keep within Montserrat and shall submit to the Supervisor within four months of the end of a calendar year—

- (a) a record of all local policies issued by him on behalf of members of a registered association of underwriters;
- (b) a record of the aggregate amount of the premiums received on the policies;
- (c) an analysis of premiums payable to insurers by the number of days outstanding.

Procuring premiums by fraudulent means

97. An insurance agent or a sales representative is guilty of an offence where he—

- (a) knowingly procures by fraudulent representation 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.

Failure to pay over money to client or insurer

98. (1) An insurance agent, an insurance broker or a sales representative is guilty of an offence where he receives money—

- (a) from an insurer for the account of an insured and fails to pay over the same within fourteen days; or
- (b) 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, within thirty days after demand for payment made in writing.

(2) Where an insurer at the request of an insurance broker provides cover to an insured, the insurance 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 insurance broker as a civil debt.

PART 6

LONG-TERM INSURANCE BUSINESS

Appointment of Actuary

Company to appoint actuary

99. (1) Every company carrying on long-term insurance business in Montserrat shall appoint an actuary, as a member of its staff or as a consulting actuary, and notify the Supervisor in writing within fourteen days of making the appointment.

(2) The company shall, within three months of the termination of the appointment of an actuary, appoint another actuary.

(3) Where the appointment of an actuary is terminated, the company shall within fourteen days of appointing another actuary notify the Supervisor in writing of the appointment.

(4) No person may carry out the functions of an actuary unless the Supervisor is satisfied that he possesses the necessary qualifications to carry out such functions.

Issue of Policies

Premium rates to be approved by actuary

100. (1) A company shall not issue any policy unless the rate of premium chargeable under the policy is a rate which has been approved by its actuary as being suitable for the class of policy to which the policy belongs.

(2) The Supervisor may, at any time, require the company to obtain and to furnish him with a report by its actuary as to the suitability of the rate of premium chargeable under any class of policy issued by the company and, where the actuary considers that the rate is not suitable, a report as to the rate of premium which the actuary approves as suitable in respect of that class of policy.

(3) Where a requirement is made under subsection (2), the company shall not issue any policy of that class until it has, in accordance with the requirement, obtained the approval of its actuary as to the rate of premium.

(4) When approving a rate of premium under this section 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.

(5) Where a rate of premium is approved by its actuary in respect of any class of policy the company shall not except with the approval of its actuary, pay or allow in respect of any policy of that class a commission or a reduction of premium at a rate greater than the maximum rate of commission or reduction of premium to which the actuary had regard when approving the rate of premium.

Notice in respect of long-term policies by insurer

101. (1) Subject to section 102(3) an insurer shall not enter into a contract of long-term insurance unless the insurer, not later than 7 days after receipt of an

application for a policy, serves on the applicant a notice containing the information specified in subsection (2).

- (2) A notice mentioned in subsection (1) shall—
 - (a) specify the nature and type of the policy; and
 - (b) have annexed thereto a form of notice of withdrawal for use by the applicant.
- (3) An insurer who contravenes this section is guilty of an offence.

Insurer's right of cancellation

102. (1) A person who has applied for a policy of insurance with an insurer may serve notice of withdrawal of that application on the insurer—

- (a) not later than the expiration of the tenth day from the date on which he receives a notice mentioned in section 101; or
- (b) not later than ten days from the expiration of the day on which he first became aware that the application had been received by the insurer,

whichever is the later.

(2) A notice of withdrawal need not be in the form attached to the notice required to be served under section 101(1) and is sufficient if the notice of cancellation indicates a desire to withdraw from the contract.

(3) Where an application has been withdrawn as a result of the service of a notice, any moneys paid by way of premium or otherwise, whether to the insurer or to any person acting on behalf of the insurer for the purpose of receiving the moneys, are recoverable from the insurer as a debt in civil proceedings.

Notice regarding proof of age

103. Where a company issues a life policy that provides that proof of age of the person whose life is insured is a condition precedent to the payment of the sum insured, the company shall, unless the age of the person whose life is insured, has already been admitted by it, issue on or with the policy a printed notice stating that proof of age of the person whose life is insured may be required before the payment of the sum insured.

Procedure where company declines to accept proof

104. (1) Where a company declines to accept the proof of age tendered in respect of a policy, whether issued before or after the commencement of this Act, the policy-holder may apply to the Judge in chambers, by summons for an Order directing the company to accept the proof tendered.

(2) The Judge in chambers may upon an application made to him under subsection (1), make such Order in relation to the application as he thinks just.

(3) Every Order made under this section shall be binding on the company and shall be complied with on its part.

Mis-statement of age

105. (1) A policy is not avoided by reason only of a mis-statement 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 company 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 company 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 shall not be avoided 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 company unless the statement—

- (a) was fraudulently untrue; or
- (b) is material in relation to the risk of the company under the policy and was made within the period of three years immediately preceding the date on which the policy is sought to be avoided or the date of the death of the life insured, whichever is the earlier.

Provisions relating to state of health of insured

106. Nothing in any term or condition of a life policy issued after the commencement of this Act shall operate to exempt an insurance company from

liability under the policy or to reduce the liability of the company under the policy on the ground of any matter relating to the state of health of the person whose life is insured, other than the ground of the proposer's having, when making the proposal or thereafter and before the making of the contract—

- (a) made an untrue statement of his knowledge and belief as regards the matter; or
- (b) failed to disclose to the company something known or believed by him as regards that matter.

Minors may effect policies and take assignments

107. (1) A minor who has attained the age of ten years but has not attained the age of sixteen years may, with the written consent of his parent or of a person standing *in loco parentis* to the minor—

- (a) effect a policy upon his own life or upon another life in which he has an insurable interest; or
- (b) take an assignment of a policy.

(2) A minor who has attained the age of sixteen years—

- (a) may effect a policy upon his own life or upon another life in which he has an insurable interest; or
- (b) may take an assignment or a policy; and
- (c) subject to subsection (3), is as competent in all respects to have and exercise the powers and privileges of a policy-holder in relation to a policy of which he is the holder as he would had he been of full age.

(3) 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 of a person standing *in loco parentis* to the minor.

(4) This section does not—

- (a) impose on a minor any liability to which, but for this section, he would not be subject;
- (b) confer on a minor any power or capacity which, but for this section, he would not have;
- (c) validate a receipt, a discharge or a surrender of, or security over a policy given by a minor, if, but for this section, that receipt, discharge, surrender or security would not be valid; or
- (d) validate any assignment of a policy which, but for this section, would not be valid.

Insurable Interest

108. (1) Without in any way limiting or restricting the meaning of the expression “**insurable interest**”, as understood on the coming into force of this Act, an insurable interest shall be deemed to be had by—

- (a) a parent of a child who is under eighteen years of age, or a person *in loco parentis* of such a 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 person, in the life of an officer or employee thereof; and
- (f) any person who has a pecuniary interest in the duration of the life of another person, in the life of that person.

(2) For the purposes of this Act, “**child**”, in relation to any person, includes—

- (a) an adopted child;
- (b) a step-child; and
- (c) any other child living with that person and wholly or mainly maintained by that person.

Beneficiaries

Designation of beneficiaries

109. (1) A policy-holder may at the time the policy is taken out or at any time thereafter by declaration in writing designate his personal representative or a named person to be the beneficiary under his policy and may, subject to subsection (4), alter or revoke the designation by declaration in writing.

(2) A designation in favour of “**heirs**”, “**next of kin**”, “**estate**”, “**succession**” or similar designation shall be deemed to be a designation of the personal representative of the policy-holder.

(3) A designation by a will does not affect a designation made under a policy.

Irrevocable designations of beneficiaries

110. (1) The provisions of this section apply only in respect of policies taken out after the commencement of this Act.

(2) Subject to subsections (4), (5) and (6) a policyholder may, by declaration in writing filed with the insurer at the time the policy is taken out, or at any time thereafter, designate irrevocably a named person to be beneficiary under the policy and, in such a case—

- (a) the policy-holder, subject to section 125, may not during the life time of named beneficiary, alter or revoke the designation without the consent of the beneficiary; and
- (b) the monies payable under the policy are not subject to the control of the policy-holder or the creditors of the policy-holder and do not form part of his estate [succession].

(3) Notwithstanding subsection (1)(a), consent of the beneficiary is not required where the beneficiary under a policy of insurance is a former spouse and the marriage ended in divorce or the common law union has come to an end, as the case may be.

(4) Where the insured purports to designate a beneficiary irrevocably in a declaration that has not been filed with the insurer as required by subsection (1) or in a will, the designation has the same effect as if the insured had not purported to make the designation irrevocable.

(5) An irrevocable designation may only be made by a policy-holder in favour of a spouse or a child, including a child born out of wedlock.

(6) A designation by a policy-holder shall not be regarded as irrevocable unless the words creating the irrevocable designation are clear and unequivocal and are prominently displayed on the proposal form and signed by the policy-holder, and there is sufficient evidence that it was explained to the policy-holder that the designation was irrevocable.

Trusts for beneficiaries

111. (1) A policy-holder may, in writing, appoint by contract or by declaration a trustee for a beneficiary under the policy and may alter or revoke the appointment by declaration in writing.

(2) The contract or declaration referred to in subsection (1) must be filed with the insurer.

(3) A payment by an insurer to a trustee for a named beneficiary discharges the insurer from payments to the beneficiary to the extent of the payment.

Beneficiary predeceasing policy-holder

112. (1) Where by a contract or by a declaration filed with the insurer, a person has been named as beneficiary under a policy and the person so named as beneficiary under a policy predeceases the policy-holder and no provision is made in the contract or agreement or declaration for the disposition of moneys payable under the policy in the event of the beneficiary predeceasing the policy-holder then, without limiting or affecting the application of section 110, the moneys payable under the policy shall vest in the following persons in the following order—

- (a) in the surviving beneficiary, if any;

- (b) in the surviving beneficiaries in equal shares, if there is more than one surviving beneficiary;
- (c) in the policy-holder or his personal representatives, if there are no surviving beneficiaries.

(2) Where two or more beneficiaries are designated otherwise than alternatively, and no provision is made as to the quantum of their respective shares of the moneys payable under the policy, then, they are entitled to the moneys in equal shares.

Simultaneous deaths

113. Unless a declaration otherwise provides, where the policy-holder and a beneficiary die in circumstances that render uncertain the order of the deaths, in the absence of proof to the contrary, it shall be presumed that the beneficiary pre-deceased the person whose life is insured.

Designated beneficiary

114. (1) Where a beneficiary other than a personal representative has been designated by a policy-holder, the money payable under the policy from the time of the happening of the event upon which the insurance money becomes payable, does not form part of the estate [succession] of the insured and is not subject to claims of the creditors of the insured.

(2) While a designation in favour of a spouse or child of a policy-holder or any of them is in effect, the rights and interests of the policy-holder in the insurance money and in the contract are exempt from execution or seizure.

Assignment of policy

115. (1) Where a beneficiary is not designated irrevocably, the policy-holder may assign, exercise rights under or in respect of, surrender or otherwise deal with the contract as provided in the contract or in this Part or as may be agreed upon with the insurer.

(2) Where a beneficiary is designated irrevocably, the policy-holder may not assign the policy, use the policy as a security, surrender it or otherwise deal with it without the consent in writing of the designated beneficiary.

Enforcement by beneficiary trustee

116. A beneficiary may enforce for his own benefit and a trustee appointed pursuant to section 111 may, in accordance with the terms of the contract or declaration, as the case may be, enforce payment of moneys payable under a policy even though there is no privity of contract, but the insurer may invoke against the beneficiary or trustee any defence available against the policy-holder or his personal representative.

Entitlement to dividends and bonuses

117. (1) Notwithstanding the designation of a beneficiary irrevocably, the policy-holder is entitled, while living, to the dividends or bonuses declared on a policy, unless the policy otherwise provides.

(2) Unless the policy-holder otherwise directs, the insurer may apply the dividends or bonuses declared on a policy for the purpose of keeping the policy in force.

Effect of assignment of policies on beneficiaries

118. (1) An assignee of a policy who gives notice in writing of the assignment to the insurer has priority of interest as against—

- (a)* any assignee other than one who gave notice earlier in like manner; and
- (b)* a beneficiary other than one designated irrevocably as provided in section 110 prior to the time the assignee gave notice to the insurer of the assignment in the manner prescribed in this subsection.

(2) Where a policy is assigned as security, the rights of a beneficiary under the policy are affected only to the extent necessary to give effect to the rights and interests of the assignee.

(3) Where a policy is assigned absolutely, the assignee has all the rights and interests given to the policy-holder by the policy and by this Part and shall be deemed to be the policy-holder.

(4) A provision in a policy to the effect that the rights or interests of the policy-holder, or, in the case of group insurance, the group life insured are not assignable, is valid.

Group Life Insurance

Policy of group insurance

119. Where a contract of insurance is entered into for the provision of group insurance, the insurer shall—

- (a)* set out in the policy the following particulars—
 - (i)* the name or sufficient description of the insured;
 - (ii)* the method of determining the persons whose lives are insured;
 - (iii)* the beneficiaries under the policy;
 - (iv)* the amount, or the method of determining the amount, of the insurance money payable, and the conditions under which it becomes payable;

- (v) the period of grace, if any, within which the premium may be paid;
 - (vi) whether the policy provides for participation in the distribution of surplus or profits that may be declared by the insurer;
- (b) issue to the insured and to each group life insured, a certificate or other document, in which the following particulars are set out—
- (i) the name of the insurer and the identification number or other means of identifying the policy;
 - (ii) the amount or the method of determining the amount, of insurance on the group life insured and on any person whose life is insured under the policy;
 - (iii) the circumstances in which the insurance terminates and the rights, upon such termination, of the group life insured or of any person whose life is insured under the policy.

Power of Group life insured to sue insurer

120. A person insured under a group life insurance policy may, in his own name, enforce a right given to him under the policy, subject to any defence available to the insurer against him or against the insured.

Assignment and Mortgages of Policies

Assignment of policies

121. (1) After the coming into effect of this Act every assignment of a policy shall be by deed or other instrument in writing.

(2) An assignment is not binding on the company liable under the policy until written notice of the date and purport of the assignment is received by the company at its principal office in Montserrat.

(3) Every insurer shall in a register of policies required by section 188 to be maintained, enter the date and purport of every assignment of which it receives notice and the date on which the notice is received.

(4) Upon the presentation of a memorandum of discharge of an assignment, the insurer shall enter the discharge in the register.

Effect of notice on assignment

Effect of notice on assignment

122. (1) Notwithstanding section 121, a company shall not be entitled to any protection under that section or to rely upon that section where the company—

- (a) has not acted in good faith;

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(b) has received express notice in writing of any trust, right, equity or interest of any person.

(2) Where a company receives express notice of any trust, right, equity or interest of any person, the company may, if it thinks fit, pay to the Supervisor any money payable under the policy, and the receipt of the Supervisor for the money shall be a valid discharge to the company for the money so paid.

(3) Money paid to the Supervisor pursuant to subsection (2), shall be paid by the Supervisor to such person or persons as the Court orders.

Assignment not to distinguish rights.

123. (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 company which issued the policy.

(2) Notwithstanding anything to the contrary in section 121 or section 122, but subject to subsection (3), no assignment of an industrial policy shall be valid without the consent of the company liable under such policy.

(3) Where the company refuses its consent to the assignment of an industrial policy, the policy-holder may appeal to the Supervisor whose decision shall be final.

Release of assignments

124. Upon 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 indicating that the assignment is relinquished and the policy discharged and where the assignment was by deed, the assignee shall execute a deed of release in favour of the assignor.

Protection of Policies

Lost policy

125. (1) Where—

(a) the holder of a policy; or

(b) a person claiming the benefit of the provisions of section 137 or 138 in respect of a policy,

claims that the policy, in this section referred to as the original policy, is lost or has been destroyed, the company liable under the original policy may, subject to this section, upon application by the holder or that person and upon such evidence as to the loss or destruction of the original policy as the company deems sufficient, issue to the applicant a special policy in substitution for the original policy.

(2) Where an application under subsection (1) is made by a person referred to in paragraph (b) of that subsection, the company shall not issue a special policy unless the company is satisfied that section 137 or 138 should be applied in favour of the applicant in relation to the policy.

(3) A special policy shall—

- (a) be a copy, as nearly as can be ascertained, of the original policy in substitution for which it has been issued;
- (b) contain copies of every endorsement on the original policy registered by the company; and
- (c) state the reason for the issue of the special policy.

(4) Before issuing a special policy, the company shall, if the amount insured, exclusive of bonus additions exceeds \$5,000, give at least one month's notice of its intention to do so in the *Gazette* and in a newspaper circulating in Montserrat and approved by the Supervisor.

(5) The expenses of the advertisement and all other costs of the issue of a special policy shall be paid by the applicant at the time of the application.

(6) The fact of the issue of a special policy and the reason for its issue shall be recorded by the company in the appropriate register of policies.

(7) A special policy is valid and available for all purposes for which the original policy in substitution for which it has been issued would have been valid and available and, after the issue of the special policy, the original policy in substitution for which it has been issued is void.

(8) Where the company fails to issue a special policy within six months after receipt of an application in writing from the policy-holder, the court may, upon application by summons, and upon such evidence as to the loss or destruction of the original policy as the court deems sufficient, order the company, upon such terms and within such time as the court thinks fit, to issue a special policy.

(9) Where the holder of a special policy or a person claiming the benefit of the provisions of section 137 or 138 in respect of a special policy, claims that the special policy is lost or has been destroyed, this section shall apply as if the special policy were an original policy issued by the company.

Interest of the insured to be protected

126. (1) The property and interest of any person in a policy effected (whether before or after the commencement of this Act) upon his own life is not 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 own life dies after the commencement of this Act, the moneys 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 whatsoever, except by virtue

of a contract or charge made by the person whose life is insured, or by virtue of an express direction contained in his will or other testamentary instrument executed by him that the moneys 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 testators estate, or a trust for the payment of debts, shall not be deemed to be an express direction.

Effect of capital punishment, suicide on policy

127. 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 death he was mentally ill, where upon the true construction of the policy, the company thereby agreed to pay the sum insured on the happening of either of those events.

Condition reducing the sum insured void

128. 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 death of the life insured, 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.

Paid-up Policies Surrender Values, and Non-Forfeiture

Application to certain types of policies

129. Sections 130 to 136 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.

Paid-up policies

130. (1) A policy-holder who desires to discontinue further premium payments on a policy on which not less than three years' premiums have been paid shall, where the policy has a cash surrender value, be entitled on application to the company to receive instead of that policy, 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 company liable under the original policy, the company shall thereupon be liable under the paid-up policy, limited to its paid-up value.

Surrender of policies

131. Notwithstanding the terms of a particular policy the owner of a policy that has been in force for at least three years, shall, on application to the company, be entitled to surrender the policy and to receive not less than the cash surrender value of the policy less any tax payable and the amount of any debt owing to the company under, or secured by, the policy.

Supervisor may vary obligation to pay surrender value

132. The Supervisor may on an application by a company, suspend or vary for such period and subject to such value conditions as he thinks fit the obligation of the insurance company to pay surrender values pursuant to section 131 where in his opinion the payment of cash of those surrender values would be prejudicial to the financial stability of the insurance company or to the interests of its policy-holders.

Dividends

133. A company shall on the issue of each policy, give a written disclosure to each policy-holder of the basis on which he is entitled to a dividend, bonus or other means of distribution of profit.

Non-forfeiture of ordinary life policies

134. (1) An ordinary policy shall not be forfeited by reason only of the non-payment of any premium, in this section referred to as the overdue premium where—

- (a) the policy contains provisions enabling the exercise of certain options in lieu of the forfeiture of the policy; and
- (b) the surrender value of the policy calculated as at the day immediately preceding that on which the overdue premium falls due, exceeds the sum of the amount of the debts owing to the company under, or secured by, the policy and the amount of the overdue premium.

(2) The company may until payment of the overdue premium, charge interest on it, on terms not less favourable to the policy-holder than such terms, if any, as may be prescribed.

(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 company under the policy.

(4) Without affecting the generality of the foregoing provisions of this section, an ordinary policy on which not less than three years' premiums have been paid shall not be forfeited by reason only of the non-payment of a premium unless, on or after the day on which the premium fell due—

- (a) the company liable under the policy serves a notice on the policy-holder stating—

- (i) the amount due or payable to the company at the date of the notice;
 - (ii) that the policy will be forfeited at the expiration of twenty eight days after the date of the notice if a sufficient sum is not paid to the company within that period; and
- (b) a period of at least thirty days has elapsed after the service of the notice.

(5) For the purposes of subsection (4) a notice posted to the last known address of the policy-holder shall be deemed to be a notice on the policy holder.

Non-forfeiture of industrial life policies

135. (1) An industrial life policy on which less than 1 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 life policy on which not less than 1 year's but less than two years premiums have been paid shall not be forfeited by reason only of the non-payment of any premium, unless the premium has remained unpaid for not less than eight weeks after it became due.

(3) An industrial life policy on which not less than two years premiums have been paid shall not be forfeited by reason only of the non-payment of any premium, unless the premium has remained unpaid for not less than twelve weeks after it became due.

(4) Where an industrial life policy on which not less than three years premiums have been paid has been forfeited by reason of the non-payment of any premium, the company shall, without requiring any application from the policy-holder, 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 company liable under the original policy the company shall thereupon be liable under the paid-up policy limited to its paid-up value.

(6) The company shall notify the policy-holder 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 company.

Treatment of debts on issue of paid-up policies

136. Where in pursuance of any provisions of this Part a policy holder is entitled to receive, or a company is required to grant, a paid-up policy and

there is any debt owing to the company under or secured by the policy, the company may elect—

- (a) to treat the debt so owing as a debt secured by the paid-up policy and thereupon the paid-up policy shall be a security for the debt so owing; or
- (b) on ascertaining the amount of the paid-up policy, to reduce the amount by taking into account upon a basis approved by the Supervisor the debt so owing to the company and thereupon the debt shall cease to be owing to the company.

Payment of Policy Monies

Payment without probate or administration in certain cases

137. (1) An insurer by whom any moneys are payable under one or more policies to the personal representative of a deceased person may, without requiring the production of probate or letters of administration, pay out of the moneys any amount (including any bonuses added to the policy or policies) not exceeding \$5,000 to any person who satisfies the insurer that he is entitled to—

- (a) receive the property of the deceased person;
- (b) obtain probate of the will of the deceased person;
- (c) take out letters of administration of the estate of the deceased person.

(2) An insurer who makes a payment pursuant to subsection (1) shall be discharged from all further liability in respect of the moneys so paid.

(3) All persons to whom moneys are paid under subsection (1) shall apply those moneys in due course of administration and, if the insurer thinks fit, it may require those persons to give sufficient security by bond or otherwise that the moneys so paid will be so applied.

Death of policy-holder not being life insured

138. (1) Subject to this section, where a policy-holder, not being the person whose life is insured by the policy, pre-deceases the person whose life is insured, and a person satisfies the company which issued the policy—

- (a) that he is entitled under the will or on the intestacy of the deceased policy-holder, to the benefit of the policy; or
- (b) that he is entitled to obtain probate of the will, or to take out letters of administration of the estate of the deceased policy-holder,

the company may, without requiring the production of any probate or letters of administration, endorse on the policy a declaration that the person has so

satisfied the company and is the holder of the policy, and thereupon that person becomes, subject to subsection (2), the holder of the policy.

(2) Subsection (1) does not confer on a person declared to be the holder of a policy any beneficial interest in the policy which he would not otherwise have had.

(3) This section applies in relation to a policy referred to in subsection (1) whether the deceased holder dies before or after the commencement of this section.

(4) This section does not apply in relation to—

(a) a policy the surrender value of which, at the date of the death of the deceased holder, exceeds or exceeded \$2,000;

(b) a policy which is one of two or more policies held by the deceased holder and issued by the same company if the aggregate of the surrender values of those policies at the death of the deceased holder exceeds or exceeded \$2,000.

(5) For the purposes of subsection (4), the surrender value of a policy is the amount (including any amount in respect of bonus additions) that would be paid by the company issuing the policy of its surrender.

Company not bound to see to application of moneys

139. Nothing contained in this Part shall be construed as requiring a company to see to the application of any moneys paid under section 137 by the company in respect of any policy.

Company may pay money to Supervisor

140. (1) A company may pay to the Supervisor any money payable by it in respect of a policy for which, in the opinion of the company, no sufficient discharge can otherwise be obtained.

(2) The receipt of the Supervisor for any money paid under subsection (1) shall be a good and valid discharge to the company for the money so paid, and the money shall be dealt with according to an order made by the court.

Unclaimed moneys

141. (1) A company shall, not later than sixty days after the end of its financial year, deliver to the Supervisor a statement of all unclaimed moneys as at that date.

(2) The statement shall specify, in respect of each policy to which it refers—

(a) the name and last known address of the person whose life is insured;

(b) the name of the policy-holder (if known) and his last known address; and

(c) the amount due and the date on which it became due.

(3) The company shall pay to the Supervisor at the time of the delivery of the statement, the total amount of unclaimed moneys shown therein, less any amount paid by the company, between its financial year and the date on which the copy of the statement is delivered, to the person to whom the amount was due, and the company shall furnish, with the copy of the statement, particulars in writing of the amounts paid.

(4) Where unclaimed money is paid to the Supervisor under this section and he is satisfied that, but for this section, a person would have been paid the unclaimed money by the company which made the payment or where that company is no longer carrying on that class of insurance business, by the company to which it sold or disposed of such business, the Supervisor shall arrange payment of the unclaimed money to that company and specify the person to whom that company is to pay the money, and that company shall thereupon pay the money to the person specified.

(5) Where in pursuance of this section a company has paid to the Supervisor an amount in respect of a policy and the company satisfies the Supervisor that the amount paid exceeds the amount which would have been payable under the policy to the policy-holder, the Supervisor shall arrange for payment of a refund to the company in the amount of the excess.

(6) On payment to the Supervisor of unclaimed money in accordance with this section, a company is, subject to subsection (4), discharged from further liability in respect to the amount paid.

(7) There shall be paid from the Consolidated Fund such sums as are necessary to give effect to this section.

(8) A company which fails to comply with this section is guilty of an offence.

(9) In this section—

“unclaimed money” means 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 insurance policy which are not claimed within seven years after the maturity date of the policy.

Variable Life Products

Interpretation

142. In this Part—

“Variable product” means a variable life insurance policy, a variable annuity contract, or an universal life insurance policy;

“Universal life insurance policy” means a policy in which mortality, investment income and administrative charges are expressed separately in the policy;

“Variable annuity” means an annuity in which the contributions, after the deduction of administrative charges, are deposited in an investment fund and the benefits payable depend on the performance of that fund;

“Variable life insurance policy” means a policy in which a fixed portion of the premium is placed in an investment fund and the benefits payable under the policy is dependent on the performance of that fund.

Policy document

143. The policy document of a variable product shall contain such specifications as may be prescribed.

Sales illustration

144. (1) Every insurance agent, insurance broker and sales representative in making a presentation for the sale of a variable product to a prospective client shall use a pre-printed sales illustration approved by the insurer.

(2) A sales illustration shall contain such particulars as may be prescribed.

(3) An insurance agent, insurance broker or sales representative who makes a presentation for a variable product without using an approved sales illustration, or uses a sales illustration which has not been approved by the insurer commits an offence.

Industrial Life Insurance Business

Objection to policies

145. (1) If, within twenty eight days after a company delivers an industrial policy—

(a) to the policy-holder; or

(b) at the residence of the policy-holder to some other person who resides there and appears to be not less than sixteen years of age and by whom any premium in respect of the policy is paid on behalf of the policy-holder, the policy-holder returns the policy to the company with an objection in writing to any term or condition of the policy, the company shall immediately refund any premium which has been paid in respect of the policy which shall thereupon be cancelled.

(2) Where an industrial policy is sent by post by a company 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 purpose of this section, a policy shall be deemed to have been returned to a company with an objection if the policy and the writing specifying the objection are posted for transmission to the company by registered letter.

Returning policies, premium receipt books

146. Where at any time a company which carries on industrial life insurance business, or any person authorised by such a company, takes possession of an industrial policy or premium-receipt book or other document issued in connection with the policy, a receipt for the policy, book or document shall be given to the person from whom it was received, and the policy, book or document shall be returned to that person on demand at any time after the expiration of twenty eight days, 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 capable of arising under it; or
- (c) in the case of a policy, the company is entitled to retain the policy as security for money owing to the company by the policy-holder.

Falsification of entries an offence

147. Any 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 premium-receipt book, with intent to falsify the book, or to evade any of the provisions of this Act, shall be guilty of an offence.

Avoidance where proposal is filled in by agent

148. (1) Where any agent or servant of a company writes or fills in or has before the commencement of this Act written or filled in any particulars in a proposal for an industrial policy with the company, then, notwithstanding any agreement to the contrary between the proponent and the company, any policy issued in pursuance of the proposal shall not be avoided by reason only of any incorrect or untrue statement contained in any such particulars so written or filled in unless the incorrect or untrue statement was in fact made by the proponent to the agent or servant for the purposes of the proposal.

(2) The burden of proving that any such statement was so made shall lie upon the company.

(3) Nothing in this section shall be deemed to allow the avoidance of any policy for any reason or in any circumstances for or in which the policy could not have been avoided apart from this section.

Particulars to be set out in policies

149. Every industrial life policy issued by a company after the commencement of this Act shall contain an endorsement in distinctive type setting out—

- (a) whether the policy is or is not a participating policy; and
- (b) a short statement in a form approved by the Supervisor as to—
 - (i) the right of the policy-holder to be granted a paid-up policy;
 - (ii) the right of the policy-holder to surrender his policy and to receive in cash the surrender value of the policy; and
 - (iii) the forfeiture of the policy.

Issue of premium receipt book

150. (1) A company shall, in respect of each industrial policy issued by the company, issue to the policy-holder a premium-receipt book as follows—

- (a) where the policy was issued before or is issued within the period of twelve months immediately following the commencement of this Act, issue the book before the end of that period of twelve months; or
- (b) where the policy is issued after the end of that period of twelve months, issue the book at the time of the issue of the policy.

(2) Notwithstanding subsection (1), if the policy-holders concerned do not object, the company may—

- (a) issue one premium-receipt book in respect of two or more policies if held by the same policy-holder or by two or more policy-holders who are members of the same household; or
- (b) add the endorsements and entries required by this section in respect of any policy to the premium-receipt book issued in respect of any earlier policy held by the same policy-holder or by a member of the same household.

(3) After the end of the period of twelve months immediately following the commencement of this Act a company shall not issue or permit to be used one premium-receipt book in respect of two or more policies held by different policy-holders not being members of the same household.

(4) Any premium-receipt book issued to a policy-holder by a company, whether before or after the commencement of this Act, shall, if it complies with this section or if it is amended to comply with these provisions and returned to the policy-holder within the period of twelve months immediately following the commencement of this Act, be deemed to be a premium-receipt book issued in accordance with this section.

(5) Every premium-receipt book issued by a company shall contain in respect of each policy to which it relates—

- (a) an endorsement in distinctive type of the particulars referred to in section 149(a) and (b);
- (b) an entry made by the company of the following matters, namely—
 - (i) the surname and initials of the policy-holder and, where the policy is issued in respect of the life of a person other than the policy-holder, the surname and initials of that person;
 - (ii) 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 premium paid

151. (1) Every payment in respect of premiums under an industrial policy made to an agent or servant of the company shall be recorded by the agent or servant 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) if it is the first entry on a page of the premium-receipt book, be signed by the agent or servant with his usual signature; and
- (b) if it is not such an entry, be signed by the agent or servant 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 or servant of the company to whom the payment is made to state the policy or policies in respect of which no payment or an insufficient payment is made, and the agent or servant shall clearly record in the premium-receipt book the fact stated.

(3) Unless the amount of the deficiency is paid before any further premiums are paid, the company shall cause a separate premium-receipt book in compliance with section 150 to be issued in respect of any policy in relation to which the deficiency exists and shall cause the particulars and entry in the first mentioned premium-receipt book relating to any such policy to be cancelled.

Mutualisation

Conversion to a mutual company

152. (1) Notwithstanding anything in its articles of incorporation or other instrument of incorporation or in its by-laws or other rules, or in this Act, a company may, with the approval of the Supervisor, establish and implement a plan in accordance with this Part.

(2) In this section and in sections 153 to 158—

“company” means a company incorporated in Montserrat which has a share capital and is registered under this Act to transact long-term insurance business, whether alone or in combination with any other class of insurance business;

“plan” means a plan for the conversion of either—

- (a) a company with a share capital into a mutual company by the purchase of its shares and their conversion into debentures.
- (b) a mutual company into a company with a share capital.

Application to establish plan of mutualisation

153. Every application for approval to establish and implement a plan shall be made in writing to the Supervisor.

Appointment of an independent actuary

154. (1) Where the Supervisor receives an application made in accordance with section 153, he shall appoint an independent actuary to investigate the financial position of the company.

(2) The actuary appointed under subsection (1), shall on completion of his investigation, furnish the Supervisor with a report on his findings.

(3) In addition to the findings of the actuary, the report shall state—

- (a) the price which should be offered for the shares of the company;
- (b) the terms and conditions of the security which should be offered in exchange for the shares; and
- (c) such other information as the Supervisor may require.

Approval of application

155. Where after considering the report of the actuary appointed under section 154 the Supervisor is satisfied that the paid-up capital of the company has ceased to be an important factor in safeguarding the interests of the policy-holders of the company, having regard to—

- (a) the quality and amount of the assets of the company;
- (b) the surplus of the assets of the company relative to its liabilities;
- (c) the nature of the business carried on by the company; and
- (d) any other considerations which the Supervisor may consider relevant;

the Supervisor may approve the application referred to in section 154.

Submission of detailed plan

156. Where an application is approved by the Supervisor, the board of directors of the company shall prepare and submit to the Supervisor a detailed plan which shall include—

- (a) particulars relating to the financial state of the company;
- (b) a statement of any actual or contingent liability as determined by the actuary;
- (c) any changes which are proposed to be made in its articles of incorporation or by laws; and
- (d) such other information as the Supervisor may require.

Acceptance by shareholders and policy-holders

157. (1) When a plan is approved by the Supervisor—

- (a) it shall be laid as a special resolution before the shareholders of the company at a special general meeting of the company duly called for considering the resolution, and there shall be recorded in the minutes of the meeting the number of votes cast in favour of and against confirmation of the resolution;
- (b) the board of directors shall send by post to each policy-holder of the company at his last known address—
 - (i) a ballot paper; and
 - (ii) a circular approved by the Supervisor, inviting the policy holders to vote by post on the resolution referred to in paragraph (a) within the time specified in the circular.

(2) The resolution shall only be effective where it is approved by not less than 50% of the votes by the shareholders at the special general meeting and by not less than 50% of the votes cast by the policy-holders in accordance with the circular referred to in subsection (1)(b)(ii).

(3) Where the resolution is effective the shareholders shall sell their shares to the company at such price as may be approved by the Supervisor.

Recovery of expenses

158. All expenses incurred by the Supervisor in connection with an application for approval to establish and implement a plan shall be defrayed by the company, and any sum due in respect of those expenses may be recovered from the company by the Supervisor summarily as a civil debt.

Transfer and Amalgamation

Application for a scheme of transfer

159. (1) A company shall not transfer or amalgamate its long term insurance business, either in whole or in part, to or with the long term insurance business of any other company, except in pursuance of a scheme—

- (a) prepared in accordance with this section and with sections 160 to 162; and
- (b) confirmed by the Supervisor.

(2) An application for the confirmation of a scheme shall be made to the Supervisor by or on behalf of any company engaged in the transfer or amalgamation, and an application with respect to any matter connected with a scheme or a proposed scheme may be made at any time before it is confirmed, by any person who, in the opinion of the Supervisor, is likely to be affected by the scheme or the proposed scheme.

(3) Where an application is made under subsection (2) the Supervisor shall set a date not less than two months from the date of the application for the hearing thereof.

(4) At the hearing of the application the company is entitled to appear and to be heard either through one of its officers or through an attorney-at-law; the Supervisor may hear such other evidence as he considers necessary and any person who, in the opinion of the Supervisor, is likely to be affected by the scheme is entitled to be heard.

(5) A company which is aggrieved by the refusal of the Supervisor to confirm a scheme may appeal against the decision in the manner specified in section 202.

(6) In the case of a foreign company this section shall apply only to the transfer or amalgamation of insurance business relating to its policies in Montserrat.

Submission of details of scheme

160. 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.

Confirmation of a scheme of transfer

161. (1) Before a scheme for the transfer or amalgamation of the insurance business of a company is confirmed by the Supervisor—

- (a) certified copies of the assets and liabilities of the companies engaged in the transfer or amalgamation shall be submitted to the Supervisor;

- (b) a copy of the scheme together with copies of the actuarial and other reports, if any, upon which the scheme was founded, shall be submitted to the Supervisor;
- (c) copies of the scheme and of every report submitted to the Supervisor or summaries of the scheme and reports approved by the Supervisor shall, unless the Supervisor otherwise directs, be transmitted to every policy-holder affected by the scheme by the companies engaged in the transfer or amalgamation, at least fifteen days before the application for confirmation of the scheme is to be heard;
- (d) notice of the intention to make the application (the notice to contain such particulars as may be prescribed by the Supervisor) shall, not less than one month after the copy of the scheme is submitted to the Supervisor be published in the *Gazette* and in such local newspapers as may be approved by the Supervisor;
- (e) the scheme shall be open for inspection by any policy-holder or shareholder affected by it, for a period of fifteen days after the publication of the notice, at the office of each company engaged in the transfer or amalgamation;
- (f) the Supervisor 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; and
- (g) the Supervisor may give directions concerning—
 - (i) the publication of advertisements of the scheme;
 - (ii) the giving of notices to shareholders, policy-holders or creditors of the companies;
 - (iii) the holding of meetings of any company affected,

and such directions shall be complied with by the person to whom they are given.

(2) When confirmed by the Supervisor, the scheme shall be binding on all persons and shall have effect notwithstanding anything in the instruments constituting the company or in the articles of incorporation or in by laws of the company and the directors of any company affected by the scheme shall cause a copy of the scheme to be filed with the Registrar of Companies.

(3) All expenses incurred by the Supervisor 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 Supervisor from the companies either jointly or severally.

Return to be made on confirmation of scheme

162. Where the insurance business carried on by a company is transferred to or amalgamated with the insurance business of another company, the company to which the insurance business is transferred or the company carrying on the amalgamated insurance business shall, within one month after the transfer or the amalgamation, submit to the Supervisor—

- (a) a certified copy of the agreement or deed under which the transfer or the amalgamation is effected; and
- (b) a statutory declaration made by the Chairman of the board of directors or by the principal representative of the company—
 - (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 money, 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.

PART 7

GENERAL INSURANCE

Application of this Part

163. This section and sections 164 to 173 shall apply to all companies registered under this Act to carry on any class of general insurance business.

Misrepresentation

164. A policy of general insurance shall not be avoided by reason only of any incorrect statement made in any proposal or other document on the faith of which the policy was issued or renewed by the company unless the statement—

- (a) was fraudulently untrue; or
- (b) is material in relation to the risk of the company under the policy.

Reinsurance arrangements

165. (1) Every company registered to transact general insurance business in Montserrat shall within fourteen days of the commencement of each underwriting year, submit to the Supervisor, in respect of each class of insurance business to be transacted, such information regarding its reinsurance arrangements as may be prescribed.

- (2) An insurer which contravenes subsection (1) is guilty of an offence.

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Condition of average

166. (1) Notwithstanding any condition in a policy, where the sum insured in a contract of insurance on a residential building or on its contents is not less than 85% of the value of the property, the liability of the insurer in respect of loss of or damage to any part of the property insured is not reduced by reason only of any provision included in the contract requiring that the insured be his own insurer for the proportion by which the value of the risk exceeds the sum insured.

(2) In this section “**residential**” means a building that is occupied or has been set apart for occupation as a private dwelling and includes residential apartments in a town house or condominium as well as outbuildings and other appurtenances thereto.

(3) For the purpose of this section value shall mean—

- (a)* if the policy is on a reinstatement basis, the cost of reinstating the buildings or contents to their condition when new or the cost of replacement at the date of any loss or damage, which ever shall be the less;
- (b)* if the policy is on an indemnity basis, the cost of reinstatement calculated as in *(a)* above, less a reasonable provision for depreciation.

Structured settlements

167. (1) A court, in awarding judgment to a plaintiff in respect of a claim, liability for which is covered by a contract of insurance may, with the consent of both parties, instead of a lump sum, order specified payments with interest to be made at such intervals and over such period not exceeding three years as the court may specify.

(2) Nothing in subsection (1) operates to prevent an insurer and a person who has made a claim against an insurer from entering into a settlement agreement for the payment by the insurer of specified payments at specified intervals and over a specific period in satisfaction of the claim that has been made.

(3) Notwithstanding anything contained in the Income Tax and Corporation Act, no tax is payable by the insured or the beneficiary in respect of payments made or, as the case may be, received pursuant to this section.

Reserves for unexpired policies

168. Every company shall, in respect of its outstanding unexpired policies, include among the liabilities provided in its annual statement of account, reserves computed to the satisfaction of the Supervisor.

Reserves for outstanding claims

169. Every company shall, in addition to the reserves required to be included pursuant to section 168, provide—

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- (a) reserves for meeting outstanding claims; and
- (b) set aside reserves for catastrophic losses in such manner as may be prescribed.

Methods for calculating reserves

170. (1) Every company shall furnish to the Supervisor details of the methods used in calculating the reserves to be provided under sections 168 and 169.

(2) The Supervisor may disallow any method used in calculating the reserves referred to in subsection (1) where he is satisfied that the method does not result in the provision of adequate reserves.

Prohibition on payment of dividends

171. No dividend may be paid by any company incorporated in Montserrat—

- (a) while its assets are less than the amount required for solvency by section 46; or
- (b) where the dividend would reduce its assets below the amount referred to in paragraph (a) or would impair its capital.

Deficiency in solvency margin

172. (1) Where it appears to the Supervisor that the assets of any company fall below the amount required for solvency by section 46 the Supervisor, after giving the company not more than thirty days to be heard by him, may—

- (a) forthwith cancel the registration of the company; or
- (b) on such terms and conditions as he considers necessary, specify a time not exceeding three months within which the company shall make good the deficiency; or
- (c) where the admissible assets of the company are less than its total liabilities, including the reserves referred to in sections 168 and 169 or where the company has contravened the requirements of section 171, cancel the registration of the company.

(2) Where a company fails to make good a deficiency within the time specified by the Supervisor pursuant to subsection (1)(b), the Supervisor shall cancel the registration of the company.

Appropriation of profits towards surplus

173. (1) A company incorporated in Montserrat shall at the end of each year appropriate towards surplus at least 25% of its profits for that year until the surplus of the company equates with or exceeds the liability of the company in respect of outstanding unexpired policies required to be included in the annual statement in accordance with section 168.

(2) In this section “**surplus**” means the excess of assets over all the liabilities of the company, including its liability in respect of outstanding unexpired policies required to be included in the annual statement in accordance with section 168.

PART 8

PENSION FUND PLANS

Plans to be registered

174. After one year from the date on which this Act comes into effect, no person may operate a pension fund plan (hereinafter referred to as “**a plan**”) in Montserrat unless the plan is registered under this Part.

Qualifications for registration

175. (1) Subject to this Part, where a plan establishes a fund under trusts which are subject to the laws of Montserrat, in connection with an undertaking or a combination of undertakings carried on wholly or partly in Montserrat, 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 the Fifth Schedule.

(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 Supervisor 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 under trusts which are subject to the laws of Montserrat; or
- (b) the plan does not comply with the requirements set out in Part 1 of the Fifth Schedule.

(3) 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.

Registration of plans

176. (1) An application for the registration of a plan under this Part shall be addressed to the Supervisor and shall—

- (a) be on the form approved by the Supervisor;
- (b) be signed by the trustees of the plan;
- (c) specify the address at which communications concerning the plan will be received (hereafter referred to as the “**address of the plan**”);
- (d) be accompanied by—
 - (i) a copy 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 required by the Supervisor.

(2) Where an application is made in accordance with this Part for the registration of a plan, the Supervisor shall register the plan and the rules thereof where he is satisfied that the plan is qualified for registration.

(3) Where—

- (a) the trust deed or the rules, or both, of a plan registered under this Part (hereafter 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 twenty one days of the amendment or the change, apply for the registration of the amendment or the change.

(4) An application for an amendment or for a change shall be addressed to the Supervisor and shall be—

- (a) on the form approved by the Supervisor;
- (b) signed by one of the trustees of the plan; and
- (c) accompanied—
 - (i) in the case of an amendment, by a copy of the amendment 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 records.

Amendment not valid until registered

177. (1) An amendment to the 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 176(4), the Supervisor shall register the amendment where he is satisfied that the trust deed or the rules, or both, as amended would not have disqualified the plan from registration under this Part.

Certificate of registration

178. (1) The Supervisor 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 (hereafter referred to as a “Certificate”).

(2) Any document purporting to be a Certificate issued under subsection (1) and purporting to be signed by the Supervisor shall be received in evidence and be deemed to be so issued or signed without further proof unless the contrary is shown, and shall be conclusive evidence of the fact certified.

Cancellation of registration of plan

179. (1) The registration of a registered plan shall not be cancelled unless the plan has been wound-up.

(2) The trustees of a registered plan shall, within fourteen days of the completion of the winding-up of the plan, notify the Supervisor in writing that the winding-up has been completed.

(3) On receiving notice in writing that a registered plan has been wound-up, the Supervisor shall cancel the registration of the plan where he 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 payable

180. 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 records 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 set out in the Third Schedule.

Additional powers of the Supervisor

181. (1) The Supervisor 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 Supervisor under this part.

(2) Where the trustees of a registered plan commit a breach of trust by making an unauthorised investment or by violating any rule of the plan, where the rule is necessary for registration under this Part, the Supervisor shall have the same remedies in all respects for the breach of trust as if he were a person beneficially interested in the plan.

(3) The Supervisor or any person authorised by him 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 moneys of any such plan are invested.

Penalties for default

182. (1) Every trustee of a registered plan commits 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 records 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 Supervisor or the winding-up of the plan.

(2) It is a defence to any proceedings instituted under subsection (1) against the trustees 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 Supervisor to furnish any information or explanation which could with reasonable diligence be furnished by him makes default in complying with any such requirement within fourteen days after written notice thereof has been delivered to him, is guilty of an offence.

(4) A person who commits an offence under this Part is liable on summary conviction to a fine of \$5,000 and in the case of a continuing offence to a further fine of \$100 for every day during which the offence is committed after conviction thereof.

Submission of annual accounts

- 183. (1)** The trustees of each plan registered under this Part shall—
- (a) submit annually to the Supervisor 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 Supervisor annually or at such periods and in such form as may be set out in the Fifth Schedule 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 Supervisor be audited by an auditor approved by him; and
 - (b) be prepared in accordance with the format set out in the Fifth Schedule.

Actuarial investigation

184. (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 four years or at such shorter intervals as the Supervisor may specify.

(3) A copy of the report of the actuary shall be furnished to the Supervisor.

(4) 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 by subsection (4) shall be deposited by the trustees with the Supervisor.

Investment of assets of a plan

185. (1) The trustees of a registered plan may invest the assets of the plan only in such securities as may be prescribed in the Fourth Schedule.

(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.

PART 9

MISCELLANEOUS

Policy to be issued expeditiously

186. (1) Where a person has entered into a contract of insurance with an insurer, the insurer shall forward to that person the relevant insurance policy documents within thirty days of the entering into a contract or such other time as the Supervisor may consider reasonable.

(2) No registered insurer shall issue a policy in Montserrat which, whatever its nature, is not printed or typed in clearly legible letters.

(3) An insurer who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$2,000.

Jurisdiction over local policies

187. Every policy issued in Montserrat shall, notwithstanding any agreement to the contrary, be governed by the laws of Montserrat and shall be subject to the jurisdiction of the courts of Montserrat.

Insurer to maintain register of policies

188. (1) Every company shall keep at its principal office in Montserrat a register of policies (hereafter referred to as “**the register**”).

(2) Every local policy existing at the date of commencement of this Act shall as at that date be registered by the company in the register.

(3) A company shall specify its principal office in Montserrat on every policy issued by it.

(4) Every local policy issued after the commencement of this Act shall immediately after issue be registered by the company in the register.

(5) A policy may at the written request of the policy-holder and with the consent of the company, be transferred from a register outside Montserrat to a register in Montserrat, or from a register in Montserrat, to a register outside of Montserrat.

(6) All expenses incurred in connection with the transfer of a policy pursuant to subsection (5) shall be borne by the policy-holder.

Policy not invalidated by breach of this Act

189. A policy issued by any person whether before, or after the date of commencement of this Act shall not be invalid merely because that person contravened or failed to comply with any enactment in force applying to that policy.

Restriction on use of Insurance terms

190. (1) No person other than a registered insurer or a registered insurance intermediary shall have or use the word “**insurance**” or “**assurance**” or any derivative thereof in the name under which such person carries on business.

(2) A registered insurer, insurance broker or insurance agent shall not change the name under which he is registered without the prior written permission of the Supervisor.

Inspection of documents lodged with Supervisor

191. (1) A person may, subject to the payment of any fee which may be prescribed—

(a) inspect; or

(b) inspect and make a copy of,

any prescribed returns and any audited statement furnished by a registered insurer to the Supervisor under this Act.

(2) The Supervisor shall, without charge furnish at the request of any person the name of the principal representative in Montserrat of a registered insurer and the address of the principal office in Montserrat of a registered insurance company notified to him in accordance with Part 3 and in respect of an association of underwriters the name and address of any person nominated pursuant to Part 4.

Annual licences

⁴192. (1) Every insurer shall pay to the Accountant General a licence fee for the transaction of insurance business as set out in the Third Schedule.

(2) Such licence fee shall be payable at registration and thereafter in the month of January in every year for the continuance of the registration of the insurer. In the event of the licence fee for the continuance of the registration of an insurer being paid after the last day of January, a sum equal to 5% of the licence fee for each month that the fee is unpaid after that date, and shall be paid in addition to the relevant licence fee.

(3) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of \$5,000.

(4) Where it appears to the Supervisor that an insurer has failed to comply with the requirements of sections 22, 29 and 38 the Supervisor may refuse the renewal.

⁴ Cuna Insurance Mutual Group exempted from Annual Licence Fee – S.R.O. 27/2005
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Publication of registrations, cancellations, etc.

193. (1) The Supervisor shall cause notice of registration or the cancellation of registration of an insurer or of an insurance agent or of an insurance broker to be published in the *Gazette*.

(2) The Supervisor shall, from time to time, cause to be published in the *Gazette* and in a newspaper circulating in Montserrat up-to-date lists of companies, associations of underwriters and persons registered under Part 3, Part 4 or Part 5, as the case may be.

Misleading advertisements

194. (1) No advertisement shall be used by a registered insurer or a registered insurance intermediary which, directly or by implication, has the capacity or tendency to mislead or deceive prospective policy-holders with respect to an insurer's assets, corporate structure, financial standing or relative position in the insurance business or in any other material respect.

(2) In this section and in sections 195 and 196—

“**advertisement**” includes every form of advertising whether by oral statement or in the form of a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs, cinematographic films, video tapes or by way of electronic broadcasting or by any other means.

Approval required for notice offering shares for subscription

195. (1) A person shall not publish in respect of any company or in respect of a company proposed to be formed after the commencement of this Act a prospectus, notice, circular, advertisement or other invitation offering to the public for subscription any shares in the company or proposed company, unless the prospectus, notice, circular, advertisement or other invitation is first submitted to and approved by the Supervisor.

(2) A person acting as promoter of a proposed company shall not accept any office of profit in the company or any payment or pecuniary advantage other than as provided in any such prospectus, notice, circular, advertisement or other invitation.

Publication of authorised and paid-up capital

196. Where any advertisement, notice or other document of a registered insurer contains a statement of the amount of its authorised capital or of its issued capital, the publication shall also contain a statement of the amount of the capital which has been paid up.

False documents

197. If a person prepares or issues a document referred to in this Act which is false or misleading in any material respect, that person and every other person who took part in the preparation or issue of the document or who

signed it is guilty of an offence, unless it is proved that the offender, if an individual, or all the persons who acted on behalf of the offender, if he is not an individual, had no knowledge of the falsity or misleading character of the document when it was prepared or issued and had taken every reasonable precaution to ensure its accuracy.

Translation of documents

198. The Supervisor may require any person who furnishes him in accordance with this Act, any statement, certificate or other document whatsoever in a language other than the English language to provide a translation of that document in the English language at that person's expense.

Governor acting on the advice of Cabinet may authorise exemptions

199. The Governor acting on the advice of Cabinet may by Order published in the *Gazette* and on such terms as he may determine, authorise the exemption from any provision of this Act of any person where such exemption is considered necessary. (*Amended by Act 9 of 2011*)

Regulations

200. (1) The Governor acting on the advice of Cabinet may make regulations for giving effect to this Act and, in particular, the regulations may make provision in relation to all or any of the following—

- (a) prescribing the forms to be used in connection with any provision of this Act;
- (b) prescribing anything which is required or authorised to be prescribed by this Act;
- (c) amending any Schedule to this Act or adding any Schedule to this Act;
- (d) prescribing rules governing reinsurance business;
- (e) prescribing rules for the investment of funds by insurers;
- (f) prescribing rules for the form, procedure and time limits for appeals;
- (g) prescribing rules for the valuation of assets;
- (h) prescribing rules for the writing-off of preliminary expenses and the deferring of acquisition costs in respect of new insurance business;
- (i) prescribing rules for the registration of persons as sales representatives, insurance agents, insurance adjusters or insurance brokers, the holding of examinations to qualify for registration and the exemptions of persons from such examinations;

- (j) prescribing rules governing the sale of universal life, annuity and variable life products;
 - (k) prescribing fees for the holding of examinations for sales representatives, insurance agents and insurance brokers and insurance adjusters;
 - (l) generally for the effective implementation of this Act.
- (2) The Governor acting on the advice of Cabinet may by Order extend the period prescribed under this Act for the performance of an act, or things as to him may seem necessary for the fulfillment of the Act.

(Amended by Act 9 of 2011)

Supervisor may authorise extension of time

201. Where any provision of this Act requires anything to be done within a specified period of time and no provision is made for the extension of it, that period may in any particular case be extended by the Supervisor in writing.

Appeals

202. (1) Any person who is aggrieved by any decision of the Supervisor under this Act, including a cancellation of his registration, or a refusal to register him as an insurer or as an insurance intermediary may within twenty one days of the decision, appeal to the Tribunal established under this Act.

(2) Except with the permission of the Minister, the Tribunal shall determine an appeal within a period of six months from the date on which the appeal is filed. In the event that the appellant fails to supply information as required by the Tribunal, the appeal shall be dismissed.

(3) An appeal shall lie from a decision of the Tribunal to a Judge of the High Court.

(4) Where an appeal is pending any order made by the Supervisor shall be suspended until the final determination of such appeal.

(5) Notwithstanding subsection (4) where an appeal is made against the action of the Supervisor to intervene in the affairs of a company in accordance with section 49 the intervention shall have effect notwithstanding the appeal.

Appeals tribunal

203. (1) For the purpose of hearing appeals under this Act, there is established an Insurance Appeals Tribunal (in this Act referred to as “**the Tribunal**”) which shall consist of a Chairman who shall be a person qualified in law of not less than five years standing and two other members, one of whom shall be a representative of the insurance industry.

(2) The members of the Tribunal shall be appointed by the Governor acting on the advice of Cabinet shall, subject to subsections (4), (5) and (6), hold office for such period not exceeding three years as may be specified in the instrument of appointment, but shall be eligible for re-appointment.

(3) A member of the Tribunal other than the Chairman may at any time resign his office by instrument in writing addressed to the Chairman who shall cause it to be transmitted to the Governor.

(4) The Chairman of the Tribunal may at any time resign this office by instrument in writing addressed to the Governor.

(5) The Governor acting on the advice of Cabinet may at any time revoke the appointment of the Chairman or any other member of the Tribunal.

(6) At any meeting of the Tribunal, the Chairman and one other member shall constitute a quorum.

(7) The members of the Tribunal shall be paid such remuneration and allowances as may be prescribed.

(8) A Secretary shall be appointed to the Tribunal and the Secretary shall perform such duties as may be prescribed.

(9) Subject to this section, the Tribunal may regulate its own procedure.

(10) Where a member of the Tribunal is for any reason temporarily unable to perform his duties under this Part, the Governor acting on the advice of Cabinet may appoint some other person to act as a temporary member of the Tribunal during such inability; save that where the member is the Chairman, the person appointed to act in his stead shall be a person qualified in law of not less than five years standing.

(Amended by Act 9 of 2011)

Offences

204. (1) Any person who contravenes—

(a) any provision of this Act;

(b) any provision of any rules prescribed under this Act; or

(c) any direction or requirement given or made by the Supervisor,

is guilty of an offence, unless he proves that he did not knowingly commit such contravention or omission and, in the case of a default in complying with any such provision, direction or requirement, the offence shall be deemed to be continued so long as the default continues.

(2) Where an offence against this Act is committed by a company and the offence is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of, any director, any officer, or an actuary or auditor of the company, he, as well as the company, shall be deemed to be guilty of the offence.

(3) Where any document required by or under this Act to be signed by any person is false in any material particular to the knowledge of any such person who signs it, that person shall be guilty of an offence.

(4) For the purpose of this section, a certificate purporting to be signed by the Supervisor as to the date on which that evidence came to his knowledge shall, in any such summary proceedings, be conclusive evidence of that date.

(5) Any proceedings against a company for an offence against this Act shall be without prejudice to any proceedings for the judicial management, or the winding-up of the company or of any part of the business of the company which may be taken in respect of the matter constituting the offence.

Penalties

205. All offences against this Act for which no other penalty is prescribed is punishable, on summary conviction, in the case of a company, by a fine of \$5,000 and in the case of an individual by a fine of \$2,000 or to imprisonment for a term of six months.

Married persons

206. The Married Women's Property Act or any legislation in force relating to married persons' property, in so far as it creates a statutory trust of a life policy, has no effect in relation to sections 109 to 120.____

Repeal

207. (1) The Insurance Act 1977 is repealed.

(2) Notwithstanding subsection (1) anything granted or done or any Regulations or Orders made under the Insurance Act, Montserrat and in force immediately before the commencement of this Act shall continue in force as if made under this Act until amended, cancelled or revoked.

FIRST SCHEDULE

(Section 2)

CLASSES OF INSURANCE BUSINESS

1. (1) “**Ordinary long-term insurance business**” means business of any of the following classes—

- (a) the effecting and carrying out of contracts of insurance on human life or contracts to pay annuities on human life;
- (b) the effecting and carrying out of contracts of insurance against the risks—
 - (i) of death or personal injury of the persons insured resulting from an accident or from an accident of a specified class;
 - (ii) of the persons insured becoming incapacitated as a result of disease or of a disease of a special class,

if, in the absence of special circumstances specifically provided for in such contracts, they cannot be terminated before the expiration of five years from the date on which they were entered into;

- (c) the effecting and carrying out of contracts of insurance other than contracts referred to in paragraph (b), whether effected by the issue of policies, bonds or endowment certificate or otherwise, under which in return for one or more premiums paid to the insurer, a sum or a series of sums becomes payable to the insured at a future date.

(2) Where the principal object of a contract of insurance is to insure a person against risks of such kinds that the business of effecting and carrying out contracts of insurance against such risks constitutes marine, aviation and transport insurance business, motor vehicle insurance business or property insurance business, a company shall not for the purpose of this Act be treated as carrying on ordinary long-term insurance business by reason only of the incidental inclusion in such a contract of a provision whereby the company assumes liability against the happening of personal accidents, whether fatal or not.

2. “**Industrial life insurance business**” means the business of effecting and carrying out insurance upon human life, premiums in respect of which are contracted to be paid at intervals of less than two months and which are received by means of collectors.

3. (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.

(2) Where the principal object of a contract of insurance is to insure a person against risks of such kinds that the business of effecting and carrying out contracts of insurance against such risks constitutes property insurance business, a company shall not for the purpose of this Act be treated as carrying on liability insurance business

by reason only of the incidental inclusion in such a contract of a provision whereby the company assumes liability against the risk of the person insured incurring liabilities to third parties.

4. (1) “Marine, aviation and transport business” means the business of effecting and carrying out contracts of insurance—

- (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 on board 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 loss of or damage to merchandise, baggage and other goods in transit (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 this definition by virtue of any of sub-paragraphs (a) to (f).

(2) Where the principal object of a contract of insurance is to insure a person against risks of such kinds that the business of effecting and carrying out contracts of insurance against such risks constitutes insurance business of some other class, a company shall not for the purpose of this Act be treated as carrying on marine, aviation and transport insurance business by reason only of the incidental inclusion in such a contract of a provision whereby the company assumes liability of a kind which by itself would constitute liability against any of the risks specified in paragraph 4(1)(a) to (g).

5. (1) “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 risks but exclusive of transit risks.

(2) For the purposes of this Act a company shall not be treated as carrying on motor vehicle insurance business by reason only of the fact that goods, merchandise or property upon which a contract of insurance is effected by it (being goods, merchandise or property on board of a vessel or an aircraft) consist of, or include motor vehicles.

6. (1) “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 interruptions of the carrying on of business carried on by them or to reductions of the scope of business so carried on;
- (d) of loss to the persons insured attributable to incurring unforeseen expenses; and
- (e) neither falling within any of the foregoing sub-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.

(2) Where the principal object of a contract of insurance is to insure a person against risks of such kinds that the business of effecting and carrying out contracts of insurance against such risks constitutes marine, aviation and transport insurance business, motor vehicle insurance business or property insurance business, a company shall not for the purpose of this Act be treated as carrying on pecuniary loss insurance business by reason only of the incidental inclusion in such a contract of a provision whereby the company assumes liability against the risks specified in paragraph 6(c) and (d).

7. (1) “**Personal accident insurance business**” means the business of effecting and carrying out contracts of insurance against the risks of the persons insured—

- (a) dying or sustaining injury as the result of an accident or of an accident of a specified class; or
- (b) becoming incapacitated as the result of a disease or a disease of a specified class, where such contracts do not fall within the classes of contracts specified in sub-paragraph (b) of the definition of “**Ordinary long-term insurance business**”.

(2) Where the principal object of a contract of insurance is to insure a person against risks of such kinds that the business of effecting and carrying out contracts of insurance against such risks constitutes marine, aviation and transport insurance business, motor vehicle insurance business or property insurance business, a company shall not for the purpose of this Act be treated as carrying on personal accident insurance business by reason only of the incidental inclusion in such a contract of a provision whereby the company assumes liability against the happening of personal accidents, whether fatal or not.

8. “Property Insurance Business” Means The Business Of Effecting And Carrying Out Contracts Of Insurance Against Risks Of Loss Or Damage To Property Or Against Loss Consequential Upon Such Loss Or Damage, Not Being Risks Of Such Kinds 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.

SECOND SCHEDULE

(Section 22)

PRESCRIBED SECURITIES FOR DEPOSITS

Deposits required for transacting insurance business may be in the following prescribed securities—

1. Treasury bills issued by the Government of Montserrat;
 2. Bonds and debentures issued by the Government of Montserrat;
 3. Treasury bills issued by member governments of the Eastern Caribbean Central Bank;
 4. Bonds and debentures issued by the Governments of the Commonwealth Caribbean;
 5. Bonds, debentures, stock issued by the Caribbean Development Bank;
 6. Bonds, debentures and stock of the Eastern Caribbean Home Mortgage bank.
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THIRD SCHEDULE*(Sections 13(1), 70, 79(1), 180 and 192)***REGISTRATION AND LICENCE FEES**

1. Application Fees for Registration—
 - (a) Local Insurers—

Long term insurance business	\$750
General insurance business	\$750
 - (b) Foreign Insurers—

Long term insurance business	\$1,500
General insurance business	\$1,500
2. Annual registration fees—

Local Insurance Broker	\$1,500
Foreign Insurance Broker	\$2,000
Insurance Adjuster.....	\$1,200
Insurance Agent.....	\$1,400
Sales Representative.....	\$100
3. Annual licence fees—
 - (a) Local Insurer
 - (i) Long term insurance business.....
 - (ii) More than one type of business

Long term insurance business.....	\$4,200
More than one type of business	\$6,300
 - (b) Foreign Insurer
 - (i) Long term insurance business.....
 - (ii) More than one type of business

Long term insurance business.....	\$7,000
More than one type of business	\$10,500
4.
 - (a) Registration of a pension fund plan.....
 - (b) Registration of an amendment/change of a
Pension Fund Plan

Registration of a pension fund plan.....	\$500
Registration of an amendment/change of a Pension Fund Plan	\$10
5. Fees for reinstatement of registration—

Insurance Agent.....	\$150
Insurance Broker	\$150
Insurance Adjuster.....	\$150
Sales Representative.....	\$50

(Amended by S.R.O.s. 22/2004 and 60/2010)

FOURTH SCHEDULE

(Sections 29 and 185)

INVESTMENT OF POLICY-HOLDER RESERVES

A. ASSETS IN WHICH THE POLICY HOLDER RESERVES MAY BE INVESTED

A company in respect of its policy-holder reserves, and the trustees of a pension fund plan, may invest in assets of the following classes—

1. Bonds and Debentures—

- (a) the bonds, debentures and other evidence of indebtedness of or guaranteed by the Government of—
 - (i) Montserrat; or
 - (ii) any other country approved by the Minister.
- (b) the bonds, debentures and other evidence of indebtedness of a corporation incorporated in Montserrat which either—
 - (i) is established by statute to administer on behalf of the State a utility in Montserrat where its recurrent income is sufficient to meet its operation, maintenance and debt service charges; or
 - (ii) is fully secured by a statutory charge upon real estate or upon plant and equipment or other tangible assets of the corporation used in the transaction of its business.
- (c) the bonds, debentures or other securities of, or those guaranteed by the Caribbean Development Bank, or any other international financial institution approved by the Minister.

2. Ordinary and Preference Shares

- (a) The fully-paid ordinary shares, bonds, debentures or other evidence of indebtedness of a company incorporated in Montserrat or in any Commonwealth Caribbean State which during a period of the previous five years prior to the date of purchase, has either paid a dividend in each 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 4% of the market value of those shares.
- (b) Ordinary shares, preference shares, bonds or debentures of a company incorporated in Montserrat or in a Commonwealth Caribbean State and approved by the Minister.

3. Mortgages

- (a) Mortgages on real estate or leaseholds in Montserrat where the amount of the loan does not exceed 75% of the value of the real estate.
- (b) A company or the trustees of a pension fund plan may invest in a mortgage where the amount of the loan does not exceed 90% but

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where the portion of the indebtedness in excess of 75% is guaranteed by an agency of, or directly by the Government of Montserrat, or by a company registered under this Act to carry on that class of insurance business.

4. Real Estate

- (a) Real Estate or leaseholds in Montserrat for the production of income where—
- (i) the lease is made to or guaranteed by the Government of Montserrat and provides for a net revenue sufficient to yield a reasonable interest return and to repay the amount invested over a period not exceeding thirty years;
 - (ii) the real estate or leasehold has produced over the previous three years revenue sufficient to yield a reasonable interest return and to repay the amount invested for a period of the economic life time of the investment not exceeding forty years.
- (b) Real estate in Montserrat required by the company for its use or occupation or reasonably required for the natural expansion of its business.
- (c) Real estate in Montserrat acquired by foreclosure of a mortgage on real estate where the mortgage qualifies as an investment under this Act.

5. Deposit Certificates

Deposits for fixed terms in—

- (a) any bank in Montserrat;
- (b) any financial institution licensed under the Banking Act; or
- (c) any other financial institution operating in Montserrat and approved by the Minister.

6. Unit Trusts

Units in mutual funds and unit trusts approved by the Supervisor.

B. LIMITATIONS ON THE INVESTMENT OF POLICY-HOLDER RESERVES

For the purpose of the investment of policy-holder reserves and of pension fund plans the following limitations shall apply—

(a) Real Estate

The total amount of investment in real estate shall not exceed 20% of a long term insurance fund or a pension fund plan. The Supervisor may permit an investment in real estate to be included as part of a general insurance fund but this authority should not exceed 20% of a fund. In the case of pension fund plans the Supervisor may, on the recommendation of an actuary permit investment in real estate to exceed 20% of the fund.

(b) Mortgages

No single mortgage included as an asset of a fund shall exceed 10% of the total assets of the insurer.

(c) Bonds and Debentures

An insurer shall not invest in bonds and debentures on which payment of principal or interest is in default.

(d) Ordinary Shares

- (i) An insurer shall not invest more than 30% of a fund in ordinary shares.
- (ii) An insurer shall not purchase more than 30% of the ordinary shares in a corporation where those shares are to be included in an insurance fund.

(e) Purchase of Life Insurance Company

A long term insurer shall not purchase the shares of a company carrying on long term business where that investment is to be included in its insurance fund.

FIFTH SCHEDULE*(Section 175 (1))***PENSION FUND PLANS****PART 1***Requirements as to the Trust Deed and Rules of Registered
Pension and Provident Fund Plans*

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 moneys belonging to the plan and for authorising the investments, if any, in addition to those authorised 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 a bank;
- (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-sheet and actuarial 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 a winding-up, the application of any surplus in the fund and the use of the plan to purchase immediate annuities for contingent pensioners;
- (12) the method by which the rules may be amended.

PART 2
FORMS
PENSION FUND PLANS
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 employers.		3.	Return of contribution on withdrawal.		
4.	Any additional contribution by employer to meet deficiency or back service liabilities.		4.	Other expenditures (to the specified).		
5.	Interest dividend and rents.		5.	Amount of the Fund at the end of the period.*		
6.	Other income (to be specified).					

*Details to be specified in a Schedule

FORM B

(Not 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		Government Bonds and Debentures*	
Pensions due but not yet paid		Other Bonds and Debentures*	
Other benefits (to be specified) due but not yet paid		Ordinary and Preference shares*	
		Mortgages*	
		Real Estate	
		Deposit Certificates	
		Other Assets (specify)	

*Details to be specified in a Schedule.

PART 3

ACTUARIAL VALUATION REPORT

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 Members	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							

(b) 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 on pension during period		Number of pensioners who dies during period		No of pensioners ceasing to receive pension for other cause		Number of 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 inter-valuation 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 realised by the assets of the fund whether invested or not during each year and the inter-valuation 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,
 - (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.
