

OFFSHORE INSURANCE BILL 1990

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intituled

An Act to provide new laws for the licensing and regulation of persons carrying on offshore insurance business and offshore insurance-related activities and to provide for matters incidental thereto or connected therewith.

[]

BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

1. This Act may be cited as the Offshore Insurance Act 1990 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint. Short title and commencement

2. (1) In this Act, unless the context otherwise requires— Interpretation.

"actuary" means a person, being a Fellow of any of the professional associations listed in the First Schedule or a person recognized by the Bank as an actuary for the purposes of this Act, who appears on the list of actuaries maintained by the Bank;

"auditor" means a person, being an approved company auditor under the Offshore Companies Act 1990, who Act appears on the list of auditors maintained by the Bank;

"Bank" means the Central Bank of Malaysia established by the Central Bank of Malaysia Ordinance 1958;

Ord. 61158.

"constituent documents" means the statute, charter, memorandum of association and articles of association, rules and by-laws, partnership agreement, or other instrument, under or by which a person is established and the scope of that person's functions, business, powers and duties are set out, whether contained in one or more documents;

"controller", in relation to an applicant for a licence or a licensee, means a person who—

- (a) is entitled to exercise, or control the exercise of, not less than one third of the votes attached to the voting shares in such applicant or licensee;
- (b) has the power to appoint, or cause to be appointed, a majority of the directors of such applicant or licensee; or
- (c) has the power to make, or cause to be made, decisions in respect of the business or administration of such applicant or licensee, and to give effect to such decisions or cause them to be given effect to;

"corporation" means any body corporate formed or incorporated or existing within Malaysia or outside Malaysia and includes any foreign offshore company but does not include—

- (a) any corporation sole; or
- (b) any trade union registered under any written law as a trade union;

"declaration" means a written statement of facts which the person making it signs and solemnly declares to be true before a commissioner or magisterial officer or notary public;

"director" includes any person who occupies the position of a director, by whatever name called, and in particular, but without prejudice to the foregoing, in the case of—

- (a) a company, means a member of the board of directors;

- (b) a co-operative society, means a member of the board, or other governing body howsoever called, of the co-operative society;
- (c) a statutory body, means a member of the board, committee, or council, or other governing body howsoever called, of the statutory body;
- (d) a partnership, means a partner;
- (e) a sole proprietorship, means the sole proprietor; and
- (f) any other body, association or group of persons, whether corporate or unincorporate, means any person having the direction and control of the management of its affairs or business;

"domestic insurance business" means insurance business where the subject matter of the contract is—

- (a) property which at the time of the making of the contract is situated in Malaysia or is in transit to or from Malaysia;
- (b) a ship or an aircraft registered in Malaysia and all liabilities arising from the operation of such ship or aircraft;
- (c) the life or any contingency related to any person who, at the time of the making of the contract, is a resident; or
- (d) a risk of any nature in respect of any person who, at the time of the making of the contract, is a resident;

"establishment", in relation to—

- (a) a company, means incorporation;
- (b) a statutory body, means coming into existence under the law establishing, appointing or constituting it;
- (c) co-operative society, means registration, incorporation or otherwise coming into legal existence as a cooperative society;
- (d) a partnership, means formation;

- (e) a sole-proprietorship, means registration of its business; or
- (f) any otherbody, association or group of persons, whether corporate or unincorporate, which requires registration or any other form of recording or recognition under any written law before it can lawfully commence its activities, means registration, recording or recognition under such written law;

"foreign currency" means any currency other than Malaysian currency;

"foreign offshore company" means a branch, registered under the Offshore Companies Act 1990, of a corporation established in a country other than Malaysia;

"general insurance business" means insurance business which is not life insurance business but which includes accident, medical, surgical and hospital expenses insurances related to any person;

"Governor" means the Governor of the Bank, and includes the Deputy Governor of the Bank;

"insurance business" means the business of effecting and carrying out contracts—

- (a) protecting persons against loss or liability to loss in respect of risks to which such persons may be exposed; or
- (b) to pay a sum of money or other thing of value upon the happening of an event,

and includes reinsurance business;

"insurer" means a person who carries on insurance business;

"liabilities" includes debts, duties and obligations of every kind, whether present or future, or whether vested or contingent;

"licence" means a licence granted under subsection (1) of section 9;

"licensee" means any person licensed under subsection (1) of section 9;

"life insurance business" means insurance business connected with any policy by which payment of policy moneys is insured on death or on the happening of any contingency dependent on the termination or continuation of human life and includes any incidental extension of cover and reinsurances of such business;

"Malaysian company" means a company incorporated under the Companies Act 1965; *Act 125.*

"Malaysian insurer" means an insurer which is a Malaysian company;

"Malaysian offshore insurer" means an offshore insurer which is—

- (a) a subsidiary, established as an offshore company, of a Malaysian company; or
- (b) a branch of a Malaysian insurer;

"margin of solvency" shall have the meaning assigned thereto under section 17;

"member", in relation to—

- (a) a company, means a shareholder;
- (b) a statutory body, means a shareholder or, where the statutory body has no share capital, a person who, wholly or jointly with other persons, owns the statutory body;
- (c) a partnership, means a partner;
- (d) a co-operative society, means a shareholder or a subscriber;
- (e) a sole proprietorship, means the sole proprietor; or
- (f) any other body, association or group of persons, whether corporate or unincorporate, means any person who has any proprietary interest in such body, association or group of persons;

"Minister" means the Minister for the time being charged with the responsibility for finance;

"net premium income", in relation to a financial year, means the premiums receivable under contracts of insurance or reinsurance after deducting any premiums payable for reinsurances arranged in respect of such contracts of insurance or reinsurance;

"office" means any place of business;

"officer", in relation to a person, means an employee and includes the chief executive officer of that person;

"offshore captive insurance business" means offshore insurance business where the insured is a related company or associate corporation of the offshore insurer or where the insured is any other person in respect of whom the offshore insurer is authorized by the Bank to provide insurance or reinsurance;

"offshore company" means a company incorporated under the Offshore Companies Act 1990;

"offshore insurance broker" means a person who arranges—

- (a) offshore insurance business on behalf of prospective or existing policy owners; or
- (b) offshore reinsurance business on behalf of any insurer seeking reinsurance;

"offshore insurance business" means insurance business which is not domestic insurance business and which is transacted in foreign currency, and includes offshore captive insurance business;

"offshore insurance manager" means a person who provides management or administration services related to offshore insurance business but does not include an offshore underwriting manager;

"offshore insurer" means a licensee who carries on offshore insurance business;

"offshore underwriting manager" means a person, not being a *bonafide* employee, who provides underwriting services, including the administration of the business, to one or more offshore insurers;

"person" includes any individual, corporation, statutory body, local authority, society, trade union, co-operative society, partnership, and any other body, organization, association or group of persons, whether corporate or unincorporate;

"policy" means an insurance policy and includes any written contract of insurance whether or not embodied in or evidenced by an instrument in the form of an insurance policy; and any reference to a policy of an insurer includes a reference to any policy in respect of which the insurer is under any liability, whether the policy was issued by the insurer or the liability was transferred to the insurer from another insurer;

"policy owner" means any person who effects a policy;

"prescribed" means prescribed by this Act or any regulation made under this Act;

"reinsurance business" means a business whereby the reinsurer assumes a part of the liability under an original contract of insurance of another insurer or reinsurer;

"reinsurer" means a person who carries on or transacts or holds himself out as carrying on or transacting reinsurance business;

"related company" shall have the meaning assigned thereto under the Offshore Companies Act 1990;

"resident" means any person who is—

- (a) a citizen of Malaysia who is residing in Malaysia;
 - (b) the holder of an entry permit under the Immigration Act 1959/63 who is lawfully residing in Malaysia; or
- Act 155.*

- (c) a corporation established under the laws of Malaysia, other than the Offshore Companies Act 1990, or established as a foreign company under the Companies Act 1965;

"specify", where no mode is mentioned, means specify from time to time in writing, and a power to specify includes the power to specify differently for different persons or different classes, categories or descriptions of persons;

"subsidiary" shall have the meaning assigned thereto under the Offshore Companies Act 1990;

"working funds" means—

- (a) in relation to an offshore company, the paid-up capital unimpaired by losses; or
- (b) in relation to a foreign offshore company or a branch of a Malaysian insurer, the surplus of assets over liabilities to be maintained in the books of its office in the Federal Territory of Labuan.

(2) Any reference in this Act to "this Act" shall, unless otherwise expressly stated, be deemed to include a reference to any regulation, rule, order, notification or other subsidiary legislation made under this Act.

(3) Where fifteen per centum or more of the voting shares of a corporation are held by another corporation, the first-mentioned corporation shall be deemed to be an associate corporation of the other corporation, and any reference in this Act to an "associate corporation" shall be construed as a reference to that first-mentioned corporation or that other corporation, as the case may be.

PART II

ADMINISTRATION OF THE ACT

Functions,
powers and
duties of
the Bank.

3. (1) The Bank shall have all the functions and powers conferred, and the duties imposed, on the Bank by this Act.

(2) The Bank may authorize or instruct any officer of the Bank to perform any of the functions, exercise any of the powers, or discharge any of the duties of the Bank under this Act.

(3) The Bank may, either generally or in any particular case, appoint any person who is not an officer of the Bank to render such assistance as the Bank may specify in the performance of the functions, the exercise of the powers or the discharge of the duties of the Bank under this Act, or to perform such functions, exercise such powers or discharge such duties on behalf of and in the name of the Bank.

4. Except for the purposes of the performance of the functions, the exercise of the powers or the discharge of the duties of the Bank under this Act or when lawfully required to do so by any court, the Bank or any officer or representative of the Bank shall not disclose any information relating to any application by any person under the provisions of this Act or to the affairs of that person which the Bank or such officer or representative has acquired in the performance of the functions, the exercise of the powers or the discharge of the duties of the Bank under this Act.

Confidentiality on the part of the Bank.

PART III

LICENSING OF OFFSHORE INSURANCE BUSINESS AND OFFSHORE INSURANCE-RELATED ACTIVITIES

5. (1) No person shall carry on or transact or hold himself out as carrying on or transacting any offshore insurance business unless that person is—

Licensing of offshore insurance business and offshore insurance-related activities.

- (a) an offshore company;
- (b) a foreign offshore company; or
- (c) a branch of a Malaysian insurer,

and holds a valid licence.

(2) No person shall carry on or transact or hold himself out as carrying on or transacting any business as an

offshore insurance manager, offshore underwriting manager or offshore insurance broker unless that person holds a valid licence.

Application for licence to carry on offshore insurance business.

6. (1) Every applicant for a licence to carry on offshore insurance business shall satisfy the Minister that—

- (a) the applicant is, or will be, an offshore company or a foreign offshore company or a branch of a Malaysian insurer;
- (b) the working funds of the applicant—
 - (i) in a case where the applicant proposes to carry on either life insurance business or general insurance business, or both, are at least seven million and five hundred thousand ringgit or its equivalent in any foreign currency;
 - (ii) in a case where the applicant proposes to carry on solely reinsurance business, are at least ten million ringgit or its equivalent in any foreign currency; or
 - (iii) in a case where the applicant proposes to carry on solely offshore captive insurance business, are at least one million ringgit or its equivalent in any foreign currency;
- (c) the sum of money specified in paragraph (b) is maintained in an account of the applicant with a bank in the Federal Territory of Labuan, as evidenced by a certificate of such bank, at the time when the application is made;
- (d) the controller, director and chief executive officer of the applicant are fit and proper persons to be associated with an offshore insurer; and
- (e) the applicant either—
 - (i) has established, or will establish, its management in the Federal Territory of Labuan with adequate knowledge and expertise of the offshore insurance business to be carried on and has at least one director resident in the Federal Territory of Labuan; or

- (ii) has appointed, or will appoint, a licensed offshore underwriting manager in the Federal Territory of Labuan with adequate knowledge and experience of the offshore insurance business to be carried on.

(2) Notwithstanding paragraph (b) of subsection (1), the Minister may, having regard to the extent and volume of offshore insurance business which the applicant proposes to carry on, specify a lesser amount of working funds, subject to the applicant providing adequate guarantee on such terms and conditions as may be acceptable to the Minister for the difference in amount.

(3) Every application for a licence to carry on offshore insurance business shall—

- (a) be made in writing and be submitted to the Bank;
- (b) state whether such offshore insurance business is in relation to life insurance business or general insurance business or both;
- (c) set out the types of offshore insurance business, as the case may be, which are to be carried on under licence;
- (d) set out the applicant's business plans; and
- (e) be accompanied with—
 - (i) a copy of—
 - (A) the applicant's constituent documents, duly authenticated by a director or officer of the applicant;
 - (B) the resolutions of the board and the general meeting, if any, of the applicant, duly authenticated by a director or officer of the applicant, authorizing the applicant to apply for a licence; and
 - (C) the applicant's certificate of incorporation or registration, as the case may be, certified by the

relevant registering authority in the place of establishment or origin of the applicant;

- (ii) a copy of the applicant's audited annual accounts for the three consecutive years immediately preceding the application, where applicable;
- (iii) a statement on—
 - (A) the name, place and date of the establishment of the applicant;
 - (B) the names, addresses, qualifications and experience of the directors and officers responsible for the overall management of the affairs of the applicant; and
 - (C) the name and address of each member who holds ten per centum or more of the voting shares of the applicant; and
- (iv) a declaration by the applicant on the probity of the applicant's directors and officers who would be concerned in the management of the proposed offshore insurer.

(4) The Bank may require from the applicant such other information or documents as may be specified by the Bank for the purpose of determining the application.

(5) The matters specified under subsection (4) may differ as between applicants, or different classes, categories or descriptions of applicants.

(6) An application under this section may be made in relation to a person not yet established under the Offshore Companies Act 1990 but will be so established in the event of such person obtaining a licence, and in such event the requirements of subsection (1) may be varied by the Bank as it deems appropriate.

7. (1) Every applicant for a licence to carry on business as offshore insurance manager, offshore underwriting manager or offshore insurance broker shall satisfy the Minister that—

Application for licence to carry on offshore insurance-related activities.

- (a) the controller, director and chief executive officer of the applicant are fit and proper persons; and
- (b) the applicant is able to maintain sufficient funds to cover its expenses of operations and management in the Federal Territory of Labuan for at least six months.

(2) Every application for a licence to carry on or transact any business as an offshore insurance manager, offshore underwriting manager or offshore insurance broker shall—

- (a) be made in writing and be submitted to the Bank;
- (b) state the nature of the business to be carried on under the licence; and
- (c) be accompanied with such documents, statements and information relating to such applicant as are specified in paragraph (e) of subsection (3) of section 6.

(3) The Bank may require from the applicant such other information or documents as may be specified by the Bank for the purpose of determining the application.

(4) The matters specified under subsection (3) may differ as between applicants, or different classes, categories or descriptions of applicants.

8. The Bank shall, on an application having been duly made in accordance with section 6 or 7 and after being provided with all such information and documents as it may require, consider the application and make a recommendation to the Minister as to whether the licence should be granted or refused and, if a licence is granted, the conditions, if any, to be imposed on the licensee.

Bank's recommendation on an application for a licence.

- Grant of licence. 9. (1) Upon receiving an application for a licence, and the recommendation of the Bank under section 8, the Minister may grant a licence, with or without conditions, or refuse to grant a licence.
- (2) Where the Minister refuses to grant a licence, the Bank shall immediately notify the applicant in writing of his refusal and shall not be required to furnish any reasons for the refusal to the applicant.
- Publication of Hst of all licensees. 10. The Bank shall cause to be published in *the Gazette* not later than the 31st March in each year a list, in such form as may be determined by the Bank, of all licensees whose licences are valid as at the 31st December of the preceding year.
- Revocation of licence. 11. (1) The Minister may, on the recommendation of the Bank, revoke any licence if he is satisfied that—
- (a) the licensee has contravened any condition imposed under the licence, the licensee's constituent documents or any provision of this Act; or
 - (b) the Bank has, either in connection with the application for the licence, or at any time after the grant of the licence, been provided with false or misleading information, document or declaration by or on behalf of the licensee.
- (2) The Minister shall revoke a licence if he is satisfied that—
- (a) a winding up order has been made against the licensee; or
 - (b) a resolution for the licensee's voluntary winding up has been passed.
- (3) A revocation of a licence under this section shall take effect on the date the decision of the Minister is communicated to the licensee.
- (4) The Bank shall, as soon as practicable, publish in the *Gazette* a notice of every revocation of a licence under this section but any delay in publishing such notice or failure to publish such notice shall not in any manner affect the validity of such revocation.

12. (1) A licensee may surrender his licence by forwarding it to the Bank with a written notice of its surrender. Surrender of licence.

(2) The surrender of a licence under subsection (1) shall take effect on the date the Bank receives the licence.

(3) The Bank shall, as soon as practicable, publish in the *Gazette* a notice of every surrender of licence under this section but any delay in publishing such notice or failure to publish such notice shall not in any manner affect the validity of such surrender.

13. (1) Where the revocation of a licence under section 11 or the surrender of licence under section 12 has taken effect, the licensee shall, as from the date such revocation or surrender takes effect, cease to transact any further business. Consequences of revocation or surrender of licence.

(2) Notwithstanding subsection (1), where a licensee continues to exist as a corporation after the revocation of its licence has taken effect, the Minister may, on the recommendation of the Bank, authorize in writing such licensee to continue to transact its business activities to such extent and for such duration as the Minister may specify in the authorization for the purposes of the winding up of its affairs or for the purposes of meeting the claims of its policy owners, other customers or creditors.

(3) Every licensee whose licence has been revoked or surrendered shall continue to be subject to the provisions of this Act as long as its liabilities remain unsatisfied or not otherwise provided for.

14. (1) Every offshore insurer which is an offshore company shall, prior to the making of any amendment or alteration to any of its constituent documents, or prior to any change of its controller, director or chief executive officer, furnish to the Bank particulars in writing of any such proposed amendment, alteration or change, for the approval of the Bank. Notification of change of information.

(2) Every offshore insurer which is a foreign offshore company or a branch of a Malaysian insurer shall, prior to the making of any amendment or alteration to any of its constituent documents, or prior to any change of its controller, director or chief executive officer, notify the Bank in writing of any such amendment, alteration or change.

(3) Every Hcensee shall iminediately notify the Bank of any amendment or alteration to any information which had been furnished to the Bank in connection with the application for the licence.

Annual
licence fee.

15. Every licensee shall, on or before every 15th day of January during the currency of the licence, pay to the Bank the annual licence fee as prescribed in the Second Schedule in respect of each licence held.

PART IV

PINANCIAL REQUIREMENTS AND DUTIES OF AND RESTRICTIONS ON LICENSEES

Appointment
of auditor
and actuary.

16. (1) Every licensee shall appoint an auditor for the purposes of this Act.

(2) Every offshore insurer carrying on life insurance business shall appoint an actuary for the purposes of this Act.

Margin of
solvency

17. (1) Every offshore insurer shall ensure that the realizable value of its assets exceeds the amount of its liabilities by a margin (hereinafter referred to as "the margin of solvency") which is equivalent to or more than—

- (a) the amount of the working funds stipulated under subsection (1) of section 6; or
- (b) twenty per centum of the net premium income for the preceding year in respect of the general insurance business of the offshore insurer, or

three per centum of the actuarial valuation of the liabilities for life insurance business as at the last valuation date in respect of the life insurance business of the offshore insurer,

whichever is the greater.

(2) If the margin of solvency of an offshore insurer falls below the amount stipulated under subsection (1), the offshore insurer shall submit to the Bank within thirty days of the deficiency in the margin of solvency becoming known, or such longer period as the Bank may permit, its short-term financial scheme to make good the deficiency and shall, if the Bank considers the scheme inadequate, propose modifications to it.

(3) The offshore insurer shall, within the time limit specified by the Bank, implement such scheme under subsection (2) as may be approved by the Bank.

(4) Where an offshore insurer carries on both life insurance business and general insurance business, subsection (1) shall have effect as if any reference to the margin of solvency of the offshore insurer is a reference to the higher of—

(a) the working funds; or

(b) the aggregate of twenty per centum of the net premium income for the preceding year in respect of the general insurance business of the offshore insurer and three per centum of the actuarial valuation of liabilities as at the last valuation date in respect of the life insurance business of the offshore insurer.

(5) The margin of solvency in the case of a licensee which carries on offshore captive insurance business shall be its working funds.

18. (1) Every offshore insurer shall keep the accounts and funds in respect of its offshore insurance business separate from its other funds.

Separate accounts to be kept by offshore insurer.

(2) Every offshore insurer which carries on both life insurance business and general insurance business shall

keep the accounts and funds in respect of its life insurance business separate from the accounts and funds in respect of its general insurance business.

(3) Every offshore insurer which is a branch of a Malaysian insurer shall keep the accounts in respect of its offshore insurance business separate from the accounts in respect of its domestic insurance business carried on in the Federal Territory of Labuan.

Submission
of financial
statements.

19. (1) Every offshore insurer shall, within six months after the close of each financial year or such shorter period as the Bank may approve, submit to the Bank, in respect of its entire offshore insurance operations carried on in or from the Federal Territory of Labuan, four copies each of its audited annual balance sheet, profit and loss account, revenue account and, in respect of its life insurance business, a report setting out the actuarial valuation of its assets and liabilities.

(2) Every offshore insurer shall submit to the Bank four copies each of the documents mentioned in subsection (1) as approved in accordance with its constituent documents as soon as practicable after such approval.

(3) Every offshore insurer which is a foreign offshore company shall, in addition to the financial statements which are required to be submitted to the Bank under subsection (1), also submit each year a certified copy of its latest audited annual balance sheet in respect of its entire operations both in and outside the Federal Territory of Labuan within three months of its being filed with the regulatory authorities in its country of establishment or origin.

(4) Every licensed offshore insurance manager, licensed offshore underwriting manager and licensed offshore insurance broker shall, within six months after the close of each financial year or such further period as the Bank may approve, submit to the Bank four copies each of its audited annual balance sheet and profit and loss account.

20. (1) Without the prior written consent of the Bank— Subsidiaries and offices of licensee.
- (a) no licensee shall open any office or acquire or establish any subsidiary in Malaysia;
- (b) no Malaysian offshore insurer shall open any office or acquire or establish any subsidiary outside Malaysia.

(2) No offshore insurer shall carry on offshore insurance business in or from any place in Malaysia other than the Federal Territory of Labuan.

21. (1) No offshore insurer shall carry on any business activities in the Federal Territory of Labuan or elsewhere from its office in the Federal Territory of Labuan other than its offshore insurance business or business activities in connection with or for the purposes of such offshore insurance business. Restriction on business by offshore insurer.

(2) Notwithstanding the definition of "offshore insurance business" and notwithstanding subsection (1), an offshore insurer may carry on the reinsurance of domestic insurance business, including the reinsurance of domestic insurance business transacted in the Malaysian currency.

(3) No offshore insurer shall act on behalf of another offshore insurer as an offshore insurance manager or offshore underwriting manager unless such first-mentioned offshore insurer has been granted a licence to carry on business as offshore insurance manager or offshore underwriting manager, as the case may be.

22. (1) No licensed offshore insurance manager shall provide any services other than administrative services and no licensed offshore underwriting manager shall provide any services other than underwriting services. Restrictions on and duties of offshore insurance manager, offshore underwriting manager and offshore insurance broker.

(2) No licensed offshore insurance manager shall provide administrative services and no licensed offshore underwriting manager shall provide underwriting services in or from the Federal Territory of Labuan to any person not licensed under this Act or to any business carried on by an insurer registered under the Insurance Act 1963. Act 89.

(3) No licensed offshore insurance broker shall act as a broker in respect of domestic insurance business, but a licensed offshore insurance broker may handle the reinsurance of domestic insurance business, including the reinsurance of domestic insurance business transacted in the Malaysian currency.

(4) Every licensed offshore insurance manager or licensed offshore underwriting manager who acts on behalf of an offshore insurer shall maintain its own funds separate from the funds of the offshore insurer and shall not apply the funds of such offshore insurer to meet any of its expenses or liabilities other than in respect of the offshore insurance business.

List of offshore insurers to be supplied by offshore insurance manager and offshore underwriting manager.

23. Every licensed offshore insurance manager and licensed offshore underwriting manager shall, within thirty days from the close of its financial year, submit to the Bank, in such form and manner as may be specified by the Bank, a list of all offshore insurers for whom such licensed offshore insurance manager provides administrative services or licensed offshore underwriting manager provides underwriting services.

Conduct of business.

24. (1) Every offshore insurer shall—

- (a) conduct its business with due diligence and care in accordance with sound insurance principles;
- (b) maintain adequate and proper records and books of accounts at its office within the Federal Territory of Labuan;
- (c) follow accepted international accounting standards or such other standards as may be approved by the Bank;
- (d) register all assets in its name, and in the case of bearer shares, hold them in safe custody; and
- (e) indicate clearly on its letterhead, stationery and other documents containing its name that it is licensed under this Act, together with the number of its licence.

(2) No offshore insurer shall advertise or publish, in any form, information which is untrue or which is likely to mislead another person in relation to the laws of the Federal Territory of Labuan or that offshore insurer's financial status or insurance or reinsurance plans or any other matter in respect of its offshore insurance business.

(3) The provisions of paragraphs (a), (b) and (e) of subsection (1) and the provisions of subsection (2) shall apply *mutatis mutandis* to a licensed offshore insurance manager, licensed offshore underwriting manager and licensed offshore insurance broker.

25. No director or officer of a licensee shall disclose to any person, or make a record for any person of, any information or document relating to the affairs or account of any policy owner except when lawfully required to do so under this Act or by any court, or with the consent of the policy owner or his personal representative, or in the course of placement of reinsurance business.

Confidentiality
on the part
of licensee.

PART V

TRANSFER AND WINDING UP

26. (1) The whole or any part of the offshore insurance business of an offshore insurer (hereinafter referred to as the "transferor") may be transferred to another insurer (hereinafter referred to as the "transferee") if the transfer is effected by a scheme (hereinafter referred to as the "scheme") under this section.

Transfer of
offshore
insurance
business.

(2) A scheme under this section may provide for the offshore insurance business of the transferor to be transferred to a person who is not an insurer or who is not yet in existence if it is expressly provided in the scheme that such scheme shall only come into operation upon such person becoming an insurer.

(3) A scheme under this section may include provisions for matters incidental to the transfer thereby effected and provisions for giving effect to that transfer, and in particular may include provisions for—

- (a) any property, rights or liabilities of the transferor (including assets comprising the insurance fund) to vest, by virtue of the scheme and without further or other assurance, in the transferee;
- (b) the registration by the transferee of policies transferred, for the amounts to be included in respect of those policies in the transferee's insurance fund and for other matters arising under this Act out of the transfer;
- (c) the continuation by or against the transferee of any legal proceedings pending by or against the transferor;
- (d) the dissolution, without the winding up, of the transferor; or
- (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.

(4) A scheme under this section shall be of no effect unless it is first approved by the Bank and subsequently confirmed by the High Court.

(5) The following provisions shall apply in respect of every scheme;

- (d) the transferor shall submit to the Bank a copy of the scheme together with copies of actuarial and other reports, if any, setting out the terms of the scheme;
- (h) the transferor shall submit to the Bank a report sufficient to indicate the opinion of the actuary on the likely effects of the scheme on policy owners of the parties to the scheme in respect of any transfer of life insurance business;

- (c) each of the parties to the scheme shall, not later than one month after a copy of the scheme is submitted to the Bank, cause to be published in not less than two daily newspapers approved by the Bank a notice, containing such particulars as may be prescribed, of the intention to make an application to the High Court for the confirmation of the scheme;
- (d) each of the parties to the scheme shall, for a period of fifteen days after the publication of the notice mentioned in paragraph (c), keep a copy of the scheme at its office in the Federal Territory of Labuan and such copy shall be open to inspection by all of its members and policy-owners who are affected by the scheme; and
- (e) each of the parties to the scheme shall furnish a copy of the scheme and the report mentioned in paragraph (b) to any person who asks for such copy at any time before the High Court confirms the scheme.

(6) The Bank may cause a report on a scheme to be made by an actuary independent of the parties to the scheme and, if it does so, shall cause a copy of the report to be sent to each of such parties.

(7) Copies of any scheme and any such report as are mentioned in subsections (5) and (6), or summaries thereof approved by the Bank, shall, except so far as the High Court upon application made in that behalf otherwise directs, be transmitted by each of the parties to the scheme to each of its policy-owners affected by the scheme.

(8) The parties to a scheme shall be jointly and severally liable to reimburse to the Bank any costs or expenses incurred by the Bank under this section in connection with the scheme; and the scheme shall include provisions as to how the liability is to be borne as between such parties:

Provided that where the High Court has made any order as to costs, the costs to be reimbursed to the Bank shall not exceed the amount specified in such order.

(9) The Bank may approve or reject a scheme.

(10) After a scheme has been approved by the Bank under subsection (9), an application may be jointly made to the High Court by way of *ex parte* originating summons by the parties to the scheme for confirmation of such approved scheme.

(11) An application to the High Court with respect to any matter connected with a scheme may, at any time before confirmation of the scheme by the High Court, be made by the Bank or by any person who in the opinion of the High Court is likely to be affected by the scheme.

(12) The High Court may confirm a scheme with or without modifications or may refuse to confirm the scheme.

(13) A scheme which has been confirmed by the High Court under subsection (12) shall have effect according to its tenor notwithstanding anything in the preceding sections of this Act and shall be binding on any person thereby affected.

(14) On confirmation of the scheme, each of the parties to the scheme shall, unless it is an unincorporated company, file a copy of the scheme with the Registrar of Companies and with the regulatory authorities in its country of establishment or origin.

(15) The transferee shall, within one month after the scheme takes effect, lodge with the Bank—

- (a) statements of the assets and liabilities of the each of the parties to the scheme, as at the time immediately before the transfer, signed on behalf of such party;
- (b) a copy of the scheme as confirmed by the High Court and a sealed copy of the order of the High Court confirming the scheme; and
- (c) a declaration made by the chairman of the board of directors of the transferee, or by its chief executive officer in the Federal Territory of Labuan, fully setting out every payment made or to be made to any person on account of the

transfer, and stating that, to the best of his belief, no other payment beyond those so set out has been, or is to be, made on account thereof by or with the knowledge of the parties to the scheme.

(16) In this section, "parties to the scheme" means the transferor and the transferee, and "parties to a scheme" shall be construed accordingly.

27. (1) The Bank shall be a party to any petition for the winding up of any offshore insurer. Winding up of offshore insurer.

(2) The Bank may present a petition for the winding up of an offshore insurer or its offshore insurance business within the Federal Territory of Labuan on the grounds of its inability to meet any liabilities or when it suspends payment to its creditors.

(3) For the purposes of subsections (1) and (2), the court shall have regard to the interests of the policy owners, other customers and creditors of the offshore insurer.

(4) In any winding up of an offshore insurer, or when an offshore insurer becomes insolvent, there shall be paid from the assets in the insurance fund or other funds of the offshore insurer in priority to all other unsecured debts—

- (a) firstly, the costs and expenses of the winding up, including the costs of the liquidator or the receiver;
- (b) secondly, all wages or salary (whether or not earned wholly or in part by way of commission), including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment, of any employee not exceeding one thousand five hundred ringgit or such other amount as may be prescribed from time to time in respect of services rendered by him to the offshore insurer within a period of four months before the commencement of the winding up;

- (c) thirdly, all amounts due in respect of workers' compensation, under any written law relating to workers' compensation, which accrued before the commencement of the winding up;
 - (d) fourthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death to any other person in his right, which accrued in respect of any period before the commencement of the winding up;
 - (e) fifthly, all amounts due in respect of contributions payable during the twelve months next before the commencement of the winding up by the offshore insurer as the employer of any person under any written law relating to employees' superannuation or provident funds or under any scheme of superannuation or retirement benefit which is an approved scheme under any federal law relating to income tax;
 - (f) sixthly, the amount of all federal tax assessed under any written law before the date of the commencement of the winding up or assessed at any time before the time fixed for the proving of debts has expired;
 - (g) seventhly, all the liabilities and expenses attributable to its offshore insurance business of the class for which the particular insurance fund is created; and
 - (h) eighthly, after the liabilities and expenses attributable to the offshore insurance business of the class to which the particular insurance fund referred to in paragraph (g) is applicable have been fully met, the amounts required to make good any deficit in the other insurance funds.
- (5) The debts in each class specified in subsection (4) shall rank in the order therein specified but debts of the same class shall rank equally between themselves, and shall be paid in full, unless the assets in the insurance fund of the offshore insurer are insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(6) The provisions of this section shall have effect notwithstanding anything inconsistent therewith or contrary thereto in any written law other than this Act.

PART VI

GENERAL

28. (1) Where the Bank has reason to believe that any licensee has contravened any of the provisions of this Act or any of the conditions imposed upon such licensee, the Bank may, with the written authorization of the Governor, request for any information or clarification to be furnished to it within a specified time.

Further information or clarification may be required by the Bank.

(2) Where, upon examination of any information or clarification furnished to the Bank under subsection (1), it appears necessary to do so, the Bank may authorize an officer or appoint a representative of the Bank to inspect the accounts, books and other records of the licensee at the licensee's office in the Federal Territory of Labuan.

(3) Every director or officer of a licensee, and every licensed offshore insurance manager or licensed offshore underwriting manager acting on behalf of an offshore insurer, shall extend his co-operation and assistance to the Bank to facilitate any inspection carried out under subsection (2).

29. Any person who—

(a) contravenes—

- (i) any provision of this Act; or
- (ii) any specification or requirement made, or any order in writing, direction, instruction, or notice given, or any limit, term, condition or restriction imposed, in the exercise of any power conferred under, pursuant to, or by virtue of, any provision of this Act; or

Offences and penalties.

- (b) being a person required by or under this Act to provide any information, document or declaration, provides any information, document or declaration which he knows or has reason to believe to be false or misleading,

shall be guilty of an offence and shall on conviction be liable to imprisonment not exceeding three years or a fine not exceeding five hundred thousand ringgit or both and, in the case of a continuing offence, shall, in addition, be liable to a fine not exceeding five thousand ringgit for each day the offence continues to be committed.

Power of
Governor to
compound
offences.

30. (1) The Governor may, with the concurrence of the Minister, in a case where he deems fit and proper to do so, compound any offence committed by any person under section 29, by making a written offer to such person to compound the offence by paying to the Governor, within such time as may be specified in the offer, such sum of money as may be specified in the offer, which shall not exceed fifty per centum of the amount of the maximum fine (including the daily fine, if any, in the case of a continuing offence) to which that person would have been liable if he had been convicted of the offence.

(2) Any monies paid to the Governor pursuant to the provisions of subsection (1) shall be paid into and form part of the Federal Consolidated Fund.

(3) An offer under subsection (1) may be made at any time after the offence has been committed but before any prosecution for it has been instituted and, where the amount specified in the offer is not paid within the time specified in the offer or during such extended period as the Governor may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (1), no prosecution shall thereafter be instituted in respect of such offence against the person to whom the offer to compound was made.

31. The Minister may, on the recommendation of the Bank, on an application in writing from an applicant for a licence or a licensee, and on being satisfied that it is desirable to do so in the interest of offshore insurance business in Malaysia, exempt such applicant or licensee from any of the provisions of this Act and may, in granting such exemption, impose such terms and conditions as he thinks fit.

Power to grant exemption.

32. The Minister may, on the recommendation of the Bank, make regulations for carrying into effect the purposes and provision of this Act and without prejudice to the generality of the foregoing, may make regulations—

Power to make regulations

- (a) prescribing anything by this Act required to be prescribed;
- (b) exempting any person or class of persons or business or class of business from any provisions of this Act; or
- (c) prescribing forms to be used for any of the purposes of this Act.

33. (1) The Government of Malaysia, the Bank, officers of the Government of Malaysia and officers of the Bank shall not be subject to any action, claim or demand by or liability to any person in respect of anything done or omitted to be done in good faith in pursuance of or in execution or intended execution of, or in connection with the execution or intended execution of, any power conferred by this Act.

Indemnity.

(2) For the purposes of this section, "officers of the Government of Malaysia" includes the Minister and any public officer and "officers of the Bank" includes the Governor and Deputy Governor and any director of the Bank.

34. No licensee shall, in respect of any business carried on by such licensee, be subject to any of the provisions of the Insurance Act 1963 or the T a k a f u l 1984, or any re-enactment thereof.

Non-application of Insurance Act 1963 and Takaful Act 1984.
Act 89.
Act 312.

Application
of Offshore
Companies
Act 1990
and
Companies
Act 1965.
*Act
Act 125.*

35. (1) In addition to the provisions of this Act—

- (a) the Offshore Companies Act 1990 shall apply to a licensee which is an offshore company or a foreign offshore company; and
- (b) the Companies Act 1965 shall apply to a licensee which is a branch of a Malaysian insurer.

(2) Where there is any conflict or inconsistency between the provisions of the Acts referred to in subsection (1) and this Act in their respective application to the licensee the provisions of this Act shall prevail.

Apphcation
of Exchange
Control
Act 1953.
Act 17.

36. Nothing contained in this Act shall in any manner affect, or derogate from, the provisions of the Exchange Control Act 1953, and in the application of any provision of this Act to any person, such provision shall apply subject to the provisions of that Act and, in the event of any conflict or inconsistency between any provision of this Act and that Act, the provisions of that Act shall prevail.

FIRST SCHEDULE

RECOGNISED PROFESSIONAL ASSOCIATIONS IN RELATION TO THE QUALIFICATIONS OF ACTUARIES

(Section 2(1))

The Institute of Actuaries in England
The Faculty of Actuaries in Scotland
The Society of Actuaries in the United States of America
The Canadian Institute of Actuaries
The Australian Institute of Actuaries

SECOND SCHEDULE

ANNUAL LICENCE FEES

(Section 15)

Offshore insurer carrying on—

- | | |
|---|----------------|
| (i) general insurance business | Ringgit 30,000 |
| (ii) life insurance business | Ringgit 30,000 |
| (iii) life and general insurance business | Ringgit 60,000 |
| (iv) captive insurance business | Ringgit 10,000 |

Offshore insurance manager	Ringgit 5,000
Offshore underwriting manager	Ringgit 5,000
Offshore insurance broker	Ringgit 5,000

EXPLANATORY STATEMENT

This Bill seeks to introduce new laws for the licensing and regulation of persons carrying on offshore insurance business and offshore insurance-related activities.

2. Part of the Bill contains preliminary matters. *Clause 1* contains the short title. It also seeks to give the Minister power to appoint the date of coming into operation of the proposed Act. *Clause 2* contains the definitions of various terms used in the Bill.

3. Part II of the Bill contains provisions relating to the administration of the proposed Act. *Clause 3* sets out the functions, powers and duties of the Central Bank of Malaysia (in this Statement referred to as the "Bank"). *Clause 4* seeks to prohibit the Bank, its officers and its representatives from disclosing any information obtained while the Bank, such officers and such representatives are performing their functions under the proposed Act.

4. Part III of the Bill deals with the licensing of offshore insurance business and offshore insurance-related activities.

Clause 5 seeks to prohibit any person from carrying on or transacting offshore insurance business or offshore insurance-related activities unless that person is licensed under the proposed Act and, in the case of offshore insurance business, that person is an offshore company, a foreign offshore company or a branch of a Malaysian insurer.

Clause 6 deals with applications for licence to carry on offshore insurance business, while *clause 7* deals with applications for licence to carry on offshore insurance-related activities.

Clause 8 seeks to allow the Bank to consider applications for licence and to make recommendations to the Minister.

Clause 9 seeks to empower the Minister to grant or to refuse to grant a licence.

Clause 10 seeks to require the Bank to publish annually a list of all licensees holding valid licences.

Clause 11 seeks to empower the Minister to revoke any licence on the grounds set out in *subclauses (1) and (2)*. *Subclause (4)* seeks to require the Bank to publish in the *Gazette* a notice of every revocation of a licence.

Clause 12 seeks to allow a licensee to surrender his licence and seeks also to require the Bank to publish in the *Gazette* a notice of every surrender of a licence.

Clause 13 sets out the consequences of a revocation or surrender of a licence.

Clause 14 seeks to require every offshore insurer which is an offshore company to obtain the approval of the Bank for, and to require every offshore insurer which is a foreign offshore company or a branch of a Malaysian insurer to notify the Bank of, any proposed amendment to its constituent documents or any change of its controller, director or chief executive officer.

Clause 15 seeks to require every licensee to pay annual fees to the Bank.

5. Part IV of the Bill deals with the financial requirements and duties of licensees as well as restrictions on licensees.

Clause 16 seeks to require every licensee to appoint an auditor. It also seeks to require every offshore insurer to appoint an actuary, in addition to an auditor, in relation to its life insurance business.

Clause 17 seeks to require every offshore insurer to maintain a certain margin of solvency.

Clause 18 seeks to require an offshore insurer to keep separate accounts and funds in respect of the different types of offshore insurance business carried on by it and in respect of its other funds.

Clause 19 seeks to require every licensee to submit its audited annual balance sheet and profit and loss account to the Bank. In addition, an offshore insurer has also to submit its revenue account and, in relation to its life insurance business, a report setting out the actuarial valuation of its assets and liabilities.

Clause 20 contains certain prohibitions on the opening of offices and the acquisition or establishment of subsidiaries by licensees. It also seeks to prohibit an offshore insurer from carrying on offshore insurance business from any place outside the Federal Territory of Labuan.

Clauses 21 and *22* seek to impose certain restrictions on the business activities which can be carried on by an offshore insurer or a licensed offshore insurance manager, licensed offshore underwriting manager or licensed offshore insurance broker.

Clause 23 seeks to require every licensed offshore insurance manager and licensed offshore underwriting manager to submit to the Bank a list of all offshore insurers for whom such manager provides administrative or underwriting services, as the case may be.

Clause 24 sets out several requirements imposed on every offshore insurer in the conduct of its business. One example is that the offshore insurer is required to conduct its business with due diligence and care in accordance with sound insurance principles.

Clause 25 seeks to prohibit the directors and officers of a licensee from disclosing any information relating to the affairs and account of a policy owner.

6. Part V deals with the transfer of an offshore insurance business and the winding up of an offshore insurer.

Clause 26 seeks to allow an offshore insurer to transfer its offshore insurance business to another insurer. However, such transfer may be effected only by a scheme which is approved by the Bank and confirmed by the High Court.

Clause 27 deals with the winding up of an offshore insurer and matters relating thereto.

7. Part IV deals with general matters.

Clause 28 seeks to empower the Bank to require a licensee to furnish further information or clarification if the Bank has reason to believe that such licensee has contravened any of the provisions of the proposed Act or any of the conditions imposed upon such licensee.

Clause 29 deals with offences and penalties while *clause 30* seeks to empower the Governor to compound offences.

Clause 31 seeks to empower the Minister to grant exemptions from the provisions of the proposed Act.

Clause 32 seeks to empower the Minister to make regulations.

Clause 33 contains indemnity provisions,

Under *clause 34* a licensee would not be subject to the Insurance Act 1963 and the Takaful Act 1984.

Clause 35 deals with the application of the Offshore Companies Act 1990 and Companies Act 1965 and *clause 36* deals with the application of the Exchange Control Act 1953.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN. (U²) 1612.]

