



**Isle of Man**

*Ellan Vannin*

**AT 6 of 2017**

**INSURANCE (AMENDMENT) ACT 2017**





## INSURANCE (AMENDMENT) ACT 2017

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**Isle of Man***Ellan Vannin*

## INSURANCE (AMENDMENT) ACT 2017

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**AN ACT** to amend the Insurance Act 2008; and for connected purposes.

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### PART 1 — INTRODUCTORY

#### 1 Short title

The short title of this Act is the Insurance (Amendment) Act 2017.

#### 2 Commencement

- (1) This Act, except section 1, section 3 and this section, comes into operation on such day or days as the Isle of Man Financial Services Authority (the “**Authority**”) may by order appoint and different days may be appointed for different provisions and different purposes.
- (2) An order under subsection (1) may include such supplemental, incidental, consequential and transitional provisions as appear to the Authority to be necessary or expedient.

#### 3 Expiry

- (1) This Act (other than section 55 and Schedule 1) expires —
  - (a) on the day after its promulgation, if all of its provisions are in operation on its promulgation; or
  - (b) otherwise, on the day after the last provision is brought into operation.
- (2) The expiry does not —

- (a) affect the continuing operation of the amendments made by this Act; or
- (b) revive any provision not in operation when the amendments took effect.

#### 4 Interpretation

In this Act “the principal Act” means the *Insurance Act 2008*.

## PART 2 – CAPITAL REQUIREMENTS

### *Capital requirements*

#### 5 Capital requirements for authorised insurers: section 12 substituted

For section 12 of the principal Act (solvency margins) substitute —

##### **12 Capital requirements**

- (1) Every authorised insurer must establish and maintain the following capital requirements —
  - (a) a minimum capital requirement (“MCR”); and
  - (b) a solvency capital requirement (“SCR”),
 of such amounts as may be prescribed by or determined in accordance with regulations made for the purposes of this section.
- (2) Regulations may make provision in relation to the assets to be held by an insurer for the purpose of meeting the requirements mentioned in subsection (1) (“eligible capital resources”).

#### 6 Duties of authorised insurers and powers of Authority in relation to solvency: sections 12A to 12D inserted

After section 12 of the principal Act (capital requirements) insert —

##### **12A No dividend in breach of SCR**

- (1) No authorised insurer may declare or pay a dividend or make any distribution to any person other than a policyholder where —
  - (a) the eligible capital resources of the authorised insurer have fallen below the SCR; or
  - (b) the amount of the dividend or distribution would be such as to cause the insurer’s eligible capital resources to fall below the SCR.



- (2) Regulations may make provision in relation to what constitutes a dividend or a distribution for the purposes of this section.

### **12B Duty to inform Authority in relation to risks to solvency**

Where —

- (a) the eligible capital resources of an authorised insurer fall below —
- (i) the MCR; or
  - (ii) the SCR; or
- (b) the insurer becomes aware of a substantial risk that within the next 3 months its eligible capital resources will fall below the MCR or the SCR,
- the insurer must notify the Authority in writing of this as soon as is practicable.

### **12C Consequences of breaching MCR**

- (1) Where the eligible capital resources of an authorised insurer fall below the MCR the Authority may —
- (a) require the insurer to submit a scheme in accordance with section 13; or
  - (b) present a petition for the winding up of the insurer under paragraph 4 of Schedule 3.
- (2) For the purposes of subsection (1)(b) where the eligible capital resources of an authorised insurer fall below the MCR the insurer is deemed to be unable to pay its debts for the purposes of section 162 or 307 of the *Companies Act 1931* (as the context requires).

### **12D Consequences of breaching SCR**

- Where the eligible capital resources of an authorised insurer fall below the SCR the Authority may —
- (a) require the insurer to submit a scheme in accordance with section 13; or
  - (b) withdraw the insurer's authorisation in accordance with section 10. ~~22~~.

## **7 Schemes where capital requirements not met: section 13 amended**

- (1) Section 13 of the principal Act (consequences of not meeting solvency margins) is amended as follows.
- (2) For subsection (1) substitute —

- 66 (1) Where the Authority so requires in accordance with section 12C(1)(a) or 12D(a), the insurer must submit to the Authority a short-term financial scheme for the purpose of enabling the insurer to comply with the MCR or the SCR as the case may be. 67
- (3) In subsection (2), for the words from “within 30 days” to the end substitute —
- 66 —
- (a) within 30 days (where its submission has been required by virtue of section 12C(1)(a)); and  
 (b) within 60 days (where its submission has been required by virtue of section 12D(a)). 68
- (4) Omit subsection (4).
- (5) For subsection (6) substitute —
- 66 (6) An insurer must give effect to the scheme —
- (a) in the case of a scheme submitted by virtue of a requirement made under section 12C(1)(a), within 3 months from the date of submission of the scheme; and  
 (b) subject to subsection (6A), in the case of a scheme submitted by virtue of a requirement made under section 12D(a), within 6 months from the date of its submission.
- (6A) The Authority may extend the period mentioned in subsection (6)(b) to 9 months where the Authority thinks fit.
- (6B) The insurer must submit reports to the Authority in relation to the implementation of any proposals set out in the scheme at such intervals as the Authority may require.
- (6C) The Authority may give directions to the insurer in relation to the time —
- (a) within which modifications to a scheme must be proposed by the insurer under subsection (3); and  
 (b) for the implementation of a scheme,
- and it is the duty of the insurer to comply with a direction under this subsection. 69
- (6) For subsection (7) substitute —
- 66 (7) If an authorised insurer is unable or fails to submit a scheme which is acceptable to the Authority or fails to give effect to that scheme in accordance with directions given under subsection (6C)(b) —
- (a) in the case of a scheme submitted under this section by virtue of a requirement made under section 12C(1)(a), the insurer is deemed to be unable to pay its debts for the

- purposes of section 162 or 307 of the *Companies Act 1931* (as the context requires) and the Authority may apply to wind up the insurer under paragraph 4 of Schedule 3; and
- (b) in the case of a scheme submitted under this section by virtue of a requirement made under section 12D(a) the Authority may withdraw the insurer's authorisation in accordance with section 10. **22**.
- (7) In the heading to the section for the words "meeting solvency margin" substitute **63** complying with capital requirements **22**.

*Abolition of long-term business fund*

**8 Abolition of requirement to maintain long-term business fund: section 19 repealed**

Section 19 of the principal Act (assets attributable to long-term business) is repealed.

**9 Abolition of requirements in relation to long-term business fund: section 20 repealed**

Section 20 of the principal Act (use of long-term business assets) is repealed.

*Insurer's assets in winding up*

**10 Insurer's assets in winding up: Schedule 3 amended**

- (1) Schedule 3 to the principal Act (insolvency and winding-up) is amended as follows.
- (2) For paragraph 6 substitute —
- 63**6. Subject to paragraph 6A no insurance company may be wound up voluntarily.
- 6A. Paragraph 6 does not apply to any prescribed class of insurance companies. **22**.
- (3) For paragraph 7 substitute —
- 63**7. In any winding up of an insurer —
- (a) the insurer's assets to the value of its technical provisions are available only for meeting the obligations of the insurer in relation to its policyholders; and
- (b) the insurer's assets other than those mentioned in subparagraph (a) are available for meeting any obligation of the insurer. **22**.
- (4) Paragraph 8 is omitted.

- (5) In paragraph 10 —
- (a) omit the words “representing a fund or funds”;
  - (b) for the words “long-term business” substitute “technical provisions”;
  - (c) for the words “of that fund or funds” substitute “in respect of its technical provisions”.
- (6) At the end insert —

**“Interpretation**

20. In this Schedule “**technical provisions**” means the assets of the insurer representing the economic value of the insurer fulfilling its obligations to its policyholders arising over the lifetime of its portfolio of insurance policies.”

## PART 3 — TRANSFER OF INSURANCE BUSINESS

### *Long-term business*

#### 11 Requirement for court sanction except where transferor is holder of a permit issued under section 22: Schedule 2 amended

- (1) Schedule 2 to the principal Act (transfer of long-term business) is amended as follows.
- (2) In paragraph 2(a) after the words “independent actuary” insert “approved by the Authority”.
- (3) In paragraph 6 —
  - (a) for sub-paragraph (a) substitute —
    - “ (a) where the transferor is an authorised insurer, that the transferee is an authorised insurer;”;
  - (b) in sub-paragraph (c) —
    - (i) for the word “neither” substitute “not”;
    - (ii) omit the words “nor the holder of a permit issued under section 22”.
- (4) In paragraph 7 after the words “paragraph 1” insert “(other than a transfer mentioned in paragraph 7A)”.
- (5) After paragraph 7 insert —
  - “7A. A transfer referred to in paragraph 7 is a transfer from —
    - (a) the holder of a permit under section 22 to another such holder;

- (b) the holder of a permit under section 22 to an overseas insurer;
  - (c) an overseas insurer to the holder of a permit under section 22.
- 7B. Where a transfer between persons in paragraph 7A is proposed but the parties have determined not to seek the sanction of the court the transferor must notify the Authority of the proposed transfer.
- 7C. Where notification takes place under paragraph 7B the Authority may —
- (a) require the transferor to serve upon it any documents specified by the Authority; and
  - (b) if it thinks fit, direct the transferor to petition for an order sanctioning the scheme under paragraph 1. **22**.
- (6) In paragraph 13 before sub-paragraph (a) insert —
- 23** (za) “**overseas insurer**” means an insurer which is a company incorporated outside the Island and which is carrying on long-term insurance in a country other than the Island in accordance with the laws of that country; **22**.

*Non-long-term business*

## 12 Transfer of insurance business: section 21 amended

- (1) Section 21 of the principal Act (transfer of insurance business) is amended as follows.
- (2) In subsection (2) after the words “subject to the” insert **23** exceptions, adaptations and **22**.

## PART 4 — GROUP SUPERVISION

### 13 Group supervision of authorised insurers: Part 4A inserted

After section 21 of the principal Act (transfer of insurance business) and immediately before the heading to Part 5 (foreign insurers) insert —

#### **23** PART 4A — GROUP SUPERVISION

##### 21A Interpretation

In this Part, unless the context otherwise requires —

“**college of supervisors**” means a structure for cooperation and coordination among competent authorities;

“**competent authority**” means a regulatory authority that is empowered by law to supervise insurers;

“**designated insurer**” means an insurer designated by the Authority under section 21C(6) in respect of an insurance group;

“**equivalent jurisdiction**” means a jurisdiction that has supervisory standards that the Authority determines to be equivalent to those established by or under this Act;

“**group actuary**” means an individual appointed under section 21I;

“**group supervisor**” in relation to an insurance group, means the Authority or, as the case may be, another competent authority that is the group supervisor for the insurance group.

### 21B Insurance group (interpretation)

(1) For the purposes of this Part an “**insurance group**” means 2 or more undertakings consisting of an authorised insurer and —

(a) any other undertaking —

(i) which is the holding company or a subsidiary of the insurer;

(ii) which is a subsidiary of that holding company; or

(iii) in which that holding company, the insurer or any subsidiary of the insurer or the holding company is entitled to exercise, or control the exercise of, 20 per cent or more of the voting power at a general meeting; or

(b) any undertaking other than one mentioned in paragraph (a) which has the power to exercise or actually exercises a dominant influence or control over the authorised insurer.

(2) For the purposes of this Part “**undertaking**” means any of the following —

(a) a body corporate;

(b) a partnership;

(c) an unincorporated association; or

(d) a trust,

and references to any undertaking mentioned in paragraphs (a) to (d) include a comparable undertaking incorporated in, formed or established under the law of a country or territory outside the Island.

**21C Group Supervisor**

- (1) The Authority may, in respect of an insurance group, determine whether it is appropriate for it to be the group supervisor of that group.
- (2) Before making such a determination the Authority must take into account the matters set out in subsection (3).
- (3) Those matters are –
  - (a) whether the insurance group is headed by an authorised insurer;
  - (b) where the insurance group is not headed by an authorised insurer whether the insurance group is headed by a holding company which is incorporated in the Island;
  - (c) where the insurance group is headed by a holding company which is not incorporated in the Island, whether the Authority is satisfied that –
    - (i) the insurance group is directed and managed from the Island; or
    - (ii) the insurer in the insurance group with the largest balance sheet total is an authorised insurer;
  - (d) whether the principal activity of the group is the carrying on of insurance business;
  - (e) any other matter which may be prescribed.
- (4) The Authority may determine, notwithstanding any other consideration, that it is not appropriate for it to be the group supervisor of an insurance group where the insurance business carried on does not involve liability to third parties.
- (5) The Authority must give notice in writing to the proposed designated insurer of the Authority's intention to make such a determination and must take into account any written representation made by the proposed designated insurer within such period as the Authority may specify in the notice.
- (6) If the Authority makes a determination under subsection (1) that it is appropriate for it to be the group supervisor in respect of an insurance group, the Authority must designate an authorised insurer who is a member of the insurance group to be the designated insurer in respect of that insurance group for the purposes of this Part.
- (7) The Authority must notify the designated insurer for an insurance group and other competent authorities in writing that the Authority is the group supervisor for that insurance group.

- (8) The Authority must establish and maintain a register containing the prescribed particulars in respect of every insurance group of which it is the group supervisor.
- (9) The designated insurer for an insurance group must immediately notify the Authority of any change of the particulars entered in the register in respect of that insurance group.

#### **21D Excluding undertakings from group supervision**

- (1) The Authority may, on its own initiative or on the application of the relevant designated insurer, exclude from group supervision any undertaking that is a member of an insurance group if the Authority is satisfied that —
  - (a) the undertaking is situated in a country or territory where there are legal impediments to cooperation and exchange of information;
  - (b) the financial operations of the undertaking have a negligible impact on insurance group operations; or
  - (c) the inclusion of the undertaking would be for some other reason inappropriate.
- (2) The Authority must notify the relevant designated insurer and competent authority in writing of any decision to exclude an undertaking from the scope of group supervision.

#### **21E Authority's power to include undertakings within group supervision**

- (1) The Authority may, on its own initiative or on the application of the relevant designated insurer, include within group supervision any undertaking that is a member of the insurance group but is not on the register maintained under section 21C(8) if the Authority is satisfied that —
  - (a) the financial operations of the undertaking may have a material impact on the insurance group's operations; and
  - (b) the inclusion of the undertaking would be appropriate in the opinion of the Authority.
- (2) The Authority must notify the relevant designated insurer and competent authority in writing of any decision to include an undertaking within the scope of group supervision.

#### **21F Authority's power to withdraw as group supervisor**

- (1) The Authority may withdraw as group supervisor —
  - (a) on its own initiative;



- (b) at the request of a competent authority from an equivalent jurisdiction; or
  - (c) on the application of a designated insurer in respect of the insurance group of which it is a member.
- (2) The Authority must notify the relevant insurance group in writing of its intention to withdraw as group supervisor and must take into account any written representation made by the insurance group within such period as it may specify in the notice.
- (3) The Authority may withdraw as group supervisor if –
- (a) the Authority considers that it would be appropriate to do so having regard to the structure of the insurance group and the relative importance of the insurance group's insurance business in different countries or territories;
  - (b) the Authority determines that there has been a material change in the structure or operations of the insurance group or an absence of cooperation by other competent authorities; or
  - (c) for any other reason that prevents the Authority from effectively discharging its function as group supervisor for that insurance group.
- (4) The Authority must notify the designated insurer and any other relevant competent authority in writing of any decision made by it under this section.

### **21G Functions of Authority as group supervisor**

The Authority as group supervisor has the following functions with regard to group supervision –

- (a) coordination of the gathering and dissemination of relevant or essential information for going concerns and emergency situations, including the dissemination of information which is of importance for the supervisory task of other competent authorities;
- (b) supervisory review and assessment of the financial situation of insurance groups;
- (c) assessment of compliance of insurance groups with any regulations in relation to solvency and risk concentration and intra-group transactions prescribed by or under this Act;
- (d) assessment of any system of governance in relation to insurance groups prescribed by or under this Act, and whether the persons involved in the management or

administration of participating undertakings meet the requirements set out therein;

- (e) planning and coordination, through regular meetings held at least annually or by other appropriate means, of supervisory activities in going concerns as well as in emergency situations, in cooperation with the competent authorities concerned and taking into account the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of insurance groups;
- (f) coordination of any enforcement action that may be taken against insurance groups or any of their members; and
- (g) planning and coordinating, as required, meetings of colleges of supervisors, to be chaired by a representative of the Authority where the Authority acts as the group supervisor, to facilitate the exercise of the functions set out in paragraphs (a) to (f).

#### **21H Regulations in relation to group supervision**

- (1) The Authority may for the purposes of group supervision make regulations applying to designated insurers which take into account, in their case, any activity of the insurance group of which they are members or of other members of the insurance group.
- (2) Without prejudice to the generality of subsection (1), such regulations may make provision for —
  - (a) the assessment of the financial situation of the insurance group;
  - (b) the solvency position of the insurance group;
  - (c) intra-group transactions and risk concentration;
  - (d) the system of governance and risk management of the insurance group; and
  - (e) supervisory reporting and disclosures in respect of the insurance group.
- (3) The Authority in such regulations may in relation to group financial statements require that they be prepared in the English language and that the currency of any amount shown therein be converted to a currency specified by the Authority as at a specified date.

#### **21I Appointment of group actuary**

- (1) Where any insurer in an insurance group carries on long-term business the designated insurer for that group must ensure that

- there is appointed an actuary for the group who is qualified in accordance with section 18(2).
- (2) No appointment shall be made under subsection (1) unless a written notice containing such particulars as may be determined by the Authority is served on the Authority by the insurer concerned within such period as the Authority may require.
- (3) If it appears to the Authority that a person is not a fit and proper person to be appointed as actuary under subsection (1), the Authority may direct that such person shall not, without the written consent of the Authority, be appointed as actuary.
- (4) If it appears to the Authority that a person appointed under subsection (1) is not a fit and proper person to continue as such, the Authority may direct that such person shall not, without the written consent of the Authority, continue in such capacity.
- (5) The Authority shall give written notice to the person concerned of any decision to make a direction under this section.
- (6) Except where the Authority is satisfied that urgent action is necessary, the notice under subsection (5) shall be served on the person not less than 28 days before the date on which the direction is to take effect.
- (7) Any consent by the Authority under subsections (3) or (4) may be —
- (a) given subject to conditions;
  - (b) varied from time to time; or
  - (c) revoked at any time,
- and the Authority shall give written notice to the person concerned of any decision to exercise the powers conferred by paragraph (a), (b) or (c).
- (8) No person shall accept or continue in any appointment referred to in subsection (3) or (4) in contravention of a direction under this section.
- (9) It is the duty of a designated insurer to take care not to appoint or continue the appointment of a person in contravention of a direction under this section.
- (10) Whenever an appointment under subsection (1) comes to an end the designated insurer shall —
- (a) within 14 days of the termination of the appointment, notify the Authority in writing of the termination and the reason for the termination;

- (b) satisfy the Authority that appropriate arrangements have been made to cover any absence of a person appointed under subsection (1); and
  - (c) as soon as practicable following the termination, ensure that the insurance group makes a new appointment under subsection (1).
- (11) Whenever an appointment under subsection (1) comes to an end the person ceasing to be appointed under that provision shall serve a written notice on the Authority containing such particulars as may be prescribed within 14 days of such cessation.
  - (12) The Authority may appoint a person qualified in accordance with section 18(2) as actuary to an insurance group where a designated insurer has failed to ensure that an appointment is made under subsection (10)(c) and such appointment shall be deemed to have been made by the designated insurer.
  - (13) Where no insurer in an insurance group carries on long-term business regulations may provide for this section to have effect subject to any exception, adaptation or modification specified in the regulations. **22**.

## PART 5 — FINANCIAL RISK AND GOVERNANCE

### *Accounts*

#### **14 Time limits for submission of accounts and other documents: section 14 amended**

- (1) Section 14 of the principal Act (accounts) is amended as follows.
- (2) In subsection (3) at the end insert **23** or at such other time or times as the Authority may require. **22**.

#### **15 Accounting requirements for registered insurance managers and intermediaries: Part 6A inserted**

After section 27 of the principal Act (winding up of insurance managers and insurance intermediaries) and immediately before the heading to Part 7 (connected persons) insert —

**23 PART 6A — REQUIREMENTS FOR REGISTERED INSURANCE MANAGERS AND INSURANCE INTERMEDIARIES**

**27A Accounts**

- (1) Unless regulations made in accordance with subsection (2) provide for an alternative system of accounting, the provisions of the *Partnership Act 1909*, the *Companies Acts 1931 to 2004*, the *Limited Liability Companies Act 1996* and the *Companies Act 2006* relating to accounts shall have effect in their application to registered insurance managers and insurance intermediaries subject to this Act and to regulations made under this Act.
- (2) Regulations may provide for registered insurance managers and insurance intermediaries to be subject to a system of accounting that shall be adopted in place of that provided for in subsection (1) and for this purpose may require compliance with standards or the adoption of practices recommended by a body specified in the regulations, and may in particular require compliance with standards or the adoption of practices recommended by that body from time to time (that is, after as well as before the making of the regulations).
- (3) A copy of the audited annual accounts of every registered insurance manager and insurance intermediary shall be produced to the Authority within 21 days after the date of the meeting at which the accounts were approved by the board of directors and in any event within 6 months after the close of the year to which they relate or at such other time or times as the Authority may require.
- (4) Such statements, reports, certificates and information as may be required by regulations made under this Act, or required by any other enactment to be annexed or attached to the annual accounts for any purpose shall be produced to the Authority at the same time as the annual accounts are submitted.
- (5) The Authority may exempt in writing a registered insurance manager or insurance intermediary specified in the exemption from any provision contained in regulations made under this Act relating to accounts. **22**.

*Actuaries***16 Name of professional body for actuaries: section 18 amended**

- (1) Section 18 of the principal Act (actuary) is amended as follows.
- (2) In subsection (2)(a) —
  - (a) omit sub-paragraph (i);
  - (b) in sub-paragraph (ii) after the words “of the” insert **63** Institute and **22**.

- (3) In subsection (3) for the word “prescribed” substitute **63** determined by the Authority **62**.
- (4) At the end insert —
- 63** (15) Regulations may provide for the provisions of this section to have effect subject to any exception, adaptation or modification specified in the regulations in relation to authorised insurers who carry on business other than long-term business. **62**.

## 17 Offence (actuary): section 53 amended

In section 53 of the principal Act (offences) after subsection (6) insert —

- 63** (6A) Where an offence under this Act is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any actuary to an insurer or any person who was purporting to act in such capacity, that person is guilty of that offence and liable to be proceeded against and punished accordingly. **62**.

### *Auditors*

## 18 Duty of auditors of authorised insurers to report misconduct: section 15A inserted

After section 15 of the principal Act (auditor) insert —

### **63** 15A Auditors to report to Authority

- (1) If the auditor appointed under section 15 becomes aware of any matter which is such as to give the auditor reasonable cause to believe that —
- (a) the authorised insurer who appointed the auditor may be in contravention of —
- (i) this Act; or
- (ii) any direction or requirement imposed under this Act; and
- (b) the matter is likely to be of material significance in relation to the Authority’s functions under this Act,
- the auditor must report such matter in writing to the Authority.
- (2) No statutory or other duty to which an auditor may be subject is contravened by reason of the auditor communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information or opinion under subsection (1).

- (3) This section applies only to any matter of which the auditor becomes aware in the capacity of auditor and which relates to the business or affairs of the person who appointed the auditor. **22**.

## 19 Requirement for insurance managers and intermediaries to appoint auditors: section 27B inserted

- (1) The principal Act is amended as follows.
- (2) After section 27A (accounts) (inserted by section 15) insert —

### **22 27B Auditor**

- (1) A person mentioned in subsection (2) shall appoint an auditor to that person in accordance with section 29.
- (2) The persons are —
  - (a) a registered insurance manager; and
  - (b) a registered insurance intermediary.
- (3) A person mentioned in subsection (2) shall give notice in writing to the Authority immediately it receives notice of any resolution intended to be moved at its annual general meeting to appoint as auditor a person other than the retiring auditor or providing expressly that a retiring auditor shall not be appointed.
- (4) Where, for any reason, the appointment of an auditor comes to an end the person who made the appointment under subsection (1) and the auditor shall, not more than 14 days after the termination, each give notice in writing to the Authority of the reasons for the termination. **22**.

## 20 Duty of auditors of registered insurance managers and intermediaries to report misconduct: section 27C inserted

After section 27B of the principal Act (auditor) (inserted by section 19) insert —

### **22 27C Auditors to report to Authority**

- (1) If the auditor appointed under section 27B becomes aware of any matter which is such as to give the auditor reasonable cause to believe that —
  - (a) the person who appointed the auditor may be in contravention of —
    - (i) this Act; or
    - (ii) any direction or requirement imposed under this Act; and

- (b) the matter is likely to be of material significance in relation to the Authority's functions under this Act,  
the auditor must report such matter in writing to the Authority.
- (2) No statutory or other duty to which an auditor may be subject is regarded as contravened by reason of the auditor communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information or opinion under subsection (1).
- (3) This section applies only to any matter of which the auditor becomes aware in the capacity of auditor and which relates to the business or affairs of the person who appointed the auditor. **22**.

*Principal control officers*

**21 Service of notice where principal control officer is appointed: section 29 amended**

- (1) Section 29 of the principal Act (connected persons) is amended as follows.
- (2) In subsection (1) —
- (a) after the word “auditor” (in each place where it occurs) insert **23**, principal control officer **22**;
- (b) for the word “prescribed” substitute **23** determined by the Authority **22**;
- (c) for the word “shorter” substitute **23** other **22**.
- (3) In subsection (2) after the word “auditor” (in each place where it occurs) insert **23**, principal control officer **22**.
- (4) In subsection (3) —
- (a) after the word “auditor” (where it occurs in paragraph (a)) insert **23**, principal control officer **22**;
- (b) after the word “auditor,” (in the text following paragraph (b)) insert **23** principal control officer, **22**.
- (5) In subsection (9) —
- (a) after the words “this section” insert **23** and section 29E **22**;
- (b) in the definition of “manager” for the words “an individual employed by” substitute **23** a person working for or on behalf of **22**.



**22 Service of notice where principal control officer ceases to be appointed: section 30 amended**

- (1) Section 30 of the principal Act (notice of cessation) is amended as follows.
- (2) After the word “auditor,” insert **“principal control officer,”**
- (3) For the word “prescribed” substitute **“determined by the Authority”**.

**23 Definition of principal control officer: section 54 amended**

In section 54(1) of the principal Act after the definition of “prescribed” insert —

- “principal control officer”** means an individual working for or on behalf of an insurer, insurance manager or insurance intermediary who controls the exercise of functions on behalf of that insurer, manager or intermediary (as the case may be) in relation to —
- (a) risk management;
  - (b) internal audit;
  - (c) internal control; or
  - (d) regulatory compliance;

*Company secretaries*

**24 Service of notice where company secretary appointed: section 29 amended**

- (1) Section 29 of the principal Act (connected persons) is amended as follows.
- (2) In subsections (1), (2) and (3) after the word “director,” (in each place where it occurs) insert **“company secretary,”**

**25 Service of notice where company secretary ceases to be appointed: section 30 amended**

- (1) Section 30 of the principal Act (notice of cessation) is amended as follows.
- (2) After the word “director,” insert **“company secretary,”**

*Corporate governance*

**26 Authorised insurer to have regard to principles of good corporate governance: section 17A inserted**

After section 17 of the principal Act (management) insert —

**17A Corporate governance**

Every authorised insurer must establish, implement and maintain an appropriate and effective corporate governance framework in respect of the insurer, which ensures that the insurer is soundly and prudently managed (which includes being soundly and prudently overseen by its board of directors or, if it has no board of directors, its equivalent governing body).<sup>22</sup>

**27 Insurance manager and intermediary to have regard to the principles of good corporate governance: section 27D inserted**

After section 27C of the principal Act (auditors to report to authority) (inserted by section 20) insert —

**27D Corporate governance**

Every registered insurance manager and insurance intermediary must establish, implement and maintain an appropriate and effective corporate governance framework, which ensures that the insurance manager or intermediary is soundly and prudently managed (which includes being soundly and prudently overseen by its board of directors or, if it has no board of directors, its equivalent governing body).<sup>22</sup>

**PART 6 — AUTHORISATION OF INSURERS***Authorisation***28 Prohibition on acting as authorised insurer: section 5 amended**

(1) Section 5 of the principal Act (authorised insurers) is amended as follows.

(2) For subsection (1) substitute —

<sup>22</sup> (1) No person, other than a person mentioned in subsection (2) may carry on, or hold itself out as carrying on, insurance business in or from the Island.<sup>22</sup>

**29 Provision of documentation: section 6 amended**

(1) Section 6 of the principal Act (application for authorisation) is amended as follows.

(2) For subsection (3) substitute —

<sup>22</sup> (3) An applicant, or if agreed in writing by the Authority, another person on behalf of the applicant, must provide

the Authority with such documents and information as may be required by the Authority. **22**.

### 30 Requirements for authorisation: section 7 amended

- (1) Section 7 of the principal Act (circumstances where authorisation not granted) is amended as follows.
- (2) In paragraph (a), for the words from “the controller” to the end of that paragraph substitute —
  - 23** —
    - (i) the applicant;
    - (ii) the controller, directors and any chief executive of the applicant; and
    - (iii) in the case of an applicant to carry on long-term insurance business, any actuary to the applicant proposed in satisfaction of the requirements of section 18,

are fit and proper persons; **22**.
- (3) In paragraph (b) —
  - (a) after the words “with adequate” insert **23** knowledge and **22**; and
  - (b) at the end omit the word **23** or **22**.
- (4) After paragraph (b) insert —
  - 23** (ba) does not give any undertaking which may reasonably be required by the Authority; or **22**.

#### *Surrender of authorisation*

### 31 Surrender of authorisation by authorised insurers: section 10A inserted

After section 10 of the principal Act (withdrawal of authorisation in respect of new business) insert —

#### **23** 10A Surrender of authorisation by insurer

Where an authorised insurer proposes to surrender its authorisation the Authority may require the insurer to take such action as appears to the Authority to be necessary to secure that any insurance business carried on by that insurer is discontinued and wound up. **22**.

## PART 7 – INSURANCE MANAGERS AND INTERMEDIARIES

### *Registration*

#### **32 Prohibition on acting as insurance manager: section 23 amended**

- (1) Section 23 of the principal Act (insurance managers) is amended as follows.
- (2) In subsection (1) —
  - (a) for the words “A person” substitute **“No person”**;
  - (b) for “and” substitute **“or”**;
  - (c) for the words “if that person” substitute **“unless that person”**.

#### **33 Prohibition on acting as insurance intermediary: section 24 amended**

In section 24 of the principal Act (insurance intermediaries) —

- (a) for the words “A person” substitute **“No person”**;
- (b) for “and” substitute **“or”**;
- (c) for the words “if that person” substitute **“unless that person”**.

#### **34 Requirements for registration as insurance manager or intermediary: section 25 amended**

- (1) Section 25 of the principal Act (registration under Part 6) is amended as follows.
- (2) In subsection (2) after the words “this Part” insert **“, or, if agreed in writing by the Authority, another person on behalf of the applicant,”**.
- (3) In subsection (3) —
  - (a) after paragraph (a) insert —
 

<b>“(aa) the applicant is a body corporate;”</b>
--
  - (b) in paragraph (b) omit the words **“in the case of an applicant which is a body corporate,”**
  - (c) in paragraph (c) —
    - (i) after the words “with adequate” insert **“knowledge and”**;
    - (ii) at the end omit **“and”**;
  - (d) after paragraph (c) insert —
 

<b>“(ca) the applicant has given any undertaking in relation to its business which may be required by the Authority; and”</b>
---

**35 No requirement for annual registration for insurance intermediaries: section 26 amended**

In section 26 of the principal Act (cancellation or restriction of registration) subsection (7) is omitted.

*Cancellation of registration*

**36 Cancellation of registration of insurance managers and insurance intermediaries: section 26A inserted**

After section 26 of the principal Act (cancellation or restriction of registration) insert —

**26A Cancellation of registration of registered insurance manager or insurance intermediary on request**

Where a registered insurance manager or insurance intermediary proposes to cancel its registration the Authority may require the insurance manager or insurance intermediary to take such action as appears to the Authority to be necessary to secure that any business in respect of which that person is registered under this Part is discontinued and wound up. <sup>22</sup>.

*Ancillary*

**37 Power of Authority to require insurance managers and intermediaries to maintain assets in Island: section 31 amended**

- (1) Section 31 of the principal Act (location of assets) is amended as follows.
- (2) In subsection (1) —
  - (a) after the words “authorised insurer” insert<sup>23</sup>, registered insurance manager or insurance intermediary <sup>22</sup>;
  - (b) after the words “the insurer” insert<sup>23</sup>, insurance manager or insurance intermediary (as the case may be) <sup>22</sup>.
- (3) In subsection (3) —
  - (a) after the words “authorised insurer” insert<sup>23</sup>, registered insurance manager or insurance intermediary <sup>22</sup>;
  - (b) for the words “the insurer” substitute <sup>23</sup> the person in question <sup>22</sup>.

**38 Evidence in proceedings for winding up of insurance managers and intermediaries: section 27 amended**

In section 27 of the principal Act (winding up of insurance managers and insurance intermediaries) at the end insert —

- 33 (3) In any proceedings to wind up a company on the ground mentioned in subsection (2)(a), evidence that a company was insolvent at the close of the period to which the accounts of the company last produced under section 27A(3) relate is to be regarded as evidence that the company continues to be unable to pay its debts unless the contrary is proved. 32.

### 39 Definition of insurance intermediary: section 54 amended

In section 54(1) of the principal Act (interpretation) for the definition of “insurance intermediary” substitute —

- 33 “**insurance intermediary**” means a person who for remuneration brings 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 carries out work preparatory to the conclusion of contracts of insurance; 32.

## PART 8 – PROHIBITIONS

### *Power to impose prohibition*

### 40 Prohibitions: sections 29A to 29E inserted

After section 29 of the principal Act (connected persons) insert —

#### 33 29A Prohibitions

- (1) The Authority may impose a prohibition if it appears to the Authority that an individual is not a fit and proper person to perform any function in relation to an activity carried on, or proposed to be carried on, by a person to whom this Part applies.
- (2) Before imposing a prohibition, the Authority must give the individual whom it proposes to prohibit an opportunity to make representations in accordance with section 29B.
- (3) A prohibition may prevent an individual from performing any function specified in the prohibition, either in relation to a particular person to whom this Part applies, or generally.
- (4) A person to whom this Part applies commits an offence if without reasonable excuse that person permits an individual to perform a function which the individual has been prohibited from performing.
- (5) A person who is the subject of a prohibition commits an offence if he or she performs any prohibited function.
- (6) A prohibition operates subject to subsections (7) to (9).

- (7) Notice of a prohibition must be served upon the individual prohibited, either personally or by registered post to the individual's last known address.
- (8) Once it has been served a prohibition comes into operation on —
  - (a) the expiry of time for appealing against it under section 45; or
  - (b) if an appeal is brought within that time, on the determination or withdrawal of that appeal.

This subsection is subject to subsection (9).
- (9) If the Authority is of the opinion that a prohibition should have immediate effect the notice under subsection (7) must contain a statement to that effect together with the reasons for the opinion and the prohibition has effect on the giving of the notice.
- (10) A notice of prohibition must —
  - (a) state the terms of the prohibition;
  - (b) state the reasons for imposing the prohibition; and
  - (c) give particulars of the right of appeal under section 45.

### **29B Prohibition procedure**

- (1) If the Authority proposes to impose a prohibition under section 29A(1), it must give written notice to that effect (a "preliminary notice") to the individual whom it is proposed to prohibit.
- (2) The preliminary notice must —
  - (a) state that the Authority proposes to impose a prohibition;
  - (b) state the terms of the proposed prohibition;
  - (c) state the grounds for imposing the prohibition;
  - (d) state that within 28 days the individual proposed to be prohibited may make representations to the Authority in such manner as the Authority may specify in the preliminary notice; and
  - (e) give particulars of the right of appeal under section 45 that would be exercisable if the Authority imposed the prohibition.
- (3) The Authority must have regard to any representations made in accordance with subsection (2)(d) before imposing a prohibition.

### **29C Prohibitions: variation and revocation**

- (1) On the application of a prohibited person, the Authority may vary or revoke a prohibition.

- (2) The Authority must give the prohibited person a statement of its reasons for any decision made on an application under subsection (1).

#### 29D List of prohibitions

- (1) The Authority must maintain and publish a list of prohibitions.
- (2) The list must specify the individual prohibited and the functions to which the prohibition applies.

#### 29E Warning notices

- (1) The Authority may —
  - (a) before making a direction under section 29(3);
  - (b) before imposing a prohibition under section 29A(1); or
  - (c) in any other circumstances that the Authority considers it appropriate to do so,give a written warning notice under this section to a person who is or has been an actuary to an insurer, or a director, company secretary, chief executive, controller, manager or principal control officer (“**the relevant person**”) of a person to whom this Part applies.
- (2) A warning notice under this section is a notice that the Authority has grounds to believe that such activities or circumstances as are specified in the notice are prejudicial to the relevant person’s fitness and propriety and must be accompanied by a statement of the reasons for the giving of the notice.
- (3) A warning notice may (but need not) —
  - (a) propose that the relevant person take such action as is specified in the notice;
  - (b) request the relevant person to propose action; or
  - (c) specify action that the relevant person must take and the time within which it must be taken.
- (4) Where a warning notice has been given under this section, the Authority must, before making a direction under section 29(3), or imposing a prohibition under section 29A(1), take into account any action taken by the relevant person in response to the warning notice.
- (5) The giving of a warning notice under this section —
  - (a) does not limit the powers of the Authority under section 29 or 29A; and



- (b) is not required before the Authority may exercise those powers.
- (6) A warning notice issued under this section has effect —
  - (a) for a period of up to 3 years from the date on which it is issued under subsection (1) and such period must be specified in the notice; or
  - (b) until such time as the Authority is content that any action under subsection (3) has been completed to its satisfaction.
- (7) The Authority may disclose the circumstances surrounding a warning notice, to —
  - (a) an employer who currently employs a relevant person;
  - (b) a person who has received an employment application from a relevant person and who, if successful in the application, would be required to be an actuary to an insurer or a director, company secretary, chief executive, controller, manager or principal control officer of a person to whom this Part applies; or
  - (c) a company of which a relevant person is, or is likely to become an officer.
- (8) In subsection (7) —
 

“**officer**” (except in relation to “principal control officer”) means an officer of a company for the purposes of the *Company Officers (Disqualification) Act 2009* (see section 1(2) of that Act). <sup>22</sup>

*Contravention of prohibition*

**41 Power to issue of public statement where contravention of prohibition: section 35 amended**

- (1) Section 35 of the principal Act (public statements) is amended as follows.
- (2) In subsection (1)(b) after the words “any condition” insert <sup>23</sup>or prohibition<sup>22</sup>.
- (3) In subsection (3) after the words “public statement” insert <sup>24</sup>or passing information<sup>22</sup>.

**42 Injunction where contravention of prohibition: section 38 amended**

- (1) Section 38 of the principal Act (injunctions) is amended as follows.
- (2) In subsection (1) —
  - (a) in paragraph (a) for “or” substitute<sup>25</sup>,”;
  - (b) at the end of paragraph (a) insert <sup>26</sup>or any prohibition under section 29A(1);<sup>22</sup>;

- (c) in paragraph (b) and (c) after the words “such provision” insert **39** or prohibition **39**.

## PART 9 – REMEDIES AND INVESTIGATIONS (ANCILLARY POWERS)

### *Remedies*

#### 43 Remedies (appointment of receivers and business managers): sections 39A and 39B inserted

After section 39 of the principal Act (restitution orders) insert —

##### **39A Appointment of receiver**

- (1) This section and section 39B apply to —
  - (a) an insurer;
  - (b) an insurance manager; and
  - (c) an insurance intermediary.
- (2) The Authority may present a petition to the High Court for the appointment of a receiver under section 42 of the *High Court Act 1991* in respect of the affairs, business and property of a person to whom this section applies.
- (3) If the High Court is satisfied that —
  - (a) the appointment is in the public interest;
  - (b) the appointment is necessary to protect the interests of customers, creditors or others who have or have had dealings with the person;
  - (c) the appointment is necessary for the orderly winding up of the business undertaken by the person; or
  - (d) the appointment is necessary so that the affairs, and property relating to the former business undertaken by the person may be settled or disposed of in an orderly manner,
 it may appoint a suitable person as receiver.
- (4) On the presentation or hearing of a petition the Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.
- (5) Without prejudice to the generality of subsection (4), an interim order under that subsection may be made *ex parte* and may

restrict (whether by reference to the consent of the Court or otherwise) the exercise of any powers of —

- (a) the person; or
- (b) if the person is a body corporate, its directors,

in respect of the affairs, business and property of that person.

- (6) This section is without prejudice to the generality of the jurisdiction of the High Court under section 42 of the *High Court Act 1991*, or under any other enactment or at common law.

### **39B Appointment of business manager**

- (1) The Authority may, by order, prescribe circumstances in which the Authority may apply to the High Court for the appointment by the Court of a person as a manager to manage the affairs of a person to whom this section applies in so far as those affairs relate to the carrying on of the person's business.
- (2) An order made under subsection (1) —
  - (a) may contain such incidental or supplementary provisions as the Authority considers necessary or expedient, and may contain different provisions for different types of business; and
  - (b) must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid, or at the next following sitting, resolves that it must be annulled, the order ceases to have effect from that time.
- (3) Before making an order under this section the Authority shall consult with the Treasury and such other organisations and persons as appear to it to be likely to be affected by the proposed order.
- (4) The Court may, on an application made to it by the Authority in circumstances prescribed in an order made under subsection (1), appoint, on such terms as it considers to be appropriate, a person to manage the affairs of a person to whom this section applies in so far as those affairs relate to the carrying on of the person's business.
- (5) The Court may make such orders as are necessary to give effect to the appointment of a manager under this section and for dealing with any property connected with the person's business. **22**.

## **44 Residual power to impose requirements: section 33 amended**

- (1) Section 33 of the principal Act (residual power to impose requirements) is amended as follows.

- (2) In subsection (1) after the words “take such action” insert **63** or to refrain from taking such action **62**.

*Investigation*

**45 Authority’s power to appoint independent expert: Schedule 5 amended**

- (1) Schedule 5 to the principal Act (inspection and investigation) is amended as follows.
- (2) After paragraph 1 insert —

**64** *Appointment of expert*

- 1A. The Authority may appoint an independent expert to investigate the business of any person mentioned in sub-paragraphs (a) to (i) and (k) to (l) of paragraph 1(1) or of a scheme mentioned in sub-paragraph (j) of that paragraph and to report to the Authority in such manner as the Authority may direct, on that person’s affairs or on that scheme and for the purposes of this paragraph the Authority may authorise that independent expert to exercise on its behalf all or any of the powers conferred by or under this Schedule. **62**.
- (3) In paragraph 2(1) after the words “any information” insert **64** within such time and by such individual as the Authority may require **62**.

**46 Disclosure of information: Schedule 6 amended**

- (1) Schedule 6 to the principal Act (restrictions on disclosure of information) is amended as follows.
- (2) In paragraph 2(1) at the end insert —
- 64** (v) for the purpose of enabling or assisting the Department of Economic Development in the discharge of its functions in relation to the registration of companies and limited partnerships;
  - (w) for the purpose of enabling or assisting the Isle of Man Gambling Supervision Commission in the discharge of its functions under enactments relating to all forms of gambling;
  - (x) for the purpose of enabling or assisting the Collector of Customs and Excise to discharge the Collector’s functions under enactments relating to customs and excise or in relation to any assigned matter as defined in section 184 of the *Customs and Excise Management Act 1986*;
  - (y) for the purpose of enabling or assisting the Pensions Ombudsman or a Deputy Pensions Ombudsman

appointed under Part X of the Pension Schemes Act 1993 (an Act of Parliament) in the discharge of that person's functions. **22**.

## PART 10 – MISCELLANEOUS

### *Foreign insurers*

#### **47 Permission for foreign insurer to carry on non-insurance business away from Island: section 22 amended**

- (1) Section 22 of the principal Act (foreign insurers) is amended as follows.
- (2) In subsection (2) —
  - (a) after “6(3),” insert **23**7, **22**;
  - (b) after “10,” insert **23** 10A, **22**;
  - (c) omit the words “, 16”.
- (3) After subsection (2) insert —
 

<b>23</b>	(2A) Section 16 has effect in relation to persons who are the holders of permits issued under this section as it applies to authorised insurers but with the omission of the words “or elsewhere,”. <b>22</b> .
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### *Senior manager*

#### **48 Definition of senior manager: section 37 amended**

- (1) Section 37 of the principal Act (civil penalties) is amended as follows.
- (2) In subsection (9) for the words “an employee” (wherever occurring) substitute **23**an individual working for or on behalf **22**.

### *Fees*

#### **49 Payment and recovery of fees: section 47 amended**

- (1) Section 47 of the principal Act (fees) is amended as follows.
- (2) In subsection (1) —
  - (a) after paragraph (g) (and immediately before the words “as the case may require”) insert —
 

<b>23</b>	(h) by each registered insurance intermediary annually on such date in each year as may be prescribed, <b>22</b> ;
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  - (b) at the end of paragraph (f) omit the word **23** and **22**;

- (c) in paragraph (g) for the words “25,” substitute **25**; and **25**.
- (3) After subsection (1) insert —
- 25** (1A) Regulations may provide for the payment to the Authority of such fees, in connection with the discharge of any of its functions under this Act, as it considers will (taking account of its expected income from fees and charges provided for by any other provision of this Act) enable it to meet expenses incurred in carrying out those functions or for any incidental purpose. **25**.
- (4) In subsection (2) —
- (a) for the words “(d) and” substitute **25** (d), **25**;
- (b) after the word “(f)” insert **25** or (h) **25**;
- (c) for the word “Authority” (in both places) substitute **25** Treasury **25**.

### *Registers*

#### **50 Registers to be kept in electronic form: section 48 amended**

- (1) Section 48 of the principal Act (registers) is amended as follows.
- (2) In subsection (1) —
- (a) after the words “registers of” insert **25** former and current **25**;
- (b) in paragraph (b) omit the word **25** the **25**;
- (c) in paragraphs (c) and (d) at the beginning of each insert the word **25** registered **25**;
- (d) for the words “such form and which” substitute **25** electronic form and the registers **25**.
- (3) Omit subsection (2).
- (4) For subsection (3) substitute —
- 25** (3) The registers must be made publically available on the Authority’s website or by such other means as may be prescribed.
- (4) If reasonably requested to do so by any person, the Authority must supply that person with a copy of a register or any part of it in a legible form. **25**.

### *Status of insurance contracts*

#### **51 Insurance contracts not to be regarded as gaming or wagering: section 48A inserted**

After section 48 (registers) insert —

**25** 48A Insurance contracts not to be regarded as gaming or wagering

**contracts**

For the avoidance of doubt, no contract of insurance is void or unenforceable by reason of section 40 of the *Gaming, Betting and Lotteries Act 1988* and any security given in respect of such a contract is not illegal consideration for the purposes of section 41 of that Act. **22**.

*False or misleading statements***52 False or misleading statements: section 52 amended**

In section 52 of the principal Act (false statements, etc.) (and in the heading to the section) after the word “false” wherever it occurs insert **23** or misleading **22**.

*Holding company***53 Definition of holding company: section 54 amended**

In section 54(1) of the principal Act (interpretation) after the definition of “financial crime” insert —

**23** “**holding company**” is construed in accordance with the definition of subsidiary; **22**.

*Insurance business***54 Definition of insurance business: section 54 amended**

In section 54(1) of the principal Act (interpretation) in the definition of “insurance business” after paragraph (e) insert —

**23** (f) the effecting or carrying out of any prescribed contract in any prescribed circumstances; **22**.

*Abolition of tribunals and transfer of functions***55 Transfer of functions (tribunals)**

- (1) The functions of the following tribunals are transferred to the Financial Services Tribunal —
  - (a) the Collective Investment Schemes Tribunal;
  - (b) the Retirement Benefits Schemes Tribunal;
  - (c) the Insurance Tribunal.
- (2) The tribunals mentioned in subsection (1)(a), (b) and (c) are abolished.
- (3) Schedule 1 (transitional arrangements (tribunals)) has effect.

*Controller***56 Definition of controller: section 54 amended**

In section 54(1) of the principal Act (interpretation) in the definition of “controller” —

- (a) at the end of paragraph (c) omit the word “or”;
- (b) in paragraph (d), for the words “15 per cent” substitute “10 per cent”;
- (c) after paragraph (d) insert —
  - (e) a person who either alone or with any associate or associates is able to exercise a significant influence over the management of the person or of another body corporate of which the person is a subsidiary by virtue of —
    - (i) a holding of shares in; or
    - (ii) an entitlement to exercise, or control the exercise of, the voting power of, the person concerned; or
  - (f) a person who has the power to appoint directors to the board or other executive committees of the person and to remove them.

*Regulations***57 Powers to make regulations: Schedule 7 amended**

In Schedule 7 to the principal Act (matters in respect of which regulations may be made) —

- (a) after paragraph 1 insert —
  - 1A. Subject to paragraph 1B, provisions amending this Act in any manner specified in the regulations.
  - 1B. Regulations under paragraph 1 may not amend section 50(5).
- (b) in paragraph 2 after the word “exemption” insert “(whether subject to conditions or otherwise)”;
- (c) after paragraph 5 insert —
  - 5A. Provisions permitting the Authority to exercise a discretion in respect of any matter specified in the regulations.
- (d) after paragraph 8 insert —
  - 8A. The application of the Act to partnerships, limited liability partnerships, protected cell companies (within the meaning of the *Protected Cell Companies Act 2004*),



companies incorporated under the *Companies Act 2006*, incorporated cell companies (within the meaning of the *Incorporated Cell Companies Act 2010*) or incorporated cells (within the meaning of that Act) with such exceptions, adaptations and modifications as may be specified in the regulations. <sup>22</sup>;

(e) after paragraph 14 insert —

<sup>23</sup> 14A. The publication of such information as may be prescribed. <sup>22</sup>.

## 58 Procedure for regulations: section 50 amended

- (1) Section 50 of the principal Act (regulations) is amended as follows.
- (2) In subsection (4) after the word “Regulations” (where it first appears) insert <sup>24</sup>(other than regulations under paragraph 1A of Schedule 7) <sup>22</sup>.
- (3) At the end insert —
  - <sup>25</sup> (5) Regulations under paragraph 1A of Schedule 7 shall not come into operation unless they are approved by Tynwald. <sup>22</sup>.

### *Minor amendments*

## 59 Definition of person: section 54 amended

In section 54(1) of the principal Act (interpretation) after the definition of “long-term insurance contracts” insert —

<sup>26</sup> “person” includes any body of persons, corporate or unincorporate; <sup>22</sup>.

## 60 Definition of person: section 48 of the Financial Services Act 2008 amended


In section 48 of the *Financial Services Act 2008* (interpretation) after the definition of “permitted person” insert —

<sup>27</sup> “person” includes any body of persons, corporate or unincorporate; <sup>22</sup>.

## 61 Continuation and discontinuation of insurance companies: Schedule 4 amended

In Schedule 4 to the principal Act (continuation and discontinuation of insurance companies) after paragraph 9 insert —

<sup>28</sup> 10. In each of the following provisions of the 1998 Act —

- (a) section 2 (application for consent to be continued in the Island);
  - (b) section 3 (consent);
  - (c) section 8 (application for consent for discontinuance);
  - (d) section 9 (grant of consent); and
  - (e) section 10(1)(a) (documents to be filed),
- references to “the Department” shall be construed as references to “the Authority”. .

## 62 Saving provision: section 105 of the Interpretation Act 2015 amended

In the table in section 105 of the *Interpretation Act 2015* (repeal of provisions) omit the entry referring to Schedule 10 to the *Insurance Act 2008*.

### *Supplemental*

## 63 Minor and consequential amendments

Schedule 2 (minor and consequential amendments) has effect.

## 64 Repeals

The provisions mentioned in column 1 of the table in Schedule 3 (repeals) are repealed to the extent mentioned in column 2.

## SCHEDULE 1

## TRANSITIONAL ARRANGEMENTS (TRIBUNALS)

[Section 55]

**1. Interpretation of Schedule**

In this Schedule “**transfer date**” means the date on which the functions of a tribunal mentioned in section 55(1)(a), (b) and (c) are transferred to the Financial Services Tribunal by that provision.

**2. Transitional and saving provisions**

- (1) Any proceedings before any tribunal mentioned in section 55(1)(a),(b) and (c) which are pending immediately before the transfer date shall continue on and after the transfer date as proceedings before the Financial Services Tribunal.
- (2) The following subsections apply where proceedings are continued in the Financial Services Tribunal by virtue of subsection (1).
- (3) Where a hearing began before the transfer date but was not completed by that date, the Financial Services Tribunal must be comprised for the continuation of that hearing of the persons who began it.
- (4) The Financial Services Tribunal may give any direction to ensure that proceedings are dealt with fairly and, in particular, may apply or disapply any provision in rules made under section 8 of the *Tribunals Act 2006* which applied to the proceedings before the transfer date.
- (5) Any direction or order given or made in proceedings which is in force immediately before the transfer date remains in force on and after that date as if it were a direction or order of the Financial Services Tribunal.
- (6) A time period which has started to run before the transfer date and which has not expired shall continue to apply.
- (7) An order for costs may only be made if, and to the extent that, an order for costs could have been made by a tribunal mentioned in section 55(1)(a), (b) and (c) before the transfer date.
- (8) Sub-paragraph (9) applies where —
  - (a) an appeal lies to the High Court from any decision made by the tribunals mentioned in section 55(1)(a),(b) and (c) before the transfer date;
  - (b) the right of appeal has not been exercised;
  - (c) the time to exercise that right of appeal has not expired prior to the transfer date.

- (9) In the circumstances set out in sub-paragraph (8), section 32(7) of the *Financial Services Act 2008* applies as if the decision were a decision made on or after the transfer date by the Financial Services Tribunal.
- (10) Any case to be remitted by the High Court on or after the transfer date and which, if it had been remitted before the transfer date, would have been remitted to a tribunal mentioned in section 55(1)(a),(b) and (c) shall be remitted to the Financial Services Tribunal.
- (11) A decision made by a tribunal mentioned in section 55(1)(a),(b) and (c) before the transfer date is to be treated on or after the transfer date as a decision of the Financial Services Tribunal.
- (12) The functions transferred by section 55 are to be exercised as regards all appeals to those tribunals whether made before or after the transfer.
- (13) A person who immediately before section 55 comes into operation is a member of a tribunal mentioned in subsection (1)(a), (b) or (c) becomes a member of the Financial Services Tribunal for the purposes of any matter referred to in this Schedule.

## SCHEDULE 2

## MINOR AND CONSEQUENTIAL AMENDMENTS

[Section 63]

PART 1 – MINOR AND CONSEQUENTIAL AMENDMENTS TO  
THE PRINCIPAL ACT

## 1 Amendments to the principal Act

- (1) The principal Act is amended as follows.
- (2) In the cross-heading immediately before section 12 for the word “Solvency” substitute **63** *Capital requirements* **62**.
- (3) In section 17 after the words “with adequate” insert **63** knowledge and **62**.
- (4) In section 40 for the words “sections 38 and 39” substitute **63** sections 38, 39, 39A and 39B **62**.
- (5) In section 47 (fees) —
  - (a) in subsection (1) after paragraph (a) insert —
 

<b>63</b> (aa) by each designated insurer (within the meaning given by section 21A) annually on such date in each year as may be prescribed; <b>62</b> ;
--
  - (b) in subsection (2) after the words “subsection (1)” insert **63** (aa), **62**.
- (6) In section 53 (offences) —
  - (a) in subsection (1) —
    - (i) before paragraph (a) insert —
 

<b>63</b> (za) the terms of an undertaking given under section 7(ba); <b>62</b> ;
---
    - (ii) after paragraph (a) insert —
 

<b>63</b> (aa) a requirement to notify the Authority under section 12B;
---
    - (ab) a direction under section 13(6C); **62**;
    - (iii) at the end of paragraph (b) insert **63** or **62**;
    - (iv) omit paragraphs (d), (e) and (f);
  - (b) in subsection (2)(e) —
    - (i) in paragraph (e) before sub-paragraph (i) insert —
 

<b>63</b> (zi) the terms of an undertaking given under section 25(3)(ca); <b>62</b> ;
---
    - (ii) after sub-paragraph (ii) insert —
 

<b>63</b> (iia) section 27A(3) or (4), subject to any exemptions granted under section 27A(5); <b>62</b> ;
--

- (iii) after sub-paragraph (iii) insert —
    - █ (iiia) section 29A(4) or (5); █;
  - (iv) after sub-paragraph (iv) insert —
    - █ (iva) a direction under section 31(1); █;
  - (v) after sub-paragraph (vii) insert —
    - █ (viia) paragraph 7B of Schedule 2;
    - (viib) a requirement to notify the Authority under paragraph 7C(a) of Schedule 2;
    - (viic) a direction under paragraph 7C(b) of Schedule 2; █;
  - (c) after subsection (2) insert —
    - █ (2A) An auditor commits an offence where the auditor fails to report a matter to the Authority in accordance with section 15A(1) or 27C(1). █;
  - (d) In subsection (5) —
    - (i) after the word “auditor,” insert █ principal control officer, █;
    - (ii) after the word “director,” insert █ company secretary, █;
  - (e) In subsection (6) after the word “secretary” insert █, principal control officer █.
- (7) In section 54(1) of the principal Act (interpretation) —
- (a) the definition of “long-term business fund” is omitted;
  - (b) in the definition of “annual accounts” —
    - (i) after the words “14(1)” insert █ or 27A(1) █;
    - (ii) after the words “14(2)” insert █ or 27A(2) █;
  - (c) for the definition of “prescribed” substitute —
    - █ **“prescribed”** means —
      - (a) in relation to section 39B, prescribed by order; and
      - (b) in relation to any other provision, prescribed by regulations; █.
- (8) In Schedule 3 —
- (a) in paragraph 4(a) after the words “*Companies Act 1931*” insert █, section 12C(2) █;
  - (b) in the heading to paragraph 6 omit the words █ *with long-term business* █.
- (9) In paragraph 3(7) of Schedule 5 after the word “false” insert █ or misleading █.

- (10) In Schedule 7 (matters in respect of which regulations may be made), in paragraph 21 for the words “margins of solvency” substitute **“capital requirements”**.

## PART 2 –AMENDMENTS (TRIBUNALS)

### 2 Legal Aid Act 1986

In Part 1 of Schedule 1 to the *Legal Aid Act 1986* omit paragraphs 5D and 5E.

### 3 Retirement Benefits Schemes Act 2000

In section 38 of the *Retirement Benefits Schemes Act 2000* —

- (a) subsections (1), (2) and (7) are omitted;
- (b) in subsection (3) for the words “the Tribunal” substitute **“the Financial Services Tribunal (in this Act referred to as “the Tribunal”)**;
- (c) in subsection (6) for the words “subsection (7)” substitute **“section 32(7) of the *Financial Services Act 2008*”**;
- (d) in the heading to the section for the words “Retirement Benefits Schemes Tribunal” substitute **“Financial Services Tribunal”**.

### 4 Tribunals Act 2006

In Part 2 of Schedule 2 to the *Tribunals Act 2006* omit paragraphs 6, 9 and 10.

### 5 Principal Act

- (1) The principal Act is amended as follows.
- (2) In section 45 —
  - (a) subsections (1), (2) and (7) are omitted;
  - (b) in subsection (3) for the words “Insurance Tribunal” substitute **“Financial Services Tribunal”**;
  - (c) in subsection (6) —
    - (i) for the words “subsection (7)” substitute **“section 32(7) of the *Financial Services Act 2008*”**;
    - (ii) for the words “Insurance Tribunal” substitute **“Financial Services Tribunal”**;
  - (d) in the heading to the section for the words “Insurance Tribunal” substitute **“Financial Services Tribunal”**.
- (3) In section 54(1) —
  - (a) at the appropriate place in alphabetical order insert —

“**Financial Services Tribunal**” means the Tribunal established under section 32 of the *Financial Services Act 2008*; **22**;

- (b) omit the definition of “Insurance Tribunal”;
  - (c) omit the definition of “Retirement Benefits Schemes Tribunal”.
- (4) In Schedule 6 in paragraph 2(1)(u) for the words from “the following” to the end substitute **23** the Financial Services Tribunal to carry out its functions (regardless of the enactment under which the function is conferred). **22**.

## 6 Collective Investment Schemes Act 2008

- (1) The *Collective Investment Schemes Act 2008* is amended as follows.
- (2) In section 11A(4)(b)(iii) omit the words **24** constituted under section 21 **22**.
- (3) In section 21 —
- (a) subsections (1), (2) and (7) are omitted;
  - (b) in subsection (3) after the words “may appeal” insert **25** to the Financial Services Tribunal **22**;
  - (c) in subsection (6) for the words “subsection (7)” substitute **26** section 32(7) of the *Financial Services Act 2008* **22**.
- (4) In section 26, in the definition of “Tribunal” for the words “the Collective Investment Schemes Tribunal established under section 21” substitute **27** the Financial Services Tribunal established under section 32 of the *Financial Services Act 2008*. **22**.

## 7 Financial Services Act 2008

- (1) The *Financial Services Act 2008* is amended as follows.
- (2) In section 33(5) omit paragraphs (e), (f) and (h).
- (3) In Schedule 5 in paragraph 2(1)(t) for the words from “the following” to the end substitute **28** the Financial Services Tribunal to carry out its functions (regardless of the enactment under which the function is conferred). **22**.

## 8 Designated Businesses (Registrations and Oversight) Act 2015

In paragraph 1(1)(m) of Schedule 2 to the *Designated Businesses (Registration and Oversight) Act 2015* for the words from “the following” to the end substitute **29** the Financial Services Tribunal to carry out its functions (regardless of the enactment under which the function is conferred). **22**.



## SCHEDULE 3

## REPEALS

[Section 64]

Act	Extent of repeal
Legal Aid Act 1986	In Part 1 of Schedule 1, paragraphs 5D and 5E.
Retirement Benefits Schemes Act 2000	In section 38, subsections (1), (2) and (7).
Tribunals Act 2006	In Part 2 of Schedule 2, paragraphs 6, 9 and 10.
The principal Act	<p>At the end of section 7(b), the word “or”.</p> <p>Section 13(4).</p> <p>In section 18(2)(a), sub-paragraph (i).</p> <p>Section 19.</p> <p>Section 20.</p> <p>In section 22(2), the words “, 16”.</p> <p>In section 25(3) —</p> <p>(a) in paragraph (b), the words “in the case of an applicant who is a body corporate”;</p> <p>(b) in paragraph (c), at the end the word “and”.</p> <p>In section 26, subsection (7).</p> <p>In section 45, subsections (1), (2) and (7).</p> <p>In section 47(1), at the end of paragraph (f) the word “and”.</p> <p>In section 48 —</p> <p>(a) in subsection (1)(b), the word “the”;</p> <p>(b) subsection (2).</p> <p>In section 53(1), paragraphs (d), (e) and (f).</p> <p>In section 54(1) —</p> <p>(a) at the end of paragraph (c) in the definition of “controller” the word “or”;</p> <p>(b) the definition of “Insurance Tribunal”;</p> <p>(c) the definition of “long-term business fund”;</p> <p>(d) the definition of “Retirement Benefits Schemes Tribunal”.</p>

	<p>In Schedule 2, in paragraph 6 the words “nor the holder of a permit issued under section 22”.</p> <p>In Schedule 3 —</p> <p>(a) in the heading to paragraph 6 the words “with long-term business”;</p> <p>(b) paragraph 8;</p> <p>(c) in paragraph 10, the words “representing a fund or funds”.</p>
Collective Investment Schemes Act 2008	<p>In section 11A(4)(b)(iii), the words “constituted under section 21”.</p> <p>In section 21, subsections (1), (2) and (7).</p>
Financial Services Act 2008	In section 33(5), paragraphs (e), (f) and (h).
Interpretation Act 2015	In section 105 in the table, the entry referring to Schedule 10 to the Insurance Act 2008.

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