

ABILL

ENTITLED

AN ACT to Amend the Insurance Act.

[ ]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Insurance (Amendment) Act, 2016, and shall be read and construed as one with the Insurance Act (hereinafter referred to as the principal Act).

Short title  
and  
construction.

Amendment  
of section 2  
of principal  
Act.

**2. Section 2 of the principal Act is amended in subsection (2)(b) by deleting—**

- (a) the words “by an unregistered insurer or any person acting with the actual or apparent authority of the insurer or on his behalf”;
- (b) sub-paragraphs (vii) to (x) and substituting therefor the following—
  - “(vii) dissemination of information as to insurance coverage or rates;
  - (viii) forwarding of applications, delivery of policies or insurance contracts;
  - (ix) inspection of risks, fixing of rates or investigation or adjustment of claims or losses;
  - (x) transaction of matters subsequent to or arising out of the effecting of an insurance contract.”.

Amendment  
of section 11  
of principal  
Act.

**3. Section 11 of the principal Act is amended—**

- (a) in subsection (3) by deleting paragraph (b) and substituting therefor the following—
  - “(b) afford the applicant an opportunity to make oral or written representations on the intended action.”;
- (b) by inserting, next after subsection (3), the following subsection—
  - “(4) After affording the applicant an opportunity to make representations under subsection (3)(b), the Commission shall notify the applicant in writing—
    - (a) of its decision; and
    - (b) in the case of a decision to refuse registration, of the applicant’s right under section 140 to appeal to the Appeal Tribunal.”.

4. Section 15 of the principal Act is amended by deleting subsection (2) and inserting next after subsection (1) the following subsections—

Amendment  
of section 15  
of principal  
Act.

“ (2) Before taking any action under subsection (1), the Commission shall—

(a) notify the insurance company in writing that the Commission intends to cancel the company’s registration in respect of all or any of the classes in relation to which the company is registered, giving the reasons therefor; and

(b) afford the insurance company an opportunity to make oral or written representations on the intended action.

(3) After affording the insurance company an opportunity to make representations under subsection (2)(b), the Commission shall notify the applicant in writing—

(a) of its decision; and

(b) in the case of a decision to cancel registration, of the applicant’s right under section 140 to appeal to the Appeal Tribunal ”.

5. Section 23 of the principal Act is amended—

(a) in subsection (1)(c) by—

Amendment  
of section 23  
of principal  
Act.

(i) deleting the word “or” appearing at the end of sub-paragraph (i);

(ii) inserting the word “or” next after the semi-colon appearing at the end of sub-paragraph (ii);

(iii) inserting next after sub-paragraph (ii), the following sub-paragraph—

“(iii) facilities allowing time for the payment over of premiums to insurance companies by brokers within the prescribed period;”;

(b) by inserting, next after subsection (1), the following subsection—

“ (1A) Nothing in subsection (1)(c)(iii) applies to other credit arrangements among insurers and brokers.”.

Amendment  
of section 26  
of principal  
Act.

6. Section 26 of the principal Act is amended by deleting subsection (1)(b) and substituting therefor the following—

“(b) within fourteen days after the date on which the documents referred to in paragraph (a) are submitted to the Commission, cause a copy of the audited financial statements to be published—

(i) if the insurer has a website—

(A) on the insurer’s website; and

(B) in a daily newspaper printed and circulated throughout Jamaica, in accordance with such abridged form as may be prescribed by the Commission; or

(ii) if the insurer does not have a website, in a daily newspaper printed and circulated throughout Jamaica; and.”.

Amendment  
of section 29  
of principal  
Act.

7. Section 29 of the principal Act is amended by inserting next after the words “all records” the words “in respect of its operations,”, renumbering the section as section 29(1), and inserting the following as subsection (2)—

“ (2) The records mentioned in subsection (1) shall be retained for a period of not less than seven years.”.

Insertion of  
new section  
29A into  
principal  
Act.

8. The principal Act is amended by inserting next after section 29 the following section—

“ Risk management procedures. 29A. Every registered insurer shall establish and adhere to risk management procedures which accord with such standards as the Commission may prescribe.”.

9. Section 52 of the principal Act is amended in subsection (1) by deleting the figures “49” and substituting therefor the figures “47”. Amendment of section 52 of principal Act.

10. Section 59 of the principal Act is amended by deleting the words— Amendment of section 59 of principal Act.

- (a) “in this Act to the contrary” and substituting therefor the words “to the contrary provided in this Act or any other law”; and
- (b) “local policies” and substituting therefor the words “policyholders ahead of all other creditors, as concerns all policies”.

11. The principal Act is amended by inserting next after section 59 the following section— Insertion of new section 59A into principal Act.

“Distribution on winding-up. 59A. Upon the winding-up of an insurance company the liabilities of the company in respect of its policyholders shall be discharged ahead of its liabilities to unsecured creditors, other than any matters falling within Category 1 or Category 2 of section 202 of the *Insolvency Act* (ranking of claims).”.

12. Section 61 of the principal Act is amended by deleting subsection (2). Amendment of section 61 of principal Act.

13. Section 63 of the principal Act is amended— Amendment of section 63 of principal Act.

- (a) in subsection (2)(a) by deleting the figures “61,”;
- (b) by deleting subsection (3) and inserting, next after subsection (2), the following subsections—

“ (3) Where the Commission is not satisfied, in respect of an applicant, as to one or more of the requirements set out in subsection (2), the Commission shall—

- (a) notify the applicant in writing that it intends to refuse to register the applicant, giving reasons therefor; and

(b) afford the applicant an opportunity to make oral or written representations on the intended action.

(4) After affording the applicant an opportunity to make representations under subsection (3)(b), the Commission shall notify the applicant in writing—

- (a) of its decision; and
- (b) in the case of a decision to refuse registration, of the applicant's right under section 140 to appeal to the Appeal Tribunal.”.

Amendment  
of section 66  
of principal  
Act.

**14.** Section 66 of the principal Act is amended by deleting subsection (1) and substituting therefor the following—

“ (1) Subject to subsection (2), the Commission may, if at any time it is satisfied that the circumstances specified in that subsection so warrant, give written notice to a registered association stating—

- (a) that the Commission proposes to cancel the association's registration in respect of all or any of the classes of business in relation to which the association is registered, and giving the reasons therefor; and
- (b) the right of appeal under section 140, and shall afford the association an opportunity to make oral or written representations on the proposed action.”.

Amendment  
of section 73  
of principal  
Act.

**15.** Section 73 of the principal Act is amended by deleting subsection (3) and inserting, next after subsection (2), the following subsections—

“ (3) Where the Commission is not satisfied, in respect of an applicant, as to one or more of the requirements set out in subsection (2), the Commission shall —

- (a) notify the applicant in writing that it intends to refuse to register the applicant, giving reasons therefor; and
- (b) afford the applicant an opportunity to make oral or written representations on the intended action.

(4) After affording the applicant an opportunity to make representations under subsection (3)(b), the Commission shall notify the applicant in writing—

- (a) of its decision; and
- (b) in the case of a decision to refuse registration, of the applicant's right under section 140 to appeal to the Appeal Tribunal.”.

**16.** Section 75 of the principal Act is amended in subsection (2)(d) by deleting the word “and” and substituting therefor the word “or”.

Amendment  
of section 75  
of principal  
Act.

**17.** Section 76 of the principal Act is amended by deleting subsection (1)(b) and substituting therefor the following—

Amendment  
of section 76  
of principal  
Act.

“ (b) if satisfied that the provisions of subsection (2) apply to a person registered under this Part, notify that person in writing—

- (i) of its intention to cancel the registration, giving the reasons therefor;
- (ii) that the person may make written or oral representations on the intended action; and
- (iii) of the person's right to appeal under section 140 to the Appeal Tribunal.”.

**18.** Section 110 of the principal Act is amended in subsection (1)(b) by deleting the word “seven” and substituting therefor the word “fifteen”.

Amendment  
of section  
110 of  
principal  
Act.

**19.** Section 115 of the principal Act is amended—

Amendment  
of section  
115 of  
principal  
Act.

- (a) in subsection (3) by deleting the word “Upon” and substituting therefor the words “Subject to subsection (5), upon”;
- (b) in subsection (4) by deleting the numeral “(1)” and substituting therefor the numeral “(5)”;
- (c) by inserting, next after subsection (4), the following subsections—

“ (5) Where—

- (a) a claim has been duly made under paragraph (b) of subsection (2) but has not been determined during the one year period referred to in that paragraph; or

- (b) before the expiration of the year referred to in paragraph (b) of subsection (2) the claimant lodges with the Accountant-General a certificate to the effect that the claim is being considered by a court of competent jurisdiction, signed by a Judge or Resident Magistrate of the relevant court,

the monies in question shall not be paid over to the Accountant-General under subsection (3) unless the claim has been finally determined in a manner that allows the money to be paid over to the Accountant-General.

(6) Where subsection (3) takes effect as respects any sum, not later than fifteen years after the one year period referred to in that subsection, the Accountant-General shall pay that sum to any person who establishes a claim thereto to the satisfaction of the Accountant-General.”.

**20.** Section 120 of the principal Act is repealed and the following substituted therefor—

Repeal and replacement of section 120 of principal Act.

“ Notice of *pro rata* condition of average.

120.—(1) With respect to contracts of insurance entered into after the date of commencement of the Insurance (Amendment) Act, 2016, the Commission may, with the approval of the Minister, make regulations prescribing the form and manner in which—

- (a) notice of the *pro rata* condition of average in an insurance policy is to be given to policyholders; and
- (b) information is to be given to the public in respect of such condition.

(2) Where the provisions prescribed by regulations made under subsection (1) are not complied with in respect of a policyholder, the *pro rata* condition of average contained in the insurance policy concerned shall be deemed to be void and of no legal effect.”.



21. Section 144 of the principal Act is amended—
- Amendment  
of section  
144 of  
principal  
Act.
- (a) in subsection (1), by deleting the full-stop appearing at the end of paragraph (m), substituting therefor a semicolon, and inserting next after the following paragraphs—
- “(n) standards for risk management procedures to be established and adhered to by insurers;
- (o) in respect of any right under this Act to make oral or written representations to the Commission, the time within which those representations shall be made.”;
- (b) in subsection (3), by deleting the words “one million dollars” and substituting therefor the words “three million dollars”.
22. Section 145 of the principal Act is amended by renumbering the section as section 145(1) and inserting the following as subsection (2)—
- Amendment  
of section  
145 of  
principal  
Act.
- “ (2) By order published in the *Gazette* the Minister may, on the recommendation of the Commission, direct that, subject to such conditions (if any) as the Commission recommends, such of the provisions of this Act as may be specified in the order shall not apply in relation to any specified insurance company or specified class of insurance company or any other specified body or person, or specified class of body or person.”.
23. The principal Act is amended by inserting, next after section 148, the following section—
- Insertion of  
new section  
149 of  
principal  
Act.
- “ Amend-  
ment of  
monetary  
penalties  
by order. 149. The Minister may, by order published in the *Gazette* and subject to affirmative resolution, amend any monetary penalty imposed by or under this Act.”.
24. The Insurance Regulations, 2001, are amended—
- Amendment  
of Insurance  
Regulations,  
2001.
- (a) in regulation 126, by deleting paragraphs (4) and (5) and inserting next after paragraph (3) the following paragraphs—
- “ (4) In the case of a contract of insurance which contains a *pro rata* condition of average clause, the following notice requirements shall apply—
- (a) if the contract is first entered into after the date of commencement of the Insurance

(Amendment) Act, 2015, the contract shall bear on its face a notice conspicuously sized and placed, stating that the policy is subject to a *pro rata* condition of average;

- (b) on the first occasion on which the contract is renewed after the date of commencement of the Insurance (Amendment) Act, 2015, the renewal endorsement shall include a notice stating that the policy is subject to a *pro rata* condition of average; and
- (c) where a notice has been issued under subparagraph (a) or (b) in respect of the contract, no further notice is required under this paragraph unless there is a change of any of the policyholders who are a party to the contract, in which case notice shall be given by providing the new policyholder with a copy of the contract of insurance bearing on its face a notice, conspicuously sized and placed, stating that the policy is subject to a *pro rata* condition of average,

and a notice under this paragraph shall be deemed to have been served on a policyholder if—

- (i) posted by registered post to an address provided by the policyholder, and such service shall be deemed to have been effected on the day after such posting;
- (ii) delivered by facsimile transmission to a number provided by the policyholder;
- (iii) delivered by electronic mail to an electronic mailing address provided by the policyholder;
- (iv) delivered by hand to the policyholder; or

- (v) delivered to the policyholder's insurance broker by any method stated in paragraphs (i) to (iv).”

(5) Every insurer who carries on, in Jamaica, any property insurance business or any other class of general insurance business shall—

- (a) at least once in every calendar quarter, cause to be published in a daily newspaper in circulation in Jamaica a notice explaining the nature and effect of the *pro rata* condition of average, in the form set out in the Twenty-third Schedule or such other form as may be approved by the Commission; and
- (b) cause to be published on the insurer's website (if any) on a page accessible to the public, a notice in the form referred to in sub-paragraph (a).

(6) A notice published in accordance with sub-paragraph (5)(a) by an insurer individually or together with one or more other insurers, shall be sufficient to fulfil the obligations of that insurer under paragraph (5)(a).

(7) Paragraph (4) does not apply to—

- (a) a contract of marine insurance as defined by section 5 of the *Marine Insurance Act*; or
- (b) a contract of reinsurance.

(8) An insurer who contravenes paragraph (5) commits an offence and shall be liable, on summary conviction in a Resident Magistrate's Court, to a fine not exceeding one million dollars.”;



Example 1: Where loss is less than value and sum insured:

Assuming the loss is \$5,000,000

$$\frac{\$7,000,000}{\$10,000,000} \times \frac{\$5,000,000}{1} = \frac{\$3,500,000}{1}$$

You will be paid \$3,500,000 of 70% of your loss less any deductible Stated in the policy.

Example 2: Where loss is less than the value but greater than sum insured:

Assuming the loss is \$8,000,000

$$\frac{\$7,000,000}{\$10,000,000} \times \frac{\$8,000,000}{1} = \frac{\$5,600,000}{1}$$

You will be paid \$5,600,000 or 70% of your loss less any deductible stated in the policy.

Example 3: Where loss is equal to value:

Should you have a total loss, that is, \$10,000,000 then you will only receive the amount you insured the property for, that is, \$7,000,000 less any deductibles stated in the policy.

Under other circumstances where you under-insure, you may be entitled to the full amount of the insured loss if the sum insured is equal to or more than a specific percentage of the value, as stated in the policy. This will depend on the terms of your policy.

Please review the terms of your policy carefully, and check on the adequacy of the sum for which the property is insured or to be insured. This will enable you to identify whether you are or will be under-insured in a manner which will cause the *pro rata* condition of average detailed in your policy to be applied. You may check with your insurer, agent or broker for further clarification on the terms of your policy and the nature and effect of the *pro rata* condition of average contained therein.”.

Amendment  
of *Financial  
Services  
Commission  
Act.*

**25.** The *Financial Services Commission Act* is amended—

- (a) in section 21(1) by inserting next after the words “relevant Act” the words “or regulations made thereunder”;
- (b) in the Fourth Schedule by inserting next after item (53 ) under the heading “THE INSURANCE ACT” the following—

“ (9) Regulation 126(8)      Failure to publish  
of the Insurance      prescribed notice of  
Regulations, 2001      *pro rata* condition of

Passed in the House of Representatives this 10th day of November, 2015 with five (5) amendments.

MICHAEL A. PEART  
*Speaker.*

Passed in the Senate this 15th day of January, 2016 with one (1) amendment.

ANGELA BROWN-BURKE  
*Deputy President.*

## MEMORANDUM OF OBJECTS AND REASONS

Following upon a review of the legislative framework in order to ensure that it keeps pace with developments in the insurance sector, a decision has been taken to amend the Insurance Act in order to—

- (a) harmonize the procedures for hearings, appeals and unclaimed balances with other financial sector legislation;
- (b) remove errors and inconsistencies where they exist;
- (c) require that policies of insurance containing an average clause so indicate clearly on the cover page, otherwise the clause will be void;
- (d) require insurers to publish periodically a notice of the average clause;
- (e) allow for the exemption of persons or categories of persons from the regulatory requirements of the Act;
- (f) provide for risk management procedures, in accordance with prescribed standards, to be established and adhered to by insurers;
- (g) increase the monetary penalties which may be imposed for breaches of regulations made under the Act; and
- (h) empower the Minister to amend, by order published in the *Gazette* and subject to affirmative resolution, any monetary penalty imposed by the Act; and

to make consequential amendment to the *Financial Services Act* and the Insurance Regulations, 2001.

This Bill seeks to give effect to that decision.

DR. PETER D. PHILLIPS  
Minister of Finance and Planning

**A BILL**

**ENTITLED**

**AN ACT to Amend the Insurance Act.**

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As passed in the Honourable House of Representatives.

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As passed in the Honourable Senate.

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SECTION 2 OF THE PRINCIPAL ACT WHICH IT IS  
PROPOSED TO AMEND

2.—(1) ...

(2) For the purposes of this Act—

(a) ...

(b) any of the following activities effected in any manner by an unregistered insurer or any person acting with the actual or apparent authority of the insurer or on his behalf, shall be deemed to constitute the carrying on of insurance business in or from Jamaica—

(i) ...

(vii) dissemination of information as to coverage or rates;

(viii) forwarding of applications, delivery of policies or contracts;

(ix) inspection of risks, fixing of rates or investigation or adjustment of claims or losses;

(x) transaction of matters subsequent to or arising out of the effecting of the contract;

...

SECTION 11 OF THE PRINCIPAL ACT WHICH IT  
IS PROPOSED TO AMEND

11.—(1) ...

(3) Where, in relation to all or any of the classes of insurance business specified in the application, the Commission is not satisfied as to one or more of the conditions set out in subsection (1), it shall—

(a) ...

(b) notify it of its right under section 140 to appeal to the Appeal Tribunal.

SECTION 15 OF THE PRINCIPAL ACT WHICH IT  
IS PROPOSED TO AMEND

15.—(1) ...

(2) Before taking action under subsection (1), the Commission shall give written notice to the insurance company—

(a) stating that it proposes to cancel its registration in respect of all or any of the classes in relation to which it is registered, giving the

reasons therefor and specifying the right of appeal under section 140; and

- (b) indicating a period (not being less than thirty days after the service of the notice) within which the company may make written or oral representations on the proposed action.

SECTION 23 OF THE PRINCIPAL ACT WHICH IT  
IS PROPOSED TO AMEND

23.—(1) A registered insurer shall not, directly or indirectly—

- (a) ...

(c) grant unsecured credit facilities to any person except for—

- (i) temporary cover, not exceeding thirty days, in the case of general insurance; or
- (ii) advances to agents, sales representatives or to full-time employees against commissions or salaries to be earned;

...

26.—(1) Subject to subsections (2) and (8), every registered insurer shall—

- (a) ...

(b) within fourteen days after the date on which documents are submitted pursuant to paragraph (a), cause a copy of the audited financial statement to be published in a daily newspaper printed and circulated throughout Jamaica;

SECTION 29 OF THE PRINCIPAL ACT WHICH IT  
IS PROPOSED TO AMEND

29. Every registered insurer shall keep in Jamaica, and shall make available to the Commission on request, all records including—

- (a) ...

SECTION 52 OF THE PRINCIPAL ACT WHICH IT  
IS PROPOSED TO AMEND

52.—(1) Where the Commission is satisfied, after an investigation under section 49 in respect of an insurance company, or an examination of that company that it is necessary or proper for the company to be wound up, the Commission may, with the leave of the Court, present a petition for the winding up of the

company by the Court, on any of the grounds specified in subsection (2) and the Court may order accordingly.

SECTION 59 OF THE PRINCIPAL ACT WHICH IT  
IS PROPOSED TO AMEND

59. Notwithstanding anything in this Act to the contrary, upon the winding up of an insurance company, all moneys and securities for the time being held as a deposit in respect of that company, under section 21 shall be delivered to the liquidator and shall be applied by him, in the first instance, in the discharge of the liabilities of the company in respect of local policies.

SECTION 61 OF THE PRINCIPAL ACT WHICH IT  
IS PROPOSED TO AMEND

61.—(1) ...

(2) An association of underwriters shall not be registered under this Part to carry on both long term business and general insurance business, unless such general insurance business consists exclusively of accident insurance business.

SECTION 63 OF THE PRINCIPAL ACT WHICH IT  
IS PROPOSED TO AMEND

63.—(1) ...

(2) The requirements referred to in subsection (1) are that—

(a) the requirements of sections 61, 62 and 69 have been complied with;

(3) Where the Commission is not satisfied, in respect of the applicant as to one or more of the conditions set out in subsection (2), it shall notify the association of underwriters in writing that it proposes to refuse to register it, giving reasons therefor and shall notify it of its right of the appeal under section 140.

SECTION 66 OF THE PRINCIPAL ACT WHICH IT  
IS PROPOSED TO AMEND

66.—(1) Subject to subsection (2), the Commissioner may, if at any time it is satisfied that the circumstances specified in that subsection so warrant, give written notice to a registered association stating—

(a) that it proposes to cancel its registration in respect of all or any of the classes of business in relation to which it is registered;

- (b) its intention to cancel the registered association's registration, giving reasons therefor.
- (c) the right of appeal under section 140,

and shall afford the association an opportunity to show cause why the proposed action should not be taken.

... ..

SECTION 73 OF THE PRINCIPAL ACT WHICH IT  
IS PROPOSED TO AMEND

73.—(1) ... ..

(3) Where the Commission is not satisfied, in relation to all or any of the classes of insurance business specified in the application, as to one or more of the conditions set out in subsection (2), it shall notify the applicant in writing, within such time as may be prescribed that it proposes to refuse to register that applicant either absolutely or in respect of one or more or less of the classes of insurance business so specified, giving the reasons therefor and of his right of appeal under section 140.

SECTIONS 75 AND 76 OF THE PRINCIPAL ACT WHICH IT  
IS PROPOSED TO AMEND

75.—(1) ... ..

(2) Before taking any action under subsection (1) the Commission shall give written notice to the person concerned—

- (a) ... ..
- (b) indicating a period within which the person may make written and oral representations on the intended action.

... ..

76.—(1) The Commission may—

- (a) ... ..
- (b) if satisfied that the provisions of subsection (2) apply to a person registered under this Part, notify that person in writing that it proposes to cancel his registration, giving the reasons therefor and of his right of appeal under section 140.

... ..

110.—(1) Subject to section 111(3), an insurer shall not enter into a contract for ordinary long term insurance business unless the insurer—

(a) ... ..

(b) not later than seven days thereafter,

serves on the other party to the contract a notice containing the information specified in subsection (2).

SECTION 115 OF THE PRINCIPAL ACT WHICH IT  
IS PROPOSED TO AMEND

115.—(1) ... ..

(3) Upon the expiration of the one year period, unclaimed moneys shall lapse to and become part of the revenues of Jamaica, and shall be paid by the company to the Accountant-General for payment into the Consolidated Fund, accompanied by a statement of account made in the prescribed form and approved by the Commission.

(4) Subject to subsection (1), upon payment of unclaimed moneys to the Accountant-General under this section, the company is discharged from further liability in respect of that amount.

SECTION 120 OF THE PRINCIPAL ACT WHICH IT  
IS PROPOSED TO REPEAL AND REPLACE

120.—(1) Where a contract of insurance contains a *pro rata* condition of average, the condition is of no effect unless, before the contract is entered into, the insurer informs the insured in the prescribed manner of the nature and effect of the condition.

(2) This section shall not apply in respect of a contract entered into before the appointed day.

SECTIONS 144 AND 145 OF THE PRINCIPAL ACT WHICH IT  
IS PROPOSED TO AMEND

144.—(1) The Commission may, with the approval of the Minister, make regulations providing for such matters as may be necessary or expedient for the purposes of this Act and without prejudice to the generality of the foregoing the regulations may make provision in relation to all or any of the following—

(a) ... ..

(m) the bond insurance coverage to be maintained by insurance intermediaries.

... ..

(3) Notwithstanding section 29 of the Interpretation Act, regulations made under this section may provide for the imposition of penalties on summary conviction in a Resident Magistrate's Court of a fine not exceeding one million dollars or imprisonment for a term not exceeding one year of both such fine and imprisonment.

145. Regulations made under this Act may authorize the Commission to exempt any class of insurance business where the Commission considers the exemption necessary, having regard to the class of insurance business and to the provisions of this Act.

REGULATION 126 OF THE INSURANCE REGULATIONS, 2001  
WHICH IT IS PROPOSED TO AMEND

126.—(1) ... ..

(4) Where—

- (a) in the case of a new contract of insurance, it is proposed to include a *pro rata* condition of average in the contract; or
- (b) in the case of the renewal of a contract of insurance, contains a *pro rata* condition of average, except where the contract is renewed on similar terms and conditions as the expired contract, the insurer shall, before the insured enters into the contract and before the renewal of the contract, notify the insured in writing of the nature and effect of the condition in the form set out in the Twenty-third Schedule.

(5) Where a contract of insurance was entered into prior to the 23rd of August, 2004, the insurer shall—

- (a) before the first renewal of the contract after the 23rd day of August, 2004, notify the insured in writing of the nature and effect of the *pro rata* condition of average in the form set out in the Twenty-third Schedule; and
- (b) in the twelve-month period following the 23rd day of August, 2004, publish quarterly in a daily newspaper circulated in Jamaica, a notice stating the nature and effect of any *pro rata* condition of average contained in any contract of insurance or any class of contract of insurance offered by that insurer in such form as the Commissioner shall approve prior to publication.

THIRD SCHEDULE OF THE INSURANCE REGULATIONS, 2001  
WHICH IT IS PROPOSED TO REPEAL AND REPLACE

THIRD SCHEDULE (Regulation 6)

APPLICATION FOR REGISTRATION OF INSURANCE COMPANIES

Application by an Insurance Company for registration under Part II of the Act to carry on in Jamaica insurance business of a relevant class or relevant classes.

A—PARTICULARS OF COMPANY BUSINESS AND REGISTRATION  
REQUIRED

1. Name of Company.
2. Full address of the principal office of the company in Jamaica where service of notice may be effected.

3. Date and place of incorporation.
4. The name of the principal officer of the company in Jamaica.
5. Summary of main objects of company (attach statement where necessary).
6. The authorized and paid-up capital. If paid-up capital will be increased before registration under the Act give details.
7. The amount by which the assets of the company exceed liabilities (including all contingent or prospective liabilities but not liabilities in respect of share capital).
8. The relevant class or classes of insurance business which the company carries on (a) in Jamaica and (b) elsewhere at the present time and the amount of business undertaken outside Jamaica.
9. Particulars of any business other than insurance business which the company carries on at present or proposes to carry on anywhere, indicating how such other business will be separated from the insurance business.
10. The class or classes of insurance business for which registration is sought. Has the company been refused permission to carry on such class (or any, and if so which, of such classes) of insurance business in any other country?
11. If the company intends to limit its activities to insuring only some of the risks of the class or classes of business for which registration is being sought; particulars of the risks to be insured.
12. Does the company carry on any class of long term business with any class of general business in (a) Jamaica (b) elsewhere? If yes, state classes involved. If in addition to ordinary long-term business the company at present carries on in Jamaica any class of general business other than accident insurance business the transitional period required before cessation of ordinary long-term classes or general classes, is:
  - (a) if cessation is of the ordinary long-term classes, then 5 years; or
  - (b) if cessation is of the general classes, 3 years.
13. Is the Company carrying on business in Jamaica as a broker? State whether or not the Company's directors have or propose to hold any beneficial ownership in any insurance brokerage business in Jamaica; full details should be given.



## B—BUSINESS PLAN

14. The estimated amount of premium income (both gross and net of reinsurance) during each of the next three years in respect of each class of insurance business which the company will carry on set out hereunder:

	Gross			Net of Reinsurance		
	Year 1	Year 2	Year 3	Year 1	Year 2	Year 3
	\$	\$	\$	\$	\$	\$

- (a) from direct insurance in Jamaica;
  - (b) from direct insurance elsewhere;
  - (c) from reinsurance accepted in Jamaica;
  - (d) from reinsurances accepted elsewhere;
  - (e) Total (a) to (d).
15. Audited Financial Statements for the past three years.
16. The amount (if any) by which it is intended to increase the paid-up capital of the company during the next three years.
17. The sum expected to be spent during each of the next three years on new premises, office equipment, motor vehicles, etc.
18. The sum expected to be spent during each of the next three years on advertising or other methods of promoting business.
19. For each and every class of insurance business to be carried on by the company in Jamaica during the next three years:
- (a) The method or methods by which the policies will be marketed (e.g. by the company's own organization, by brokers, salesmen, agents, or by all methods).
  - (b) If more than one method is proposed under (a) the expected proportions to be marketed by each method.
  - (c) The rates of commission which will be paid to the categories indicated at (a) above; and
  - (d) The extent to which and the conditions under which any of the categories at (a) will have binding authority to commit the company.
20. Where an overseas company operates or proposes to operate in Jamaica through the medium of a local agent or agents a summary of

the main arrangements pertaining to the agency agreements(s) and the extent and system of supervision and control to be exercised by the principal. (Attach statement if necessary).

21. Where the company proposes to operate in Jamaica on a Branch basis details of the organization and structure of the Branch arrangements. (Attach statement if necessary).
22. The way in which the settlement of claims will be handled (e.g., by the company, by outside loss adjusters or assessors or by other persons with authority to settle claims).
23. The company's policy and practice or proposed policy and practice relating to the settlement of claims, (Attach statement where necessary).
24. Particulars of any association which exists between any of the brokers, agents, loss adjusters or assessors and any director of the company, any director it is proposed at present to appoint, any person having a majority shareholding in the company or any other person on whose directions the directors of the company or any of them act or will act.
25. The name or names of the company's agent, or agents in Jamaica, their address or addresses and the classes of insurance business for which they will be responsible.
26. In respect of each class of business for which registration is being sought:
  - (a) The proposed premium rates before deduction of commission.
  - (b) The percentage of premiums (net of reinsurance) which claims are expected to form and any other relevant information on which premium rates are based.
  - (c) The percentage of premium (net or reinsurance) which management expenses are expected to form.
  - (d) The proposed selection of risks; and
  - (e) Attach copies of the standard forms of policies. Where applications for registration to carry on industrial insurance business or ordinary long-term insurance business are being made the information requested at (b) and (c) need not be given but the company should provide a statement of the actuarial bases of the premium rates and, in the case of equity-linked business the proportion of premiums to be invested in or related to the fund. Applicants should also

supply a certificate by an actuary stating that he considers that premium rates are satisfactory in the light of the information disclosed in the application and that the proposed amount of capital is adequate to support the amount of business.

C—REINSURANCE CEDED

27. The nature and extent of the existing or proposed reinsurance arrangements for each class of business indicating clearly the amount of the applicant company's retention in each case. (Attach supporting statement, reinsurance treaties, etc.).
28. Names of the insurance companies or associations of underwriters which will reinsure each class of the company's business and the amount which will be reinsured by each. (Attach supporting statement, if necessary).

D—CONTROL OF COMPANY

29. In respect of (i) \*each of the promoters of the company, (ii) each of the present directors of the company, (iii) any directors it is proposed to appoint (iv) any other persons in accordance with whose directions the directors of the company or any of them act or will act and (v) each person who at the present time, either has an interest in or it is proposed at present will have an interest in, shares of the company having a nominal value of 10% or more of the company's total share and which carry voting rights—
  - (a) Full names (including any previous name or names by which known);
  - (b) Address;
  - (c) Nationality (indicating whether by birth or acquired by registration or naturalization);
  - (d) Date of birth;
  - (e) Place of birth;
  - (f) Present occupation, previous occupations, organizations to which employed during last ten years and reasons for leaving;
  - (g) Particulars (including date and place) of any convictions for offences involving fraud or dishonesty in Jamaica or elsewhere;
  - (h) Whether the person has been adjudicated a bankrupt during

the last ten years and particulars of any company with which the person was associated during the last ten years and which was compulsorily wound up whilst he was associated with it. If adjudicated a bankrupt, state whether or not the person has been discharged and if so, when;

- (i) Percentage of share capital of company in which the person has an interest at present or will have an interest;
- (j) Other directorships (if any) held at present and former directorships held during the last ten years; and
- (k) Names of any other companies in which the person is entitled to exercise or control the exercise of one-third or more of the voting power at a general meeting.

[\*The information about the promoters of the company specified above is only required where the officers of the company have not yet been appointed.]

30. In respect of the company's actuary and each of the persons who will be in charge of one or more of the following departments of the company, viz., fire, accident, life, marine, aviation, claims, agency, investment, accounting and underwriting, by whatever title he may be known—

- (a) Full names (including any previous name or names by which known);
- (b) Address;
- (c) Date of birth;
- (d) Place of birth;
- (e) Position held in applicant company;
- (f) Qualifications and experience;
- (g) Present occupation, previous occupations, organizations to which employed during last ten years and reasons for leaving;
- (h) Particulars (including date and place) of any convictions for offences involving fraud or dishonesty in Jamaica and elsewhere. (If the company's actuary is a consulting actuary the name of the partnership to which he belongs, together with any directorships he holds at present and any former directorships held during the last ten years must be stated).

E—INVESTMENTS AND BROKERS

31. A list of the investments under suitable headings at present held by the company, the value of each investment at the end of the last financial year and the method of valuation.
32. The categories of investments in which the insurance funds in respect of the business for which registration is being sought will be held and the approximate proportions in each category. If it is intended that any of the insurance funds will be invested in currencies other than Jamaican dollars, the approximate percentage of each fund which will be invested in each currency should be given.
33. Details of (a) any unpaid loans which the company has made, and (b) any loans which the company proposes to make to any officer of the company and any proposed loans to or investments in an associate company or any company in which any officer of or other person controlling the applicant company is entitled to exercise, or control the exercise of one-third or more of the voting power at any general meeting of the company.
34. The place or places at which the documents of title in respect of the company's present investments are held and the names of the persons authorized to deal with such, the place or places at which it is proposed to hold the documents of title in respect of the company's present and future investments and particulars of any of the documents which are or will be held outside Jamaica.
35. The names and addresses of all banks in which the company has accounts at present or intends to have accounts.

F—FINANCIAL YEAR AND AUDITORS

36. The date on which the company's financial year will end; if other than December 31, the approval of the Commission is required.
37. The name, address and qualifications of each of the company's auditors, both in Jamaica and elsewhere.

G—DOCUMENTATION

38. The above application is hereby accompanied by the following—
  - (a) Certified copies of the Memorandum and Articles of Association, or character, or Act of Incorporation or other instrument constituting of the company.
  - (b) Certified copies of the latest audited Balance Sheet, Profit and Loss Accounts and Revenue Accounts and the aforementioned Financial Statements over the previous three financial years of the company.

- (c) Certified copies of the latest annual report.
- (d) Specimens of all categories of insurance policies issuable by the applicant in respect of all classes of insurance business to be undertaken in Jamaica.
- (e) Latest actuarial report of the company where it proposes to undertake or has undertaken any class of long-term business in Jamaica.
- (f) Original receipt from the Financial Services Commission evidencing payment of registration fee.
- (g) A certificate signed by the Chairman, a Director and Chief Financial Officer of the company stating that the company has fulfilled the capital and solvency requirements indicated at sections 9 and 53 of the Act. (Where the company undertakes any class of long-term business along with general business the certificate should also be signed by an actuary).
- (h) A detailed memorandum indicating the organization of the company and/or its agency, agencies in Jamaica. The memorandum should be signed by the Chairman of the Board of Directors, a Director and the Secretary of the company and should include therein statements pertaining to the experience and qualifications of existing staff or proposed staff in Jamaica whether of the applicant company, its agency or agencies.

APPLICATION AND CERTIFICATE OF TRUTH AND  
CORRECTNESS

We hereby apply on behalf of .....  
(Insurance Company) for registration under Part II of the Insurance Act, to  
carry on in Jamaica insurance business of the class or classes indicated at  
regulations 3 and 4. We certify that to the best of our knowledge and belief all  
the information given in this application and contained in supporting statements  
and documentation submitted is true and correct.

.....  
Name (Print) Director

.....  
Director

.....  
General Manager or Secretary

.....  
Principal Officer in Jamaica

Date.....20.....

SECTION 21 OF THE FINANCIAL SERVICES COMMISSION ACT  
WHICH IT IS PROPOSED TO AMEND

21.—(1) This section shall apply to an offence under any relevant Act, being  
an offence specified in the Fourth Schedule.

... ..

FOURTH SCHEDULE TO THE FINANCIAL SERVICES  
COMMISSION ACT WHICH IT IS PROPOSED TO AMEND

FOURTH SCHEDULE (Section 21)

*Offences in respect of which liability to conviction may be  
discharged by payment of fixed penalty*

<u>Act</u>	<u>Nature of Offence</u>	<u>Penalty</u>
THE SECURITIES ACT	...	...
THE INSURANCE ACT		
Section 7(1)(b)	Failure to make deposit	\$25,000.00
	Failure to file names of persons authorized to accept service of process	\$25,000.00