



Guide to Insurance in the British Virgin Islands

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PREFACE

In February 2010, major reforms to insurance law in the British Virgin Islands (“BVI”) came into effect with the introduction of the new Insurance Act 2008 (the “Act”) (and accompanying Insurance Regulations 2009 (the “Regulations”)), along with the Regulatory Code 2009 (the “Code”) (which supplements the Act and Regulations with a suite of detailed requirements applying to financial services licensees covering financial resources, corporate governance and other matters, and Part IV of which specifically deals with insurance).

The Act introduced a number of important changes, including categories of insurance business, and a new licensing regime for insurance managers, insurance intermediaries (agents and brokers) and loss adjusters.

This Guide focuses on the Act and is set out to correspond with the structure of the Act. Just like the Act is supplemented by the Code in a number of areas, and the Code contains some additional features that are not included in the Act, this Guide primarily summarises the key provisions of the Act but builds in the relevant parts of the Code. It is not sufficient to rely solely upon the Act to understand the law of insurance in the BVI, and this is why the Guide discusses both the Act (and accompanying Regulations) and the Code. That said, this Guide needs to be referred in conjunction with Appleby’s Guide to the Regulatory Code in the BVI (available via www.applebyglobal.com), which provides a more thorough discussion of the requirements for licensees under the Code. Further, much of the Code applies only to BVI insurers (being BVI companies that hold either a Category A, Category C or Category D insurance license, as described below) and not foreign insurers doing business in the BVI (that must hold a Category B insurance licence). The provisions of the Code also do not apply to licensed loss adjusters.

It is important to note also that this Guide does not discuss the Financial Services (Miscellaneous Exemptions) Regulations 2010 and the Regulatory (Amendment) Code 2010, which will, if implemented, introduce some changes to the law of insurance in the BVI. Both were released for public consultation in July 2010, and it was not clear at the time of writing when they would come into force. We will update the Guide once these changes are implemented.

It is recognised that this Guide will not completely answer the detailed questions that companies and their advisers may have. It is intended to provide a sketch of the statutory provisions in the BVI relating to insurance business and the broader insurance industry. The Guide is, therefore, designed as a starting-point for a more detailed and comprehensive review of particular issues.

Whilst we have made every effort to ensure the accuracy of the statements made herein, we accept no liability for any errors. In all cases expert legal advice from a qualified practitioner of BVI law should be obtained.

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A. INSURANCE BUSINESS

The overwhelming majority of insurance businesses operating in or from within the BVI are captive insurers. According to the Commission's statistical bulletin, at the end of the second quarter of 2010, there were 207 captive insurers out of a total of 246 insurers registered in the BVI (the remainder being credit life and domestic insurers). Captive insurers are not specifically mentioned in the Act or Regulations.

In the Regulatory Code, the BVI Financial Services Commission (the 'Commission') uses the definition of captive insurer provided in the IAIS's Captives Issues Paper, published in October 2008:

“an insurance or reinsurance entity, created and owned, directly or indirectly, by one or more industrial, financial or commercial entities, other than an insurance or reinsurance group entity, the purpose of which is to provide insurance or reinsurance cover for risks of the entity or entities to which it belongs, or for entities connected to those entities and only a small part if any of its risk exposure is related to providing insurance or reinsurance to other parties.”

As noted by the Commission, in the Captives Issues Paper the IAIS recognises that there are a range of captives, including:

- **pure captives:** single parent companies, writing only the risks of their owner and/or affiliates;
- **group and/or association captives:** multi-owned insurance companies writing only the risks of their owners and/or affiliates (usually within a specific trade or industry);
- **rental captives:** insurers specifically formed to provide captive facilities to unrelated entities for a fee, where entities prefer not to form their own dedicated captive.
- **diversified captives:** captives writing a limited proportion of unrelated business in addition to the risks of their owner and/or affiliates.

The explanatory notes to the Regulatory Code state that the provisions of the Code apply fully to captive insurers, however the point is made in the explanatory notes that (and as will be shown in this Guide) the Code adopts a “principles-based” and “risk-based” approach (see page 237 of Code). Many of the provisions in the Code are expressed as being subject to the “size, nature, complexity, structure and diversity”, along with the risk profile, of the licensee, thus providing licensees with a deal of discretion to structure their corporate governance and other governance arrangements to suit their business. Accordingly, for captive insurers (and in particular pure captives) that are often quite small and have a relatively low risk profile due to principally taking on the risk of their parent company, compliance with many of the provisions of the Code will not be as involved as for full-service insurers.

As the explanatory notes state (at page 216): “There are no exemptions from the Code with respect to captive insurers, but where the Code is not prescriptive in its requirements, the Commission accepts that the risks faced by a captive insurer should be taken into account when applying the requirements of the Code”. It is further stated in the explanatory notes that the Commission considers that pure captives represent the lowest regulatory risk as there are no unrelated party policyholders or potential third party beneficiaries. On the other hand, rental or diversified captives that write unrelated party business or that write third party liability risks should be considered as much closer to full service insurers. The application of the Code must, therefore, be considered on a case-by-case basis taking into account the risk profile of the relevant captive.

It is also recognised in the Code that for captive insurers, the insurance manager rather than directors or senior managers will carry out key corporate governance and compliance functions. That said, the Commission notes

that while the insurance manager is an important part of the corporate governance framework of captives, it does not take the place of the board which retains ultimate responsibility for corporate governance and other obligations imposed on boards under the Code.

1. Unlicensed Insurance Business

The Insurance Act 2008 (the “Act”) clearly states that, subject to certain limited exceptions, no person shall carry on, or hold themselves out as carrying on, insurance business of any kind in or from within the BVI unless they hold a licence issued under the Act authorising them to carry on that kind of insurance business.

For the purposes of the Act, a person is deemed to carry on insurance business in the BVI if: (i) by way of business as an insurer, they occupy premises in the BVI; (ii) they invite a person resident in the BVI, or cause a person by way of the publication of advertisements or otherwise, to enter into, renew or vary or to offer to enter into, renew or vary a contract of insurance with him as insurer; or (iii) they insure a risk of a type or description specified in the regulations for the purposes of the Act, and importantly, a BVI business company that carries on, or holds itself out as carrying on, insurance business outside the BVI is deemed to carry on, or hold itself out as carrying on, insurance business from within the BVI.

The Act prohibits a licensed insurance agent from soliciting applications for insurance, or negotiating for insurance business, on behalf of an unlicensed insurer or to provide advice to clients of an unlicensed insurer.

The Commission may grant an exemption from the requirement to obtain a licence to an applicant, subject to such conditions as it considers appropriate, where it is of the opinion that the principal objective of the insurance business to which the application relates is to insure a risk or risks: (a) that no licensed insurer is willing or able to insure; (b) that licensed insurers have insufficient capacity to insure; or (c) where the terms proposed by local insurers willing and able to insure the risk are significantly less advantageous than the terms available from the unlicensed insurer with respect to which the application relates.

The Regulations provide that application may be made in writing to the Commission by Lloyd’s for the Commission’s approval for Lloyd’s syndicates to carry on insurance business in the BVI without a licence. The application needs to be in such form, contain such information and be accompanied by such documents as the Commission may specify, and needs to be accompanied by a list specifying each Lloyd’s syndicate that, at any time in the period of twelve months prior to the date of the application, has insured a risk located in the BVI or otherwise has carried on insurance business in the BVI.

The Regulations note that the Commission may approve an application if it is satisfied that the supervision and regulation of Lloyd’s and its managing agents is appropriate to protect the interests of BVI policyholders and prospective policyholders of Lloyd’s syndicates.

2. Licensing of Insurers

An insurer’s licence shall be issued in one of the following categories:

- **Category A:** which may be issued only to a BVI business company and which entitles the holder to carry on insurance business, including domestic business (which is defined as insurance business, excluding reinsurance business, the principal objective of which is to insure (a) a person who is resident in the BVI at the time the insurance contract is effected against any kind of risks, except risks in relation to property, or (b)

a person against risks of any kind in relation to (i) immovable property situated in the BVI, or (ii) personal property which at the time the insurance contract is affected is held or based in the BVI);

- **Category B:** which may be issued only to a company incorporated, registered or formed outside the BVI and entitles the holder to carry on insurance business in the BVI (including domestic business);
- **Category C:** which may be issued only to a BVI business company and which entitles the holder to carry on insurance business that is not domestic business, including, if the licence permits, reinsurance business that is not open market reinsurance business;
- **Category D:** which may be issued only to a BVI business company and which entitles the holder to carry on reinsurance business, including open market reinsurance business. “Open-market reinsurance business” is reinsurance business where the insurer is not connected with the reinsurer.

The Commission notes in the Code that it considers that an insurer holding a Category A or B insurer’s licence will never be a captive insurer.

The Act requires an insurer’s licence to state the category of licence issued to the holder and the class or classes of business that the holder is authorised to carry on. An insurer’s licence does not authorise the holder to carry on any class of insurance business that is not specified on the licence.

The Commission shall not issue an insurer’s licence that authorises the holder to carry on both long-term and general insurance business. Both long-term and general insurance businesses are defined in the Regulations. Long-term insurance business includes annuity business, life insurance, investment-related life insurance, permanent health insurance, and other contracts of insurance that the Commission determines constitute life insurance business. General insurance business includes motor insurance, property insurance, liability insurance, financial loss insurance, marine and aviation insurance, goods in transit, accident and health insurance, and other contracts of insurance that the Commission determines constitute general insurance business.

The Commission may issue a licence to an applicant if it is satisfied that:

- (a) the applicant intends, if issued with a licence, to carry on the relevant insurance business;
- (b) the applicant satisfies the requirements of this Act and the Code in relation to the relevant insurance business (including the need for a business plan, detailed below);
- (c) the applicant will, on the issuance of the licence, (i) have contributed capital (defined as the total of monies paid and the value of other consideration provided for shares issued by a company) at least equal to the amount specified in the Code (see 3.1.1 below) and (ii) otherwise be in compliance with the Act, the Code and any practice directions applicable to it;
- (d) the applicant, its directors and senior officers (senior officer includes a person who will undertake, or who exercises, one or more of the following responsibilities for the licensee: (i) internal audit, or (ii) senior management function (including acting as chief executive officer of the licensee, or an employee who holds a position that requires them to be answerable to the board of the licensee, or has responsibilities that include direct involvement in the licensee’s management or decision-making process at a senior level); and any persons having a significant interest (defined in the Act to essentially mean an interest in a licensee, or holding company of the licensee, entitling or enabling a person, either directly or indirectly, to (i) control ten per cent or more of the voting rights of the company at a meeting of the company or of its members; (ii) to a share of ten per cent or more in any distribution made by the Company; (iii) to a share of ten per cent or more in any distribution of the surplus assets of the company, and (iv) to appoint or remove one or more directors of the Company) in the applicant satisfy the Commission’s “fit and proper” criteria (the Commission is guided to take into account a number of matters in relation to an applicant (or director, senior

- officer, significant owner or another independent officer), including their honesty, integrity and reputation; competence and capacity, and financial soundness);
- (e) the organisation, management, financial resources and reinsurance arrangements of the applicant are, or on the issuance of the licence will be, adequate for the carrying on of the relevant insurance business;
 - (f) the relevant insurance business will be conducted and managed in accordance with sound and prudent insurance principles; and
 - (g) issuing the licence is not against the public interest.

The Commission must not issue a category B licence to a company unless it is satisfied that:

- (a) the applicant is authorised by or under the law of a jurisdiction outside the BVI (defined in the Act as “its home jurisdiction”) to carry on insurance business of the relevant classes of business;
- (b) the relevant insurance business would be lawfully carried on if it were carried on in its home jurisdiction; and
- (c) the relevant insurance business will be subject to the supervision of the authority responsible for the supervision of insurance business in its home jurisdiction.

The Code provides that an application to the Commission for a licence needs to be made using the appropriate approved form and shall include the information specified in the approved form. The approved form is the Commission’s “Application for a Licence or Certificate as a Financial Services Business Provider”, which is available on the Commission’s website (www.bvifsc.vg).

Part 1 of the form applies to all applications for financial services licences. Details required in the application include: (i) the applicant’s constitutional documents; (ii) details of the applicant’s experience in the relevant business; (iii) ownership/group structure (shareholders and controllers, directors and officers etc); (iv) details of financial statements and auditors; (v) copies of the applicant’s compliance procedures; (vi) financial resources and insurance arrangements; (vii) business plan etc. Part 3 of the form specifically deals with additional information required in the case of insurance applications. Additional information includes the name and address of the insurance manager/agent; five year financial projections; details of the applicant’s contributed capital; class(es) of general and/or long term insurance business, and additional information required for the business plan (e.g. feasibility study, technical issues (such as underwriting details, investment strategy)).

The Code adds that a licence will not be granted to an applicant unless the applicant is able to satisfy the Commission that it complies with (a) all applicable statutory criteria; (b) the Commission’s general licensing criteria; and (c) any additional licensing criteria applicable to the applicant.

If, before the determination by the Commission of an application for a licence, (a) there is a material change in any information or documentation provided by the applicant to the Commission in connection with the application, or (b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading, the applicant shall forthwith give the Commission written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.

It typically takes the Commission between 4-12 weeks to process an application for an insurance licence.

The Code provides details on what needs to be included in the business plan accompanying an application for an insurance licence. A business plan in the case of an application for an insurer’s licence needs to cover the first five years of operation, and shall as far as relevant to the applicant and the proposed business:

- (a) include a general description of the business proposed to be carried on, stating the types of business for which a licence is required, the applicant's short, medium and long-term objectives, how the applicant's objectives will be achieved and why the applicant wishes to be licensed in the BVI;
- (b) describe in general terms how it is proposed that the licensed business will be marketed and the expected sources of business;
- (c) specify the human resources, including employees and outsourced expertise, and other non-financial resources, including premises and systems, that the applicant considers that it will require to carry on its licensed business, as well as indicating how it is anticipated that these will be obtained;
- (d) specify any outsourcing arrangements that it proposes to put in place, and the oversight arrangements that will be put in place;
- (e) contain financial projections for the first five years, including projected set-up costs;
- (f) specify whether any other business or businesses are being carried on, or are intended to be carried on, by the applicant;
- (g) describe the governance structure, the risk management procedures, the internal controls (including with respect to the detection and prevention of criminal activities), and the reporting arrangements (both internally and to the Commission), that are in place or will be put in place, as well as (where appropriate) how liquidity will be managed; and
- (h) contain information on any contracts, or proposed contracts, with connected persons.

Unless the Commission otherwise consents, the business plan needs to include financial projections that have been subjected to appropriate stress testing and demonstrate that the capital and other financial resources will be adequate for the stress tested scenarios. The Code further provides that a business plan submitted in support of an application for an insurer's licence needs to reflect the risk profile of the proposed business by also including:

- (a) the classes and types of policy to be written, indicating whether liability policies will be written on a claims-made basis (where it is the making of a claim that triggers the coverage under the policy with the claim to be made within the reporting period specified in the contract), an occurrence basis (the trigger for a claim under the policy is the occurrence of some kind of injury or damage, with liability to arise under the particular policy if the injury or damage occurred during the policy period), or both;
- (b) the proposed underwriting policies or guidelines together with a comparison of proposed premiums with those charged by existing insurers if the risk is currently insured in the conventional insurance market or, if risks have previously been self insured, the business plan needs to set out details of previous loss experience as well as the assumptions behind the premium setting process;
- (c) the proposed claims handling and accounting techniques;
- (d) the proposed deductibles, excesses and retentions;
- (e) projected solvency margins over the period of the business plan;
- (f) the proposed reinsurance programme (if any), which needs to identify reinsurers and indicate the proposed limits and premiums and providing accounts, if appropriate;
- (g) any stop loss or excess protection;
- (h) any insurance business currently and previously carried on by the applicant;
- (i) the proportion of unrelated business that will be carried on by the applicant;
- (j) the proposed commission structure;
- (k) the proposed dividend policies; and
- (l) the proposed investment strategy and policies of the applicant, to include:
 - (i) the proposed type and diversity of investments and counterparties;
 - (ii) any limits to be established;
 - (iii) any loans that it is proposed will be made;
 - (iv) the arrangements proposed to be made for the custody of assets;

- (v) the proposed policies for matching assets and liabilities; and
- (vi) any plans that the applicant has to purchase or sell derivatives.

3. Obligations of, and Restrictions on, Licensed Insurers

3.1 Financial Resource Restrictions

A licensed insurer is required by the Act to at all times maintain its business in a financially sound condition by (a) having admissible assets (including cash on hand; cash on deposit; an irrevocable letter of credit not exceeding one million dollars issued by a recognised financial institution (or exceeding one million dollars if approved by the Commission); a debt security issued or guaranteed by the government of a recognised country or of a country approved by the Commission or of a corporation with a high credit rating by a recognised credit rating agency (subject to not exceeding twenty per cent of the summation of the insurer's total liabilities and minimum margin of solvency) (or if the corporation has a medium credit rating, not exceeding fifteen per cent of the insurer's total liabilities and minimum margin of solvency), or premiums receivable not more than six months overdue), (b) providing for its liabilities, and (c) generally conducting its business, so that it is in a position to meet its liabilities as they fall due. If a licensed insurer forms the opinion that it no longer meets this requirement, it needs to immediately notify the Commission in writing.

3.1.1 Contributed Capital and Capital Resources

A BVI insurer also needs to ensure that at all times (a) its contributed capital (defined as the total of monies paid, and the value of other consideration provided, for shares issued by the insurance company) is maintained in an amount not less than the greater of (i) the minimum applicable to it as specified in the Code (being \$200,000 where the insurer is authorised to carry on any class of long-term insurance, and \$100,000 in any other case); or (ii) such amount as the Commission may direct; and (b) its capital resources are maintained in such amount as may be prescribed or, where the Commission has issued a direction, in whatever amount which the Commission may direct.

The Code provides that a BVI insurer shall (a) ensure that, at all times, it maintains its capital resources at a level that is adequate to support its insurance business, taking into account the nature, size, complexity, structure and diversity of that business and its risk profile; and (b) maintain adequate systems and controls to monitor and assess its capital adequacy requirements on an ongoing basis. The Code further provides that the board and senior management of a BVI insurer need to make their own determination of the capital resources that are reasonably required to support the insurer's business, taking into account its risk profile, and must ensure that the insurer's capital resources are increased where appropriate.

Under the Act, if the Commission considers it appropriate, having regard to the nature and extent of the insurance business, the Commission may direct the insurer (a) to increase its contributed capital to an amount higher than the prescribed minimum contributed capital applicable to the insurer; (b) to maintain a higher amount of capital resources than that prescribed. The direction needs to specify a reasonable period for compliance with the direction.

3.1.2 Solvency Margin

The Act also requires a BVI insurer to ensure that at all times it maintains a solvency margin (defined in the Code as the surplus of the insurer's allowable assets over the value of its liabilities where the value of the insurer's allowable assets and liabilities is determined in accordance with the Code) to be calculated in accordance with the Code, or an increased solvency margin as directed by the Commission.

The Code states that a BVI insurer shall ensure that it maintains a minimum solvency margin as follows: (a) in the case of a general insurer, (i) if the insurer's annual net written premium is less than \$500,000, the minimum solvency margin is \$100,000; (ii) if the insurer's annual net written premium is greater than \$500,000, but less than \$5,000,000, the minimum solvency margin is 20% of the net annual written premium; and (iii) if the insurer's annual net written premium is greater than \$5,000,000, the minimum solvency margin is \$1,000,000 plus 10% of the difference between the annual net written premium and \$5,000,000; and (b) in the case of a long-term insurer, the prescribed minimum solvency margin is \$250,000.

Notwithstanding the above, a BVI insurer must ensure it maintains a solvency margin that is adequate to enable the insurer to meet its liabilities at all times, taking into account the nature, size, complexity, structure and diversity of that business and its risk profile.

The Code provides that if the Commission considers it appropriate, when having regard to the nature and extent of the insurance business carried on, the Commission may direct the insurer to maintain a solvency margin which is greater than what is specified in the Code.

Given that responsibility for the prudential regulation and supervision of a licensed foreign insurer lies with its home supervisor, the capital resource, contributed capital and solvency margin requirements that apply to BVI insurers do not apply to licensed foreign insurers.

The Code also notes that a BVI insurer must ensure that its liabilities are calculated and valued on the basis required by the accounting standards in accordance with which the insurer's financial statements are prepared, are monitored and calculated on a continuous basis, and include all liabilities arising out of its insurance contracts. Further, a BVI insurer must ensure that the value of its assets is determined in accordance with the accounting standards in accordance with which the insurer's financial statements are prepared.

3.2 Other Obligations and Restrictions

3.2.1 Carrying on Business

The Act provides that a BVI insurer must not carry on any business or activities, whether in the BVI or elsewhere, otherwise than in connection with or for the purposes of the insurance business which it is authorised by its licence to carry on.

A BVI insurer must also carry on its business, and a foreign insurer shall carry on its business in the BVI, substantially in accordance with the most recent business plan submitted to the Commission. Accordingly, a licensed insurer may, at any time, submit an amended business plan to the Commission.

3.2.2 Transfer of Significant Interest

The Act also deals with the transfer of a significant interest in a BVI insurer. A person who owns or holds a significant interest in a BVI insurer must not sell, transfer, charge or otherwise dispose of an interest in the insurer (or part of this interest), unless the prior written approval of the Commission is obtained. Similarly, a person must not (whether directly or indirectly) acquire a significant interest in a BVI insurer, unless the prior written approval of the Commission has been obtained.

The Act further specifies that a BVI insurer shall not, unless the prior written approval of the Commission has been obtained, (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition, or (b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation, including of its share structure, that results in (i) a person acquiring a significant interest in the insurer; or (ii) a person who already owns or holds a significant interest in the insurer, increasing or decreasing the size of their interest. The Commission shall not grant approval unless it is satisfied that, following the acquisition or disposal, any person who will acquire a significant interest satisfies the Commission's fit and proper criteria.

A foreign insurer shall provide written notice to the Commission within fourteen days after any change in the persons who own or hold a significant interest in the insurer.

3.3 Corporate Governance

The Act and Code set in place comprehensive corporate governance rules for insurance licensees. In relation to the Code, the requirements generally apply to foreign licensees in relation to business carried out in the BVI.

It is noted in the Code that the Commission does not expect all captive insurers to establish a corporate governance framework that is equivalent to the corporate governance framework required to be established by a category A licensed insurer. At page 238 of the Code in the explanatory notes, it is stated that: "Indeed, the Commission recognises that an unnecessarily burdensome corporate governance framework would hinder the efficient operation of captive insurers. The principles-based nature of the Code enables the directors of a captive insurer to establish a corporate governance framework that is appropriate for the business undertaken by the insurer and the risks that it takes."

Given the particular nature of a captive insurer's business, the Code notes that the Commission considers the following key issues to be particularly relevant when designing a corporate governance framework for a captive insurer:

- (a) the need to avoid undue influence by the captive insurer's owner, the insurance manager or other interested parties;
- (b) the need to identify and effectively manage potential conflicts of interest;
- (c) the need to ensure that the board is able to manage outsourced operations effectively, including the functions outsourced to the insurance manager;
- (d) the need to take full account of interests of possible claimants on the parent policyholder where they rely on the fact that the captive is covering a particular liability.

3.3.1 Insurance Manager

Under the Act, a BVI insurer who holds a category C or D licence must appoint and at all times have an insurance manager. A licensed insurer shall not appoint a person as an insurance manager unless that person is a company that holds an insurance manager's licence, and the Commission has given its prior written approval to that person's appointment.

A category C or D licensed insurer shall not terminate the appointment of its insurance manager, and a licensed insurance manager shall not terminate its agreement to act as insurance manager for a licensed insurer, unless the insurer or the insurance manager has given not less than 30 days' notice of its intention to do so to the Commission. The Commission may, on the application of the insurer or insurance manager, agree to accept a shorter period of notice. A category C or D licensed insurer must provide written notice to the Commission within fourteen days after it appoints an insurance manager, or the appointment of its insurance manager is terminated.

A foreign insurer which does not have a staffed office in the BVI must appoint and at all times have a representative in the BVI who needs to be either: (a) a person holding an insurance intermediary's licence and is appointed to act as its insurance agent, or b) a person holding an insurance manager's licence. A foreign insurer must provide written notice to the Commission within fourteen days after it appoints a representative, or the appointment of its representative is for whatever reason terminated.

3.3.2 Directors and Senior Officers

The Act requires a BVI insurer to at all times have at least two directors. Only individuals (not companies) can be directors of a BVI insurer.

The Act further states that a BVI insurer shall not appoint a director or senior officer without the prior written approval of the Commission. The Commission will not grant approval unless it is satisfied that person is an individual who meets the Commission's fit and proper criteria. A BVI insurer must also provide written notice to the Commission within fourteen days after a director or senior officer of the insurer ceases to hold office with, or to be employed by, the insurer. The written notice must include a statement of the reasons for the director or senior officer ceasing to hold office with, or to be employed by, the insurer and a written notice shall be deemed not to be provided if it does not include such a statement.

Foreign insurers must, within fourteen days after the appointment of a director or senior officer, or a director or senior officer ceasing to hold office with, or to be employed by, the insurer, provide written notice of that fact to the Commission.

A BVI insurer must, under the Act, take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors, senior officers and key functionaries so that (a) it is clear who has which of those responsibilities; and (b) the business and affairs of the insurer can be adequately monitored and controlled by the directors and its relevant senior officers.

The Code imposes a span of control requirement. A BVI licensee must have an adequate number of directors who (a) are capable of exercising independent judgment; (b) have sufficient knowledge, skills, experience and understanding of the business of the licensee, and the risks to which the licensee is exposed, to ensure that the board is able to fulfil its responsibilities, and (c) have sufficient time and commitment to undertake their duties diligently.

Further, a licensee shall ensure that its management is undertaken by at least two individuals each of whom is either an executive director or a senior manager (defined in the Code as an individual employed under a contract of service by the licensee who is appointed to undertake (or have responsibility for) one or more the following functions: compliance function; money laundering function; internal audit function, or senior management function— with senior management function meaning acting as chief executive officer of the licensee or exercising an equivalent position; or holding a position that requires them to be answerable to the board of the licensee, or having responsibilities that include direct involvement in the licensee’s management or decision-making process at a senior level) and is fit and proper for the purpose. The relationship between the directors or senior managers who undertake the management of the licensee need to be such so as to ensure that they can each exercise independent judgment and that none of them is able to exercise duress or undue influence over the other or others.

The Code reaffirms the requirement under the Act that licensees must have at least two directors, but goes further in providing that at least one of the licensee’s directors needs to be resident in the BVI if it holds one of the following licenses: a category A or a category D insurer’s licence; an insurance manager’s licence, or as an insurance intermediary’s licence. Further, for a licensee holding either a category A or a category D insurer’s licence, there is a requirement to ensure there is at least one non-executive director on the board.

The Code also confirms that the board of a BVI licensee has ultimate responsibility for the business and affairs of the licensee and for ensuring its effective organisation. The Code states that the board has the following responsibilities:

- (a) ensuring that a corporate governance framework complying with the Code is established and maintained by the licensee;
- (b) ensuring that it has effective oversight of the management of the licensee, including approving, periodically reviewing and overseeing (i) the licensee’s overall business strategy and its corporate values; (ii) the licensee’s risk management strategy; and (iii) such other strategies as are required by the Code or that the board considers to be necessary or appropriate;
- (c) approving and periodically reviewing the significant policies of the licensee;
- (d) ensuring that (i) the licensee has adequate and sufficiently qualified and experienced senior managers and other employees; (ii) appropriate and effective systems and controls are established, maintained and implemented for giving effect to the strategies and policies of the licensee (including internal controls and systems and controls with respect to risk management); and (iii) the licensee complies with its regulatory obligations and its anti-money laundering/counter terrorist-financing obligations;
- (e) establishing standards of conduct for business and ethical behaviour for directors, senior management and other employees, including policies on private transactions, self-dealing, preferential treatment of other entities, covering trading losses and other inordinate trade practices of a non-arm’s length nature;
- (f) monitoring, and ensuring, the financial soundness of the licensee; and

(g) such other responsibilities as are specified in the Code.

3.3.3 Maintenance of Systems and Controls

A BVI insurer must also establish and maintain such systems and controls as are appropriate to its business. The systems and controls established and maintained must take into account (a) the nature, scale, complexity, structure and diversity of the insurer's business; and (b) the degree of risk associated with each area of its business.

The Code also requires that insurance licensees must (a) establish such strategies, policies, systems and controls as are appropriate given the nature, size, complexity, structure and diversity of the licensee's business and the degree of risk associated with each area of its businesses; and (b) ensure that the strategies, policies, systems and controls are fully and clearly documented and are communicated, as appropriate, to members of staff and other functionaries. The strategies, policies, systems and controls of a licensee need to specify the duties and responsibilities of the board and senior management (including the responsibilities and duties imposed on the board and senior management by the Code).

The senior management of a licensee is responsible under the Code for ensuring that (as necessary for them to perform their duties) all staff of the licensee (a) are made aware of and understand the strategies, policies, systems and controls established and maintained by the licensee; and (b) are provided with information concerning the licensee and its business.

The explanatory notes to the Code (at page 239) provide that the Commission does not expect captive insurers to have the same policies, systems and controls as a full service insurer. The Commission expects that in most cases the policies, systems and controls of a captive insurer will be much more straightforward. Indeed, it is stated that if the circumstances of a captive insurer justify it, there may not be any need for systems and controls in certain areas. When it is decided by the board of a captive insurer that certain policies, systems and controls are not required, this decision must be recorded in writing together with the reasons.

3.3.4 Risk Management

The Code also deals with the establishment of policies, systems and controls in relation to risk management.

Under the Code, a licensee must establish and maintain (a) a clearly defined strategy, and if the board considers it appropriate, policies, for the effective management of all significant risks which the licensee is exposed or may become exposed; and (b) systems and controls to ensure that the risk management strategy and policies are effectively implemented.

The Code states that a licensee's risk management strategy and policies need to (a) be appropriate for the nature, size, complexity, structure and diversity of the licensee's business; (b) specify how risks are to be identified, measured, assessed, monitored, controlled and reported; (c) where appropriate, set the level of risk which the licensee is prepared to accept and authority levels for members of staff; and (d) be approved, and reviewed at least annually, by the board.

The Code provides more specific details on risk management for insurance licensees. Under the Code, the risk management strategy, policies, systems and controls of a BVI insurer need to cover the risks associated with investment activities which may affect the insurer's liabilities or solvency margin. The board of a BVI insurer must also consider whether the following risks are material risks for the insurer and, if it determines that they are, the board must make sure that the risks are covered by the insurer's risk management strategy and policies: (a) market risk; (b) insurance risk; (c) investment risk; (d) underwriting risk; (e) pricing and product design risk; (f) liquidity risk (g) credit risk; (h) operational risk; (i) reinsurance risk; and (j) custodial risk.

The risk management strategy, policies, systems and controls need to be fully and clearly documented and effectively communicated and readily available to the directors and to those senior managers, staff and other functionaries of the licensee who have responsibility for implementing them. The board and senior management of a licensee are responsible under the Code for (a) ensuring they understand all the risks for which the licensee is exposed to in its business; (b) assessing the resources required for an appropriate risk management system and for ensuring that the required resources are available; and (c) overseeing the implementation of the licensee's risk management strategy, policies, systems and controls.

Furthermore, the risk management systems and controls of a licensee need to: (a) enable the licensee to monitor the adequacy and effectiveness of (i) its risk management strategy and policies and their implementation; and (ii) measures taken to address any deficiencies identified in the risk management strategy, policies, systems and controls; and (b) ensure that any exceptions to the risk management strategy and policies of the licensee are reviewed and authorised by senior management and (where appropriate) the board.

The explanatory notes to the Code state that there are some risks for a captive insurer that are more important than for a full service insurer. These risks include operational risks arising out of greater use of outsourcing; risks arising out of the fact that the captive and the owner are (typically) in different locations; asset concentration risk; lack of risk diversification; high claims volatility; high liquid requirements; exposure to related parties, and currency risk.

3.3.5 Business Continuity

The Code's corporate governance requirements include a business continuity policy for the licensee. All licensees are required to establish a business continuity policy, and put business continuity arrangements in place to ensure that, in the event of an unforeseen interruption or disruption, (a) the licensee is able to continue to carry on its regulated business and to meet its regulatory and anti-money laundering/counter terrorist-financing obligations; (b) losses to the licensee's functions, systems and data are limited and losses can be recovered in a timely manner, and (c) where the severity of the interruption or disruption causes the licensee to cease its regulated business, or any part of it, it is able to resume its business in a timely manner.

The Code provides that the interruptions and disruptions covered by the business continuity plan must include: (a) the loss or failure of internal and external resources, including human resources, systems and other assets; (b) the loss or corruption of data and other information; and (c) external events, such as criminal acts and hurricanes and other natural disasters. Further, the business continuity plan and arrangements need to be (a) appropriate for the nature, size, complexity,

structure and diversity of the licensee's business and the types and degree of risk to which it is exposed; and (b) regularly reviewed and tested, and updated as required.

3.3.6 Internal Controls

The Code also includes comprehensive rules dealing with internal controls for licensees. The Code requires licensees to establish and maintain an adequate and effective system of internal controls appropriate for the nature, size, complexity, structure and diversity of its business.

The internal controls need to operate at all levels of the licensee as appropriate and must ensure that:

- (a) the business of the licensee is planned and conducted properly, adequately and in an orderly manner and in accordance with the strategies and policies established by the board and the policies established by senior management;
- (b) transactions and commitments are entered into pursuant to documented general or specific authorities and any appropriate limits and that compliance with such authorities and limits is reviewed;
- (c) the assets of the licensee are appropriately safeguarded and the liabilities controlled through measures which are designed to minimise risk of loss from irregularities, error, fraud and physical damage, and to identify such occurrences promptly should they occur;
- (d) there are appropriate arrangements in place to delegate authority and responsibility and for the segregation of duties;
- (e) the accounting and other records of the licensee are complete, accurate and timely and can be used to compile financial statements as required;
- (f) the board and senior management, where relevant, is able to assess and monitor the adequacy of capital of the licensee and the adequacy of the licensee's solvency margin;
- (g) the board and senior management is able to identify and regularly assess all relevant risks relating to the conduct of the licensee's business, to ensure that (i) identified risks can be measured, monitored and controlled appropriately; (ii) any losses can be monitored and controlled on a regular and timely basis; and (iii) appropriate provisions can be made for bad and doubtful debts and for any other exposures (both on- and off-balance sheet);
- (h) the board and senior management are able to properly guard against involvement in financial crime and ensure that the licensee is complying with all its regulatory and anti money-laundering/counter terrorist-financing obligations;
- (i) relevant staff of the licensee are able to perform sufficient due diligence on its customers and prospective customers to adequately assess all relevant risks;
- (j) adequate business resumption, disaster recovery and other contingency arrangements are in place and tested at appropriate intervals; and
- (k) adequate controls are in place, including controls (i) relating to changes to systems and records to ensure that only valid changes are made to them; (ii) relating to access to protect the confidentiality and integrity of electronic assets; and (iii) to ensure that appropriate cross-checking and reconciliations (including of accounts) is undertaken.

The Code states that the board of a licensee has ultimate responsibility for ensuring that the licensee establishes, and maintains, an adequate and effective system of internal controls. The board of a licensee is required to: (a) approve and periodically review the overall business strategies and significant policies of the licensee; (b) set acceptable levels, where appropriate, for

the licensee's significant risks; (c) ensure senior management implements the internal controls strategy and policies established by the board; (d) approve an organisational structure which is appropriate for the licensee; (e) approve new products and major risk management initiatives; (f) ensure senior management is monitoring the effectiveness of the licensee's internal control system; and (g) monitor the licensee's market conduct activities.

The senior management of a licensee have responsibility for (a) implementing the strategy and policies of the board in relation to internal controls; (b) ensuring the internal controls required under the Code are established and maintained; (c) the information systems required to be put in place; (d) monitoring the internal controls and ensuring deficiencies are corrected; and (e) reviewing the licensee's internal controls on at least an annual basis, and reporting on the results of their review to the board.

A licensee must ensure that the effectiveness of its internal control system is monitored on an on-going basis; regular reports on the effectiveness of the internal control system are made to the board, and any deficiencies identified in the internal control system are corrected as soon as reasonably practicable. The Code further specifies that a licensee's internal control policies shall require any deficiencies identified in the internal control system to be reported in a timely manner to senior management and for material internal control deficiencies identified to be reported to the board (notwithstanding the fact that these deficiencies may have been corrected).

The explanatory notes to the Code state that given that the insurance manager will usually be holding the assets and handling the transactions of a captive insurer, the Commission will tend to focus on the adequacy of internal controls of the insurance manager rather than the insurer itself. Insurance managers should therefore make sure their internal controls meet the requirements of the Code. Notwithstanding this, ultimate responsibility for the internal controls of a captive insurer remains with the board and the board should, therefore, carefully consider the extent to which the duties of the board should apply given the circumstances of the captive insurer concerned.

3.3.7 Internal Audit Function

The Code requires that a licensee holding a Category A or Category D insurance licence must appoint one or more persons as its "internal audit function" (meaning a person or persons appointed by the licensee who has responsibility for the internal audit obligations that are imposed on the licensee by the Code). The Code specifies that the internal audit function must:

- (a) possess sufficient independence to carry out the licensee's internal audit obligations objectively;
- (b) report directly to the board and needs to be given sufficient status within the licensee to ensure that senior management and the board both react to and act on its recommendations;
- (c) have unrestricted access to (i) the staff of the licensee, in order to carry out the licensee's internal audit obligations; and (ii) documents and information relating to the business of the licensee and its customers;
- (d) have sufficient human resources with adequate professional qualifications, relevant auditing experience and training in order to understand and evaluate the business they audit; and
- (e) employ a methodology that identifies all significant risks of the licensee and allocate resources accordingly.

The internal audit function has the following principal responsibilities under the Code:

- (a) assessing whether the licensee's risk management strategy, policies, systems and controls and its internal controls are sufficient, effective and appropriate for the licensee's business;
- (b) assessing whether the licensee's risk management strategy, policies, systems and controls and its internal controls, are being implemented and complied with;
- (c) assessing whether the systems and controls for monitoring and assessing the on-going capital requirements of the licensee are effective and are being implemented;
- (d) periodically reviewing the licensee's separate risk management function, where the licensee has such a function; and
- (e) periodically reviewing the licensee's compliance function.

The Code requires that a BVI licensee that appoints an internal audit function shall (a) within ten days of the last day of each calendar quarter, provide the Commission with a list of reports that have been prepared by the internal audit function during that calendar quarter, including a summary of the areas covered by each report; and (b) if requested in writing by the Commission, submit to the Commission copies of the internal reports specified in the Commission's request (within the time period specified in the request).

3.3.8 Compliance Policy, Systems and Controls

A licensee is required under the Code to establish, maintain and implement a compliance policy and compliance systems and controls. The compliance policy shall be appropriate for the nature, scale, complexity and diversity of the business carried on by a licensee.

The Code specifies that the compliance systems and controls need to be (a) sufficient to ensure compliance (i) by the licensee with its compliance policies and its regulatory obligations; (ii) by the licensee's board, senior management and employees with its compliance policies and any obligations that may be imposed on them by the BVI's Financial Services Commission Act 2001, another regulatory enactment or the Code; and (iii) with the licensee's internal controls; (b) adequate to identify compliance breaches, and also (c) effectively implemented by the licensee.

The board of a licensee needs to approve the licensee's compliance policy and then review the compliance policy on at least an annual basis, and assess the effectiveness of the compliance policy, systems and controls in managing the licensee's compliance risk. The Code also requires a licensee to appoint a compliance officer, who must be an individual with the appropriate skills and experience and is otherwise fit and proper to act as the licensee's compliance officer.

The Code specifies that a licensee's compliance officer needs to possess sufficient independence to perform their role objectively, and the compliance officer must not be:

- (i) involved in the performance of services or activities that they are responsible for monitoring;
- (ii) placed in a position where they are expected to perform functions that conflict with their role as compliance officer; or
- (iii) subjected to any undue influence or pressure with respect to the carrying out of the compliance function.

Further, the Code requires that the compliance officer must have sufficient seniority in the organisational structure of the licensee to:

- (i) effectively undertake the compliance function;
- (ii) communicate freely with the Commission concerning compliance matters on their own initiative; and
- (iii) ensure that their requests, where appropriate, are acted upon by the licensee and its staff and their recommendations properly considered by the board and by senior management; and
- (iv) have sufficient resources to perform the compliance function effectively.

As part of the compliance requirements under the Code, licensees must also produce a compliance manual which needs to provide sufficient detail to ensure employees of the licensee understand the compliance function, as well as their individual roles in the overall compliance framework.

The compliance manual needs to include information on the following general areas: (a) the purpose and importance of the compliance function; (b) the role of the compliance officer as well as any compliance committee that may be established, and how the compliance function is to be monitored and reviewed; (c) a description of the business undertaken by the licensee, including risks associated with the business and the risk management systems in place; (d) an organisational chart which indicates who is responsible for procedures and tasks; (e) a description of the regulatory framework which applies to the licensee and of the licensee's regulatory obligations; and (f) the procedures used to test compliance and how breaches in compliance will be reported and rectified.

3.3.9 Investment Strategy and Policies

Another requirement under the Code is for BVI insurers to establish and maintain: (a) an investment strategy and such investment policies as the board considers appropriate for the nature, size, complexity, structure and diversity of the insurer's business; and (b) systems and controls which are sufficient to ensure the investment strategy and policies are effectively implemented. The investment strategy and policies of a licensee must address: (i) the risk profile of the insurer; (ii) the mixture and diversification of investment by type (including the long-term asset mix over the main investment categories); (iii) the establishment of limits for allocation of assets by geographical area, markets, sectors, counterparties and currency; (iv) the extent to which holding some types of assets is restricted or disallowed; (v) conditions under which the insurer can pledge or lend assets, and (vi) clear accountability for all asset transactions and associated risks.

The board of a BVI insurer needs to (a) approve the investment strategy and the significant investment policies, and any subsequent changes to the strategy or significant policies, and review them at least annually; and (b) ensure that a management structure (including appropriate systems and controls) is implemented to effectively execute and monitor the investment strategy and policies.

It is noted in the Code that the Commission recognises many captives have straightforward investment strategies, which will be reflected in its investment policies, systems and controls.

3.3.10 Underwriting and Pricing Strategy and Policies

A BVI insurer is also required to establish and maintain: (a) an underwriting and pricing strategy and policies, and (b) systems and controls to ensure that such underwriting and pricing strategy and policies are effectively implemented. The Code states that the underwriting and pricing policies of a BVI insurer must provide for: (a) the evaluation of risks underwritten or to be underwritten; (b) the establishment of adequate premium levels; (c) the mitigation and diversification of risks by (i) defining limits on the amount of risk retained; and (ii) providing for the transfer of appropriate levels of risk away from the insurer by way of adequate and appropriate reinsurance or other risk transfer arrangements.

The underwriting and pricing strategy and the significant underwriting and pricing policies must be approved (and reviewed on at least an annual basis) by the board. Senior management must monitor the systems and controls on an ongoing basis.

3.3.11 Investments

The board of a BVI insurer need to ensure that (a) effective policies, systems and controls are established and maintained to enable the monitoring and managing of the insurer's asset/liability position so that the insurer's investment activities and assets positions are appropriate for its risk profile; and (b) contingency plans are put in place to mitigate the effect of a deterioration in investments.

3.3.12 Remuneration Policy

The Code requires a licensed insurer to establish a remuneration policy and ensure that the remuneration is periodically reviewed. The Code expressly provides that the remuneration policy must not include incentives which are likely to cause imprudent, unnecessary and excessive risk-taking.

3.4 Actuaries

The Act requires a BVI insurer who is a long-term insurer to appoint and at all times have an actuary. A long-term insurer must not appoint a person as its actuary unless the person is an individual qualified to act as an actuary for the purposes of the Act, and the Commission has given its prior written approval to their appointment as the actuary of the insurer. Further, the person must first actually consent to acting as actuary.

The Code states that an individual is qualified to act as the actuary of a licensed insurer if (a) they are a member of a recognised professional body; and (b) they are eligible to be appointed as actuary for the insurer under the rules of the professional body. The following are recognised professional bodies under the Code: (a) Institute of Actuaries (England); (b) Faculty of Actuaries (Scotland); (c) Canadian Institute of Actuaries (Canada); (d) Society of Actuaries (United States); (e) Casualty Actuarial Society (United States); (f) American Society of Pension Professionals and Actuaries (United States); (g) Conference of Consulting Actuaries (United States); and (h) other professional bodies which may be recognised by the Commission on a case-by-case basis.

The Code sets out the duties of an actuary. It provides that the actuary of a long-term insurer appointed under the Act shall, (a) on an annual basis, or more frequently if the actuary considers it necessary to monitor the solvency of the insurer, (i) prepare a valuation of the liabilities of the insurer arising out of its long-term business, setting out the basis for the valuation; (ii) assess the adequacy of the funds and other assets of the insurer to meet its long-term liabilities and specifically the adequacy of the insurer's solvency margin; (iii) test the adherence of the insurer to relevant internal controls; and (iv) prepare a written report covering the matters in (i), (ii) and (iii), accompanied by a certification in the approved form of the liabilities of the insurer, its assets and its solvency position; and (b) carry out such additional work and investigations as may be (i) required by the actuarial standards applicable to the actuary; or (ii) agreed between the insurer and the actuary.

The actuary of a licensed insurer must comply with prescribed actuarial standards in the performance of their duties and exercise of their powers.

The actuary of a BVI insurer needs to report to the insurer any matter relating to the business of the insurer that the actuary has obtained in the course of acting as its actuary which requires action to be taken by the company or its directors to avoid a contravention of the Act or the Code, or to avoid prejudice to the interests of policyholders of the insurer. Where the actuary of a BVI insurer makes such a report to the insurer and the insurer does not, within such time as the actuary considers reasonable, take the action required, the actuary must report the matter to the Commission.

Under the Act, notwithstanding anything to the contrary in any other enactment, the actuary of a long-term insurer must report immediately to the Commission if they are of the opinion that (a) there are reasonable grounds for believing that the insurer or a director or senior officer of the insurer may have contravened the Act or the Code or any other enactment; and (b) the contravention is of such a nature that it may significantly affect the interests of policyholders of the insurer.

Where the appointment of an actuary of a BVI insurer is terminated, or the actuary resigns, the actuary needs to forthwith inform the Commission of the termination of the appointment, or resignation, and disclose to the Commission the circumstances giving rise to the termination or resignation. The Act provides that where the Commission is satisfied that the actuary of an insurer has failed to fulfil their obligations under the Act and the Code, it may, by written notice to the insurer, revoke the approval of the appointment of the actuary and the insurer needs to appoint a new actuary pursuant to the Act and the Code. Further, if a BVI insurer fails to appoint an actuary, the Commission may appoint a qualified person to act as the actuary of the insurer.

The Commission has the power to direct a licensed insurer (whether long-term or general) to cause an actuary to investigate whichever aspects of the insurer's financial condition that the Commission may specify.

3.5 Transfers and Mergers

No part of the business of a BVI insurer may be (a) transferred to another person, or (b) merged with the business of another person, except under a scheme of transfer or merger complying with the Code. In the case of a general insurer, the transfer or merger requires the prior written approval of the Commission. In the case of a long term insurer, the transfer or merger needs to be approved by the Court.

An application to the Commission or the Court for the approval of a scheme needs to be made jointly by, or on behalf of, the BVI insurer and each other person being a party to the scheme and must be in the approved form. In determining an application for a transfer or merger in relation to a general insurer, the Commission may (at the cost of the insurer) undertake an investigation into the desirability of the scheme.

Importantly, any transaction in which a BVI insurer is a party which has the effect of transferring any part of the business of an insurer to another person or merging any part of the business of the insurer with the business of another person is void and of no legal effect unless carried out by way of a scheme of transfer or merger approved by the Commission or the Court (as the case may be).

Further, a BVI insurer must not propose a merger, consolidation, arrangement or scheme of arrangement pursuant to Part IX of the BVI Business Companies Act 2004, unless the Commission has given its prior written approval. Further, in relation to an arrangement (under section 177 of the BVI Business Companies Act 2004) or a scheme of arrangement (under section 179A of the BVI Business Companies Act 2004), the Commission is entitled to appear and be heard at every hearing and the Court shall not make an order under the relevant provision unless the Commission has been given notice of the hearing in which the order is made.

B. INSURANCE MANAGERS, INSURANCE INTERMEDIARIES AND LOSS ADJUSTERS

The Act and the Code contain quite comprehensive rules in relation to the business of insurance managers, insurance intermediaries and loss adjusters carried on in or from within the BVI.

The Act includes the following definitions. An “insurance manager” is defined as a person who provides insurance expertise to any insurer of which he is not an employee (or who exercises such other functions as may be specified).

An “insurance intermediary” means an insurance agent or insurance broker. An “insurance agent” means a person appointed and authorised by an insurer to solicit applications for insurance, negotiate for insurance business or provide advice to clients of the insurer who appointed them (but excludes an individual who is an employee of the insurer). An “insurance broker” means a person who acts as an independent contractor or consultant and who, for commission or other compensation, carries out any of the following: (a) soliciting or negotiating insurance business, including the renewal and continuation of such business, on behalf of an insured or a prospective insured (other than themselves); (b) bringing together (either directly or through the agency of a third party) with a view to the insurance of risks, persons seeking insurance and insurers, and carrying out work preparatory to the conclusion of contracts of insurance, and (c) the provision of advice to clients concerning their insurance requirements.

A “loss adjuster” means a person who, for commission or other compensation, investigates and negotiates the settlement of claims under insurance contracts solely on behalf of either the insurer or the insured but does not include: (a) an individual who is an employee of an insurer or an insurance agent, whilst acting on behalf of the insurer or insurance agent, and (b) an insurance agent who is authorised to settle claims of the insurer for whom he acts as agent.

According to the Commission's statistical bulletin released in August 2010, at the end of the second quarter of 2010 there were 38 licensed insurance functionaries in the BVI: 13 agents; 7 brokers; 14 managers, and 4 loss adjusters.

1. Unlicensed Business

The Act specifies that, subject to certain exceptions that may be provided by way of regulations, no person may carry on (or hold themselves out as carrying on) business as an insurance manager, an insurance intermediary or a loss adjuster in or from within the BVI unless they hold a licence authorising them to carry on the relevant business.

If an insurance intermediary's licence is sought, the Act provides that the licence must be issued in one of the following categories: (a) insurance broker; or (b) insurance agent. The licence of an insurance intermediary must state the category of insurance intermediary in respect of which it is issued and, if the category of the licence is insurance agent, the licence must state the insurer (or insurers) by which the licensee is or will be appointed.

For the purposes of the Act, a person is considered to carry on business as an insurance manager or insurance intermediary in the BVI if they (i) occupy premises in the BVI to conduct business as an insurance manager or intermediary, or (ii) they invite a person in the BVI, or cause a person to be invited, whether through advertisements or otherwise, to become a client. Further, a BVI business company which carries on, or holds itself out as carrying on, business as an insurance manager or intermediary outside the BVI is deemed to carry on, or hold itself out as carrying on, business as an insurance manager or an insurance intermediary from within the BVI.

A person who carries on, or holds themselves out as carrying on, business as an insurance manager, an insurance intermediary or a loss adjuster, without holding the appropriate licence, commits an offence. The Act further provides that a licensed insurer must not pay any commission in relation to domestic business to an insurance intermediary that does not hold an insurance intermediary's licence.

Under the Act, an application to the Commission for an insurance manager's licence or insurance intermediary's licence may be made by a BVI business company, whereas any person may apply for a loss adjuster's licence.

The Commission may issue an insurance manager's licence, an insurance intermediary's licence or a loss adjuster's licence to an applicant if it is satisfied that:

- (i) the applicant intends to carry on business as an insurance manager, an insurance intermediary or a loss adjuster (as the case may be);
- (ii) the applicant satisfies the requirements of the Act and the Code in relation to the application;
- (iii) the applicant will be in compliance with the Act and the Code once issued with the licence;
- (iv) the applicant and, if appropriate, its senior officers and, (i) in the case of a company, its directors and any persons having a significant interest in the applicant, and (ii) in the case of a partnership, the partners, satisfy the Commission's "fit and proper" criteria (the Commission is also empowered to refuse an application for a licence if it is satisfied that any person having a share or other interest (whether legal or equitable) in the applicant does not satisfy the fit and proper criteria);
- (v) the organisation, management and financial resources of the applicant are, or will be when issued with the licence, adequate for the carrying on of the relevant business; and
- (vi) issuing the licence is not against the public interest.

2. Obligations of, and Restrictions on, Licensed Insurance Managers and Insurance Intermediaries

2.1 Financial Resource Requirements

The Act provides that both licensed insurance managers and licensed insurance intermediaries must at all times maintain their business in a financially sound condition by: (a) having assets, (b) providing for its liabilities, and (c) generally conducting its business in order to be able to meet its liabilities as they fall due. If a licensed insurance manager or insurance intermediary forms the opinion that it does not comply with the requirement to be in a position to maintain its liabilities as they fall due, it must forthwith notify the Commission in writing.

Just as for insurers, licensed insurance managers and licensed insurance intermediaries must ensure that at all times their contributed capital does not fall below the greater of the minimum applicable to the licensee as specified in the Code (currently being \$25,000), or such higher amount that the Commission considers appropriate having regard to the nature and extent of the business carried on (or proposed to be carried on). If the contributed capital of the licensee falls below the required amount, it must forthwith notify the Commission in writing.

The Code also includes more general requirements, being that licensed insurance managers and licensed insurance intermediaries must: (i) ensure that, at all times, they maintain their contributed capital at levels adequate to support their licensed business, taking into account the nature, size, complexity, structure and diversity of their business and risk profile, and (ii) maintain adequate systems and controls to monitor and assess their capital adequacy requirements on an ongoing basis.

The Code also requires that the board and senior management of a licensed insurance manager and a licensed insurance intermediary must make their own determination of the contributed capital which is reasonably required to support the business of the manager or insurance intermediary and must ensure that contributed capital is increased where appropriate.

2.2 Directors and Senior Officers

A licensed insurance manager or insurance intermediary must not appoint a director or senior officer without the Commission's prior written approval. The Commission will not provide this approval unless the relevant person is an individual who satisfies the Commission's fit and proper criteria.

Under the Act, a licensed insurance manager or insurance intermediary must provide written notice to the Commission within 14 days after a director or senior officer ceases to hold office with (or be employed by) the licensee. This written notice must include a statement of the reasons for the director or senior officer ceasing to hold office with, or to be employed by, the licensee.

2.3 Disposal or Acquisition of Significant Interest

The Act also includes rules relating to the disposal, or acquisition, of a significant interest in a licensed insurance manager or insurance intermediary. A person who owns or holds a significant interest in a licensed insurance manager or insurance intermediary must not sell, transfer, charge or otherwise dispose of their interest (or any part of their interest) in the licensed entity, unless the prior written approval of the Commission has been obtained. Further, a person must not, whether directly or indirectly, acquire a

significant interest in a licensed insurance manager or insurance intermediary unless the prior written approval of the Commission has been obtained.

It is also provided that, unless the prior written approval of the Commission has been obtained, a licensed insurance manager or insurance intermediary must not: (a) cause, permit or acquiesce in a sale, transfer, charge or other disposition of a significant interest in the entity, or (b) issue or allot any shares or cause, permit or acquiesce in any other reorganisation, including of its share structure, that results in (i) a person acquiring a significant interest in the licensee, or (ii) a person who already owns or holds a significant interest in the licensee, increasing or decreasing the size of his interest.

An application to the Commission for approval of an acquisition or disposal needs to be made by the licensee. The Commission must not grant approval unless it is satisfied that, following the acquisition or disposal, any person acquiring a significant interest will satisfy the Commission's fit and proper criteria.

2.4 Insurance Agents

A licensed insurance agent cannot act as the insurance agent for a particular insurer unless the name of the insurer is stated on the agent's licence. At any time, a licensed insurance agent can apply to the Commission to add a licensed insurer to, or remove a licensed insurer from, their licence. If the application is to add a licensed insurer to the licence, the application needs to include a written confirmation from the licensed insurer concerned that it will appoint the agent as its insurance agent upon the amendment of the licence.

A licensed insurance agent who ceases to act as the insurance agent for an insurer must notify the Commission in writing within fourteen days of ceasing to act.

2.5 Insurance Managers

Insurance managers are required under the Act to appoint, and at all time have, a designated representative in the BVI who must be an individual approved by the Commission. An insurance manager must provide written notice to the Commission within 14 days after (a) it appoints a designated representative; or (b) the appointment of its designated representative is, for whatever reason, terminated. The written notice must include a statement which sets out the reasons for the termination of the representative's appointment.

Under the Act, licensed insurance managers, or any employees or associates of a licensed insurance manager, must not, without the prior written approval of the Commission, (a) be a shareholder, or have any direct or indirect interest, in or (b) be a director or employee of an insurer for which it acts or, in the case of an employee or associate, an insurer for which the insurance manager of which the person is an employee or associate, acts. A licensed insurance manager, or any employee or associate of a licensed insurance manager who violates this requirement, commits an offence.

The Act sets out a number of obligations that apply to insurance managers. It is specified in the Act that an insurance manager of a licensed insurer must immediately report to the Commission any information relating to the affairs of that licensed insurer that they have obtained in the course of acting as insurance manager which, in the insurance manager's opinion suggests that:

- (a) the licensed insurer is insolvent, or is likely to become insolvent, or is likely to be unable to meet its obligations;
- (b) a criminal offence has been, or is being, committed by the insurer in connection with its business;
- (c) a serious breach of the Act or the Code (or such other enactments, guidelines or codes relating to money laundering or the financing of terrorism as may be prescribed) has occurred in respect of the insurer or its business;
- (d) the insurer has defaulted in the payment of any of its liabilities;
- (e) the insurer is not conducting its business in accordance with sound insurance principles; or
- (f) the insurer has ceased to carry on business in or from within the BVI.

If the appointment of an insurance manager is terminated, there is also an obligation on the insurance manager to forthwith inform the Commission of the termination of his appointment, and disclose to the Commission the circumstances that gave rise to such termination.

2.6 Premiums

There are also rules under the Act relating to the receipt of, and dealing with, premiums by intermediaries. Licensed insurance intermediaries must not receive, hold or in any way deal with a premium payable under an insurance policy entered into (or to be entered into) with an insurer, or other client monies unless:

- (a) in relation to insurance agents, the agent is authorised by the relevant insurer to receive, hold or deal with the premium or other client monies, and
- (b) in the case of any insurance intermediary, the intermediary receives, holds or deals with the premium or other client monies in accordance with the provisions of the Code. **(see 4.7 below)**

Where a licensed insurance agent receives the premium (or any part of the premium) payable under an insurance policy issued or to be issued by an insurer for which he is appointed, the insurance agent is deemed to receive the premium as agent of the insurer and to hold the premium on trust for the insurer, and payment to the insurance agent is deemed to be payment to the insurer (notwithstanding any agreement to the contrary).

2.7 Professional Indemnity and other Insurance

A licensed insurance intermediary and a licensed insurance manager must at all times maintain professional indemnity insurance, as well as any other insurance as may be prescribed. Failure to do so is an offence under the Act. The Code adds to the requirements of licensed insurance managers and insurance intermediaries. Under the Code, licensed insurance managers and insurance intermediaries must ensure that, at all times, they each maintain such professional indemnity, fidelity and other insurance as is appropriate taking into account the nature, size, complexity, structure and diversity of their licensed business.

The Code goes further by noting that the insurance required to be maintained by licensed insurance managers and intermediaries must, except where the Commission otherwise give permission in writing:

- (a) cover the negligence of, and errors and omissions by, the licensee, the dishonesty of its employees and the loss and theft of documents (extending to liability, the costs of replacement, the reinstatement of data and the increased costs of working);
- (b) include costs and expenses, and
- (c) be for a minimum amount of cover of \$500,000 (for any one claim) and \$2,500,000 (in aggregate).

The Code further provides that licensed insurance managers and insurance intermediaries must notify the Commission of any limitations in cover that may apply to its licensed business. If the aggregate level of cover required under an insurance policy is depleted as a result of a claim on the policy, the licensed insurance manager or insurance intermediary must obtain re-instated cover to meet the requirements which are set out under the Code. There is an additional requirement for licensed insurance managers and intermediaries to establish systems and controls with a view to ensuring compliance with the terms and conditions set out in an insurance policy (specifically including in relation to the timely notification of events that may lead to a claim on the policy).

C. GENERAL REQUIREMENTS

1. Maintenance of Records

The Act requires that a BVI insurer, a licensed insurance manager and a licensed insurance intermediary keep at their office in the BVI (or at the office of an insurer's insurance manager if they are required to appoint an insurance manager) such records which are sufficient to:

- (a) show and explain its transactions;
- (b) at any time, enable its financial position to be determined with reasonable accuracy;
- (c) enable it to prepare such financial statements and make such returns as are required under the Act, and
- (d) enable its financial statements to be audited in accordance with the Act (if applicable).

A foreign insurer is required under the Act to keep at its BVI office (or at the office of its representative in the BVI if required to appoint such a representative) records which are sufficient to (i) show and explain all transactions in respect of the business it carries on in the BVI, and (ii) to enable it to prepare returns which it is required to prepare and make under the Act and the Code. A foreign insurer is also required to notify the Commission in writing of the place (or places), whether this be in or outside the BVI, where its other financial records are maintained. A licensee (and where a license has been revoked, a former licensee) is required to retain the records required to be maintained under the Act for at least six years after the completion of the transaction to which they relate.

The records kept by a licensee shall be sufficient to enable the Commission to monitor the compliance of the licensee with its regulatory obligations and its anti-money laundering counter-terrorist financing obligations. A licensee must also maintain its records so they can be readily retrieved in the BVI and, if kept otherwise than in legible form, so they can be accessed and read at a computer terminal in the BVI in legible form and in the English language without delay. A licensee must also ensure its records are kept up-to-date and that a full audit trail is maintained of all changes to its records. Further, a licensee must not keep records which it is required to maintain under the BVI Business Companies Act 2004, the Act or the Code outside the BVI if access to those records will be (or is likely to be) impeded by confidentiality or data protection restrictions.

The Code provides that licensees must establish a record retention policy which needs to include (i) the period of time in which various types of records will be retained, (ii) how records are to be securely and safely stored, and (iii) the process by which stored records can be readily accessed when required by the licensee, the Commission, law enforcement agencies or other persons entitled to access them.

2. Financial Statements

The Act includes some requirements relating to financial statements and audit that apply to BVI insurers (as well as other licensees that may be specified in the regulations as a “relevant licensee”).

A relevant licensee must, no later than eleven months after the date that its licence is issued to it, provide the Commission with a notice of its financial year end. For the purposes of the Act, the financial year of a relevant licensee is: (a) in the case of its first financial year, the period from the date of its incorporation to the last day of the month specified in the notice provided to the Commission, and (b) in the case of subsequent financial years, the period of one year commencing on the day immediately after the end of its previous financial year. The Commission can, on the application of a relevant licensee, vary the financial year of a relevant licensee for a period of not less than three months and not more than fifteen months.

For the purposes of the Act and Code, “financial statements” includes, in relation to a relevant licensee and to a financial year: (a) a statement of the financial position of the licensee as at the last date of the financial year, (b) a statement of the financial performance of the licensee in relation to the financial year, (c) a statement of cash flows for the licensee in relation to the financial year, (d) such statement relating to the prospects for the licensee's business as may be prescribed or as may be required by the accounting standards in accordance with which the accounts are prepared, and (e) such other statements as may be prescribed.

A licensee must ensure that its financial statements, as well as any group accounts which are required to be submitted to the Commission, are prepared in accordance with: (i) the International Financial Reporting Standards, promulgated by the International Accounting Standards Board, (ii) UK GAAP, (iii) US GAAP, (iv) Canadian GAAP, or (v) such other recognised international accounting standards which may be approved by the Commission on a case-by-case basis. If, when complying with the applicable accounting standards, the financial statements of a licensee do not provide a true and fair view of the matters to which they relate, the licensee must ensure that the notes to the financial statements contain such information and explanations to give a true and fair view of those matters.

The financial statements of a relevant licensee need to be approved by the directors of the relevant licensee, and signed by at least one director on behalf of all the directors. The director who signs the financial statements shall state the date when the financial statements were approved by the directors and the date when they sign the financial statements.

The financial statements of a relevant licensee which are signed by a director need to be submitted to the Commission within six months of the end of the financial year to which they relate, and be accompanied by: (a) a directors' certificate in the approved form, (b) an auditor's report, (c) any report on the affairs of the licensee made to the members of the licensee in respect of the relevant financial year, as well as any other documents as may be prescribed. Unless the financial statements are accompanied by these certificates, reports and documents, the financial statements will be deemed not to have been submitted to the Commission. The Commission may, upon an application by a relevant licensee, extend the time for submitting financial statements, for a period of up to three months (or for an aggregate period not exceeding three months where the Commission grants more than one extension). An extension may be granted upon such conditions as the Commission considers appropriate.

If the Commission considers that any financial statements (or accompanying document) submitted by a relevant licensee are inaccurate or incomplete or not prepared in accordance with the Act or the Code, the Commission may by written notice require the licensee to amend the statements or document or submit replacements. If the relevant licensee fails to comply with such a notice, the Commission can reject the relevant document and it shall be deemed not to have been submitted.

3. Audit

A BVI insurer, or such other relevant licensee, must appoint and at all times have an auditor to audit its financial statements. An auditor must not be appointed unless: (i) they are qualified under the Code to act as the auditor of a relevant licensee; (ii) they have consented to the appointment, and (iii) the Commission has given its prior written approval to a person being appointed as auditor.

The Code provides that an individual is qualified to act as the auditor of a licensee if: (a) they are a member of a recognised professional body, and (b) they are eligible to be appointed as an auditor under the rules of the professional body. The Code lists the following as recognised professional bodies: (a) the Institute of Chartered Accountants in England and Wales; (b) the Association of Chartered Certified Accountants; (c) the Institute of Chartered Accountants of Scotland; (d) the Institute of Chartered Accountants in Ireland; (e) the Canadian Institute of Chartered Accountants; (f) the American Institute of Certified Public Accountants, and (g) such other professional body as may be recognised by the Commission on a case-by-case basis.

A partnership is qualified to act as auditor of a licensee if a majority of the partners are individuals qualified to act as the auditor of a licensee, and a body corporate is qualified to act as auditor of a licensee if the body corporate is controlled by individuals qualified to act as the auditor of a licensee.

The Commission must not approve the appointment of an auditor unless satisfied that the person has sufficient experience and is competent to audit the financial statements of the licensee. The approval of the Commission is not required where the auditor appointed in respect of a financial year acted as the auditor of the licensee in the previous financial year and the Commission's approval of their appointment has not been revoked. A relevant licensee must within 14 days of the appointment of its auditor, submit a notice of appointment in the approved form to the Commission.

An auditor, or a person whom the licensee proposes to appoint as auditor, must upon a request being made by the Commission, provide the Commission with whatever information or documentation regarding their experience, skills and resources as the Commission reasonably requires to determine whether they are fit and proper to audit the licensees.

A licensee must take reasonable steps to ensure that the person it appoints as auditor is independent of the licensee and must not appoint a person as auditor who it knows, or ought to have known, has a conflict of interest in relation to the licensee. A licensee must notify the Commission in writing if it forms the opinion, at any time, that the auditor is not independent of it. The auditor of a licensee must also take reasonable steps to be satisfied that they are independent of the licensee and have no conflicts of interest in relation to the licensee.

A relevant licensee is required under the Act to make whatever arrangements are necessary to enable the auditor to audit their financial statements in accordance with the Act and the Code, including: (a) giving the auditor a right of access at all reasonable times to its financial records and to all other documents and

records, and (b) providing the auditor with such information and explanations, as, in either case, the auditor reasonably requires for the purposes of the audit.

If, for whatever reason, a person ceases to be the auditor of a relevant licensee, the licensee must not commit an offence if it appoints another auditor within two months of the date that the person who was previously appointed auditor ceases to hold that appointment.

An auditor is required to carry out sufficient investigation to enable them to form an opinion on the financial statements of the licensee, and prepare an audit report in compliance with the Code. Once completing the audit of the relevant licensee's financial statements, the auditor must provide an audit report to the licensee which complies with the Code. The Commission is empowered under the Act to direct a relevant licensee, by way of a notice in writing, to supply the Commission with a report, prepared by its auditor (or another person as may be nominated by the Commission), dealing with such matters as the Commission may determine which may include an opinion on (i) the adequacy of the accounting systems and controls of the licensee and (ii) asset quality and the adequacy of technical provisions. Such a report is to be prepared at the cost of the licensee.

The auditor of a relevant licensee must immediately report to the Commission any information relating to the affairs of the licensee which the auditor has obtained in the course of acting as auditor that, in the auditor's opinion, *inter alia* suggests that: (a) the licensee is insolvent or is likely to become insolvent or is likely to be unable to meet its obligations; (b) a criminal offence has been or is being committed by the licensee or in connection with its business; (c) the licensee has significant weaknesses in its internal controls rendering it vulnerable to significant risks or exposures which could potentially jeopardise the licensee's financial viability, or (d) a serious breach of the Act or the Code (or such other enactments, guidelines or codes relating to money laundering or the financing of terrorism as may be prescribed) has occurred in respect of the licensee or its business.

Where the appointment of an auditor of a relevant licensee is terminated, or the auditor resigns, that auditor needs to (a) forthwith inform the Commission of the termination of their appointment, or their resignation, and disclose to the Commission the circumstances giving rise to the termination or resignation; and (b) if, but for the termination of their appointment, or their resignation, they would have reported information to the Commission, they shall report the information concerned to the Commission. The Commission may require an auditor of a relevant licensee to discuss any audit they have conducted or commenced with, or provide additional information regarding the audit to, the Commission.

If the Commission is satisfied that the auditor of a relevant licensee has failed to fulfil their obligations under the Act or is otherwise not a fit and proper person to act as the auditor of an insurer, the Commission may revoke the appointment of the auditor by notice in writing, and appoint a new auditor. If a licensed insurer fails to appoint an auditor, the Commission may appoint a qualified person to act as the auditor of the insurer.

If a relevant licensee is a member of a group of companies, the Commission may require the licensee to submit group accounts. The Commission may require that the group accounts are audited by the auditor of the licensee, or by another auditor approved by the Commission.

For the purposes of an audit under the Act, the auditor of a long-term insurer may accept a valuation by the actuary appointed by the insurer of: (i) the policy liabilities of the insurer as at the end of a financial

year of the insurer, or (ii) a change, during a financial year, in the policy liabilities of the insurer in relation to a particular fund.

To comply with the Code, the auditor of a licensee must audit the licensee's financial statements and report to the licensee in accordance with the auditing standards specified or endorsed by the recognised professional body of which they are a member, or other recognised international auditing standards which may be approved by the Commission on a case-by-case basis. The auditor must also (i) certify the licensee's compliance with such obligations and matters which may be specified in the Code, the Act, and other regulatory enactments, (ii) provide such certifications or confirmations as may be specified by the Commission, and (iii) carry out such other duties as may be required of the auditor by the Code, the Act and other regulatory enactments.

Where the auditor of a licensee is an individual, they must sign the audit report. If the licensee's auditor is a partnership or a corporate body, the audit report needs to be signed by an individual who is qualified to act as the auditor of a licensee, and authorised to sign the audit report on behalf of the partnership or corporate body.

The Code also specifies that an auditor who carries on business in the BVI must maintain professional indemnity insurance with an eligible insurer that provides a minimum cover of \$500,000 for one claim and \$5,000,000 in aggregate.

4. Miscellaneous

4.1 Submission of returns and reporting of information to Commission

Under the Act, a licensee must report to the Commission certain information, or submit to the Commission such documents or returns, as prescribed. If the Commission considers that any document submitted by a licensee is inaccurate, incomplete or not prepared in accordance with the Act or the Code, it may require the licensee to amend the document or submit a replacement document.

4.2 Advertisements

A licensee must not issue (or cause or permit to be issued) any advertisement, statement, brochure or similar document that is misleading or which contains an incorrect statement of fact. If the Commission forms the opinion that any such document which has been issued (or is to be issued) contains an incorrect statement of fact or is contrary to the public interest, it may direct the licensee in writing not to issue the document or to withdraw it, or authorise the licensee in writing to issue the document with certain changes specified by the Commission.

4.3 Market Conduct

The Act requires licensees to take all reasonable steps to protect its customers and to ensure that its customers are treated fairly at all times.

4.4 Change of Name

With the exception of foreign insurers, a licensee must not change the name under which it carries on business (or, in the case of a corporate body, change its name) without the prior written approval of the Commission. A foreign insurer must forthwith notify the Commission in writing if it changes its name or the name under which it carries on business.

4.5 Registers

The Commission must maintain: (a) a Register of Licensed Insurers, (b) a Register of Licensed Insurance Managers, (c) a Register of Licensed Insurance Intermediaries, (d) a Register of Licensed Loss Adjusters, as well as such other registers as may be specified in regulations, containing such information as may be specified in the regulations.

The registers maintained by the Commission need to maintain the following information: (a) the address of the licensee's principal office in the BVI, (b) if appropriate, the address of the licensee's head office of the licensee outside the BVI, (c) the type and category of licence granted to the licensee and, in the case of an insurer, the classes of insurance business authorised by its licence; (d) the full name and address of each director of the licensee and the date of the director's appointment and, in the case of a former director, the date that the director ceased to hold office, as well as (e) such other information as the Commission considers appropriate.

4.6 Public Inspection of Records

A person may, on payment of the prescribed fee and during normal business hours, (a) inspect the registers and any records kept by the Commission that are specified as public records in the regulations (being the audited financial statements of an insurer that holds, or has held, a Category A licence or Category B licence); and (b) require the Commission to provide them with a copy or certified copy of, or extract from, any document they are entitled to inspect. In relation to documents filed or kept in electronic form, a person's rights extend only to reproductions of those documents in useable written form produced in such manner as the Commission considers appropriate.

4.7 Client Accounts and Client Money

Under the Code, all insurance licensees are required to ensure that: (a) customer assets (defined as assets that, in the course of its licensed business, a licensee holds, has custody or control of or responsibility for that (a) belong to a customer or potential customer of the licensee; or (b) the licensee holds, has custody or control of or is responsible for on behalf of a customer or a prospective customer) are identified, or identifiable, and appropriately segregated and accounted for; (b) customer money (defined as customer assets that consist of money) is not mixed with other money; (c) arrangements are made for the safekeeping and proper protection of customer assets and any documents of title relating to customer assets; (d) the location of a customer's assets and documents of title relating to a customer's assets are recorded in the customer's records; and (e) where any asset is required to be registered, the asset shall be properly registered in the customer's name (or, where agreed with the customer, in the name of a nominee).

A licensee must ensure that any customer account that it maintains is (a) held with an approved bank (meaning a person holding a general banking licence; or a person holding a licence equivalent to a general banking licence in a jurisdiction recognised by the Commission); (b) separate from any of the licensee's own bank accounts; (c) clearly designated as a customer account; and (d) under at least dual signatory control, where the signatories are sufficiently senior to provide an appropriate span of control.

A licensee who opens a customer bank account with a bank must (a) provide written notice to the bank that the account is to be a customer account, specifying whether the account is a general client account or a specific customer account (under the Code, "general customer account" means a bank account maintained by a licensee in its name that holds, or is intended to hold, customer money in respect of two or more customers of the licensee; and "specific customer account" means a bank account maintained by a licensee in the name of a specific customer of the licensee or, with the agreement of the customer in the licensee's name, that holds, or is intended to hold, customer money in respect of that customer only); and (b) request the bank in writing to provide an undertaking to the effect that the bank (i) acknowledges that the account is a client account and that money standing to the credit of the account at any time is held by the licensee as a trustee; (ii) agrees not to combine the customer bank account with any other account (held by the licensee or by any other person); and (iii) agrees that it has no right of set off, counterclaim or any security interest against money in the customer account in relation to any debt (or other obligation) of the licensee.

A licensee must not pay any customer money into a customer account unless it has received an undertaking as to the above from the bank. Further, a licensee must not pay money that is not customer money into a customer account or pay customer money received in respect of one customer into a specific customer account held in respect of another customer, or knowingly permit a customer account to become overdrawn.

If a licensee receives a postal order, cheque, bankers' draft or other payable order which includes customer money and money payable to the licensee, the licensee must (a) ensure that both the customer money and the other money are paid into a customer account; and (b) once the postal order, cheque, bankers' draft or other payable order has been received into the account and, where appropriate, fully cleared, withdraw the money that does not represent customer money for payment to the licensee's own account.

Licensees must ensure that customer money held in relation to a customer are not used for another customer, without proper authority. Licensees must also ensure that customer money is not disbursed (by payment out of a customer account or otherwise) unless the money is properly required for payment to, on behalf of or with respect to a customer. Customer money is properly required for payment on behalf of or with respect to a customer if (a) it is required for the payment of fees, commissions or disbursements payable to the licensee by the customer in accordance with the terms of an agreement between the licensee and the customer; (b) it is withdrawn or paid on a customer's authority or otherwise in conformity with any contract between the licensee and the customer.

Unless any written agreement between the licensee and a customer provides otherwise, the licensee shall account to the customer for any interest received by the licensee with respect to customer money of that customer.

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