

No. of 2002

VIRGIN ISLANDS
INSURANCE (AMENDMENT) ACT, 2002
ARRANGEMENT OF SECTIONS

Section

1. Short title and commencement
2. Interpretation
3. Part IIIA inserted

No. of 2002 Insurance (Amendment) Act, 2002 Virgin Islands

I Assent

Governor

, 2002

VIRGIN ISLANDS

No. of 2002

A bill for

An Act to amend the Insurance Act, No. 15 of 1994.

[Gazetted , 2002]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title and

Commencement

1. This Act may be cited as the Insurance (Amendment) Act, 2002 and shall come into force on such date as the Governor may, by Proclamation published in the Gazette, appoint.

Interpretation

No. 15 of 1994

2. In this Act, “the principal Act” means the Insurance Act, 1994.

Part IIIA inserted.

3. The principal Act is amended by inserting after section 30, the following Part:

**PART IIIA
SEGREGATED PORTFOLIO
COMPANIES**

Definitions. 30A. In this Part

Cap. 285 “insurance company” means an insurer that is
Cap. 291 incorporated under the Companies Act or the
International Business Companies Ordinance

“segregated portfolio company” means a company which is registered under section 30B(1);

“segregated portfolio shares” means shares issued under section 30E(1);

“segregated portfolio share capital” means the proceeds of the issue of segregated portfolio shares”

“segregated portfolio dividend” means a dividend paid under section 30E(3);

“receivership order” means an order made under section 30M(1);

“receiver” means the person specified in a receivership order for the purposes specified in section 30M(3).

Licensing of insurers

As segregated portfolio Companies.

30B. (1) Subject to subsection (3), the Commission may, upon an application made

- (a) at any time by an insurance company, license the insurance company as a segregated portfolio company;
- (b) at the same time as an application is made to incorporate a company for the object and purpose of carrying on insurance business, license the company, upon its incorporation, as a segregated portfolio company.

(2) An application under subsection (1) shall be accompanied by

- (a) an adequate business plan for the proposed segregated portfolio company and for each proposed segregated portfolio of that company; and

- (b) such fee as may be prescribed together with any other fee that may then be payable.
- (3) No company shall be licensed as a segregated portfolio company unless
 - (a) the Commission is satisfied that it has or has available to it the knowledge and expertise necessary for the proper management of segregated portfolios; and
 - (b) prior approval for such licensing has been granted in writing by the Commission.
- (4) A segregated portfolio company shall, at the same time and in the same manner that it pays the renewal fee referred to in section 17(d), pay such fee in respect of each segregated portfolio as may be prescribed.

Designation **30C.** Without prejudice to the provisions of the Companies Act, a segregated portfolio company shall include in its name the letters “SPC” or the words “Segregated Portfolio Company”.

Segregated Portfolios **30D.** (1) Subject to subsections (2) and a segregated portfolio company may create one or more segregated portfolios in order to segregate the assets and liabilities of the company held within or on behalf of a segregated portfolio from the assets and liabilities of the company held within or on behalf of any other segregated portfolio of the company or the assets and liabilities of the company which are not held within or on behalf of any segregated portfolio of the company.

(2) A segregated portfolio company that is desirous of creating a segregated portfolio shall first apply to the Commission to do so and shall submit together with its application

(a) an adequate business plan for the proposed segregated portfolio; and

(b) the prescribed fee.

(3) No segregated portfolio shall be created unless prior approval to do so has been granted in writing by the Commission, and such approval may be granted at the same time that the approval under section 30B(3)(b) is granted.

(4) A segregated portfolio company shall be a single legal entity and any segregated portfolio of or within a segregated portfolio company shall not constitute a legal entity separate from the company.

(5) Each segregated portfolio shall be separately identified or designated and shall include in such identification or designation the words "Segregated Portfolio".

Shares and
Dividends

30E. (1) A segregated portfolio company may create and issue shares in one or more classes (including different classes or series relating to the same segregated portfolio), the proceeds of the issue of which shall be included in the segregated portfolio assets of the segregated

portfolio in respect of which the segregated portfolio shares are issued.

(2) The proceeds of the issue of shares, other than segregated portfolio shares, shall be included in the segregated portfolio company's general assets.

(3) A segregated portfolio company may pay a dividend in respect of segregated portfolio shares of any class or series and whether or not a dividend is declared on any other class or series of segregated portfolio shares or any other shares, except that where a loss is declared in respect of any of its segregated portfolios, the power to pay dividends shall be subject to such restrictions as may be prescribed.

(4) Segregated portfolio dividends shall be paid on segregated portfolio shares by reference only to the accounts of and to and out of the segregated portfolio assets and liabilities of the segregated portfolio in respect of which the segregated portfolio shares were issued and otherwise in accordance with the rights of such shares.

Company to act
On behalf of
Portfolios

30F. (1) Any act, matter, deed, agreement, contract, instrument or arrangement which is to be binding on or to enure to the benefit of a segregated portfolio or portfolios shall be executed by the segregated portfolio company for and on behalf of such segregated portfolio or portfolios which shall be identified or specified, and where in writing it shall be indicated that such execution is in the name of, or by, or for the account of, such segregated portfolio or portfolios.

(2) If a segregated portfolio company is in breach of subsection (1)

(a) the directors shall, notwithstanding any provisions to the contrary in the company's articles or in any contract with such company or otherwise) incur personal liability for the liabilities of the company and the segregated portfolio under the act, matter, deed, agreement, contract, instrument or arrangement that was executed; and

(b) unless they were fraudulent, reckless, negligent or acted in bad faith, the directors shall have a right of indemnity in the case of a matter on behalf of or attributable to a segregated portfolio or portfolios against the assets of that portfolio or portfolios and, in the case of a matter not on behalf of or attributable to any segregated portfolio, against the general assets of such company.

(3) Notwithstanding the provisions of subsection (2)(a), the court may relieve a director of all or part of his personal liability thereunder if he satisfies the court that he ought fairly to be so relieved because

(a) he was not aware of the circumstances giving rise to his liability and, in being not so aware, he was not fraudulent, reckless or negligent, and did not act in bad faith; or

(b) he expressly objected, and exercised such rights as he had as a director, whether by way of voting power or otherwise, so as to try to

prevent the circumstances giving rise to his liability.

(4) Where, pursuant to the provisions of subsection (3), the court relieves a director of all or part of his personal liability under subsection (2)(a), the court may order that the liability in question shall instead be met from such of the segregated portfolio or general assets of the segregated portfolio company as may be specified in the order.

(5) Any provision in the articles of a segregated portfolio company, and any other contractual provision under which the segregated portfolio company may be liable, which purports to indemnify directors in respect of conduct which would otherwise disentitle them to an indemnity by virtue of subsection (2)(b), shall be void.

Assets

30G. (1) The assets of a segregated portfolio company shall be either segregated portfolio assets or general assets.

(2) The segregated portfolio assets comprise the assets of the segregated portfolio company held within or on behalf of the segregated portfolios of the company.

(3) The general assets of a segregated portfolio company comprise the assets of the company which are not segregated portfolio assets.

(4) The assets of a segregated portfolio comprise

(a) assets representing the share capital and reserves attributable to the segregated portfolio; and

(b) all other assets attributable to or held within the segregated portfolio.

(5) For the purposes of subsection (4), “reserves” includes retained earnings, capital reserves and share premiums.

(6) It shall be the duty of the directors of a segregated portfolio company to establish and maintain (or cause to be established and maintained) procedures

- (a) to segregate, and keep segregated portfolio, portfolio assets separate and separately identifiable from general assets;
- (b) to segregate, and keep segregated, portfolio assets of each segregated portfolio separate and separately identifiable from segregated portfolio assets of any other segregated portfolio; and
- (c) where relevant, to apportion or transfer assets and liabilities between segregated portfolios, or between segregated portfolios and general assets of the company.

Segregation of assets **30H.** Segregated portfolio assets

- (a) shall only be available and used to meet liabilities to the creditors of the segregated portfolio company who are creditors in respect of that segregated portfolio and who shall thereby be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio for such purposes; and
- (b) shall not be available or used to meet liabilities to, and shall be absolutely protected from, the creditors of the segregated portfolio company who are not creditors in respect of that segregated portfolio, and who

accordingly shall not be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio.

Segregation of

Liabilities

30I. (1) Where a liability of a segregated portfolio company to a person arises from a matter, or is otherwise imposed, in respect of or attributable to a particular segregated portfolio

(a) such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to

(i) firstly the segregated portfolio assets attributable to such segregated portfolio; and

(ii) secondly the segregated portfolio company's general assets, to the extent that the segregated portfolio assets attributable to such segregated portfolio are insufficient to satisfy the liability and to the extent that the assets attributable to such segregated portfolio company's general assets exceed any minimum capital amounts lawfully required by the Commission; and

(b) such liability shall not extend to, and that person shall not, in

respect of that liability, be entitled to have recourse to the segregated portfolio assets attributable to any other segregated portfolio.

(2) Where a liability of a segregated portfolio company to a person

- (a) arises otherwise than from a matter in respect of a particular segregated portfolio or particular segregated portfolios; or
- (b) is imposed otherwise than in respect of a particular segregated portfolio or particular segregated portfolios,

such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the company's general assets.

General liabilities
And assets.

30J. (1) Liabilities of a segregated portfolio company not attributable to any of its segregated portfolios shall be discharged from the company's general assets.

(2) Income, receipts and other property or rights of, or acquired by, a segregated portfolio company not otherwise attributable to any segregated portfolio shall be applied to and comprised in the company's general assets.

Solvency of
Segregated
Portfolios.

30K. (1) Without prejudice to section 15, a licence shall not be granted or renewed in respect of a segregated portfolio company unless the Commission is satisfied that the total value of the assets of each segregated

portfolio exceeds the total amount of its liabilities by at least the prescribed amount.

- (2) For the purposes of this section, the total value of the assets, and the total amount of the liabilities, of a segregated portfolio shall be determined on the prescribed basis.

Accounting
Procedures

30L. (1) One set of accounts shall be prepared and audited in respect of a segregated portfolio company pursuant to section 22(1)(a).

(2) The audited accounts of a segregated portfolio company prepared pursuant to section 22(1)(a) shall take into account the segregated nature of the company and shall include an explanation of

- (a) the nature of the company;
- (b) how the segregation of the assets and liabilities of the company impacts upon members of the company and persons with whom the company transacts;
- (c) the effect that any existing deficit in the assets of a segregated portfolio of the company has on the general assets of the company.

(3) Notwithstanding paragraph (b) of section 22(1), the statement required by that paragraph to be delivered to the Commission shall, in relation to a segregated portfolio company, be delivered within six months of the end of each financial year and include, in addition to the requirements of section 22(1)(B)(i) to (iv),

- (a) a certified copy of the Commission's approval of the auditor of the company issued under section 22(1)(a);

- (b) a certified copy of the certificate of authority issued under section 59 to each insurance manager of the company;
- (c) a margin of solvency calculation to show whether the company is in compliance with the provisions of section 15; and
- (d) a margin of solvency calculation to show
 - (i) whether the company is in compliance with provisions of section 30K; and
 - (ii) where applicable, the extent to which the net worth of the general assets of the company is applied to the requirements of each segregated portfolio.

Receivership
Orders

30M. (1) Subject to the provisions of this section, if in relation to a segregated portfolio company the court is satisfied

- (a) that the segregated portfolio assets attributable to a particular segregated portfolio of the company (when account is taken of the company's general assets, unless there are no creditors in respect of that segregated portfolio

entitled to have recourse to the company's general assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that segregated portfolio; and

- (b) that the making of an order under this section would achieve the purposes set out in subsection (3),

the court may make a receivership order under this section in respect of that segregated portfolio.

- (2) A receivership order may be made in respect of one or more segregated portfolios.
- (3) A receivership order shall direct that the business and segregated portfolio assets of or attributable to a segregated portfolio shall be managed by a receiver specified in the order for the purposes of
 - (a) the orderly closing down of the business of or attributable to the segregated portfolio; and
 - (b) the distribution of the segregated portfolio assets attributable to the segregated portfolio to those entitled to have recourse thereto.

- (4) A receivership order
 - (a) may not be made if the segregated portfolio company is in winding up; and
 - (b) shall cease to be of effect upon commencement of the winding up of the segregated portfolio company, but without prejudice to prior acts of the receiver or his agents.
- (5) No resolution for the voluntary winding up of a segregated portfolio company of which any segregated portfolio is subject to a receivership order shall be effective without leave of the court.

Application for

Receivership orders.

30N. (1) An application for a receivership order in respect of a segregated portfolio of a segregated portfolio company may be made by

- (a) the company;
- (b) the directors of the company;
- (c) any creditor of the company in respect of that segregated portfolio;
- (d) any holder of segregated portfolio shares in respect of that segregated portfolio; or
- (e) the Commission.

(2) The Court, on hearing an application

- (a) for a receivership order; or
- (b) for leave, pursuant to section 30M(5), for a resolution for voluntary winding up,

may make an interim order or adjourn the hearing, conditionally or unconditionally.

(3) Notice of an application to the court for a receivership order in respect of a segregated portfolio of a segregated portfolio company shall be serve upon

- (a) the Company;
- (b) the Commission; and
- (c) such other persons, if any, as the court may direct,

each of whom shall be given an opportunity of making representations to the court before the order is made.

Administration
Of receivership
Orders.

300. (1) The receiver of a segregated portfolio

- (a) may do all such things as may be necessary for the purposes set out in section 30M(3); and
- (b) shall have all the functions and powers

of the directors in respect of the business and segregated portfolio assets of or attributable to the segregated portfolio.

(2) The receiver may at any time apply to the court

(a) for directions as to the extent or exercise of any function or power;

(b) for the receivership order to be discharged or varied; or

(c) for an order as to any matter acting in the course of his receivership.

(3) In exercising his functions and powers the receiver shall be deemed to act as agent of the segregated portfolio company, and shall not incur personal liability except to the extent that he is fraudulent, reckless, negligent, or acts in bad faith.

(4) Any person dealing with the receiver in good faith is not concerned to inquire whether the receiver is acting within his powers.

(5) When an application has been made for, and during the period of operation of, a receivership order

(a) no proceedings may be instituted or continued by or against the segregated portfolio company in relation to the segregated portfolio in respect of which the receivership order was made; and

(b) no steps may be taken to enforce any security or in the execution of legal process in respect of the business or segregated portfolio assets of or attributable to the segregated portfolio in respect of which the receivership order was made,

except by leave of the court, which may be conditional or unconditional.

(6) During the period of operation of a receivership order

(a) the functions and powers of the directors shall cease in respect of the business of or attributable to, and the segregated portfolio assets of or attributable to, the segregated portfolio in respect of which the order was made; and

(b) the receiver of the segregated portfolio shall be entitled to be present at all meetings of the segregated portfolio and to vote at such meetings, as if he were a director of the segregated portfolio company, in respect of the general assets of the company, unless there are no creditors in respect of that segregated portfolio entitled to have recourse to the company's general assets.

Discharge of
Receivership orders

30P. (1) The Court shall not discharge a receivership order unless it appears to the court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

(2) The court, on hearing an application for the discharge or variation of a receivership order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

(3) Upon the court discharging a receivership order in respect of a segregated portfolio or a segregated

portfolio company on the ground that the purpose for which the order was made has been achieved or substantially achieved, the court may direct that any payment made by the receiver of that segregated portfolio shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that segregated portfolio, and the creditor's claims against the company in respect of that segregated portfolio shall be thereby deemed extinguished.

Remuneration

Of receiver **30Q.** The remuneration of a receiver and any expenses properly incurred by him shall be payable, in priority to all other claims, from the segregated portfolio assets attributable to the segregated portfolio in respect of which the receiver was appointed but not from any other assets of the segregated portfolio company.”

Passed by the Legislative Council this day of 2002.

Speaker.

Clerk of the Legislative Council.

OBJECTS AND REASONS

The Bill seeks to amend the Insurance Act, 1994 (hereinafter referred to as “the principal Act”) to provide for the licensing of insurance companies as segregated portfolio companies. A segregated portfolio company is a single legal entity which is subdivided into cells known as “segregated portfolios”.

By clause 1, the proposed Act would come into force on a date appointed by the Governor by Proclamation.

Clause 3 would insert a new Part IIIA into the principal Act. This new Part would make special provision for segregated portfolio companies and would consist of new sections 30A to 30Q.

The new section 30A would provide for the definition of certain terms used in new Part, such as “segregated portfolio company”, “segregated portfolio shares” and “segregated portfolio dividend”.

The new section 30B would provide for the licensing of insurance companies as segregated portfolio companies by the Financial Services Commission. By the new section 30C, the names of all segregated portfolio companies would contain the letters “SPC” or the words “Segregated Portfolio Company”.

By the new section 30D, a segregated portfolio company would be able to create one or more segregated portfolios and to assign to each segregated portfolio such assets and liabilities of the company as it determines. Thus, the assets and liabilities within a segregated portfolio would be segregated from the assets and liabilities of other segregated portfolios and those assets and liabilities of the company that are not held in a segregated portfolio. The creation of segregated portfolios would be subject to the approval of the Financial Services Commission. Each segregated portfolio would have a designation containing the words “Segregated Portfolio”.

The new section 30E would provide for the issuing of shares by a segregated portfolio company in respect of a segregated portfolio. Those shares would be known as “segregated portfolio shares” and the proceeds of the issue of those shares would be included in the assets of the relevant segregated portfolio. The proceeds of the issue of shares which are not segregated portfolio shares would be included in the general assets of the segregated portfolio company. A segregated portfolio company would also be able to pay dividends in respect of segregated portfolio shares (to be known as “segregated portfolio dividends”). Where a loss is declared in respect of any segregated portfolio, however, the power to pay dividends would be subject to prescribed restrictions.

By the new section 30F, a segregated portfolio company would be required to execute on behalf of any of its segregated portfolio, any act, agreement, instrument or arrangement which is to be binding on, or for the benefit of, that segregated portfolio. Failure to comply with this requirement would result in the directors being personally liable for the resulting liabilities of the company and the relevant segregated portfolio. The directors would, however, be entitled to be indemnified against the assets of the relevant segregated portfolio and the general assets of the company, unless they had acted fraudulently, recklessly, negligently or in bad faith. The High Court would also have the power to relieve a director of all or part of his personal liability in certain circumstances and to order that such liability be met by the assets of the segregated portfolio or the general assets of the company.

The new section 30G would provide for the distinction between segregated portfolio assets and general assets. By the new section 30H, the segregated portfolio assets of a segregated portfolio would only be available to meet liabilities to creditors in respect of that segregated portfolio and would be absolutely protected from the creditors who are not creditors in respect of that segregated portfolio. The new section 30I would provide that where the segregated portfolio assets of a segregated portfolio are insufficient to meet a liability in respect of that portfolio, recourse shall be had to the general assets of the company and not to the segregated portfolio company that are not related to any particular segregated portfolio would be met out of the company's general assets only.

The new section 30K would ensure that the licence for a segregated portfolio company is not granted or renewed unless the Financial Services Commission is satisfied that each segregated portfolio satisfies prescribed solvency margins. The new section 30L would require one set of accounts to be prepared and audited in respect of a segregated portfolio company and provide for special accounting procedures in respect of segregated portfolio companies.

The new section 30M would empower the High Court to make receivership orders in respect of segregated portfolios. A receivership order would appoint a receiver for the segregated portfolio in question to manage the business and assets of the segregated portfolio for the purpose of closing down the business and distributing the assets. A receivership order in respect of a segregated portfolio would not have effect during the winding up of the segregated portfolio company. However, where a segregated portfolio is subject to a receivership order, a resolution for the voluntary winding up of the segregated portfolio company would not have effect without the leave of the High Court.

The new section 30N would provide for applications for receivership orders in respect of segregated portfolios and the making of interim orders by the High Court. The new section 30O would provide for the powers of receivers of

segregated portfolios and the new section 30P would provide for the power of the High Court to discharge receivership orders.

Finally, the new section 30Q would provide for the remuneration of the receiver of a segregated portfolio from the assets attributable to that segregated portfolio.

Minister of Finance