



TURKS AND CAICOS ISLANDS

CHAPTER 121
INSURANCE ORDINANCE
and Subsidiary Legislation

Revised Edition
showing the law as at **2004**

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance 1997.

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CHAPTER 121

INSURANCE ORDINANCE

*(Ordinances 12 of 1989, 5 of 1990, 6 of 1992,
28 of 1994, 9 of 1995, 9 of 1998 and Legal Notice 24 of 1993)*

AN ORDINANCE TO MAKE PROVISION FOR THE LICENSING AND CONTROL OF THE BUSINESS OF INSURANCE AND FOR MATTERS INCIDENTAL OR RELATED THERETO.

Commencement

[31 December 1989]

PART I

PRELIMINARY

Short title

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

Interpretation

2. In this Ordinance, unless the context otherwise requires—

“actuary” means—

(a) a person who has qualified as an actuary by examination of the Institute of Actuaries in England or the Faculty of Actuaries in Scotland or the Society of Actuaries in the United States of America or Canada, and who is a current member of good standing of one of the aforementioned professional associations; or

(b) a person of good standing with some other actuarial qualifications who is recognised by the **financial services commission**, as an actuary for the purpose of this Ordinance; *(Amended by Ord.6/2001)*

“auditor” means a person holding a currently valid certificate **from the financial services commission** certifying that in its opinion such person is of good standing and qualified to undertake the audit of an insurer; *(Amended by Ords.6 of 2001 and 3 of 2002)*

“contract” includes policy;

“controller”, in relation to a licensee which is a body corporate means a director, any person in accordance with whose decisions the directors are accustomed to act or any person

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entitled to exercise not less than thirty *per centum* of the votes at a general meeting. In determining for purposes of this definition the voting rights which a body corporate may be entitled to exercise it shall be deemed to be entitled to exercise, in addition to any voting rights it has solely on its own account, those of any company of which it is a subsidiary and those of its subsidiary company or companies. In determining for purposes of this definition the voting rights which a natural person may be entitled to exercise he shall be deemed to be entitled to exercise, in addition to any voting rights he has solely on his own account, those of any partner, parent, brother, sister, spouse, minor child or minor step-child;

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

“external insurer” means an insurer having its principal or registered office in a place outside the Islands which the **financial services commission** has approved as a jurisdiction in which the regulation and supervision of insurers is, in **its** opinion, satisfactory; (*Inserted by Ord. 28 of 1994, and amended by Ords. 6 of 2001 and 3 of 2002*)

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

“general business” means insurance business other than long term business;

“Governor” means the Governor in Council;

“insurance agent” means a person (not being an insurer) who solicits directly, or through representatives, advertising or other means, domestic business on behalf of not more than one insurer;

“insurance broker” means a person (not being an insurer) –

(a) **who negotiates directly or through representatives or other means, contracts of insurance or of re-insurance on behalf of more than one insurer; or**

- (b) who places or arranges insurance business with insurance companies' agents or sub-agents on behalf of prospective policy holders, who advises policy holders on the business of insurance or who assists policy holders in the settlement of claims.
(Amended by Ord. 3 of 2002)

“insurance business” means the business of effecting and carrying out contracts—

- (a) protecting persons against loss or liability to loss in respect of risks to which such persons may be exposed; or
- (b) to pay a sum of money or other thing of value upon the happening of an event, and includes re-insurance business and running-off business including the settlement of claims;

“insurance manager” means a company operating in or from within the Islands which provides insurance expertise to or for insurers and which has in its employment a person who—

- (i) is qualified by examination as a fellow or associate of the Chartered Insurance Institute of London, or who is a member of either the Society of Chartered Property and Casualty Underwriters or the American Society of Chartered Life Underwriters both of the United States of America and who is either a current member of good standing of the applicable professional body or of some other professional insurance association recognised by the **financial services commission** for the purpose of this Ordinance; or
- (ii) is a person of good standing as has been approved by the **financial services commission**;

(Amended by Ord.6 of 2001)

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

“insurer” means a person carrying on insurance business and includes an association of individual underwriters including Lloyd's and other associations of underwriters recognised by the **financial services commission**, and which comply with such laws as are enacted in their principal place of

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residence for their regulation and supervision; *(Amended by Ord. 6 of 2001)*

“the Islands” means the Turks and Caicos Islands; *(Inserted by Ord. 28 of 1994)*

“licence” and its cognates means a licence granted under this Ordinance;

“licensing committee” means the licensing committee of the financial services commission established under section 14 of the Financial Services Commission Ordinance; *(Inserted by Ord. 6 of 2001)*

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

- (a) on human life or contracts to pay annuities on human life but excluding contracts for credit life insurance and term life insurance for a period of five years or less other than convertible and renewable term life contracts;
- (b) against risks of the persons insured sustaining injury as the result of an accident or of an accident of a specified class or dying as the result of an accident or of an accident of a specified class or becoming incapacitated in consequence of disease or diseases of a specified class, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either not expressed to be terminable by the insurer before the expiration of five years from the taking effect thereof or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned;
- (c) whether by bonds, endowment certificates or otherwise whereby in return for one or more premiums paid to the insurer a sum or series of sums is to become payable to the person insured in the future, not being contracts falling within paragraphs (a) or (b);

“net worth” means excess of assets (including any contingent or reserve fund secured to the satisfaction of the **financial services commission**) over liabilities other than liabilities to partners or shareholders; *(Amended by Ord.6 of 2001)*

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

“principal insurance representative” means a person operating in or from within the Islands who, on his own account and not as the employee of any other person, maintains for an insurer full and proper records of the business activities of that insurer;

“Superintendent” means the Superintendent of Insurance appointed under section 3.

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3. (1) The **financial services commission** shall appoint a Superintendent of Insurance. *(Amended by Ord. 6 of 2001)*

The
Superintendent
of Insurance, his
duties and
powers

(2) It is the duty of the Superintendent—

- (a) to maintain a general view of insurance practice in the Islands;
- (b) on his own motion or when so required by the **licensing committee**, to examine the affairs or business of any licensee or other person carrying on, or who at any time since the coming into operation of this Ordinance has carried on, insurance business, for the purposes of satisfying himself that the provisions of this Ordinance have been or are being complied with, that the licensee is in a sound financial position and is carrying on his business in a satisfactory manner, and to report to the **licensing committee** the results of every such examination; *(Amended by Ord. 6 of 2001)*
- (c) to examine annual returns delivered to the **financial services commission**, and report to it on the result of every such examination; *(Amended by Ords. 6 of 2001 and 3 of 2002)*
- (d) to examine and make recommendations to the **licensing committee** with respect to applications for licences under section 5; *(Amended by Ord. 28 of 1994 and Ord. 6 of 2001)*
- (e) when so required by the **financial services commission**, to submit a written report to the **it**, as the case may be, on any matter connected with the performance of his functions. *(Inserted by Ord. 28 of 1994 and amended by Ord. 6 of 2001)*

(3) In performance of his functions under this Ordinance and subject to the provisions of section 11 the Superintendent may at any reasonable time—

- (a) have access to the books, records, vouchers, documents, policies, contracts, cash and securities of any licensee;
- (b) call upon the manager or officer designated by the manager of any licensee for such information or explanation as the Superintendent may reasonably require for the purpose of enabling him to perform his functions under this Ordinance.

(4) **Repealed by Ord. 6 of 2001**

(5) Any person who fails to comply with any requirement lawfully made pursuant to subsection (3) commits an offence.

PART II

LICENCES

Offence to
conduct
insurance
business without
a licence

4. (1) Any person who not being licensed in that behalf carries on insurance business commits an offence.

(2) Any person who not being licensed in that behalf acts as—

- (a) an insurance manager;
- (b) an insurance broker;
- (c) an insurance agent;
- (d) an insurance sub-agent; or
- (e) a principal insurance representative;

commits an offence.

Licences

5. (1) Any person wishing to carry on insurance business in or from within the Islands may make application to the **financial services commission** for the grant of one or more of the following licences—

- (a) an Insurer's Licence;
- (b) an Insurance Agent's Licence;
- (c) an Insurance Broker's Licence;
- (d) an Insurance Manager's Licence;
- (e) a Principal Insurance Representative's Licence;
- (f) an Insurance Sub-agent's Licence.

(Amended by Ord. 6 of 2001)

(2) An application under this section shall be made in the prescribed form accompanied by the prescribed fee **and such other information and documents as may be prescribed**. The fee shall not be refunded in the event of the refusal, withdrawal or failure to pursue the application *(Amended by Ords. 28 of 1994 and 3 of 2002)*

(3) Upon receiving, and before deciding upon, any application, the **licensing committee** may call upon the applicant to

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supply such further information as the Permanent Secretary, Finance, may specify. *(Amended by Ord. 6 of 2001)*

(4) The **licensing committee** may refuse an application made under this section or may grant it unconditionally or subject to such conditions as **the licensing committee** may see fit to impose. A decision under this section is final and not subject to appeal to, or review by, any court or other authority. *(Amended by Ord. 6 of 2001 and Ord. 3 of 2002)*

(5) The **licensing committee** shall cause notice of the granting of a licence under this section to be published in the *Gazette*. *(Amended by Ord. 6 of 2001)*

(6) Every licensee holding a current licence shall on or before the 31st day of March in each year and every year during the subsistence of that licence pay to the **financial services commission** for the benefit of the general revenues of the Islands the annual fee prescribed in respect of such licence. *(Amended by Ord. 6 of 2001)*

6. (1) Any person commits an offence who without the approval in writing of the **licensing committee**, in any description or title under which he carries on business in or from within the Islands uses (whether in English or in any other language) any of the following words—

Offence to use
certain words in
title

“assurance”
“casualty”
“guarantee”
“indemnity”
“insurance”
“re-insurance”
“surety”
“underwriting”,

or any other word, derivative thereof, which in the opinion of the **licensing committee** connotes insurance business.

(Amended by Ord. 6 of 2001)

(2) Before giving **its** approval under subsection (1) the **licensing committee** may require of any person such references and such information and particulars as may be prescribed. *(Amended by Ords. 6 of 2001 and 3 of 2002)*

PART III

LICENSED INSURERS

Scope of
insurer's
licences,
conditions
applicable, etc

7. (1) An Insurer's Licence licenses an insurer to carry on business in or from within the Islands.

(2) Every Insurer's Licence shall be subject to the conditions that the licensee—

- (a) notifies the **licensing committee** of any change, or proposed change, in the information (including any business plan) contained in, or supplied in connection with, the application for the licence;
- (b) carries on business only in accordance with the information referred to in paragraph (a) and such changes as the **licensing committee** has approved;
- (c) furnishes annually to the **licensing committee** a certificate, in the prescribed form, of compliance with the provisions of this subsection. Such form shall be signed by an independent auditor or such other person as the **licensing committee** approves. *(Amended by Ord. 6 of 2001)*

(3) In respect of a licensed insurer's domestic business, such insurer shall maintain within the Islands in cash, short term securities or other realisable investments approved by the **financial services commission**, sufficient funds to match current liabilities, life insurance funds and annuity funds. *(Amended by Ords. 28 of 1994 and 6 of 2001)*

(4) Every contract of domestic business effected by a licensed insurer shall be subject to the jurisdiction of the courts in the Islands, notwithstanding any provision to the contrary contained in such contract or in any agreement related to such contract.

(5) Every licensed insurer shall appoint at least one person resident in the Islands (consent to which appointment shall be signified by the person in writing) who is approved by the **financial services commission**, for the purpose of accepting service of process in any legal proceedings to which the insurer is a party. *(Substituted by Ord. 28 of 1994 and amended by Ord. 6 of 2001)*

(6) Every licensed insurer shall prepare annual accounts in accordance with generally accepted accounting principles acceptable to the **financial services commission** and audited by an independent auditor. *(Amended by Ord. 6 of 2001)*

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(7) Every licensed insurer who is carrying on general business shall, in addition to the requirement in subsection (6), prepare annually a financial statement in the prescribed form, certified by an independent auditor, to enable the **financial services commission** to be satisfied as to its solvency. *(Amended by Ord. 6 of 2001)*

(7A) The auditor referred to in subsections (6) and (7) shall report to the licensing committee breaches of this Ordinance and failure by the licensed insurer to conduct business in accordance with its business plan or its internal controls. (Inserted by Ord. 3 of 2002)

(8) Every licensed insurer who is carrying on long term business shall, in addition to complying with subsection (6), prepare at least once in every three year period an actuarial valuation of its assets and liabilities, certified by an actuary, so as to enable the **financial services commission** to be satisfied as to its solvency. Furthermore—

- (a) every such insurer carrying on both long term business and general business shall keep separate accounts in respect of its long term business;
- (b) (i) all receipts by any such insurer of funds in respect of its long term business shall be placed in a separate long term business fund;
- (ii) payments from the said long term business fund shall not be made directly or indirectly for any purpose other than those of the insurer's long term business, except insofar as such payments can be made out of any surplus disclosed on an actuarial valuation and certified by an actuary to be distributable otherwise than to policy-holders;
- (c) every such insurer carrying on long term business may establish any number of separate accounts in respect of respective premiums paid to it to provide—
 - (i) annuities on human life; and
 - (ii) contracts of insurance on human life;and such respective premiums shall be kept segregated one from the other and independent of all funds of the insurer and notwithstanding the provisions of any other law to the contrary are not chargeable with any liability arising from any other business of the insurer.

(Amended by Ords. 28 of 1994 and 6 of 2001)

(9) In respect of any insurer other than an approved external insurer or an insurer who, with the approval of the **financial services commission**, permanently maintains in the Islands a principal office and staff—

- (a) each such insurer shall appoint an insurance manager resident in the Islands and maintain permanently at a designated principal office in the Islands (unless some other location is approved by the **financial services commission**) full and proper records of its business activities;
- (b) each such insurer carrying on besides insurance any other business shall keep separate accounts in respect of its insurance business and shall segregate the assets and liabilities of its insurance business from those of its other business;
- (c) the **financial services commission** may direct that any such insurer shall not without the specific approval of the Superintendent make investments of a specified class and may in that case require such insurer to realise investments of that class within such period as may be prescribed;
- (d) no such insurer shall without the sanction of the **financial services commission**—
 - (i) amalgamate with any one or more insurers;
 - (ii) other than in the normal course of insurance business, transfer its insurance operations or a part thereof or accept transfer of the insurance operations or a part thereof from another insurer. *(Amended by Ord. 6 of 2001)*

(10) A licensed insurance broker may obtain a special dispensation from the **financial services commission** to place a policy or contract of domestic business with one or more unlicensed insurers where—

- (i) the said insurers have not been refused a licence under this Ordinance;
- (ii) the said insurers are approved by the **financial services commission** as being of sound reputation;
- (iii) the **financial services commission** is satisfied that the proposed volume of domestic business to be placed with such unlicensed insurers is inadequate to support the payment of the fees of

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an Insurer's Licence or that some other good and sufficient reason exists; and

- (iv) the said insurance broker can demonstrate to the satisfaction of the **financial services commission** an evident need (in terms of additional capacity, or policy coverage, or otherwise) that the business be so placed.

Such dispensation, if granted, shall be subject to review at such intervals, if any, as the **financial services commission** may specify when granting the dispensation and there shall be no appeal against the refusal of any such dispensation or renewal thereof. *(Amended by Ord. 6 of 2001)*

Subsection (4) shall apply to a policy placed under this subsection.

(11) *Repealed by Ord. 3 of 2002*

7A.(1) For the purpose of this section “a producer owned reinsurance company” is a company –

- (a)* which carries on the business of reinsurance
- (b)* whose affairs are under control of a direct writer; and
- (c)* which is beneficially owned by the producers of the business reinsured.

(2)A producer owned reinsurance company shall -

- (a)* submit annual financial statements to the financial services commission in such form as may be prescribed; and
- (b)* deposit with the financial services commission an undertaking satisfactory to the commission that the company shall not engage in business other than the reinsurance of risks covered by a insurer acceptable to the financial services commission.

(3)The insurer referred to in subsection (2)(b) shall meet such requirements as may be prescribed.

(4)Agreements between the producer owned reinsurance company and the insurer referred to in subsection (2)(b) shall have the prior approval of the financial services commission.

(5)Section 7(3), (6), (7), (8) and 9(a) and section 9 shall not apply to a producer owned reinsurance company. *(Inserted by Ord. 3 of 2002)*

Prohibition on
cancellation of
contract

7B. A licensed insurer shall not cancel a contract of insurance if and only if a claimant under the contract of insurance has not paid the premium under the contract. *(Inserted by Ord. 3 of 2002)*

PART IV

LICENSEES OTHER THAN LICENSED INSURERS

Licenses other
than licensed
insurers

8. (1) An insurance agent who acts on behalf of more than one insurer is deemed for the purpose of this Ordinance to be acting as an insurance broker.

(2) A licensed insurance broker shall maintain in force professional indemnity insurance in respect of his insurance broking activities, placed with an insurer licensed to carry on domestic business and for an indemnity of not less than \$100,000 for any one loss, or such other figure as may be prescribed by the **financial services commission**. Such professional indemnity shall extend to include the activities on behalf of the broker and his sub-agents, if any. In the event that such professional indemnity insurance be withdrawn, or cancelled, or the said insurance be not renewed, the said broker shall immediately notify the **financial services commission** and shall forthwith cease to solicit further insurance business until such professional indemnity insurance has been reinstated or replaced. *(Amended by Ord. 6 of 2001)*

(2A) A licensed insurance broker shall maintain separate books of accounts in respect of –

- (a) premium collected on behalf of insurers; and
- (b) its other business. *(Inserted Ord. 3 of 2002)*

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

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- (b) A licensed insurance agent may, as an alternative to meeting the requirement laid down in paragraph (a), maintain in force professional indemnity insurance in like manner and for a like amount as if he had been a licensed insurance broker as in subsection (2). *(Amended by Ord. 6 of 2001)*

(4) A licensed insurance sub-agent may not solicit or carry on business on behalf of more than one insurance broker. If the professional indemnity insurance or power of attorney, agency agreement or guarantee, as the case may be, referred to in subsections (2) and (3), is for any reason withdrawn from the said sub-agent, then the licence of the said sub-agent is *ipso facto* suspended until such time as such professional indemnity insurance, power of attorney, agency agreement or guarantee, as the case may be, is reinstated.

(5) A licensed insurance manager or a licensed principal insurance representative shall use his best endeavours to carry on insurance and re-insurance business only with insurers of sound reputation. In the event that such insurance manager or licensed principal insurance representative has reason to doubt the honesty or solvency of any insurer or re-insurer for or with whom he is carrying on business, he shall report his doubt forthwith to the **financial services commission**. In the event that either party to an agreement relating to representation between an insurer and an insurance manager or principal insurance representative intends to terminate the same, sixty days written notice of such proposed termination shall be given to the Superintendent by such insurance manager or principal insurance representative. *(Amended by Ord. 6 of 2001)*

(5A) A licensed insurance manager in respect of his insurance and reinsurance business, shall maintain in force professional indemnity insurance, placed with an insurer and for an indemnity of not less than \$100,000 for any one loss, or such other figure as may be specified by the financial services commission. *(Inserted by Ord. 3 of 2002)*

(5B) If the professional indemnity insurance maintained under subsection (5A) is withdrawn, cancelled, or not renewed, the licensed insurance manager shall immediately –

- (a) notify the financial services commission; and
- (b) cease to solicit further insurance business until such professional indemnity insurance has been reinstated or replaced. *(Inserted by Ord. 3 of 2002)*

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

(7) Every licence to which this Part applies shall be subject to the conditions that the licensee—

- (a) notifies the **licensing committee** of any change, or proposed change, in the information (including any business plan) contained in, or supplied in connection with, the application for the licence;
- (b) carries on business only in accordance with the information referred to in paragraph (a) and such changes as the **licensing committee** has approved;
- (c) furnishes annually to the **licensing committee** a certificate in the prescribed form of compliance with the provisions of this subsection. Such form shall be signed by an independent auditor or such other person as the **licensing committee** approves. *(Amended by Ord. 6 of 2001)*

PART V

ANNUAL RETURNS

Annual returns
by licensed
insurers

9. (1) Every licensed insurer shall furnish to the **financial services commission** within three months of the end of its financial year or such longer period not exceeding a further three months as the **licensing committee**, may in writing allow in response to a written request, the following annual returns—

- (a) written confirmation from an independent auditor that annual accounts have been prepared as required under section 7(6) and whether or not the auditor's certificate for such accounts is unqualified;
- (b) a certificate of compliance as required by section 7(2)(c);
- (c) if the said insurer is carrying on, or has carried on, general business, a financial statement in the prescribed form, certified by an independent auditor, in accordance with section 7(7);
- (d) if the said insurer is carrying on, or has carried on, long term business, an actuarial valuation of its assets and liabilities, certified by an actuary, in accordance with section 7(8);
- (e) if the said insurer has a branch or other subsidiary activity in the Islands which is constituted as a separate legal entity, written confirmation that the

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said insurer accepts responsibility for all contracts issued by such branch or subsidiary activity and also for all acts, omissions and liabilities of such branch or subsidiary activity;

- (f) if the said insurer is carrying on, or has carried on, general business, such information as the **licensing committee** may require concerning the availability of funds for prompt settlement of claims under general domestic business;
- (g) if the said insurer is carrying on, or has carried on, long term business such information as the **licensing committee** may require concerning the investment of premium income received from such domestic long term business in prescribed investments within the Islands;
- (h) a list of insurance agents and insurance brokers who have the said insurer's authority to effect business on its behalf.

(Amended by Ords. 28 of 1994 and 6 of 2001)

(2) The Governor may prescribe additions, deletions or modifications to the returns required to be made by licensees under this section.

(3) A licensed insurer which does not make the returns referred to in subsection (1) -

- (a) within the period which may be allowed under that subsection, shall be liable to a penalty of \$5,000
- (b) within such further period as may be allowed by the licensing committee, shall not accept business which it did not have at the end of the period allowed under this paragraph; and
- (c) within such further period as may be allowed by the licensing committee beginning on the day after the end of the period allowed under paragraph (b), may have its license revoked by the licensing committee.

(Inserted by Ord. 3 of 2002)

(4) The licensing committee where it is satisfied that failure to comply with the periods allowed under subsection (3) is because of circumstances outside the control of the licensed insurer or its auditors, may extend an allowed period for such length of time as it considers appropriate in the circumstances. *(Inserted by Ord. 3 of 2002)*

10. (1) Every licensed insurance agent shall furnish to the **financial services commission** within three months of the end of

Annual returns
by other
licensees

each calendar year the following returns in respect of his domestic business—

- (a) confirmation in writing that the said agent is acting for one insurer only and the name of that insurer;
- (b) evidence of the existence of a power of attorney, agency agreement or guarantee or professional indemnity insurance as referred to under section 8(3);
- (c) a list of the sub-agents, if any, authorised by the said agent to solicit domestic business on his behalf and on behalf of the insurer whom he represents;
- (d) confirmation in writing that the information set out in the application for the said agent's licence, as modified by subsequent notifications of changes in accordance with section 8(7), remains correct and gives a full and fair picture of his business.*(Amended by Ord. 6 of 2001)*

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

- (a) a list of all insurers for whom the said sub-agent broker has acted during that year, and the premium income to each such insurer during the last financial year; *(Amended by Ord. 28 of 1994)*
- (b) evidence of the existence of professional indemnity insurance in respect of his activities as an insurance broker, as required under section 8(2);
- (c) a list of the sub-agents, if any, authorised by the said insurance broker to solicit domestic business on his behalf and on behalf of the insurers whom he represents;
- (d) confirmation in writing that the information set out in the application for the said insurance broker's licence, as modified by subsequent notifications of changes in accordance with section 8(7), remains correct and gives a full and fair picture of his business.*(Amended by Ord.6 of 2001)*

(3) Every licensed insurance sub-agent shall furnish to the **licensing committee** before the renewal of his licence—

- (a) confirmation in writing that the said sub-agent is acting for one insurance agent only, or for one

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insurance broker, and the name of such insurance agent or insurance broker;

- (b) confirmation in writing that the information set out in the application for the said sub-agent's licence, as modified by subsequent notifications of changes in accordance with section 8(7), remains correct and gives a full and fair picture of his activities. *(Amended by Ord. 6 of 2001)*

(4) Every licensed insurance manager and principal insurance representative shall furnish to the **financial services commission** by the 31st March each year the following information—

- (a) a list of all licensed insurers for which he has acted during that year, indicating any additions or deletions;
- (b) a report by an auditor that the statutory books and records of the insurers have been kept properly, accurately, up to date and in accordance with applicable law;
- (c) a certificate by the insurance manager or principal insurance representative that those insurers have to the best of his knowledge and belief complied with the requirements of the Ordinance and with any regulations made thereunder and with any terms or conditions attached to their licenses by virtue of the powers granted under this Ordinance;
- (d) a certificate signed by the insurance manager or principal insurance representative that to the best of his knowledge and belief those insurers continue to be of sound reputation and probity.

(Amended by Ords. 28 of 1994 and 6 of 2001)

(5) The Governor may prescribe additions, deletions or modifications to the returns required to be made by licensees under this section.

PART VA

REGULATION

10A. For the purposes of this Part –

Definition

- (a) “documents” includes information recorded in any form; and

- (b) the power to require the production of information or documents includes power to require the production of the information or documents in legible form.

(Inserted by Ord. 3 of 2002)

Inspection,
investigation and
complaints

10B. (1) The licensing committee may –

- (a) inspect the affairs or business of a licensee for the purpose of ensuring that the licensee is or has been acting in accordance with this Ordinance and with the terms and conditions of its licence;
- (b) investigate the affairs or business of a licensee; and
- (c) investigate the affairs or business of a person who, it has reasonable grounds to believe, has committed or is committing an offence under section 4.

(2) The licensing committee shall receive and examine complaints against licensees.

Powers of the
licensing
committee to
appoint
investigator

10C. (1) The licensing committee in exercise of the powers conferred by section 10B(1)(b) and (c) may authorise a person as an investigator to investigate –

- (a) the affairs or business of a person specified in the authorisation; or
- (b) a subject matter specified in the authorisation,

being a person who or subject matter which, is the subject of the investigation.

(2) A person shall not be obliged to comply with a requirement imposed by an investigator exercising powers under this section unless the investigator produces if requested evidence of his authority.

(3) The person referred to in subsection (1)(a) –

- (a) shall be given written notice by the licensing committee of the appointment of an investigator unless the licensing committee believes that the notice would be likely to result in the investigation being frustrated; and
- (b) shall not be obliged to comply with a requirement imposed by an investigator

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exercising powers under this section unless the investigator produces if requested –

- (i) evidence of his authority, and
- (ii) directions under subsections (7) to (9).

- (4) An authorisation under subsection (1) shall –
- (a) specify the provisions under which the investigator was appointed; and
 - (b) state the reason for his appointment.

- (5) An investigator –
- (a) may require a person to attend before the investigator at a specified time and place to answer questions;
 - (b) may require a person to provide such documents and information as the investigator may require for the purposes of the inquiry; and
 - (c) may examine a person on oath and may administer an oath accordingly.

(6) A person who is to be examined on oath under this section may be represented by an attorney.

(7) The licensing committee shall direct an investigator as to –

- (a) the scope of the investigation;
- (b) the period during which the investigation is to be conducted;
- (c) the conduct of the investigation; and
- (d) the reporting of the investigation.

- (8) A direction under subsection (7) may –
- (a) confine the investigation to particular matters;
 - (b) extend the investigation to additional matters;
 - (c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction; or
 - (d) require the investigator to make such interim reports as are specified.

(9) If there is a change in the scope or conduct of the investigation and, in the opinion of the licensing committee the person subject to investigation is likely to be significantly

prejudiced by not being made aware of it, that person shall be given written notice of the change.

(10) An investigator shall make a report of his investigation to the licensing committee.

(Inserted by Ord 3. of 2002)

Powers of
investigator to
require
information

10D. (1) An investigator may direct a person –

- (a) to attend before the investigator at a specified time and place to answer questions;
- (b) to produce documents relevant to the investigation;
- (c) to furnish him with information with respect to a matter relevant to the investigation; and
- (d) to provide him with such assistance in relation to the investigation as he may specify.

(2) Where a person fails to comply with a direction issued under subsection (1) within the period of three days beginning with the date of the direction or such longer period as the investigator may permit, he may apply to the court for an order requiring the person to comply with the direction.

(3) Where under a direction issued under subsection (1) the investigator considers it necessary to examine a person on oath, he may apply to the court to have the person examined by the court and the transcript of the examination sent to him.

(4) A person who is to be examined under subsection (3) may be represented by an attorney and the examination shall be held in camera.

(5) An order of the court made under subsection (3) may limit the scope and nature of the examination of a person and may provide for the payment of costs incurred by the person in connection with the examination.

(6) Where documents are produced under this section the investigator may take copies of or extracts from, them.

(7) A person shall not under this section be required to disclose information or produce a document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings, except that an attorney may be required to furnish the name and address of his client.

(8) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.

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(9) The licensing committee may make a contribution to the costs of a person who complies with a direction given under this section other than the person who or whose affairs are the subject of the investigation in respect of which the direction was issued. (*Inserted by Ord.3 of 2002*)

10E. (1) The court may issue a warrant under this section if satisfied on information on oath given by or on behalf of the licensing committee that there are reasonable grounds for believing that the conditions referred to in subsection (2) or (3) are satisfied.

Powers of entry
and search

(2) The conditions referred to in subsection (1) are –

- (a) that a person on whom an order of the court under section 10D has been imposed has failed wholly or in part to comply with it; and
- (b) that on the premises specified in the warrant –
 - (i) there are documents which have been required; or
 - (ii) there is information which has been required.

(3) The conditions referred to in subsection (1) are –

- (a) that there are on the premises specified in the warrant documents or information in relation to which a direction of the investigator or an order of the court under section 10D could be imposed; and
- (b) that if such a requirement were to be imposed the documents or information to which it related would be removed, tampered with or destroyed.

(4) A warrant under this section shall authorise a police officer –

- (a) to enter the premises specified in the warrant;
- (b) to search the premises and take possession of any documents or information specified in the warrant or take, in relation to any such documents or information, any other steps which appear necessary for their preservation or preventing interference with them;
- (c) to take copies of or extracts from documents or information specified in the warrant;

(d) to require a person on the premises to provide an explanation of a document or information specified in the warrant or to state where it may be found; and

(e) to use reasonable force.

(5) A document of which possession is taken under this section may be retained –

(a) for a period of three months beginning with the date on which possession is taken; or

(b) if within that period proceedings to which the document is relevant are commenced against a person for a criminal offence, until the conclusion of the proceedings.

(Inserted by Ord.3 of 2002)

Admissibility of answers obtained under this Ordinance

10F. (1) A statement made by a person in compliance with this Ordinance shall be admissible in evidence in proceedings, if it complies with the requirements governing the admissibility of evidence in the proceedings.

(2) In criminal proceedings in which the person referred to in subsection (1) is charged with an offence to which this subsection applies or in proceedings in relation to action to be taken against that person –

(a) no evidence relating to the statement may be adduced; and

(b) no question relating to it may be asked.

(3) Subsection (2) applies to an offence other than perjury. *(Inserted by Ord.3 of 2002)*

Immunity from action or proceedings

10G. No action or proceedings for breach of confidentiality or contravention of any duty to which a person is subject shall lie against a person who furnishes information, produces documents, renders assistance or provides an explanation in relation to a direction, examination, search warrant, inspection or investigation under this Ordinance. *(Inserted by Ord.3 of 2002)*

PART VI

GENERAL

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11. (1) Subject to section 12 and except for the purpose of the performance of duties or the exercise of functions under this Ordinance or when lawfully required to do so by any court of competent jurisdiction in the Islands or under the provisions of any law for the time being in force in the Islands, neither the **financial services commission**, nor the Superintendent, nor any person acting under the authority of the **financial services commission**, or the Superintendent, shall disclose any information relating to any application by any person under the provisions of this Ordinance or to the affairs of a licensee or of any policy holder of a licensee which has been acquired by the **financial services commission**, the Superintendent or authorised person in the performance of his duties or the exercise of his functions under this Ordinance. *(Substituted by Ords. 9 of 1995 and 6 of 2001)*

Preservation of
secrecy

(2) Any person who contravenes subsection (1) commits an offence and is liable to a fine of \$50,000 or imprisonment for one year. *(Substituted by Ord. 28 of 1994)*

12. (1) For the purpose of assisting an overseas regulatory authority which has requested information in connection with inquiries being carried out by it, the Superintendent acting in his discretion may disclose to it such information which he has acquired in connection with the performance of his duties or in the exercise of his functions under this Ordinance as he considers appropriate.

Request for
assistance by
overseas
regulatory
authority

(2) **For the purpose of this section -**

- (a) an “overseas regulatory authority” means an authority which in a country or territory outside the Turks and Caicos Islands exercises any functions corresponding to the functions of the
- (i) the Superintendent and the licensing committee under this Ordinance.
 - (ii) the Governor, the licensing committee, the Attorney General and the Superintendent of Banking under the Banking Ordinance;
 - (iii) the Superintendent of Company Management and the licensing committee under the Company Management (licensing) Ordinance 1999;
 - (iv) the financial services commission and the licensing committee under the Investment Dealers (Licensing) Ordinance 2001;
 - (v) the superintendent of Mutual Funds and the licensing committee under the Mutual Funds Ordinance 1998;

(vi) the Superintendent of Trustees and the Licensing committee under the Trustees Licensing Ordinance; and

(vii) regulatory functions; and

(b) “regulatory functions” has the same meaning as in section 2 of the Overseas Regulatory Authority (Assistance) Ordinance 2001.
(Amended by Ord.3 of 2002)

(3) The Superintendent shall not disclose any such information to the authority unless he is satisfied—

- (a) that the information requested by the authority is for the purposes of its regulatory functions;
- (b) that the request is not for information that is related directly or indirectly to the imposition, calculation and collection of taxes or the enforcement of exchange control regulations; and
- (c) that the authority is subject to adequate legal restrictions on further disclosure.

(4) The Governor may from time to time issue guidelines to the Superintendent concerning the discharge of his functions under this section; and the Superintendent shall have regard to any such guidelines in the discharge of his functions under this section.

(5) Before making any guidelines under subsection (4), the Governor shall consult Executive Council.

(6) The Governor shall keep under review the working of any guidelines made under subsection (4) and shall make to Executive Council a report on it at least once in every six months after the coming into operation of this section.

(Inserted by Ord. 9 of 1995)

Power to
suspend licences
etc.

13. (1) If the **licensing committee** has reasonable grounds for believing that a licensee—

- (a) has ceased to carry on the business for which it is licensed;
- (b) is carrying on business while insolvent;
- (c) has become bankrupt, gone into liquidation, has been wound up or is otherwise dissolved;
- (d) has undertaken insurance business other than that for which it was licensed at the time in question;

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- (e) has carried on business in contravention of the provisions of this Ordinance or any other law;
- (f) is carrying on business in contravention of any conditions subject to which the licence was granted or has had imposed on it;
- (g) is carrying on business in a manner which is likely to be detrimental to the interests of the public or of its creditors or policy holders;
- (h) is carrying on business or acts as an insurance agent, an insurance broker, an insurance manager, a principal insurance representative or an insurance sub-agent, under a name which—
 - (i) is identical with that of any other person, company, firm or business house whether within the Islands or not or which so nearly resembles that name as to be calculated to deceive;
 - (ii) is calculated falsely, to suggest the patronage of, or some connection with, some person in authority whether within the Islands or not;
 - (iii) is calculated falsely to suggest that such person has a special status in relation to or derived from the Government of the Islands or has the official backing of or acts on behalf of the said Government or of any department or official thereof or is recognised in the Islands as a national insurer, insurance broker, insurance agent or insurance manager; or
 - (iv) is calculated falsely to suggest that the licensee is carrying on insurance business in a different category from that in respect of which he is licensed,
- (i) is being managed or controlled by persons not fit and proper to control or manage a company in respect of which the license has been granted. *(Inserted by Ord.3 of 2002)*

the **licensing committee**, may forthwith and without compensation order that—

- (A) the licensee take such steps as are necessary to rectify the matter; or
- (B) such licence be suspended and an enquiry be held into the affairs of the licensee

under section 3(2)(b). *(Amended by Ord. 6 of 2001)*

(2) Notice of the suspension of a licence under this section shall be given by the **licensing committee** to the licensee as soon as is practicable and shall be published in the *Gazette*:

Provided that such giving of notice to the licensee may be delayed pending the determination of an application to the Supreme Court under section 14. *(Amended by Ord. 6 of 2001)*

(3) A licensee aggrieved by any order respecting his licence made under this section may within thirty days of his receiving notice thereof appeal against such order to the Supreme Court.

(4) An appeal under this section shall not operate as a stay of the order appealed against.

13A. Where the licensing committee is of the opinion that a director or officer or auditor of a licensee is no longer a fit and proper person to be a director or officer or auditor of the licensee the licensing committee may request the licensee to replace the director or officer or auditor with a person approved by the licensing committee as a fit and proper person. *(Inserted by Ord. 3 of 2002)*

Preservation of
assets, etc

14. (1) In any case where the **licensing committee** has suspended a licence under section 13 the Superintendent may apply *ex parte* to the Supreme Court for an order that the assets, books or other papers of the licensee be preserved, not moved or otherwise disposed of and the Supreme Court may, if it is satisfied that such assets, books or other papers are liable to be moved, destroyed or otherwise disposed of make an order that they shall be preserved and not moved or otherwise disposed of until a further order of that Court. *(Amended by Ord. 6 of 2001)*

(2) Where an order has been made by the Supreme Court under subsection (1), the licensee may apply to the Supreme Court at any time for the discharge of such order and the Supreme Court may thereupon discharge, vary, or confirm the order.

Licensing
committee may
take protective
steps

15. (1) If the **licensing committee** has reasonable grounds for believing that circumstances exist, or are likely to arise, constituting grounds for the suspension of a licence under section 13, **the licensing committee** may—

- (a) impose a prohibition on the writing by the licensee of new insurance business for such time or until the happening of such events as the **licensing committee** may specify;

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- (b) appoint a receiver or manager to run off or otherwise dispose of the insurance business of the licensee;
- (c) direct the controllers, or any of them to provide the licensee with additional capital;
- (d) direct the licensee to maintain in the Islands in a readily realisable form for the satisfaction of claims a sum not exceeding forty *per centum* of the premium income of the licensee during the immediately preceding twelve months;
- (e) direct that the licensee make or refrain from making investments of a specified class or of more than a specified sum in a specified class. *(Amended by Ord.6 of 2001)*

(2) Any person who, without reasonable cause, contravenes any prohibition, or fails to comply with any direction, given under this section commits an offence.

(3) Nothing done in respect of any licence under the provisions of this section shall prevent the **licensing committee**, from exercising **its** powers under sections 13 or 16 to suspend or revoke such licence.

(Amended by Ords.6 of 2001 and 3 of 2002)

16. (1) If—

- (a) a licensee has without reasonable cause failed to obey an order under section 13(1)(A); or
- (b) after considering a report of an enquiry ordered by him under section 13(1)(B) the **licensing committee** is of the opinion that the grounds on which **it** made **its** order under section 13(1) were well-founded;

the **licensing committee** may without compensation revoke the licence to which the order relates:

Provided that the **licensing committee** shall not exercise **its** powers under this section unless the time limit for appealing against the relevant order has elapsed without any appeal having been lodged, or if such an appeal was lodged, until its final determination. *(Amended by Ords.6 of 2001 and 3 of 2002)*

(2) Notice of the revocation of a licence under this section shall be given to the licensee by the **licensing committee** as soon as is practicable and shall be published in the *Gazette*. *(Amended by Ord.6 of 2001)*

Revocation of
licences

(3) No appeal against the revocation of a licence under this section shall be subject to appeal to, or review by, any court or other authority.

Winding up

17. (1) In this section, “insurance company” means an insurance company which carries on domestic business, and includes a company which has ceased to be licensed as an insurer but remains under any liabilities in respect of its domestic business.

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(2) The Supreme Court may order the winding up of an insurance company in accordance with the winding up provisions of the Companies Ordinance, subject, however, to the modification that the insurance company may be ordered to be wound up —

- (a) on the petition, presented by leave of the Court, of one or more policyholders owning policies of an aggregate value of not less than \$25,000, which leave shall not be granted until a *prima facie* case of insolvency has been established to the satisfaction of the Court, and security for costs for such amount as the Court may think reasonable has been given; or
- (b) on application made by the Superintendent showing that, from a consideration of the documents deposited with him under this Ordinance and any information coming to his attention, it appears to him that the insurance company is insolvent.

(Inserted by Ord. 28 of 1994)

Regulations

18. The Governor may make regulations for carrying out the purposes of this Ordinance and, without derogating from the generality of the foregoing, may make Regulations—

- (a) prescribing anything by this Ordinance required to be prescribed;
- (b) exempting any person or class of persons or business or class of business from any provision of this Ordinance;
- (c) prescribing forms to be used;
- (d) prescribing the format for any returns to be made under this Ordinance;
- (e) prescribing capital and liquidity margins and ratios to be maintained by licensees under this Ordinance;
- (f) amending the fees payable under this Ordinance; and

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(g) prescribing such other things as are required to be prescribed by this Ordinance or may be incidental to, or conducive of, its purposes.

19. (1) Any person who in compliance or purported compliance with this Ordinance makes any representation in the truth of which he does not believe (the onus of proof of his belief being upon him) commits an offence and shall be liable on conviction to a fine of \$100,000 or imprisonment for two years. (*Amended by Ord. 28 of 1994*)

Penal

(2) Any person who by any act or omission contravenes any requirement of this Ordinance for which no specific penalty is provided, whether such contravention is or is not specifically stated to be an offence, commits an offence and shall be liable on conviction to a fine of \$100,000 or imprisonment for two years. (*Amended by Ords. 5 of 1990 and 28 of 1994*)

INSURANCE REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

1. Short title
2. Interpretation
3. Procedure on application for a licence
4. External insurers: Permanent Secretary, Finance's power to exempt
5. Provisions as to valuation of an applicant's assets
6. Superintendent's power to issue certain guidelines
7. Fees
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9. Duty to display licence
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12. Prior approval of appointment of directors, senior officers or auditors and duty to notify changes
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14. Licensed insurers to file annual accounts
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INSURANCE REGULATIONS – SECTION 18

(Legal Notices 8 of 1990, 15 of 1991, 25 of 1993 and 69 of 1994)

[14 February 1990] Commencement

1. These Regulations may be cited as the Insurance Regulations. Short title

2. (1) In these Regulations, unless the context otherwise requires, the following expressions have the following meanings— Interpretation

“applicant” means a person or company applying for a licence;

“capital” means the paid-up capital of a company;

“credit life reinsurer” means a licensed insurer who reinsures any policy of insurance securing the obligations of a debtor under a credit contract in the event of the debtor's death, illness or injury, and includes such an insurer who provides extended warranty insurance cover;
(Inserted by L.N. 69/1994)

“external insurer” means an insurer having its principal or registered office in a place outside the Islands which the Permanent Secretary, Finance has approved as a jurisdiction in which the regulation and supervision of insurers is, in his opinion, satisfactory;

“licensee” means a person or company to whom or to which a licence has been granted;

“net useable worth” means the net asset value of a company excluding assets which are not readily realisable or which are not readily useable to meet insurance claims;

“the Ordinance” means the Insurance Ordinance;

“prescribed” means prescribed under the Ordinance or under these Regulations;

“Schedule” means one of the schedules to these Regulations;

“section” means a section of the Ordinance;

“solvency ratio” means the ratio of net premium income written to net useable worth;

“Superintendent” means the person appointed as the Superintendent under section 3(1) of the Ordinance.

(2) The expressions defined in section 2 shall, insofar as the same appear in these Regulations and unless the context otherwise requires, have the same meanings as those expressions have for the purposes of the Ordinance.

Procedure on
application for a
licence

3. Every person or company applying for a licence shall at the time of application furnish to the Permanent Secretary, Finance the following:

- (a) an application in writing in such form as may be prescribed or if none has been prescribed then in such form as shall be acceptable to the Permanent Secretary, Finance in his discretion;
- (b) a remittance for the prescribed fee;
- (c) the name of the applicant and, if a natural person, his address and, if a company, its principal or registered office;
- (d) if the applicant is a company, evidence in writing satisfactory to the Permanent Secretary, Finance of the incorporation and registration of the applicant under the Companies Ordinance or, if the applicant was incorporated outside the Islands, then such evidence as aforesaid of its proper incorporation and registration in the place where it was incorporated together with a certificate of good standing;
- (e) if the application is for an insurer's licence and the Permanent Secretary, Finance considers it appropriate, a statement in writing in a form acceptable to him from the authority responsible for the supervision of insurance in the place in which the applicant or its parent company was incorporated, that such authority is aware of the intended application;
- (f) if the application is for an insurer's licence and the Permanent Secretary, Finance considers it appropriate, evidence in writing satisfactory to the Permanent Secretary, Finance that the board of directors or governing body of the applicant, and the persons responsible for the management of the applicant, is or are sufficiently experienced and knowledgeable in the business of insurance;
- (g) if the application is for an insurer's licence and the Permanent Secretary, Finance considers it appropriate, the annual accounts of the applicant and (if appropriate) the annual accounts of the applicant's holding, parent and associated companies for the two years immediately preceding the application, such accounts to be duly audited and certified to the satisfaction of the Permanent Secretary, Finance;
- (h) if the application is for an insurer's licence and the Permanent Secretary, Finance considers it appropriate, a statement of the assets and liabilities of the applicant at the end of the month prior to the lodging of the application, such statement to be certified by a director or senior officer

of the applicant and, if such assets include a shareholding in another company, a statement of the capital of such company;

- (i) if the application is for an insurer's licence and the Permanent Secretary, Finance considers it appropriate, the name, address and professional qualifications of the proposed auditor of the applicant, and also the written consent of such auditor to act;
- (j) unless the Permanent Secretary, Finance determines that it is not appropriate, three references, one of which shall be financial in nature, from a bank or trust company in respect of all the applicants who are natural persons, and all the persons who are the directors (not to be less than two), managers or senior officers of any applicant which is a company;
- (k) if the application is for an insurer's licence and the Permanent Secretary, Finance, considers it appropriate, a list of all persons, with their addresses and nationalities, who are registered shareholders of the applicant, distinguishing the shareholdings of each, and a list of all persons, with their addresses and nationalities, who are beneficial owners of shares in the applicant but not registered shareholders, distinguishing the shares of which each is such beneficial owner, and two or more references verifying the financial good standing of each such shareholder or beneficial owner or person who is a natural person:

Provided that no applicant shall have issued any bearer shares nor shall it have power to issue such shares;

And provided further that no company which is, directly or indirectly, the registered or beneficial owner of any share or shares in the applicant shall have issued, nor have power to issue, any bearer shares;

- (l) if the applicant is a company, a certified copy of the charter, statutes or memorandum and articles of the applicant or other instrument constituting or defining the constitution of the applicant, and if the instrument is not written in the English language, a certified translation thereof, and in every case a certified copy of the certificate of incorporation:

Provided that—

- (i) in the case of a company incorporated in the Islands, certification shall be under seal by the Registrar of Companies; and

- (ii) in the case of a company incorporated outside the Islands, certification shall be under the public seal of the place under the law of which the company has been incorporated or under the public seal of the registrar or other responsible officer holding office under such law;

And provided further that every such copy, instrument, translation or certificate shall be verified by a statutory declaration made by a director or the secretary of the applicant;

- (m) unless the Permanent Secretary, Finance determines that it is not appropriate, a list of all companies in which the applicant holds shares, distinguishing the number of shares held and stating the registered office of each company;
- (n) if the application is for an insurer's licence, an insurance broker's licence or an insurance manager's licence, a business plan which shall, where appropriate, contain a five years projection (with effect from the grant of the licence), and shall, where appropriate, set out details of the following—
 - (i) the type of business to be undertaken and, if appropriate, the categories thereof;
 - (ii) the principal sources of business;
 - (iii) the anticipated premium income from the business expected to be written and, if appropriate, the categories thereof;
 - (iv) the reasons for and the advantages in the applicant operating in or from within the Islands;
 - (v) the overall assessment of the risk factors with, if appropriate, an analysis of proposed reinsurances;
 - (vi) the projected risk exposure and asset base at the end of each year in the five years period following the grant of the licence;
 - (vii) the assessment of the expected ratio of claims to premiums for each category of business and a statement of the rationale for the ratio applied.

External
insurers:
Permanent
Secretary,
Finance's power
to exempt

4. If the applicant is an external insurer, the Permanent Secretary, Finance may, at his discretion and subject to such conditions as he may impose, exempt the applicant from any of the requirements of regulation 3, and he shall publish in the *Gazette* notice of any exemption so granted.

5. (1) Insofar as the Permanent Secretary, Finance may require to assess the value of the assets of a company applying for an insurer's licence, he shall, subject as provided in this regulation, have discretion in determining which assets or categories of assets may be taken into account:

Provisions as to valuation of an applicant's assets

Provided that in making such determination he shall have regard to the following—

- (a) the type or class of business being or intended to be written; and
- (b) the matching of the maturity of assets with the maturity of liabilities.

(2) The following assets shall, however, be taken into account in making such assessment as aforesaid—

- (a) fixed deposits with acceptable banks and financial institutions;
- (b) acceptable government bond issues and bond issues guaranteed by an acceptable government;
- (c) land, whether freehold or leasehold and whether or not developed;
- (d) quoted bonds and commercial paper.

(3) The Permanent Secretary, Finance shall have discretion in determining, for the purpose of assessing an applicant's net useable worth, whether or not any particular asset is readily realisable or readily useable.

6. Subject to any regulation that may be made from time to time under section 18(e), the Superintendent may issue guidelines as to minimum capital requirements, capital and liquidity margins and ratios, as well as solvency ratios in relation to net useable worth and any such guidelines so issued shall be taken into account by the Permanent Secretary, Finance, upon considering any application for an insurer's licence.

Superintendent's power to issue certain guidelines

7. The fees to be paid under the Ordinance shall be as set forth in the First Schedule.

Fees

8. The licences to be granted under the Ordinance shall be in the form set forth in the Second Schedule.

Form of licence

9. Every licensee shall display in a conspicuous position at each of its offices in the Islands any licence, or a copy thereof, issued to it or him which is still in force.

Duty to display licence

10. If at any time a licensee has cause to believe that a client of the licensee is conducting his business affairs, or is likely to do so, either contrary to any law of the Islands or in a manner which is, or may become, detrimental to the reputation or standing of the licensee or of the Islands, it

Duty to report detrimental conduct

[Subsidiary]

or he shall forthwith notify the Superintendent and furnish full particulars thereof.

Prohibition of
bearer shares

11. (1) No licensee shall at any time issue bearer shares nor shall it at any time be authorised to do so by its memorandum or articles, or the charter, statutes or other instruments defining its constitution.

(2) No company which is, or shall become, directly or indirectly, the registered or beneficial owner of any share or shares in any licensee shall have issued or shall issue at any time, or have power to issue, any bearer shares.

Prior approval of
appointment of
directors, senior
officers or
auditors and duty
to notify changes

12. (1) Unless expressly exempted from so doing by the Permanent Secretary, Finance, a licensed insurer shall obtain the approval in writing of the Permanent Secretary, Finance prior to making the appointment of any director, senior officer or auditor of the licensed insurer.

(2) Without prejudice to the foregoing, any change in the directors, senior officers or auditor of a licensed insurer shall be notified to the Permanent Secretary, Finance within fourteen days of such change and details of the newly appointed directors, senior officers or auditor, with, in the case of an auditor, the auditor's written consent to act, shall be given with such notification.

(3) In the case of a change of the auditor of a licensed insurer, the Permanent Secretary, Finance may at his discretion require that the former auditor disclose the circumstances responsible for the change.

Prior approval of
issue or disposal
of shares and
duty to notify
changes

13. (1) No shares in a licensed insurer shall be issued and no issued shares shall be transferred, charged or disposed of in any manner without the prior approval of the Permanent Secretary, Finance:

Provided that the Permanent Secretary, Finance, may exempt any licensed insurer from the provisions of this regulation subject to such terms and conditions, if any, as he may deem necessary.

(2) Without prejudice to the foregoing, any change in the shareholdings in a licensed insurer, or in the members of a licensed insurer, or in the persons who are beneficial but not registered owners of the shares in a licensed insurer, shall be notified to the Permanent Secretary, Finance within thirty days of such change and details of the new shareholdings, members or persons (as the case may be) shall be given with such notification.

Licensed
insurers to file
annual accounts

14. Unless expressly exempted from so doing by the Permanent Secretary, Finance, every licensed insurer required to furnish returns under section 9 shall at the time of furnishing such returns to the Permanent Secretary, Finance furnish to him its annual accounts and (if appropriate) the annual accounts of the licensed insurer's holding, parent and associated companies, such accounts to be duly audited and certified to the satisfaction of the Permanent Secretary, Finance.

15. If any change shall occur in the information given by a licensee at the time of its (or his) application, whether the information was supplied pursuant to section 5(3) or otherwise, particulars of such change shall be notified by the licensee within fourteen days of its occurrence, or within fourteen days from its first becoming known to the licensee, whichever be the later, to the Permanent Secretary, Finance.

Duty to notify
change in
information
supplied at the
time of
application

16. Whenever anything is required or allowed to be done under the Ordinance or these Regulations and no form or procedure is prescribed for so doing, application may be made in writing to the Permanent Secretary, Finance for directions as to doing the same and anything done in accordance with such directions shall be deemed to have been properly done in compliance with the Ordinance or these Regulations, as the case may be.

Directions

FIRST SCHEDULE*(Regulation 7)**(Substituted by L.N. 69/1994)***FEES**

- A. Fees on Application for a Licence (Section 5(2))**
1. Insurer's Licence, other than as mentioned below \$ 500
 2. Insurer's Licence accompanied by an undertaking given under section 7(11) of the Ordinance—
 - (a) where such undertaking is given by a credit life reinsurer \$ 100
 - (b) where such undertaking is given by an applicant other than a credit life reinsurer..... \$ 500
 3. Insurance Agent's Licence \$ 300
 4. Insurance Broker's Licence..... \$ 500
 5. Insurance Manager's Licence..... \$ 500
 6. Principal Insurance Representative's Licence \$ 300
 7. Insurance Sub-agent's Licence..... \$ 100
- B. Annual Fees (Section 5(6))**
1. Upon the grant of a licence, a fee equivalent to the annual fee set out in relation to the category of licence into which that licence falls in paragraph 2, as reduced by one-twelfth for every completed month from the 31st March last preceding the date of the grant.
 2. Annually on or before the 31st March during the subsistence of the licence, for each category of licence as follows—
 - (a) Insurer's Licence where insurer is carrying on domestic business \$2,500
 - (b) Insurer's Licence where insurer is carrying on business other than domestic business in or from within the Islands, other than as mentioned below \$2,000
 - (c) Insurer's Licence accompanied by an undertaking given under section 7(11) of the Ordinance—
 - (i) where such undertaking is given by a credit life reinsurer..... NIL
 - (ii) where such undertaking is given by an insurer other than a credit life reinsurer..... \$ 500
 - (d) Insurance Agent's Licence \$ 100
 - (e) Insurance Broker's Licence \$1,000
 - (f) Insurance Manager's Licence \$3,500
 - (g) Principal Insurance Representative's Licence..... \$1,000
 - (h) Insurance Sub-Agent's Licence \$ 50

SECOND SCHEDULE
TURKS AND CAICOS ISLANDS



Insurance Ordinance

Insurance Regulations

(Regulation 8)

LICENCE

No.

.....
is hereby licensed under the Insurance Ordinance to carry on business in or
from within the Turks and Caicos Islands as
under Section of the Ordinance subject to the provisions of
the said Ordinance and of any Regulations made thereunder and, in
particular, to the condition that the Licensee shall forthwith notify the
Permanent Secretary, Finance, of any change in the information supplied in
or in connection with the application for this Licence.

Given this day of 19/20..... at Cockburn Town on the
Island of Grand Turk.

.....
Permanent Secretary, Finance

INSURANCE REGULATIONS

GUIDELINES ON THE ISSUE OF INSURANCE LICENCES IN THE TURKS AND CAICOS ISLANDS – REGULATION 6

(Gazette Notice 223/1995)

*(Issued by the Superintendent of Insurance of the Turks and Caicos
Islands pursuant to regulation 6 of the Insurance Regulations)*

An insurance company wishing to be licensed in the Turks and Caicos Islands must show that those persons who control its affairs are competent, with evidence of relevant ability, integrity and experience in the field of insurance. The Insurance Regulations in force have been designed to accommodate a wide variety of insurance business. The Financial Services Commission seeks to adopt a flexible approach in applying the Regulations. The Superintendent of Insurance may recommend that certain companies with particular characteristics be allowed, in appropriate circumstances, to operate under modified regulatory requirements after he has assessed the nature of the risk and, in particular, the risk that policyholders, wherever they reside, may have if their legitimate claims are not met in full.

Business Plan

Fundamental to an application for an insurer's, broker's or manager's licence is the submission of a Business Plan which will—

- (a) be a major factor in determining whether or not a licence is issued; and
- (b) if so, define and thereby control the *modus operandi* of the licensee.

This Business Plan must include, where appropriate—

- (1) The reasons for choosing the Turks and Caicos Islands as a base for operations.
- (2) A five year projection including anticipated risk exposure and asset base at the end of each year during the period.
- (3) The type and source of business contemplated, specifically categorized.
- (4) Anticipated premium income, properly categorized.
- (5) An overall assessment of the risk factors and, if appropriate, an analysis of proposed reinsurances. Details of reinsurance and net risk retained must be provided. The prime concern is to ensure that, where reinsurances are used to reduce substantially the potential liabilities outstanding, the policies should be taken out with only reputable, well-reserved and financially sound Reinsurance writing companies.
- (6) An assessment of the expected ratio of claims to premiums for each category of business written—with a statement explaining the rationale applied.

Company Name

The name of the insurance company should reflect the type of insurance being written. It is now unlawful for a company to use in its name the word "insurance" or any other word which connotes insurance business unless the Permanent Secretary, Finance's consent has been obtained.

Capital Requirements

Capital requirements for insurers will vary, but those companies engaged in reinsurance, and general (domestic or international) business should expect to have minimum paid-up capital of U.S. \$100,000. For life companies, this minimum paid-up capital figure will be U.S. \$180,000. Capital levels will be determined on the following criteria (projected or actual):

1. The size of the company as measured by its assets, capital and/or surplus, reserves, premium writings and insurance in force.
2. The kinds of business written, the company's net exposure and the degree of diversification of lines of insurance.
3. The past and anticipated trend in the size of the company's capital and consideration of premium growth, operating history, loss and expense ratios.

Solvency Ratios

Solvency ratios will be established on the basis of risk assessment in each particular case. As a guideline, the minimum net worth requirement will be calculated as follows:

Business	Net Annual Premium Income	Net Worth
A. General only	Up to U.S. \$5M	20% of Net Annual premiums
	Over U.S. \$5M	U.S. \$1M <i>plus</i> 10% of Net Annual premiums in excess of U.S.\$5M
B. Long term only		U.S. \$180,000
C. Long term & General	Up to U.S. \$5M	20% of Net Annual premiums <i>plus</i> U.S. \$180,000
	Over U.S. \$5M	U.S. \$1M <i>plus</i> U.S. \$180,000 <i>plus</i> 10% of annual premiums in excess of U.S.\$5M

"Net worth" is defined as the excess of assets (including any contingent or reserve fund) over liabilities other than liabilities to partners or shareholders. The assets readily available must be sufficient to meet liabilities at all times and therefore the net worth must comprise assets which are acceptable to the Superintendent. The range of permitted assets will be as broad as possible

but will depend upon the type of business to be written. Companies must satisfy the Superintendent that the maturity dates of relevant assets are planned to correspond with maturing liabilities.

Permitted Assets

Permitted assets will include:

1. Cash and time deposits with acceptable financial institutions.
2. Fixed interest securities and blue-chip equities traded on recognized stock exchanges.
3. Eurobonds rated at BBB or above by Standard and Poor.
4. Premiums receivable—but excluding premiums more than 6 months outstanding.
5. Irrevocable Letters of Credit issued by acceptable financial institutions.

All assets should be valued at *market value* and no amounts receivable from related parties may be included without prior written approval from the Superintendent.

Prohibited Assets

Prohibited assets will include:

1. Yachts, aeroplanes, motor vehicles and livestock.
2. Loans to group or connected companies and individuals.
3. Investments in options, futures or forward contracts.
4. Premiums more than 6 months outstanding from due date.

Categories of Licence

There are, at present, six categories of Insurance licence covering:

1. Insurers
2. Agents
3. Brokers
4. Managers
5. Principal Representatives
6. Sub-Agents

Further categories of licence may be added when circumstances dictate.

Branches/subsidiaries of leading international insurance companies will receive every assistance when applying for a licence; parent companies, however, may be required to provide a suitable guarantee covering the liabilities of any *subsidiary* applying for a licence. Approval from the insurance supervisor in the company's country of domicile and copies, periodically, of statutory filings made in the home jurisdiction, may be requested.

Application Fee

The non-refundable licence application fees applicable are as follows—

- for an Insurer's, Insurance Manager's or Insurance Brokers's licence \$ 500
- for a Credit Life Reinsurer's Licence or a Sub Agent's licence \$ 100
- for an Agent's or Principal Insurance Representative's licence \$ 300

Application Forms

Partially completed or undated or unsigned applications without adequate supporting required documentation should not be submitted. Application Forms are available from FSC's office.

Annual Fees

Annual Fees for Insurance Licences are as follows (renewable by 31st March each year)

- | | | |
|----|----------------------------------|---------|
| 1. | Insurers | |
| | (a) Domestic | \$2,500 |
| | (b) Non-domestic (e.g. captives) | \$2,000 |
| | (c) Credit Life Reinsurers | Nil |
| | (d) Other | \$ 500 |
| 2. | Agents | \$ 100 |
| 3. | Brokers | \$1,000 |
| 4. | Managers | \$3,500 |
| 5. | Principal Representatives | \$1,000 |
| 6. | Sub-agents | \$ 50 |

When a licence is first granted, the annual fee payable for the initial year of the company's operations shall be the relevant annual fee indicated above pro-rated from the month in which the licence is granted to the following 31st March.

The Regulations require every Licensee to conspicuously display at each of its offices in the Islands the current licence or a copy thereof.

Insurance Managers (See Definition in Section 2 of Insurance Ordinance)

The Superintendent is particularly anxious to encourage the licensing of Insurance Managers i.e. Companies with insurance experience and expertise capable of managing the affairs of insurers. Insurance companies wishing to be licensed in the Islands must demonstrate that the necessary Insurance Management expertise is readily available at all times.

Statements And Balance Sheets

Profit and loss statements and balance sheets must be prepared and audited. Such accounts may be required annually or every six months, at the discretion of the Superintendent, and subject to the type of business written. In any event, a full set of accounts will be required annually.

Auditors

The auditors of insurance companies must be approved in terms of the Insurance Ordinance (“the Ordinance”). Copies of their signed acceptance of their appointments must also be submitted with the advice of their appointment. In addition to being suitably professionally qualified, auditors must satisfy the Superintendent that they have adequate knowledge of the insurance industry to be relied upon to conduct a proper audit. The auditor is required to provide the necessary annual confirmations (accounts/business plan compliance) to the Superintendent. Residence on the Islands is not a prerequisite to obtaining approved auditor status. The Superintendent will seek agreement from insurers that an open dialogue between his department and the auditors is maintained. This practice should be extended to Insurance Managers as well. For new applications the intended auditor must report on the opening balance sheet and, for existing Insurers, on the Annual Accounts for the previous 3 years.

Actuaries

Actuarial valuations will be required of Life Insurers. The Superintendent may also, in his discretion, require a General Insurer to submit an actuarial valuation in relation to its general business. The actuary must hold appropriate professional qualifications and, unless otherwise specified, all valuations prepared must be sent direct to the Superintendent.

Annual Compliance Requirements

Apart from the payment by all licensees (except Credit Life Licensees) of an annual licence fee, Insurers, Managers, Principal Insurance Representatives, Brokers and Sub-Agent licensees are required under the Ordinance to submit as well, within three (3) months of the end of their financial years, certain specified documents and/or undertakings so as to ensure that acceptable business standards and practices are not only in place but are also maintained while the company/licensee is carrying on Insurance Business. It is important for all such documents to be appropriately signed and dated and to clearly indicate the period to which they relate. Any changes made should also be appropriately initialled.

Penalties

The conduct of insurance business in or from within the Islands will be closely monitored and the Ordinance provides for the suspension or revocation of licences where such action is justified. Additionally, fines and imprisonment can be imposed where a person contravened the provisions of the Ordinance. The intention of the law and the Regulations is to attract quality insurance operations in the Turks and Caicos Islands.

Superintendent of Insurance
Financial Services Commission
Post Office Building,
P. O. Box 173
Grand Turk,
Turks and Caicos Islands, BWI

Telephone: (1) (649) 94 62791 • Telefax: (1) (649) 94 62821

GUIDELINES—OVERSEAS REGULATORY AUTHORITY
— SECTION 12

GUIDELINES FOR THE DISCLOSURE OF INFORMATION TO AN
OVERSEAS REGULATORY AUTHORITY

(Gazette Notice of 1 April 1997)

(Issued by HE The Governor pursuant to section 12 of the Insurance Ordinance, section 29 of the Banking Ordinance, and section 9 of the Trustees Licensing Ordinance)

1. These guidelines concern the discharge by the Superintendent of his functions under section 12 of the Insurance Ordinance, section 29 of the Banking Ordinance, or section 9 of the Trustees Licensing Ordinance, relating to the disclosure to an Overseas Regulatory Authority (ORA) of information which he has acquired in connection with the performance of his duties, or in the exercise of his functions under the Ordinance.

Cap. 118

Cap. 123

2. Assistance may only be given for the purpose of the regulatory function of the ORA, which may include purposes relating to the prudential supervision of the financial services industry and for the obtaining of information relating to market oversight and the protection of the markets of the Turks and Caicos Islands and the markets of the country of the ORA against fraudulent transactions.

3. Where the Superintendent expects to request corresponding assistance from an ORA or expects an ORA to make frequent requests for assistance from him, he should enter into a Memorandum of Understanding (MOU) with the ORA based on the proforma MOU annexed to these guidelines.*

4. The Superintendent must satisfy himself that an ORA is an authority which exercises regulatory functions corresponding to his functions under the Insurance Ordinance and Regulations, the functions of the Superintendent of Banking under the Banking Ordinance and Regulations, or the functions of the Superintendent of Trustees under the Trustees Licensing Ordinance and Regulations.

5. A request from an ORA should be in writing and should contain sufficient particulars of the following to enable the Superintendent to assess whether the conditions set out in the Ordinance governing the disclosure of information are satisfied—

- (a) details of the information requested (including the identity of the person making the request);

* The proforma is not included in this Revised Edition, it may be found in the Revised Edition of the Trustees Licensing Ordinance (Cap. 123).

- (b) the link between the information requested and the territory of the ORA;
- (c) the purpose for which the information is sought;
- (d) a description of the conduct, or suspected conduct, which gives rise to the request;
- (e) the link between the specified laws or regulatory requirements and the regulatory function of the ORA;
- (f) the relevance of the requested information to the specified laws or regulatory requirements;
- (g) copies of any statutory provisions in the territory of the ORA which prohibit or restrict the further disclosure of information disclosed to it by the Superintendent; and
- (h) the steps, if any, taken by the ORA to obtain the requested information by some other means.

6. In deciding whether to accept or decline a request for assistance, the Superintendent should take into account whether the requested information should be obtained by some other means.

7. No assistance will be given where the request is for information relating directly or indirectly, to the imposition, calculation and collection of taxes or the enforcement of exchange control laws and regulations. If the Superintendent is of the view that the request is for such information, he must refuse all assistance. An ORA must furnish the Superintendent with an undertaking that the request is not for such information.

8. An ORA must furnish the Superintendent with an undertaking that it will keep confidential to the extent permitted by law any information disclosed to it by the Superintendent. However, an ORA may disclose such information to another regulatory authority in its jurisdiction if such authority is responsible for taking regulatory action or imposing regulatory requirements in the ORA's jurisdiction; but before doing so, an ORA must obtain the approval of the Superintendent for such disclosure.

9.1 Where the information which is requested is information to which this paragraph applies, the Superintendent may disclose the information without regard to paragraphs 5, 6 and 8 of these guidelines.

9.2 This paragraph applies to requests for information about companies, being information which is routine in nature and which concerns non-sensitive matters, and which relate to—

- (a) a company's local agent;
- (b) a company's registered office or principal office;
- (c) a company's local manager;

- (d) a company's licence: details of the licence (i.e. type, date, number, class of business for which it is licensed and the conditions and restrictions if any, endorsed on its licence;
 - (e) the standing of the company with the Superintendent, and the Registrar of Companies;
 - (f) company records which are available for public inspection.
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