

2012-12-14

OBJECTS AND REASONS

This Bill would amend the *Insurance Act*, Cap. 310 to make provision for new classes of insurance licensees and for related matters.

Arrangement of Sections

1. Short title
2. Amendment of section 2 to Cap. 310
3. Amendment to section 3 of Cap. 310
4. Amendment of Cap. 310
5. Amendment to section 9 of Cap. 310
6. Amendment to section 13 of Cap. 310
7. Amendment to section 13A of Cap. 310
8. Amendment to section 22 of Cap. 310
9. Amendment to Cap. 310
10. Amendment to section 23 of Cap. 310
11. Amendment to section 33 of Cap. 310
12. Amendment to section 39 of Cap. 310
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- 16.** Amendment of Cap. 310
- 17.** Amendment of Cap. 310
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- 19.** Continuation of licensee
- 20.** Savings
- 21.** Repeal
- 22.** Commencement

SCHEDULE

BARBADOS

A Bill entitled

An Act to amend the *Insurance Act*, Cap. 310.

ENACTED by the Parliament of Barbados as follows:

Short title

- 1.** This Act may be cited as the *Insurance (Amendment) Act, 2018*.

Amendment of section 2 to Cap. 310

2. Section 2 of the Insurance Act, in this Act referred to as the principal Act, is amended

- (a) **by deleting the definition of “principal representative” and substituting the following:**

“

“principal representative” means a licensee’s management company or such individual as the Commission approves for the purpose of managing the business of a licensee or the representative notified to the Commission as such in accordance with the Act;”;

- (b) **by deleting the word “Supervisor” wherever it appears in the Act and substituting therefor the word “Commission”;**
- (c) **by deleting the definition of “qualifying insurance company”;**
- (d) **by inserting the following new definitions in their appropriate alphabetical order:**

“ “Commission” means the Financial Services Commission established by the *Financial Services Commission Act* (Act 2010-21);

“holding company” means a body corporate that satisfies the following requirements:

- (a) it is incorporated under the *Companies Act*, Cap. 308 and its sole object is to own shares in a company whose objects and activities are the transaction of insurance business under Class 1 or Class 2;
- (b) at least one of its directors is a resident citizen of Barbados;
- (c) it is registered with the Commission;

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

- (a) that provide for the protection of persons against loss or liability in respect of risk to which such persons may be exposed;
- (b) by virtue of which the company assumes the obligation to pay a sum of money or other thing of value upon the happening of an event;
- (c) that provide for re-insurance; and
- (d) relating to pensions and other business directly connected to insurance business;

“licensee” means an entity licensed to carry on business within a specified class under this Act;

“management services” includes the provision of accounting, administrative, brokerage and underwriting services, and the processing of claims for insurance business;

“manager” means a person who, not being an employee of a licensee, provides management services to one or more licensees;

“premium income” means the net premium earned after deducting any premiums paid by the licensee for re-insurance;

“securities” has the meaning assigned to it by section 2 of the *Securities Act*, Cap. 318A;”.

Amendment to section 3 of Cap. 310

3. Section 3 of the principal Act is amended in subsection (1) by

- (a) deleting the word “or” appearing in paragraph (i) thereof; and**

(b) *inserting therein the following new paragraphs immediately after paragraph (i):*

- “(i.1) financial insurance business;
- (i.2) workmen’s compensation insurance business; and
- (i.3) public liability insurance business; or”.

Amendment of Cap. 310

4. *The principal Act is amended by inserting therein the following new section immediately after section 3:*

“Classes of licensee

3A.(1) There shall be three classes of licensee under this Act as follows:

- (a) Class 1 licensee which shall be an insurance company which underwrites related party business;
 - (b) Class 2 licensee which shall include an insurance company which underwrites risks of third parties;
 - (c) Class 3 licensee which shall include an insurance intermediary, an insurance management company and an insurance holding company
- (2) All categories specified in subsection (1) shall pay the licence fee as prescribed.
- (3) Notwithstanding subsection (1), the Commission may place any applicant into any of the classes set out in that subsection.
- (4) The Commission may in the grant of licences, issue such conditions as it may deem fit.”.

Amendment to section 9 of Cap. 310

5. Section 9 of the principal Act is amended

- (a) *in subsection (1) by deleting paragraph (f) thereof;*
- (b) *deleting the word “and” appearing at the end of paragraph (e) and inserting a full-stop;*
- (c) *by inserting the following new subsections immediately after subsection (1):*

“(1A) Paragraphs (a) to (e) of subsection (1) shall apply to an insurer which carries on insurance business of insuring risks located within Barbados, and in respect of which premiums originate from within Barbados.

(1B) Paragraph (f) of subsection (1) shall apply to an insurer which carries on insurance business of insuring risks located outside Barbados, and in respect of which premiums originate outside Barbados.”;

- (d) *by inserting the following new subsection immediately after subsection (2):*

“(2A) Subsection (2) shall apply to an insurer which carries on insurance business of insuring risks located outside Barbados, and in respect of which premiums originate outside Barbados.”.

Amendment to section 13 of Cap. 310

6. Section 13 of the principal Act is amended by deleting the words “class or classes of insurance business for which it is registered” appearing in the third line thereof and substituting the words “the Class of licence granted under section 3A”.

Amendment to section 13A of Cap. 310

7. *Section 13A of the principal Act is deleted.*

Amendment to section 22 of Cap. 310

8. *Section 22 of the principal Act is amended*

(a) *in subsection (1) by deleting the opening words thereof and substituting the following:*

“No insurer carrying on the insurance business of insuring risks located within Barbados and in respect of which premiums originate from Barbados.”; and

(b) *in subsection (2) by deleting the words “Any person” appearing in the first line thereof and substituting the words “A licensee who holds a Class 2 licence”.*

Amendment to Cap. 310

9. *Section 22A is deleted and the following substituted:*

“**22A.** An insurer carrying on the insurance business of insuring risks located outside of Barbados, and in respect of which premiums originate outside of Barbados shall comply with the requirements as the Commission may determine.”.

Amendment to section 23 of Cap. 310

10. *Section 23 of the principal Act is amended by inserting the following new subsection immediately after subsection (4):*

“(5) This section shall apply only to an insurer which carries on insurance business of ensuring risks located within Barbados and in respect of which premiums originate within Barbados.”.

Amendment to section 33 of Cap. 310

11. *Section 33 of the principal Act is amended by deleting the words “Minister” and inserting the words “the Commission”.*

Amendment to section 39 of Cap. 310

12. *Section 39 of the principal Act is amended by adding the following new subsection immediately after subsection (12):*

“(13) This section shall only apply to an insurer which carries on insurance business of insuring risks located within Barbados, and in respect of which premiums originate within Barbados where that insurer issues policies of insurance to a citizen or resident of Barbados.”.

Amendment of Cap. 310

13. *The principal Act is amended by inserting the following new section immediately after section 49:*

“Non-application of certain sections to class

49A. Sections 22, 23, 25-34, 39(2), 46-49, 58, 100-147, 148-187 shall not apply to Class 1 licensees.”.

Amendment of Cap. 310

14. *The principal Act is amended by inserting the following new Part therein immediately after Part II:*

“PART IIA

SPECIAL REQUIREMENTS FOR THE INSURANCE OF RISKS
ORIGINATING OUTSIDE BARBADOS

Conditions of Licence

70A.(1) In issuing a licence under this Act, the Commission may specify the class or classes of insurance business in which the licensee may engage.

(2) Notwithstanding section 8 of the *Aliens Act*, Cap. 185, the Minister may attach such conditions to the issue of a licence relating to the real property investments and holdings of a licensee as the Minister thinks fit.

(3) It is a condition of a licence under this Part that the licensee shall not, without the prior approval in writing of the Minister,

- (a) enter into a merger or consolidation;
- (b) transfer, otherwise than in the ordinary course of its business including a transfer by way of re-insurance, the whole or any part of its assets or liabilities;
- (c) charge the whole or any part of its assets;
- (d) change its name from that set out in the licence;
- (e) engage in a class of insurance business other than that specified in its licence;
- (f) alter its articles of incorporation.

(4) It shall not be a condition of a licence issued under this Part that the licensee commences business within a specific period of time; and a licensee shall not be struck off the register of companies or incur penalty or sanction for not commencing business within a specified period of time, notwithstanding any other enactment to the contrary.

(5) Subsection (3)(b) does not apply where the licensee has filed documents specifying procedures which in the opinion of the Minister are satisfactory for effecting the full discharge of any liabilities that may arise under the laws of Barbados in relation to the licensee.

(6) Subsection (3)(c) does not apply where the charge is by way of letters of credit issued to secure the insurance of reinsurance obligations of the licensee.

Management services

70B.(1) Notwithstanding any other enactment and subject to subsection (2), no person other than a management company may offer or provide management services to a licensee conducting insurance business from within Barbados.

(2) Subsection (1) shall not apply to a company that has satisfied the Commission that

- (a) it is resident in Barbados; and
- (b) the majority of its directors are resident in Barbados.

Requirements for management company

70C. A management company is a body corporate that satisfies the following requirements:

- (a) its main object and activity are the provision of management services other than banking business as defined by section 2 or Part IIIB of the *Financial Institutions Act*, Cap. 324A or to licensees under this Act; or

- (b) it is registered with the Commission in compliance with this Act.

Registration as management company

70D.(1) A company that wishes to register as a management company under this Act may apply to the Commission to be registered setting out the management services that it proposes to offer to a licensee under this Act, and providing a copy of its articles of incorporation and such other information as may be prescribed.

(2) An application under subsection (1) must be accompanied by the prescribed application fee.

(3) In considering an application under this section, the Commission shall take into account

- (a) the ability of the company to provide the proposed management services; and
- (b) the character and reputation of the company.

(4) When the Commission is satisfied that a company is registrable under this section, he shall, upon payment of the prescribed fee, but subject to subsection (5), issue to the company a license containing the name and business address of the company and the date of its registration as a management company.

(5) Where in considering the registration of a company the Commission is of opinion that there are circumstances requiring that the company's registration should be subject to conditions, he may attach any of those conditions to the registration as are specified in the certificate as the circumstances require.

(6) Subject to the payment of the annual prescribed fee, a license remains valid until revoked or suspended by the Commission.

(7) The Commission may suspend or revoke the registration of a management company in such circumstances as are prescribed by paragraphs (a), (b) and (c) of section 70I(1) and sections 70H and 70I apply with such adaptations as are necessary to the certificate of registration as they apply to a licence under this Act.

Duty of Managers

70E. A manager shall maintain an accurate list of all licensees for which he acts as manager and shall, if requested in writing at any time to do so by the Commission, provide the Commission with a copy of that list.

Holding Companies

70F. For the purposes of this Act, a holding company is a body corporate that satisfies the following requirements:

- (a) it is incorporated under the *Companies Act*, Cap. 308 and its sole object is to own shares in a company whose objects and activities are the transaction of insurance business; and
- (b) it is registered with the Commission in compliance with section 70H.

Resident citizens consent to director

70G. A resident citizen who has consented to his appointment as a director of a holding company must, before the registration of the articles of incorporation of the company, file with the Registrar of Companies a consent signed by him to act as a director.

Procedures for registration of a holding company

70H.(1) A company that wishes to register as a holding company under this Part may apply to the Minister for approval to be so registered.

- (2) An application under this section must be accompanied by a certified copy of the articles of incorporation of the company under the *Companies Act*, Cap. 308 and the prescribed application fee.
- (3) In considering the application, the Minister shall
 - (a) ensure that the sole object of the company is to own shares in a company whose objects and activities are the transaction of insurance business from within Barbados;
 - (b) take into account the character and reputation of the company.
- (4) Where the Minister is satisfied that a company is registrable under this section, he shall, subject to subsections (5) and (6), approve the registration of the company.
- (5) On receipt of the Minister's approval under subsection (4), the Commission shall, upon payment of the prescribed fee, issue to the company a certificate of registration containing the name and business address of the company and the date of its registration as a holding company.
- (6) Notwithstanding anything contained in this section, where the Commission is of the opinion that there are circumstances requiring the company's registration to be subject to conditions, he may, in addition to requiring the company to submit one copy of its financial statements in a form that complies with generally accepted accounting principles and such other information as may be prescribed, specify such other conditions in the certificate of registration as the circumstances require.
- (7) Subject to the payment of an annual registration fee, the certificate of registration remains valid until revoked or suspended by the Minister.

- (8) The Minister may suspend or revoke a certificate of registration where a holding company
- (a) fails to comply with a condition specified in that certificate; or
 - (b) is in breach of any duty or obligation imposed upon it by or under this Part and sections 70H and 70I apply, with such adaptations as are necessary, to the certificate of registration as they apply to a licence under this Part.

Revocation or suspension of licence

70I.(1) The Minister may revoke a licence if the licensee under this Part

- (a) fails to comply with a condition of its licence;
 - (b) is in breach of any duty or obligation imposed upon it by this Part or commits an offence under this Part; or
 - (c) ceases to carry on business under its licence.
- (2) The Minister may by notice in writing addressed to the licensee direct the licensee to remedy any breach of this Act within the time specified in the notice.
- (3) Where the licensee fails to comply with the Minister's directions, the Minister may suspend the licence for a period not exceeding 90 days, and his decision thereon is final.
- (4) Where the Minister intends to revoke or suspend a licence under this section, it is his duty to give the licensee notice of his intention to do so and reasonable opportunity to show cause why the licence should not be revoked or suspended, as the case may be.
- (5) It is the duty of the Minister to give the licensee notice of the suspension or revocation of the licence.

Appeal against revocation of licence

70J.(1) A person who is aggrieved by the revocation of a licence by the Minister may within 30 days of the giving of the notice of revocation under section 12 appeal against that revocation to a Judge in Chambers, whose decision thereon is final.

(2) The Minister may, pending the determination of an appeal under subsection (1), suspend the operation of the revocation of the licence in relation to the existing business of the licensee.

(3) Where the Minister revokes a licence and there is no appeal or where there is an appeal that is disallowed, the notice of revocation must be published in the *Official Gazette* and in a daily newspaper published and circulated in Barbados.”.

Amendment of Cap. 310

15. *The principal Act is amended by inserting the following new section into Part V immediately before section 100:*

“**99A.** This Part V shall apply only to an insurer carrying on business of insuring risks located within Barbados, and in respect of which premiums originate from Barbados.”.

Amendment of Cap. 310

16. *The principal Act is amended by inserting the following new section into Part VI immediately before section 148:*

“147A. This Part VI shall apply only to insurers licensees which carry on general insurance business with a citizen or resident of Barbados.”.

Amendment of Cap. 310

17. *The principal Act is amended by inserting the following new section into Part VII immediately before section 158:*

“157A. This Part VII shall apply only to an insurer carrying on insurance business of insuring risks located within Barbados, and in respect of which premiums originate from Barbados.”.

Amendment of Cap. 310

18. *The principal Act is amended by deleting the Fourth Schedule.*

Continuation of licensee

19. *A company that held a license under the Exempt Insurance Act, Cap. 308A now repealed by this Act on the day immediately preceding the 1st day of January 2019 under that Act shall, from that date, be deemed to be licensed under this Act and the provisions of this Act shall apply to that company accordingly.*

Savings

20. *Notwithstanding the repeal effected by section 21, the rights and benefits conferred upon licensees under the Exempt Insurance Act, Cap. 308A are saved or shall cease as is hereafter provided:*

- (a) a licensee holding a valid licence issued prior to 17th October 2017 shall be entitled to receive its benefits until 30th June 2021;*

- (b) *a licensee holding a valid licence issued on or after 17th October 2017 shall cease to be entitled to any benefits after 31st December 2018.*

Repeal

21. *The enactment set out in the first column of the Schedule is repealed to the extent set out in the second column thereof.*

Commencement

22. *This Act shall come into operation on the 1st day of January, 2019.*

SCHEDULE

(Section 21)

Column 1	Column 2
<i>Exempt Insurance Act, Cap. 308A</i>	The whole Act

Read three times and passed the House of Assembly this
day of _____, 2018.

Speaker

Read three times and passed the Senate this _____ day of
, 2018.

President