



NEGARA BRUNEI DARUSSALAM

TAMBAHAN KEPADA

WARTA KERAJAAN

BAHAGIAN II

Disiarkan dengan Kebenaran

SUPPLEMENT TO

GOVERNMENT GAZETTE

PART II

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CONTENTS

Notification Numbers	Subjects	Pages
S 48	Constitution of Brunei Darussalam — Insurance Order, 2006	991
S 49	Insurance Order, 2006 — Insurance Regulations, 2006	1075

**The following Notifications are published for general information by Command of
His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam.**

No. S 48

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))**

INSURANCE ORDER, 2006

ARRANGEMENT OF SECTIONS

5 28/07
Section/

PART I

PRELIMINARY

1. Citation, commencement and long title.
2. Interpretation.
3. Classification of insurance business and construction of references to matters connected with insurance.

PART II

APPOINTMENT OF AUTHORITY, AUTHORISED PERSONS ETC.

4. Appointment.

PART III

CONDUCT OF INSURANCE BUSINESS

General restriction on insurers

5. Requirements for carrying on business as insurer.
6. Holding out as a registered insurer.
7. Use of word "insurance".
8. Examination of persons suspected of carrying on insurance business.

Registration of insurers

9. Registration by Authority.

10. Requirements before registration.
11. Conditions of registration.
12. Registration and annual fees.
13. Cancellation of registration.
14. Effects of cancellation of registration.
15. Prohibition of investment-linked insurance business or annuity insurance business without approval.

Deposits, register of policies, insurance funds and reinsurance

16. Deposits.
17. Bank covenants in lieu of deposits.
18. Requirement in respect of insurance products and policies.
19. Register of policies.
20. Establishment and maintenance of insurance funds and allocation of surplus.
21. Paid-up capital and margins of solvency.
22. Form, investment and situation of assets.
23. Requirements as to assets of insurance funds.
24. Restrictions on payment of dividends and grant of advance, loan and credit facility.
25. Disclosure of interest by directors.
26. Submission of statement and liquidation of transaction by insurer.
27. Requirements as to documents evidencing title to assets of insurance funds.
28. Enforcement of requirements as to registers of policies and insurance funds and payment of levies by insurers.
29. Reinsurance.

Miscellaneous Requirements As to Conduct of Business

30. Payment in Brunei Darussalam currency of policy moneys under life policies.
31. Assumption of risk by insurer and collection and refund of premium.
32. Appointment of actuary.
33. Regulation of premiums under life policies.
34. Notice regarding proof of age.
35. Mis-statement of age and non-avoidance of policy.
36. Objection to life policy.
37. Control of form of proposals, policies and brochures.
38. Misleading statement, promise, or forecast inducing person to enter into contract of insurance.
39. Requirements as to prospectuses and statements of capital.
40. Opening of counter or branch office.
41. Approval of proposed managing director, director, chief executive or principal officer of insurer.
42. Approval of person proposing to become controller of insurer where section 41(1) does not apply.
43. Disqualification of managing director, director etc.
44. Duty to notify change of controller, managing director, director, chief executive or principal officer.
45. Power of Authority to require information, to inspect books etc.

Insurance Intermediaries

46. Insurance agents to act only for insurers entitled to carry on business in Brunei Darussalam.
47. Application of section 45.

48. Registration of insurance agents.
49. Pre-contract disclosure by insurance intermediary.
50. Insurance intermediary in insurance transactions.
51. Insurance brokers to act only for insurers entitled to carry on business in Brunei Darussalam.
52. Application of sections 40 to 45.
53. Registration of insurance brokers.
54. Insurance brokers in insurance transactions.
55. Insurance broking premium accounts.
56. Registration of adjusters.
57. Examination of person suspected of acting, holding out as insurance broker, insurance intermediary or adjuster.
58. Saving for validity of policies.

PART IV

RETURNS, INSPECTIONS AND INVESTIGATIONS, WINDING-UP AND TRANSFERS OF BUSINESS

Returns

59. Annual accounts and audit.
60. Actuarial investigations and reports as to life business.
61. Power to require returns under section 59 or 60 to be rectified.
62. Additional provisions as to return under section 59 or 60.
63. Returns of changes in registration particulars.

Inspections and investigations

64. Inspections and investigations of affairs of insurers.
65. Powers of Authority to issue directions.

Winding-up

66. General provisions as to winding-up.

Transfers of business

67. Special provision for insurers directed to cease insurance business.
68. Priority of claim of policy owners.
69. Policy Owners' Protection Fund.
70. Schemes for transfer of business.
71. Confirmation of schemes.
72. Documents to be filed when scheme confirmed.

PART V

MISCELLANEOUS AND GENERAL

Administration and enforcement

73. Exemption.
74. Annual reports.
75. Statistics.
76. Service of notices.
77. Secrecy and penalty.
78. General provisions as to offences.
79. Prosecution.

Miscellaneous amendments of law

80. Insurable interest required for life insurance.
81. Capacity of infant to insure.
82. Particulars to be set forth in life policy.

- 83. Life policy moneys to be paid without deduction.
- 84. Life policies (surrenders; non-payment of premiums; paid-up policies).
- 85. Payment of life policy and personal accident policy claims without probate etc.
- 86. Knowledge of and statement by authorised agent to be deemed knowledge and statement by insurer.
- 87. Application of other laws.

Supplementary

- 88. Power to issue guidelines.
- 89. Regulations.
- 90. Transitional provisions.

FIRST SCHEDULE	—	DEFINITION OF "ASSOCIATE", "PARENT" AND SUBSIDIARY UNDERTAKINGS
SECOND SCHEDULE	—	DEFINITION OF INSURANCE TERMS
THIRD SCHEDULE	—	BRUNEI DARUSSALAM ASSETS AUTHORISED FOR INSURANCE FUNDS
FOURTH SCHEDULE	—	RETURNS BY INSURERS

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))**

INSURANCE ORDER, 2006

In exercise of the power conferred by Clause (3) of Article 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Insurance Order, 2006 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notice in the *Gazette*.

(2) The Minister may appoint different dates for the commencement of different provisions of this Order or for different purposes of the same provision.

(3) The long title of this Order is "An Order to provide for the regulation of insurance business in Brunei Darussalam and for other purposes relating thereto or connected with insurance".

Interpretation.

2. (1) In this Order —

"accounting period", in relation to any insurer, means the period for which the insurer makes up the accounts of the insurance business carried on by him in Brunei Darussalam; but, unless in any particular case the Authority allows those accounts to be made up for a longer or shorter period, every accounting period for which those accounts have not been made up before the commencement of this Order shall be a period of 12 months beginning from the commencement of that business or from the end of the preceding accounting period, and "initial accounting period", in relation to any existing insurer, means the accounting period beginning with 1st. January, 2006, or, if the insurer has no such accounting period, the first accounting period beginning thereafter.

"actuary" means a Fellow of the Institute of Actuaries in England, a Fellow of the Faculty of Actuaries in Scotland, a Fellow of the Society

of Actuaries in America or a Fellow of the Canadian Institute of Actuaries, the Australian Institute of Actuaries, or any person holding an equivalent qualification and approved in writing by the Authority as an actuary for the purposes of this Order;

"adjuster" means any person who for compensation, fee, commission or salary investigates and negotiates settlement of claims arising under insurance contracts, solely on behalf of either the insurer or the insured;

"annuity" means a right to a series of periodical payments at intervals of one year or less under a contract with a life insurer;

"associate undertaking" shall be construed in accordance with Part I of the First Schedule;

"Authority" means such person as is appointed by His Majesty the Sultan and Yang Di-Pertuan under subsection (1) of section 4 to be the Authority for the purposes of this Order;

"commission" means an amount or a benefit in kind, whether expressed as a percentage of premium or not, agreed to be paid by an insurer to an insurance broker or insurance intermediary including introducer's fees;

"company" means a company incorporated or registered under the Companies Act (Chapter 39);

"controller" shall be construed in accordance with Part II of the First Schedule;

"existing" means existing immediately before the commencement of this Order;

"financial year", in relation to a registered insurer, means the period for which the registered insurer makes up the accounts of its business which shall be a period of 12 calendar months, calculated from the commencement of the business or from the end of the immediately preceding financial year as the case may be, or such longer or shorter period as the Authority in relation to a particular registered insurer, may approve on a particular occasion;

s 28/07

"insurance agent" means a person who does all or any of the following —

(a) solicits or obtains a proposal for insurance on behalf of an insurer;

(b) offers or assumes to act on behalf of an insurer in negotiating a policy;

(c) does any act on behalf of an insurer in relation to the issuance, renewal or continuance of a policy;

"insurance broker" means any company who, for compensation as an independent contractor, in any manner solicits, negotiates or procures insurance or the renewal or continuance thereof on behalf of an insured other than himself;

"insurance business" includes 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 render money and includes reinsurance business;

"insurance intermediary" means a person who, as an agent for one or more insurers or as an agent for insured or intending insured, arranges contracts of insurance;

"Minister" means the Minister of 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 reinsurance arranged in respect of such contracts of insurance or reinsurance;

"parent undertaking" shall be construed in accordance with Part II of the First Schedule;

"premium receipt book" includes any book or document held by the policy owner in which acknowledgements of receipts of premiums payable in respect of the policy are entered;

"principal officer" means a person, by whatever designation called, appointed by an insurer and charged with the responsibility of managing the affairs of the insurer;

"registered insurer" means an insurer which has been registered by the Authority under this Order;

"reinsurer's deposit" means an amount deposited with or retained by an insurer by way of security for the performance by the reinsurer of

contracts reinsuring liabilities of the insurer, and includes any similar amount retained by a branch of the insurer's business in Brunei Darussalam against a branch outside Brunei Darussalam (the head office of a business being for this purpose treated as a branch);

"statutory balance-sheet" and "statutory valuation" mean respectively a balance-sheet lodged with the Authority in order to comply with subsection (1) of section 59, and a valuation of which the results are shown in a valuation balance-sheet lodged with him on an actuarial investigation made in order to comply with subsection (1) of section 60. Any reference to the last statutory balance-sheet or to the last statutory valuation shall be construed as referring to that last prepared or made and not superseded by the arrival of the date as at which another is to be prepared or made. Any reference to there being shown in a statutory balance-sheet or on a statutory valuation a surplus of assets over liabilities of an insurance fund shall be construed accordingly by reference to the prescribed form of balance-sheet or valuation balance-sheet and to the rules to be followed under this Order and the regulations in preparing it;

"subsidiary undertaking" (and references to a subsidiary) shall be construed in accordance with Part III of the First Schedule;

"undertaking" shall be construed in accordance with Part III of the First Schedule;

s 28/07 "written premiums" means gross premiums during the accounting period in respect of Brunei Darussalam policies issued, and reinsurances accepted which are entered in the register, reduced by return^{of} premiums and premiums in respect of reinsurances on Brunei Darussalam policies ceded during the accounting period to an insurer registered under this Order, and relates only to general business.

(2) References in this Order to the date of commencement of this Order are to the date of commencement of the main substantive provisions of this Order.

Classification of insurance business and construction of references to matters connected with insurance.

3. (1) For the purposes of this Order, insurance business shall be divided into 2 classes —

(a) life business, which in addition to all insurance business concerned with life policies shall include, in the case of any insurer, any type of insurance business carried on as incidental only to the insurer's other life business; and

(b) general business, that is to say, all insurance business which is not life business.

(2) For the purposes of this Order, the reinsurance of liabilities under insurance policies shall be treated as insurance business of the class and type to which the policies would have belonged if they had been issued by the reinsurer.

(3) Notwithstanding anything in subsections (1) and (2), if the Authority is satisfied that any part of an insurer's business which belongs to a particular class or type of insurance business ought in the insurer's case to be treated as belonging to another class or type, the Authority may direct that it shall be so treated for the purposes of this Order.

(4) For the purposes of this Order, references to carrying on insurance business include carrying it on through an agent, or as agent; but "insurer" shall not include an insurance agent as such nor, in the case of a person who is both insurer and insurance agent, have references to business done as insurance agent.

(5) For the purposes of this Order, "insurer", means a person who carries on insurance business as an insurer; and references to carrying on insurance business, or any class of insurance business, in Brunei Darussalam mean the receipt of proposals for, or issuing of, policies in Brunei Darussalam or the collection or receipt in Brunei Darussalam of premiums on insurance policies.

(6) The operation, otherwise than for profit, of a scheme or arrangement relating to service in particular offices or employments, and having for its object or one of its objects to make provision in respect of persons serving therein against future retirement or partial retirement, or against future termination of service through death or disability, or against similar matters, shall not be treated for the purposes of this Order as carrying on the business of insurance.

S28/07

(7) The definitions set out in the Second Schedule shall have effect for the construction of references in this Order to policies of insurance, policy owners and policy moneys.

PART II

APPOINTMENT OF AUTHORITY, AUTHORISED PERSONS ETC.

Appointment.

4. (1) His Majesty the Sultan and Yang Di-Pertuan may, by notification published in the *Gazette*, appoint a person to be the Authority for the purposes of this Order.

(2) The Authority may authorise or appoint any person to assist in the exercise of the powers, duties and functions of the Authority under this Order, either generally or in any particular case.

(3) Any person appointed by the Authority under subsection (2) shall be deemed to be a public servant for the purposes of the Penal Code (Chapter 22).

PART III

CONDUCT OF INSURANCE BUSINESS

General restriction on insurers

Requirements for carrying on business as insurer.

5. (1) Subject to this Order, no person shall carry on any class of insurance business in Brunei Darussalam as insurer unless the person is registered as a company under the Companies Act (Chapter 39).

(2) No such company shall carry on life business or general business of insurance in Brunei Darussalam as insurer unless —

(a) it has been registered under this Order in respect of that class of business;

(b) it maintains a surplus of assets over liabilities of not less than such amount as may be prescribed;

(c) it has the deposit required by this Order in respect of it; and

(d) it is a member of an association of insurers approved by the Authority.

(3) For the purpose of paragraph (b) of subsection 2, the surplus of assets shall be in the form of cash or securities specified in the Third Schedule.

(4) For the purpose of this section, the value of assets and liabilities may be determined on a basis to be prescribed.

(5) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000, imprisonment for a term not exceeding 3 years or both, and in the case of a continuing offence to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.

Holding out as a registered insurer.

6. Where any company holds itself out to be a registered insurer in respect of life business or general business when it is not registered under this Order in respect of that business, the company shall be guilty of an offence, and every director, manager or officer of the company shall, unless he proves that the holding out by the company was made without his knowledge or consent, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000, imprisonment for a term not exceeding 3 years or both, and in the case of a continuing offence to a further fine not exceeding \$2,000 for every day during which the offence continues after conviction.

Use of word "insurance".

7. (1) No person other than an insurer registered under this Order shall, without the written consent of the Authority, use the word "insurance" or any of its derivatives in any language, or any other word indicating that such person carries on insurance business in the name, description or title under which it carries on business in Brunei Darussalam or make any representation to such effect in any bill head, letter, paper, notice or advertisement or in any other manner:

Provided that nothing in the section shall prohibit an association of insurers from using the words "insurance", "assurance" or "underwriter" or any of their derivatives in any language as part of its name or description of its activities.

(2) Every insurer and insurance intermediary registered under this Order shall in advertisement, letterhead, name board, brochure or other publication indicate after its name whether it is an insurer, insurance broker or insurance intermediary for an insurer.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

Examination of persons suspected of carrying on insurance business.

8. (1) Whenever the Authority has reason to suspect or believe that a person is carrying on insurance business without having been registered under this Order, he may call for or inspect the books, accounts and records of that person in order to ascertain whether or not that person has contravened any provisions of this Order.

(2) Any person who wilfully refuses to submit such books, accounts and records or to allow the inspection thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 12 months or both, and in the case of a continuing offence to a further fine not exceeding \$4,000 for every day during which the offence continues after conviction.

Registration of insurers

Registration by Authority.

9. (1) A person who desires to carry on insurance business in Brunei Darussalam as insurer shall apply in writing to the Authority for registration under this section and shall furnish such documents and information as may be prescribed or as the Authority may in the particular case require.

(2) Upon receiving and after considering an application under subsection (1), the Authority may, subject to section 10, register the company with or without conditions in respect of life insurance or general business, or may refuse to register it.

(3) The Authority shall cause notice of any registration of a Brunei Darussalam insurer to be published in the *Gazette*.

Requirements before registration.

10. (1) The Authority shall not register any applicant under section 9, unless the applicant —

(a) is a company as defined in the Companies Act (Chapter 39) or a company incorporated outside Brunei Darussalam which has an established place of business in Brunei Darussalam;

§ 28/07 (b) ~~it~~ has a surplus of assets over liabilities of not less than such amount as may be prescribed; and

(c) has made the deposit under section 16.

(2) For the purpose of paragraph (b) of subsection (1), different amounts may be prescribed for different classes of insurance business or for different types of insurers.

Conditions of registration.

11. (1) The Authority may —

(a) impose conditions of registration on an insurer; or

(b) add to, vary or revoke any conditions of registration of an insurer who is registered under this Order in order for it to remain so registered.

(2) Any insurer which fails to comply with any of the conditions imposed by the Authority under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

Registration and annual fees.

12. (1) Every registered insurer shall pay such registration and annual fees as may be prescribed.

(2) Different annual fees may be prescribed for different classes of insurance business or for different types of registered insurers.

Cancellation of registration.

13. (1) The Authority may by order, at the request of the insurer or on any of the grounds set out in subsection (2), cancel the registration of any insurer either wholly or in respect of a class of business, as the case may be.

(2) The grounds referred to in subsection (1) are —

(a) that the insurer has not commenced business within 12 months after being registered;

(b) that the insurer has ceased to carry on insurance business in respect of any class of business;

(c) that the insurer has failed to maintain the surplus of assets over liabilities required by paragraph (b) of subsection (1) of section 10;

(d) that the insurer has neglected or refused to observe an order of the Authority to make good any deficiency, whenever its insurance fund shall have become impaired;

(e) that the insurer proposes to make, or has made, any composition or arrangement with its creditors or has gone into liquidation or has been wound up or otherwise dissolved;

(f) that the insurer is carrying on its business in a manner likely to be detrimental to the interests of its policy owners;

(g) that the insurer is unable to meet its obligations;

(h) that the insurer has failed to effect satisfactory reinsurance arrangements;

(i) that the insurer is contravening or has contravened any provision of this Order or of the regulations, or any condition imposed or any direction given by the Authority under this Order;

(j) that any of the officers of the insurer holding a managerial or an executive position has been convicted of any offence under this Order;

(k) that the insurer has furnished false, misleading or inaccurate information or has concealed or failed to disclose material facts in its application for registration; or

(l) that it is in the public interest to cancel the registration.

(3) The Authority shall, before cancelling the registration of an insurer under this section otherwise than at the request of the insurer, cause to be given to the insurer notice in writing of his intention to do so, specifying a date, not less than 14 days after the date of notice, upon which the cancellation will take effect and calling upon the insurer to show cause to the Authority why the registration should not be cancelled.

(4) Notwithstanding the fact that the registration of an insurer has been cancelled under this section, so long as the insurer remains under any liability in respect of Brunei Darussalam policies belonging to the class of insurance business to which the registration relates, the insurer shall take such action as it considers necessary or as may be required by the Authority to ensure that reasonable provision has been or will be made for that liability and that adequate arrangements exist or will exist for payment in Brunei Darussalam of premiums and claims on those policies.

(5) When the Authority cancels a registration under subsection (1), he shall forthwith inform the insurer of the cancellation.

(6) An insurer whose registration has been cancelled may, within 30 days of being informed in writing of the order of cancellation, appeal to the Minister whose decision thereon shall be final.

(7) An order of cancellation made by the Minister shall not take effect until 14 days after the insurer has been informed in writing of such order.

Effects of cancellation of registration.

14. (1) Where an order of cancellation made by the Minister becomes effective under section 13 —

(a) notice of the cancellation shall be published in the *Gazette*; and

(b) the insurer shall, as from the date of cancellation, cease to carry on in Brunei Darussalam insurance business of the class in respect of which its registration has been cancelled under this Order, otherwise than by the collection or receipt of premiums on Brunei Darussalam policies belonging to that class effected before the date of cancellation of registration and section 6, shall not apply to the insurer in the respect of the collection or receipt of those premiums.

(2) The provisions of paragraph (b) of subsection (1) shall not prejudice the enforcement by any policy owner or person of any right or claim against the insurer or by the insurer of any right or claim against any policy owner or person.

Prohibition of investment-linked insurance business or annuity insurance business without approval.

15. (1) An insurer shall not carry on investment-linked insurance business or annuity insurance business in Brunei Darussalam without the approval in writing of the Authority and subject to such conditions as he may impose.

(2) For the purpose of this section, "investment-linked insurance business" means the effecting and carrying out of a contract of life insurance under which the benefits payable to the policy owner is the greater between —

(a) a specified minimum amount payable on death, on survival to a specified date, or at specified intervals; and

(b) an amount which is determined by reference to the value at the relevant date of, or the income during the relevant period from, assets of a description specified in the policy or in any related statement.

Deposits, register of policies, insurance funds and reinsurance

Deposits.

16. (1) An insurer, while registered in respect of any class of insurance business, shall at all times have in respect of that class of business a deposit with the Authority of such amount as may be prescribed.

(2) Any such deposit shall be in cash or in Government Securities or such other securities as may be prescribed.

(3) All income accruing in respect of a deposit shall be payable to the insurer making the deposit.

(4) A deposit made under this section in respect of any class of business shall be retained by the Authority until either the insurer ceases to be registered in respect of that class of insurance business or the deposit is required in the winding-up of the affairs of the insurer; and if the insurer ceases to be so registered, the deposit or part of it may be further retained for the purpose of and in accordance with any such provision for liabilities in respect of policies as is required by subsection (4) of section 13.

(5) If at any time a deposit under this section (other than a deposit retained after the insurer has ceased to be registered) comprises assets other than Government Securities, and the value of those assets is less than the sum prescribed by virtue of subsection (1), the Authority may by notice in writing direct the insurer to add thereto within 28 days of the service of the notice, cash or security of a value not less than the difference.

(6) An insurer which has made a deposit under this section may at any time substitute for any assets comprised in the deposit, cash or securities as may be prescribed so long as the value of the deposit is not thereby reduced to an amount below that which is required by this Order.

(7) In the foregoing subsections, "securities" (except in the expression "Government Securities") includes any form of investment, and "Government Securities" means securities of which the principal or interest is charged directly or by way of guarantee on the Consolidated Fund; but no deposit shall include —

(a) any shares in, or debentures or other securities of, an insurer registered under this Order;

(b) except so far as a debt comprised in the deposit is secured on land, any estate or interest in land; or

(c) any securities authorised in the Third Schedule which the Authority declares in writing to the insurer to be unsuitable for the purposes of a deposit.

Where by virtue of paragraph (c) of subsection (7) any securities comprised in a deposit have been declared unsuitable, the insurer shall within one calendar month of the securities being so declared substitute therefor such other securities as are authorised by this section.

Bank covenants in lieu of deposits.

17. (1) If, in the case of any insurer, a bank licensed under any written law for the time being in force relating to banking makes with the Authority an agreement in a form approved by the Authority whereby the bank covenants to deposit with the Authority a specified sum in cash on account of the insurer's deposit under section 16 in respect of either class of insurance business, and the covenant complies with any requirements the Authority may impose as to the circumstances in which that sum is to be deposited, then for the purpose of this Order, the insurer shall be treated as having made the deposit under section 16 and the sum so covenanted for shall be recoverable notwithstanding that no consideration is furnished on the agreement.

(2) Any sum deposited by a bank in pursuance of an agreement made under subsection (1) shall be dealt with under or for the purposes of this Order as if it were a sum deposited by the insurer under section 16.

Requirement in respect of insurance products and policies.

18. In order to comply with the requirements of this Order, any insurance product or policy must be a product or policy which –

(a) is approved by the Authority; or

(b) is issued by an insurer and registered by the Authority.

Register of policies.

19. (1) Every registered insurer shall establish and keep a register of Brunei Darussalam policies where it carries on business relating to Brunei Darussalam policies.

(2) Subject to this section, there shall be entered in the register of Brunei Darussalam policies all Brunei Darussalam policies of the insurer and no policy entered in the register shall be removed from it so long as the insurer is under any liability in respect of that policy.

(3) Subject to this section, there may be entered in the register of Brunei Darussalam policies such other policies as the insurer, with the consent (express or implied) of the policy owners may determine, and this Order shall apply in relation to any policy so entered as if it were a Brunei Darussalam policy.

(4) Subject to subsection (5), an insurer carrying on life business outside Brunei Darussalam (and not doing so only by the collection or receipt of premiums) may, at the request of the policy owner of a policy belonging to the insurer's life business —

(a) refrain from entering the policy in the register of Brunei Darussalam policies, notwithstanding that it is a Brunei Darussalam policy; or

(b) remove the policy from the register of Brunei Darussalam policies,

and this Order shall thereafter apply in relation to the policy as if it were not a Brunei Darussalam policy.

(5) Regulations may provide that subsection (3) or (4) shall apply only in such cases as may be prescribed or shall have effect subject to any prescribed exceptions or restrictions.

(6) A Brunei Darussalam insurer shall, at the request of any person having an interest in any policy of the insurer, inform him whether or not the policy is entered in any register of policies established by the insurer under this Order.

(7) Where a Brunei Darussalam insurer has established under this Order any register of policies, the register shall cease to exist as a statutory register under this Order of policies belonging to either class of insurance business, if the insurer ceases to be registered under this Order in respect of that class of business; and any reference in this Order to policies registered under this Order shall be construed accordingly.

(8) Subject to subsection (7), the register shall, notwithstanding that the insurer at any time has ceased to carry on in Brunei Darussalam either class of insurance business, continue to be maintained by the insurer for policies belonging to that class so long as the insurer is under any liability in respect of those policies registered or required to be registered at that time; but no policies belonging to either class of business shall be entered in the register under subsection (3) when the insurer is not carrying on that class of business in Brunei Darussalam or is doing so only by the collection or receipt of premiums.

(9) The register of an existing insurer shall be established as at the beginning of the initial accounting period, and shall be taken for the purposes of this Order to be the date of the establishment of the register.

Establishment and maintenance of insurance funds and allocation of surplus.

20. (1) Every insurer registered under this Order shall establish and maintain in accordance with this section an insurance fund in respect of the class or each of the classes of insurance business carried on by the insurer in Brunei Darussalam so far as that business relates to Brunei Darussalam policies.

(2) The Authority may require any registered insurer to establish and maintain, in addition to the insurance funds under subsection (1) such other insurance fund as the Authority may determine for different types of policies in respect of each class of business.

(3) There shall be paid into an insurance fund all receipts of the insurer properly attributable to the business to which the fund relates (including the income of the fund), and the assets comprised in the fund shall be applicable only to meet such part of the insurer's liabilities and expenses as is properly so attributable.

(4) In the case of a fund established in respect of life business, no part of the fund shall be allocated by way of bonus to participating policies, except with the approval of a qualified actuary and out of a surplus of assets over liabilities as shown on the last statutory valuation of the fund; and on the making of any such allocation that surplus shall be treated for the purposes of this section as reduced by the amount allocated.

(5) If on the last statutory valuation in the case of a fund established in respect of life business there was shown a surplus of assets over liabilities of the fund, there may, subject to the approval of a qualified actuary and to any provision to the contrary in any instrument or contract binding the insurer, be withdrawn from the fund an amount not exceeding the surplus, and on the making of any such withdrawal that surplus shall be treated for the purposes of this section as reduced by the amount withdrawn:

Provided that no part of the surplus attributable to participating policies other than reinsurance policies shall be withdrawn in excess of one quarter of the amount allocated thereout by way of bonus to participating policies.

(6) If in the last statutory balance sheet in the case of an insurance fund established in respect of general business there was shown a surplus of assets over liabilities of the fund, there may, subject to any provision to the contrary in any instrument or contract binding the insurer, be withdrawn from the fund an amount not exceeding the excess of the surplus over any fund margin of solvency prescribed for that fund under section 21, and on the making of any such withdrawal that surplus shall for the purposes of this section be treated as reduced by the amount withdrawn.

(7) In respect of any policy belonging to the insurer's life business which is under subsection (4) of section 19 removed from the insurer's register of Brunei Darussalam policies there may be withdrawn from an insurance fund to which the policy relates an amount not exceeding the prescribed amount.

(8) Any amount withdrawn from an insurance fund under subsection (5), (6) or (7) and, in a winding-up, any part of an insurance fund remaining after meeting the liabilities and expenses to which the fund is applicable may be dealt with as if it had not formed part of the fund except that in the case of a winding-up where any other insurance fund of the insurer under this Order is in deficit the surplus remaining after the winding-up shall first be applied to make good the deficit in that fund.

(9) In a winding-up, assets comprised in the deposit made by an insurer under section 16 in respect of either class of business may be allocated by the Authority to any insurance fund established by the insurer for that class of business in such manner and proportion as it sees fit, and assets so allocated shall be treated as assets of the insurance fund, and subsections (3) and (8) shall apply to those assets accordingly.

(10) Any insurance fund established by an insurer for any class of business shall, notwithstanding that the insurer at any time ceases to carry on that class of business in Brunei Darussalam, continue to be maintained by the insurer so long as the insurer is required by this Order to maintain the register of policies belonging to that class.

(11) In the case of an existing insurer, an insurance fund shall be established as at the date of establishment of the register under subsection (9) of section 19 and by reference to the policies registered or required to be registered in it as at its establishment, and by reference to the assets and liabilities of the insurer as at that date; and —

(a) there shall be allocated to the fund assets of a value not less, after allowing for any charges to which the fund is not applicable, than the aggregate of the amounts specified in subsection (12); and

(b) all such matters as would subsequently have affected the fund if established at that date shall be brought into account accordingly.

(12) The amounts referred to in paragraph *(a)* of subsection (11) are as follows —

(a) the amount, determined in the prescribed manner, of the liability of the insurer in respect of the policies referred to in subsection (11);

(b) the amount of any other liabilities of the insurer in so far as the assets allocated to the fund will be applicable or be treated as having been applicable to meet those liabilities; and

(c) the amount of the fund margin of solvency, if any, required to be maintained for the fund under section 21.

(13) The assets of any insurance fund established by an insurer under this Order shall be kept separate from all other assets of the insurer.

Paid-up capital and margins of solvency.

21. (1) Every registered insurer shall maintain —

(a) a fund margin of solvency in respect of each of the insurance funds established by the insurer under this Order; and

(b) a margin of solvency,

of such amounts as may be prescribed or determined in accordance with regulations.

(2) The Minister may prescribe —

(a) a paid-up share capital of an insurer incorporated in Brunei Darussalam or, where an insurer incorporated outside Brunei Darussalam does not have a share capital, its surplus of assets over liabilities, different margins of solvency under subsection (1) for different classes of insurance business and for different types of insurers; and

(b) in respect of any type of insurers, any exception from the requirements of subsection (1).

(3) Without prejudice to the generality of section 89, regulations made under this Order may —

(a) provide for the determination of the value of assets and the amount of liabilities in any case in which the value or amount is required by this section to be determined in accordance with regulations;

(b) provide that, for any specified purpose, assets or liabilities of any specified class or description shall be left out of account or shall be taken into account only to a specified extent; and

(c) make different provision in relation to different cases or circumstances.

(4) For the purposes of this section —

(a) the fund margin of solvency in respect of any insurance fund is the excess of the value of the assets over the liabilities of the fund;

(b) the margin of solvency of a registered insurer is the excess of the value of its assets over the amount of its liabilities; and

(c) that value and amount being determined in accordance with any applicable valuation regulations.

Form, investment and situation of assets.

22. Regulations made under this Order may make provision for securing that, in such circumstances and to such extent as may be prescribed, the assets of any insurance fund of a registered insurer are invested in such manner and maintained in such places as may be prescribed and the nature of the assets is appropriate in relation to the currency in which the liabilities of the insurer are or may be required to be met.

Requirements as to assets of insurance funds.

23. (1) The assets of any insurance fund under this Order shall be kept separate from all other assets of the insurer, and shall not include assets comprised in a deposit under this Order except as provided by subsection (5), nor any amounts on account of goodwill, the benefit of development expenditure or similar items not realisable apart from the business or part of the business of the insurer.

(2) The assets of an insurance fund established in respect of general business shall not include any amount representing the total of outstanding premiums and agents' balances which is in excess of any amount prescribed by the Minister.

(3) Subject to section 27, the assets of any insurance fund shall be such that —

(a) the value of Brunei Darussalam assets as specified in the Third Schedule, with any such additions as are permitted by subsection (4), is not less than any amount prescribed; and

(b) the value of investments in securities of the Government or of a body incorporated in Brunei Darussalam is not less than 25 per cent of the total value of the assets of the fund.

(4) For the purposes of subsection (3), there may be added to the value of items specified in the Third Schedule the amount or value of any assets of the fund of the following descriptions —

(a) income arising from those items but not yet received;

(b) outstanding premiums on life policies on which future liabilities may be met out of the assets of the fund, being premiums which are to be paid in Brunei Darussalam currency;

(c) outstanding premiums and agents' balances in respect of Brunei Darussalam policies for general business but not exceeding the amount permitted in subsection (2);

(d) interest not yet received on loans secured on any such policies, being interest which is to be paid in Brunei Darussalam currency;

(e) sums representing claims recoveries from reinsurers in or outside Brunei Darussalam.

(5) The Authority may, in respect of assets of any insurance fund, require an insurer —

(a) not to make investments of a specified class or description;

(b) to realise, before the expiration of a specified period or such extended period as the Authority may allow, the whole or a specified proportion of investments of a specified class or description held by the insurer when the requirement is made.

(6) For the purpose of this section, the assets representing any reinsurer's deposit held by the insurer to meet liabilities of an insurance fund shall be treated as assets of the fund.

Restrictions on payment of dividends and grant of advance, loan and credit facility.

24. (1) No insurer shall —

(a) pay any dividend on its shares until all its capitalised expenditure (including preliminary expenses, organisation expenses, share selling commission, brokerage, amounts of losses incurred, and any other item of expenditure not represented but tangible assets) have been completely written off;

(b) grant an advance, loan, credit facility, or financing facility, against the security of its own shares;

(c) except in such circumstances and in such amounts as the Authority may allow, grant an advance, loan, credit facility or financing facility —

- (i) to any of its directors, other than an advance or a loan secured by a policy of insurance held by that director;
- (ii) to a firm in which it or any of its directors has any interest as partner, manager or agent, or to an individual for whom or a firm for which any of its directors is a guarantor;
- (iii) to a company in which any of its directors owns 20 per cent or more of the voting shares;
- (iv) to a company in which the insurer owns 20 per cent or more of the voting shares;
- (v) to a company which owns 20 per cent or more of the voting shares of the insurer; and
- (vi) to a company in which a company mentioned in subparagraph (v) owns 20 per cent or more of the voting shares;

(d) except in such circumstances and in such amounts as the Authority may allow, grant to any person other than its employee or any person mentioned in paragraph *(c)*, an unsecured advance, unsecured loan, unsecured credit facility or unsecured financing facility;

(e) except in such circumstances as the Authority may allow, act as guarantor on an advance, loan, credit facility or financing facility granted to any person, firm or company mentioned in paragraph *(c)*; or

(f) except with the approval of the Authority, pledge, mortgage, or charge any of its assets or securities.

(2) All the directors of the insurer shall be liable jointly and severally to indemnify the insurer against any loss arising from the making of an unsecured advance, unsecured loan, unsecured credit facility or unsecured financing facility.

(3) For the purpose of subsection (1), "director" shall be deemed to include the wife, husband, father, mother, son and daughter of a director.

(4) For the purposes of this section and of section 25, "unsecured advance", "unsecured loan", "unsecured credit facility" and "unsecured financing facility" mean respectively —

(a) an advance, loan, credit facility or financing facility made without security; or

(b) in the case of an advance, loan, credit facility or financing facility made with security, any portion of the advance, loan, or credit facility which at any time exceeds —

(i) the market value of the assets constituting the security; or

(ii) the value of the assets constituting the security assessed on a basis approved by the Authority where he is satisfied that there is no established market value.

Disclosure of interest by directors.

25. (1) Every director of an insurer who in any manner whatsoever has an interest, whether directly or indirectly, in an advance, loan, credit facility or financing facility from that insurer shall as soon as practicable make to the insurer a declaration in writing as to the nature and extent of his interest, and the insurer shall within 7 days of its receipt furnish copies of that declaration to the Authority, its auditor, and all its directors.

(2) For the purpose of subsection (1), a general notice given to the board of directors of an insurer by a director to the effect that he has an interest in a specified enterprise, undertaking, firm or company and that he is to be regarded as having an interest in an advance, loan, credit facility or financing facility which may, after the date of the notice, be granted to that enterprise, undertaking, firm or company shall be deemed to be sufficient declaration of interest in relation to the advance, loan, credit facility or financing facility so granted if —

(a) it specifies the nature and extent of his interest in that enterprise, undertaking, firm or company; and

(b) at the time the advance, loan, credit facility or a financing facility is made, his interest is not different in nature or greater in extent than had been specified in the notice.

(3) Every director of an insurer who holds any office or possesses any property whereby, whether directly or indirectly, a duty or an interest may arise in conflict with his duty or interest as such the director shall declare at a meeting of the directors of the insurer the fact, nature and extent of the conflict which may arise.

(4) A declaration referred to in subsection (3) shall be made at the first meeting of the directors held —

(a) after the person becomes a director of the insurer; or

(b) if already a director, after the person commenced to hold office or to possess the property whereby the conflict may arise.

(5) The secretary to the board of directors of the insurer shall cause any declaration made or notice given under this section to be read at the next meeting of the directors after the declaration was made or the notice was given, and he shall record the same in the minutes of that meeting.

(6) Any director or secretary to a board of directors who acts in contravention of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 3 years, or both.

Submission of statement and liquidation of transaction by insurer.

26. (1) An insurer which has, or a director of an insurer who has, prior to the commencement of this Order, entered into a transaction or has an interest contrary to the provisions of section 24 or 25, shall within 2 months of such commencement, submit a statement of that transaction or interest to the Authority and that insurer or director, as the case may be, shall further within that time or such further time as the Authority may specify, liquidate the transaction, cease to have the interest, or comply with the provisions of those sections, and dispose of any property or right that may have been acquired or interest that may have been held.

(2) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding \$100,000, and in the case of a continuing offence to a further fine not exceeding \$4,000 for every day during which the offence continues after conviction.

Requirements as to documents evidencing title to assets of insurance funds.

27. (1) Where an insurer has established an insurance fund under this Order, the insurer shall secure that any documents evidencing the insurer's title to assets of the fund, or assets falling within subsection (6) of section 23, so long as the documents are held by or on behalf of the insurer, shall be kept in Brunei Darussalam or, if not so kept, shall be kept in the custody of a person approved by the Authority, and at a place and on terms so approved:

Provided that the Authority may, in the case of an insurer who is being investigated under this Order or where the Authority is satisfied that the affairs of an insurer are being conducted in a manner likely to be detrimental to the interests of the policy owners or potential policy owners, direct that all such

documents be handed over to be kept by him or by a person approved by him at a place and on terms so approved.

(2) An insurer who has established an insurance fund under this Order shall from time to time notify the Authority in writing —

(a) of the person having the custody of any such documents on behalf of the insurer, and the fact of any person ceasing to do so; and

(b) of the reason why any such documents are not held by or on behalf of the insurer, and the identity of the documents in question.

(3) Any document kept by the Authority or by a person approved by him pursuant to the proviso to subsection (1) shall not be released except with the consent in writing of the Authority.

(4) Any such document which is for the time being held by or on behalf of the insurer shall, on the Authority giving not less than one day's notice in writing to the insurer or to the person having the custody of the document, be produced for inspection to the Authority by the person to whom the notice is given.

(5) A person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

Enforcement of requirements as to registers of policies and insurance funds and payment of levies by insurers.

28. (1) If an insurer makes default in complying with the provisions of section 19, 20 or 23, the Authority may by notice in writing require the insurer to make good the default.

(2) If the insurer does not make good the default within one month after the notice is given, the High Court may on the application of the Authority make such order against the insurer or any director or officer of the insurer as the High Court thinks fit with a view to making good the default and otherwise securing compliance by the insurer with section 19, 20 or 23.

(3) Nothing done under this section shall affect any person's liability for any offence against this Order.

Reinsurance.

29. (1) An insurer shall make and maintain arrangements consistent with sound insurance principles for reinsurance of liabilities in respect of risks insured or to be insured by the insurer in the course of his carrying on insurance business.

(2) The Authority may by notice in writing require an insurer to produce for his inspection, and review within a period specified in the notice, treaties on reinsurance, such other detailed information pertaining thereto and any other such reinsurance arrangements as he may in any particular case require.

(3) Where as a result of a review of reinsurance treaties, contracts or arrangements, the Authority is of the view that it is in the public interest to do so, the Authority shall direct the insurer to cause amendments to be made to the reinsurance treaties, contracts or arrangements when they come up for renewal.

(4) Any person who fails to comply with subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

Miscellaneous Requirements As to Conduct of Business

Payment in Brunei Darussalam currency of policy moneys under life policies.

30. (1) In the case of a life policy issued as a Brunei Darussalam policy after the commencement of this Order, to a policy owner who is a citizen of Brunei Darussalam, any policy moneys or moneys payable on the surrender of the policy shall, notwithstanding anything in the policy or in any agreement relating thereto, be paid in Brunei Darussalam currency, unless at the time of payment it is otherwise agreed between the insurer and the person entitled to payment.

(2) Where an insurer satisfies the Authority as regards any life policy registered under this Order by the insurer that the policy moneys (including any moneys payable on the surrender of the policy) are not, under the policy or any agreement relating thereto, to be paid in Brunei Darussalam currency, then for the purpose of subsection (3) of section 23 there shall be disregarded from the value of the assets of the relevant insurance fund such amount as is equal to the value of the insurer's liability in respect of the policy determined on a basis approved by the Authority.

Assumption of risk by insurer and collection and refund of premium.

31. (1) Subject to subsections (2) and (3), no insurer shall assume any risk in respect of any general insurance business unless —

(a) the premium payable is received by the insurer or is guaranteed to be paid by such person in such manner and within such time as may be prescribed; or

(b) a deposit in advance has been made of such amount and in such manner as may be prescribed.

(2) Where the premium payable pursuant to subsection (1) is received by any person, including an insurance agent or insurance broker, on behalf of an insurer, such receipt shall be deemed to be receipt by the insurer for the purposes of that subsection and the onus of providing that the premium payable was received by a person, including an insurance agent or insurance broker, who was not authorised to receive such premium shall lie on the insurer.

s 28/07

(3) Subsections (1) and (2) shall apply to such description of general insurance business as may be prescribed.

(4) Notwithstanding subsections (1) and (2), an insurer shall not grant credit to insurance agents or insurance brokers and insured in respect of motor vehicle insurance business.

(5) Where any person, including an insurance agent or insurance broker receives on behalf of an insurer a premium on a policy of insurance of a description for the time being prescribed pursuant to subsection (3), such person shall deposit with, or despatch by post to, the insurer the premium so collected within such period as may be prescribed in relation to policies of the description.

(6) Any refund of premium, in relation to a policy of insurance of a description as may be prescribed under subsection (3) which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or for any other reason, shall be paid by the insurer directly to the insured and a proper receipt shall be obtained by the insurer from the insured and such refund shall not be paid or credited to any other person, including an insurance agent or insurance broker.

(7) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

Appointment of actuary.

32. (1) No actuary or consulting actuary, as the case may be, shall be appointed by an insurer without the prior approval in writing of the Authority.

(2) An insurer shall inform the Authority in writing whenever there is a change in the actuary and such change is subject to the written approval of the Authority.

Regulation of premiums under life policies.

33. (1) An insurer shall not issue a life policy of any description, being a Brunei Darussalam policy, without the prior approval in writing of the Authority.

s 54/07 (2) Such life policy shall only be issued if the rate of premium under the policy is approved by the actuary appointed under section 31, or the value of the rates fixed for such policies, is a premium approved by the actuary.

(3) An actuary shall not for the purposes of this section approve a premium for a policy or a rate of premium for any description of policy, unless he is satisfied that it is suitable and in accordance with sound insurance principles.

(4) An actuary in giving his approval in respect of any description of life policy shall have regard to the maximum rate of commission proposed to be paid or allowed to any person in respect of that description of policy, and shall certify the maximum rate.

(5) Where in the case of any insurer a rate of premium is approved by an actuary for any description of life policy, the insurer shall not, except with the approval of the Authority, pay or allow in respect of any policy of that description a commission at a rate greater than the maximum rate of commission certified by the actuary.

(6) The Authority may by notice in writing require any Brunei Darussalam insurer to obtain and furnish him within a time specified in the notice with a report by an actuary as to the suitability of the rates of premium for the time being chargeable by the insurer for any description of life policy, and if the actuary considers that the rates are not suitable or not in accordance with sound insurance principles, a report as to the rates of premium which the actuary approves for that description of policy; and for the purposes of subsection (2) regard shall be had to any such report to the exclusion of any previous approval or report.

(7) For each occasion on which an insurer issues a policy or allows a commission in contravention of this section, the insurer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

Notice regarding proof of age.

34. Where an insurer issues a life policy which provides that proof of age of the life insured is a condition precedent to the payment of the sum, the insurer shall, unless the age of the life insured has already been admitted by the insurer, issue on or with the policy a printed notice stating that proof of age of the life insured may be required prior to the payment of the sum insured.

Mis-statement of age and non-avoidance of policy.

35. (1) A policy shall not be called in question by reason only of a mis-statement of the age of the life insured.

(2) Where the true age as shown by the proof is greater than that on which the policy is based, the insurer may vary the sum insured by, and bonuses (if any) allotted to, the policy so that, as varied, they bear the same proportion to the sum insured by, and bonuses (if any) allotted to, the policy before variation as the amount of premiums that have become payable under the policy bear to the amount of the premiums that would have become payable if the policy had been based on the true age.

(3) Where the true age as shown by the proof is less than that on which the policy was based, the insurer shall either —

(a) vary the sum insured by and bonuses (if any) allotted to, the policy so that, as varied, they bear the same proportion to the sum insured by, and the bonuses (if any) allotted to, the policy before variation as the amount of the premiums that have become payable under the policy as insured bears to the amount of the premiums that would have become payable if the policy had been based on the true age; or

(b) reduce, as from the date of issue of the policy, the premium payable to the amount that would have been payable if the policy had been based on the true age and repay the policy owner the amount of over-payments of premium less any amount that has been paid as the cash value of bonuses in excess of the cash value that would have been paid if the policy had been based on the true age.

(4) No life policy after the expiry of 2 years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in a report of a doctor, referee, or other person, or in a document leading to the issue of the policy, was inaccurate or false unless the insurer shows that such statement was on a material matter or suppressed a material fact and that it was fraudulently made by the policy owner with the knowledge that the statement was false or that it suppressed a material fact.

(5) For the purposes of subsection (4) "material matter" or "material fact" means such matter or fact which, if known by the insurer, would have led to a refusal by the insurer to issue a life policy to the insured or would have led the insurer to impose terms less favourable to the insured than those imposed in the policy.

(6) Nothing in this section shall prevent the insurer from calling for proof of age at any time, and no policy shall be deemed to be called in question merely

because the terms of the policy are adjusted in accordance with subsections (2) and (3).

Objection to life policy.

36. (1) A policy owner may, within 14 days after the delivery of a life policy to him or, if delivered at his residence, to a person who is resident therein, return the policy to the insurer with an objection in writing to any term or condition of the policy and the insurer shall forthwith refund any premium which has been paid in respect of the policy which shall thereupon be cancelled.

(2) For the purposes of this section, a policy shall be deemed to be returned to an insurer with an objection when the policy with the objection in writing are received by the insurer or are posted to the insurer by registered post.

Control of form of proposals, policies and brochures.

37. (1) The Authority may by notice in writing require an insurer to submit to him the forms of proposal and policy in use by the insurer in Brunei Darussalam, and any brochures which are in use by the insurer for describing the terms or conditions of, or the benefits to be or likely to be derived from such policies; and where the whole or part of any such forms or brochures are not in the Malay or English language there shall be submitted with them a translation in the Malay or English language.

(2) A requirement under this section, unless it is otherwise provided therein, shall apply to all such forms and brochures coming into use after the making of the requirement and until the Authority notifies the insurer that the requirement has been withdrawn.

(3) If it appears to the Authority, after affording the insurer an opportunity to make representations orally or in writing, that any such form or brochure contravenes or fails to comply with any provision of this Order, or is in any respect likely to mislead, he may by notice in writing direct the insurer to discontinue the use of the form or brochure in Brunei Darussalam either forthwith or from a date specified in the notice.

(4) No Brunei Darussalam insurer shall use in the course of carrying on insurance business in Brunei Darussalam a form of proposal which does not have prominently displayed therein a warning that if a proposal does not fully and faithfully give the facts as he knows them or ought to know them, he may receive nothing from the policy.

(5) For each occasion on which any insurer uses a copy of a form or brochure in contravention of subsection (3) or (4), the insurer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

(6) In this section, "brochure" includes any printed leaflet and advertising material.

Misleading statement, promise, or forecast inducing person to enter into contract of insurance.

38. Any person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive, by any fraudulent concealment of a material fact or by the reckless making (fraudulently or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces another person to enter into or offer to enter into any contract of insurance with an insurer shall be guilty of any offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding one year or both.

Requirements as to prospectuses and statements of capital.

39. (1) In any case where, under section 37 of the Companies Act (Chapter 39), it is an offence to knowingly be a party to the issue of a prospectus relating to a company without a copy of it being first delivered for registration under that Act, it shall also be an offence, in the case of a company registered or intended to be registered as an insurer under this Order, to do so without the prospectus having been approved by the Authority; and any person who is knowingly a party to the issue, circulation or distribution of a prospectus in contravention of this subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000.

(2) Where a notice, advertisement or other official publication of a company registered or intended to be registered as an insurer under this Order, contains a statement of the company's authorised share capital, and does not state how much of that capital has been subscribed and how much is paid up, the company shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000.

(3) In this section, "prospectus" includes any printed document to which the expression applies in section 37 of the Companies Act (Chapter 39).

Opening of counter or branch office.

40. (1) Except with the prior approval in writing of the Authority, no insurer shall open a counter or branch office in Brunei Darussalam.

(2) Subject to subsection (1), such insurer shall pay such fees as may be prescribed.

Approval of proposed managing director, director, chief executive or principal officer of insurer.

41. (1) No insurer incorporated in Brunei Darussalam shall appoint a person as its managing director, director, chief executive or principal officer, and no insurer incorporated outside Brunei Darussalam or otherwise carrying on business outside Brunei Darussalam shall appoint a chief executive or principal officer for Brunei Darussalam, unless —

(a) the insurer has served on the Authority a notice in writing stating that the person it proposes to appoint fulfills the minimum criteria of a "fit and proper person" as may be prescribed; and

(b) the Authority has, before the expiration of 3 months from the date of service of the notice, notified the insurer in writing that there is no objection to that person being appointed to the specified position or such period elapses without the Authority having served on the insurer a notice of objection in writing.

(2) A notice under paragraph *(a)* of subsection (1) shall contain a statement signed by the person proposed to be appointed that it is served with his knowledge and consent.

(3) The Authority may object to the person proposed to be appointed and serve notice thereof under paragraph *(b)* of subsection (1) on the ground that it appears to him that such person is not a "fit and proper person" to be so appointed, but before serving such notice the Authority shall serve on the insurer and on the person a preliminary notice in writing stating —

(a) that the Authority is considering the service on the insurer of a notice of objection on that ground; and

(b) that the insurer and that person may, within one month from the date of service of the preliminary notice, make representations in writing to the Authority.

(4) The Authority shall not be obliged to disclose any particulars of the grounds on which he is considering the service of the notice of objection or on which he serves the notice of objection.

(5) Where representations are made in accordance with this section the Authority shall take them into consideration in deciding whether to serve the notice of objection.

Approval of person proposing to become controller of insurer where section 41(1) does not apply.

42. (1) No person shall become a controller of an insurer incorporated in Brunei Darussalam otherwise than by virtue of an appointment in relation to which subsection (1) of section 41 has effect, unless —

(a) he has served on the Authority a notice in writing stating that he intends to become a controller of that insurer and containing such particulars as may be prescribed; and

(b) the Authority has, before the expiration of a period of 3 months from the date of service of the notice, notified him in writing that there is no objection to his becoming a controller of the insurer or such period elapses without the Authority having served on him a notice of objection in writing.

(2) The Authority may object to the person who intends to become a controller of the insurer and serve notice thereof under paragraph (b) of subsection (1) on the ground that it appears to him that such person is not a "fit and proper person" to so become, but before serving such notice the Authority shall serve on that person a preliminary notice in writing stating —

(a) that the Authority is considering the service on that person of a notice of objection on that ground; and

(b) that that person may, within one month from the date of service of the preliminary notice, make representations in writing to the Authority.

(3) The Authority shall not be obliged to disclose any particulars of the ground on which he is considering the service of the notice of objection or on which he serves the notice of objection.

(4) Where representations are made in accordance with this section the Authority shall take them into consideration in deciding whether to serve the notice of objection.

Disqualification of managing director, director etc.

43. (1) Without prejudice to anything contained in the Companies Act (Chapter 39), any person who is a managing director, director, chief executive or principal officer or controller of an insurer shall cease to hold office —

(a) if he has been adjudicated bankrupt;

(b) if he assigns his estate for the benefit of his creditors or makes an arrangement with his creditors pursuant to any law relating to bankruptcy;

(c) if he is convicted of any offence involving dishonesty or fraud; or

(d) if he becomes insane.

(2) No person who is a managing director, director, chief executive or principal officer or controller or any member of their immediate family, of an insurer shall hold shares or other interests in a company that carries on business of an insurance broker.

(3) For the purpose of subsection (2), "member of their immediate family" includes the wife, husband, father, mother, son and daughter of a managing director, director, chief executive or principal officer or controller.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

Duty to notify change of controller, managing director, director, chief executive or principal officer.

44. (1) A person who becomes or ceases to be controller of an insurer shall, within 7 days from the day following that on which he becomes or ceases to be a controller, notify the insurer in writing of that fact and of such other matters as may be prescribed; and a person who is appointed a managing director, director, chief executive or principal officer of any such insurer shall, within 7 days from the day following that on which he is so appointed, notify the insurer in writing of such matters as may be prescribed.

(2) An insurer shall give notice in writing to the Authority of the fact that any person has become or ceased to be its managing director, director, chief executive or principal officer and of any matter of which such person is required to notify the insurer under subsection (1); and the notice shall be given within 14 days from the day following that on which that fact or matter came to the insurer's knowledge.

Power of Authority to require information, to inspect books etc.

45. (1) The Authority may cause to be inspected, under conditions of secrecy, the books, accounts and transactions of any insurer, and of any of its branch offices.

(2) For the purposes of an inspection pursuant to subsection (1), the insurer shall allow access to its books, accounts and documents and shall give such information and facilities as may be required to conduct the inspection:

Provided that the books, accounts and documents shall not be required to be produced at any time or place which interferes with the proper conduct of the normal daily business of the insurer.

(3) Where the Authority is of the opinion that it is necessary for any of the purposes of this Order to do so, he may by notice in writing require any director, officer or representative of any insurer –

(a) to furnish him with any information; or

(b) to appear before him,

in connection with any matter related to any business carried on by that insurer in or outside Brunei Darussalam in the manner and to the extent and, in the case of an appearance before him, at the time and place, specified in the notice.

(4) Any person who fails to comply with any requirement under subsection (1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, and in the case of a continuing offence to a further fine not exceeding \$5,000 for every day during which the offence continues after conviction.

(5) There shall be no change in the control of an insurer incorporated in Brunei Darussalam unless the Authority has given approval in writing for such change.

(6) In subsection (5), "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of the insurer.

Insurance Intermediaries

Insurance agents to act only for insurers entitled to carry on business in Brunei Darussalam.

46. No person shall carry on insurance business in Brunei Darussalam as an insurance agent for any insurer not entitled under this Order to carry on business in question in Brunei Darussalam and any person contravening this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, increased by a fine not exceeding \$4,000 for each day on which he is ~~not~~ proved to have done so, imprisonment for a term not exceeding one year or both.

S 28/07

Application of section 45.

47. Section 45 shall apply to insurance agents.

Registration of insurance agents.

48. (1) No person shall, without being registered by the Authority, carry on insurance business in Brunei Darussalam as an insurance agent.

(2) In registering an insurance agent, the Authority may appoint a person, a body of persons or an association of insurers to administer examinations for a person who wishes to apply for registration as an insurance agent.

(3) Notwithstanding subsection (2), the Authority may register a person as an insurance agent on a temporary basis, for a period not exceeding one year, pending the passing of the required examination.

(4) The registration of an insurance agent under this section shall be for a period of one year and is renewable every year.

(5) Insurance agents shall pay such fees as may be prescribed.

(6) No director or other management staff, or any member of his immediate family, or a company carrying on business as an insurance agent shall hold shares in any insurance company. Upon the date of commencement of this Order, any such person holding shares or any other interest in any insurance company shall within a period of one year after such date relinquish such shares or other interest.

(7) For the purpose of subsection (6), "member of his immediate family" includes a wife, husband, father, mother, son and daughter.

(8) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by regulations, prescribe such qualifications for insurance agents as he sees fit.

(9) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, increased by a fine not exceeding \$2,000 for each day on which he is proved to have done so, imprisonment for a term not exceeding 6 months or both.

Pre-contract disclosure by insurance intermediary.

49. (1) No insurance intermediary shall invite any person to make an offer or proposal to enter into a contract of insurance without disclosing to the person all material information, including —

(a) the name of the registered insurer;

(b) his relationship with the registered insurer;

(c) the premium charged by the registered insurer; and

(d) such other information as may be prescribed or specified in directions.

(2) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both.

Insurance intermediary in insurance transactions.

50. (1) Any insurance intermediary who collects money on behalf of an insurer shall remit such money to the insurer without undue delay —

(a) in respect of an individual insurance agent who carries on life insurance business, within 7 days from the date of receipt thereof;

(b) in respect of a corporate insurance agent who carries on general insurance business, within 30 days from the date of receipt thereof.

(2) Any amount collected under subsection (1) is deemed to have been collected by the insurer.

(3) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both.

Insurance brokers to act only for insurers entitled to carry on business in Brunei Darussalam.

51. (1) Subject to subsection (2), no insurance broker shall in the course of his business as such negotiate any contract of insurance with an insurer other than an insurer entitled under this Order to carry on the business in question in Brunei Darussalam, and no person in Brunei Darussalam shall solicit insurance business for an insurer not entitled to carry on that business in Brunei Darussalam; and any person contravening this subsection shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, increased by a fine not exceeding \$4,000 for each day on which he is proved to have done so, imprisonment for a term not exceeding one year or both.

(2) The references in subsection (1) to a contract of insurance and to insurance business shall not apply to reinsurance or business relating to risks outside Brunei Darussalam or such other risks as may be prescribed.

Application of sections 40 to 45.

52. Sections 40 to 45 shall apply to insurance brokers.

Registration of insurance brokers.

53. (1) No person shall, without being registered by the Authority, carry on insurance business in Brunei Darussalam as an insurance broker unless –

(a) it is a company as defined in the Companies Act (Chapter 39);

(b) it has a minimum paid-up share capital;

(c) it has a professional indemnity insurance as may be prescribed;
and

(d) unless the Authority has been furnished with such documents and information as may be prescribed or he may require in a particular case.

(2) In registering an insurance broker, the Authority may impose such conditions as he thinks fit and may at any time add to, vary or revoke such conditions.

(3) The registration of an insurance broker under this section shall be for a period of one year and is renewable every year.

(4) Insurance brokers shall pay such fees as may be prescribed.

(5) The Authority may revoke the registration of any insurance broker if he is satisfied that any of the conditions imposed in relation to the registration has been breached or that it is in the interests of the public to do so.

(6) No director or other management staff, or any member of his immediate family, or a company carrying on business as an insurance broker shall hold shares in any insurance company. Upon the commencement of this Order, any such person holding shares or any other interest in any insurance company shall within a period of one year after such date relinquish such shares or other interest.

(7) For the purpose of subsection (6), "member of his immediate family" includes a wife, husband, father, mother, son and daughter.

(8) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, increased by a fine not exceeding \$2,000 for each day on which he is proved to have done so, imprisonment for a term not exceeding 6 months or both.

Insurance brokers in insurance transactions.

54. (1) An insurance broker who collects money from the insured shall remit such moneys to the insurer within 30 days from date of receipt of the premium.

(2) Any amount collected by the insurance broker is deemed to have been collected by the insurer.

(3) Any person who fails to comply with this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 6 months or both.

Insurance broking premium accounts.

55. (1) Subject to subsection (2), every registered insurance broker which receives any money —

(a) from or on behalf of an insured or intending insured for or on account of an insurer in connection with a contract of insurance or proposed contract of insurance; or

(b) from or on behalf of an insurer for or on account of an insured or intending insured,

s 28/07 shall for the purposes of this section establish and maintain separate account with a bank licensed under the Banking Act (Chapter 95), the Islamic Banking Act (Chapter 168) or with such other financial institution as may be prescribed.

(2) Any registered insurance broker which contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$25,000.

Registration of adjusters.

56. (1) No person shall, without being registered by the Authority, act or hold himself out as an adjuster unless —

(a) he is a member of an association of adjusters;

(b) he has a minimum paid-up share capital as may be prescribed;

(c) and unless the Authority has been furnished with such documents and information as may be prescribed or as he may require in any particular case.

(2) In registering an adjuster, the Authority may impose such conditions as he thinks fit and may at any time add to, vary or revoke such conditions.

(3) The registration of an adjuster shall be for a period of one year and is renewable every year.

(4) Adjusters shall pay such fees as may be prescribed.

(5) The Authority may revoke the registration of any adjuster if he is satisfied that any of the conditions imposed in relation to the registration has been breached or that it is in the interests of the public for him to do so.

(6) Nothing in this section shall apply to —

(a) advocates and solicitors and members of other professions who act or assist in adjusting insurance claims as an incident to the practice of their professions and who do not hold themselves out as adjusters;

(b) adjusters of maritime losses;

(c) employees of an insurer who, in the course of their employment, act or assist in adjusting insurance claims and who do not hold themselves out as adjusters.

s 28/07

(7) Every adjuster shall within one month after the end of each quarter of the year submit to the Authority ^areport in the prescribed form of all losses which were the subject of adjustments effected by him during that quarter.

(8) Sections 40 to 45 shall apply to adjusters.

(9) No person who carries on business of insurance loss adjuster, loss assessor, surveyor or other registered persons providing auxiliary services to the insurance industry or any member of their immediate family, shall hold shares or other interests in an insurance company.

(10) For the purpose of subsection (9), "member of their immediate family" shall be deemed to include the wife, husband, father, mother, son and daughter of a loss adjuster, loss assessor, surveyor or other registered persons providing auxiliary services to the insurance industry.

(11) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, increased by \$800 for each day on which he is proved to have done so, imprisonment for a term not exceeding one year or both.

(12) Where a person fails to submit a report as required by subsection (7), he shall be guilty of an offence and shall be liable on conviction to a fine not

exceeding \$20,000, increased by \$2,000 for each day during on which he is proved to have done so.

Examination of person suspected of acting, holding out as insurance broker, insurance intermediary or adjuster.

57. (1) When the Authority has reason to suspect or believe that a person is acting or holding himself out as an insurance broker, insurance intermediary or adjuster without being registered under this Order, he may call for or inspect the books, accounts and records of that person in order to ascertain whether or not that person has contravened any provisions of this Order.

(2) Any person who wilfully refuses to submit his books, accounts and records or to allow the inspection thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, increased by \$2,000 for each day on which he is proved to have done so, imprisonment for a term not exceeding 12 months or both.

Saving for validity of policies.

58. Nothing in this Part shall operate to invalidate any policy.

PART IV

**RETURNS, INSPECTIONS AND INVESTIGATIONS, WINDING-UP AND
TRANSFERS OF BUSINESS**

Returns

Annual accounts and audit.

59. (1) A registered insurer or a registered insurance broker shall prepare such statements of account and other statements and in such form and manner as may be prescribed and lodge them with the Authority.

(2) A registered insurer or a registered insurance broker shall cause to be kept such books and records according to international accounting standards as will sufficiently explain the transactions and financial position of the insurer in Brunei Darussalam and enable the insurer to comply with the requirements of this section and section 60, and shall cause those books and records to be kept in such manner as to enable them to be conveniently and properly audited.

(3) A registered insurer shall have its accounts audited for each accounting period for which statements of account have been prepared in accordance with regulations prescribed under subsection (1).

(4) A registered insurance broker shall have its accounts audited for each financial year for which statements of accounts and other statements are prepared in accordance with regulations prescribed under subsection (1).

(5) No person shall act as auditor for any registered insurer or registered insurance broker unless —

(a) he has a place of business in Brunei Darussalam;

(b) he has been authorised pursuant to section 131 of the Companies Act (Chapter 39) to perform the duties required by that Act to be performed by an auditor; and

(c) in the case of a registered insurer, he has the approval of the Authority.

(6) An auditor shall not be approved by the Authority as an auditor for registered insurers or registered insurance brokers unless he is able to comply with such conditions in relation to the discharge of his duties as may be determined by the Authority.

(7) The Authority may impose all or any of the following duties on an auditor —

(a) a duty to submit such additional information in relation to his audit as the Authority considers necessary;

(b) a duty to enlarge or extend the scope of his audit of the business and affairs of the insurer;

(c) a duty to carry out any other examination or establish any procedure in any particular case; and

(d) a duty to submit a report on any of the matters referred to in paragraphs *(b)* and *(c)*,

and the insurer or insurance broker shall remunerate the auditor in respect of the discharge by him of all or any of these duties.

(8) An auditor's report made under subsection (6) shall be lodged with the Authority, together with the statements of accounts lodged by the insurer or the insurance broker under subsection (1).

(9) If an auditor, in the course of the performance of his duties as an auditor of an insurer, is satisfied that –

(a) there has been a serious breach or non-observance of the provisions of this Order or that a criminal offence involving fraud or dishonesty has been committed;

(b) any transaction or dispute has taken place which will have a material effect on the solvency of any insurance fund established by the insurer under this Order;

(c) serious irregularities have occurred, including irregularities that jeopardise the interests of policy owners; or

(d) where the insurer is incorporated or established in Brunei Darussalam, the insurer is unable to meet its obligations,

he shall immediately report the matter to the Authority.

(10) In the case of a company incorporated or established outside Brunei Darussalam, the audit required by subsection (3) need not extend beyond the business for which an insurance fund is maintained under this Order.

(11) The documents to be lodged with the Authority under this section for any accounting period of an insurer shall be accompanied by copies of any report submitted to the members of the insurer with respect to that period and, if it is not among the documents so lodged, by any statement of accounts so submitted with respect to that period; but references in this section to documents lodged with the Authority shall be deemed not to include documents required by this section to accompany documents so lodged.

(12) Where any report or statement referred to in subsection (10) is in a language other than the Malay or English language, the copy required by that subsection shall be in the Malay or English language and shall be certified to be a true translation of the original by the translator.

Actuarial investigations and reports as to life business.

60. (1) Subject to this section, an insurer registered under this Order in respect of life business shall once in a period of 12 months have an investigation to be made by a qualified actuary into the financial condition of its life business and shall lodge with the Authority (together with any prescribed fee) such abstract of the actuary's report and certificate relating thereto and such statements as to that business as are prescribed under subsection (1) of section 59.

(2) An investigation under subsection (1) shall be made as at the end of each accounting period. The actuary shall certify that in his opinion the reserves of the insurer are adequate or otherwise for the insurer's business and also how the surplus if any, of the funds of the insurer attributable to its life insurance business shall be apportioned between its participating policy owners and its shareholders.

(3) In the case of a company incorporated or established outside Brunei Darussalam, the investigation required by subsection (1) need not extend beyond the business for which an insurance fund is maintained under this Order, but if such a company is required by the law relating to insurance in the country in which it is incorporated or established to furnish the authority having the administration of that law with returns as to actuarial investigations of its life business, the document to be lodged with the Authority under this section shall be accompanied by certified copies of any such returns made since the company was first registered under this Order in respect of life business (or in, the case of an existing insurer, since the commencement of this Order), other than returns of which copies have previously been furnished under this subsection. References in this section to documents lodged with the Authority shall be deemed not to include documents required by this section to accompany documents so lodged.

(4) Where an insurer registered under this Order in respect of life business —

(a) has an actuarial investigation made into the life business for which it maintains an insurance fund under this Order (whether with or without any other life business carried on by it); and

(b) the investigation is not made to comply with subsection (1) or with any provision as to returns in the law relating to insurance in a country outside Brunei Darussalam, but the results of the investigation are made public,

then the insurer shall, as to the lodging of documents with the Authority, comply with the requirements of subsection (1) as in the case of an investigation made under that subsection.

Power to require returns under section 59 or 60 to be rectified.

61. (1) If it appears to the Authority that any document lodged in accordance with section 59 or 60 is in any particular way unsatisfactory, incomplete, inaccurate or misleading or that it does not comply with the requirements of this Order, the Authority may by notice in writing require such explanation as he considers necessary to be made by or on behalf of the insurer within such time (not being less than 14 days) as is specified in the notice.

(2) The Authority may, after considering any explanation made under subsection (1), or if such explanation has not been given by or on behalf of the insurer within the time specified in the notice given pursuant to that subsection, reject the document or give such directions as he thinks necessary for its variation within such time (not being less than one month) as is specified in such directions.

(3) Directions given under subsection (2) with respect to any document may require such consequential variations of any other document lodged by the insurer under section 59 or 60, as may be specified in the directions.

(4) Where directions are given under subsection (2), any document to which they relate shall be deemed not to have been lodged until it is re-submitted with the variations required by the directions, but the insurer shall be deemed to have submitted the document within the time limited by regulations prescribed under subsection (1) of section 59 if it is re-submitted with the required variations within the time limited by the directions.

Additional provisions as to returns under section 59 or 60.

62. (1) Any member or policy owner of an insurer shall have the right, on applying to the insurer, to be sent by the insurer to an address supplied by him copies of documents lodged by the insurer to comply with section 59 or 60, and to have the copies despatched not later than 14 days after the insurer receives the application:

Provided that this right shall not extend to any document excepted from this provision by regulations prescribed under subsection (1) of section 59.

(2) Any person shall have the right, on payment of the prescribed fee, at any time during working hours of the office of the Authority, to inspect at that office any document lodged by an insurer to comply with section 59 or 60, and any document required by subsection (10) of section 59 and subsection (3) of section 60 to accompany the document so lodged and make a copy of the whole or any part of it:

Provided that the right shall not extend to any document excepted from this provision by regulations prescribed under subsection (1) of section 59, or to documents of any other description lodged more than 10 years previously.

(3) In any proceedings, a certificate signed by any person appointed by the Authority under section 67, that a document is one lodged by an insurer to comply with section 59 or 60, or one that accompanied a document so lodged, shall be admissible as evidence of the facts certified.

(4) Where an insurer fails to comply with section 59 or 60, the insurer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

Returns of changes in registration particulars.

63. (1) Subject to subsection (3), where an insurer is registered under this Order in respect of either class of insurance business, the insurer shall, until he ceases to be so registered, notify the Authority in writing of any change affecting the insurer's registration particulars, and shall do so within 3 months of the change taking place.

(2) Where the change results in the amendment of any document, or the replacement of any document by a new document, the insurer shall furnish the Authority with a copy of the document showing the amendments or, as the case may be, with a copy of the new document.

(3) This section shall have effect subject to any prescribed exceptions, and the Authority may in any particular case dispense (either unconditionally or subject to any conditions) with the furnishing of information under this section about any change.

(4) In this section, "registration particulars" means the documents and information furnished by the insurer to comply with subsection (1) of section 9 when applying to be registered in respect of the class of business in question, or furnished by the insurer to comply with this section in respect thereof.

Inspections and investigations

Inspections and investigations of affairs of insurers.

64. (1) The Authority may from time to time inspect the books, accounts and transactions of a registered insurer and institute an investigation into the whole or any part of the insurance business carried on in Brunei Darussalam by the insurer.

(2) The costs and expenses of any investigation under subsection (1) shall be paid by the insurer.

(3) In making an inspection or investigation under this section, the Authority may, by notice in writing, require —

(a) the insurer, or any person having the custody thereof on behalf of the insurer;

(b) any person who is or has at any time been or acted as a director, actuary, auditor, officer, servant or agent of the insurer; or

(c) any past or present member or policy owner of the insurer, to produce for his inspection, and allow him to copy the whole or any part of any books, accounts, records or other documents of the insurer, whether kept in Brunei Darussalam or elsewhere (including documents evidencing the insurer's title to any assets):

Provided that a requirement under this subsection shall extend only to documents relating to business carried on by the insurer in Brunei Darussalam, or evidencing the insurer's title to assets held for the purposes of any such business.

(4) For the purpose of this Order, assets include —

- | | | |
|-------|-------------------------------|---|
| (i) | immovable property | any land, building and fixtures; |
| (ii) | movable property | any furniture, equipment, books, periodicals and any motor vehicles, vessels, ships, aircraft and other means of conveyance of whatever description, including tractors, bulldozers and any other type of light and heavy machinery, as well as tools and appliances; |
| (iii) | investments | any Government Securities, including bonds and securities of any quasi-government bodies or agencies and Treasury Bills; |
| (iv) | company and other investments | any stocks and shares, whether quoted in any stock exchange or unquoted, including any bonds, ordinary or preference shares and debentures; |
| (v) | cash | any cash deposited in any bank or lending institution, or placed with any other body or agency for whatever period, either on current or fixed deposit account, including any determinable amount of cash in hand; and |
| (vi) | other assets | any outstanding premium, commission and other debt or payment due and payable, and rights contractual or otherwise, including an interest therein accruing to or vested in the insurer. |

(4) In making an investigation under this section, the Authority may require any such person as is specified in subsection (3) to attend before him and

be examined on oath with respect to the insurer's business, and for the purposes of this subsection may administer oaths.

(5) Any person who refuses or fails when required to do so under subsection (3) or (4) to produce any document in his custody or to attend for or submit to examination by the Authority or any person appointed by him, or to answer any question put to him on such examination shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

Powers of Authority to issue directions.

65. (1) Where the Authority is satisfied that the affairs of any insurer are being conducted in a manner likely to be detrimental to the public interest or the interests of the policy owners or prejudicial to the interests of the insurer, the Authority may issue such directions to the insurer as it considers necessary and in particular may require the insurer —

(a) to take such action or recruit such management personnel as may be necessary to enable it to conduct its business in accordance with sound insurance principles;

(b) to remove any of its directors or any person whom the Authority considers unfit to be associated with it;

(c) to take action as to the disposition or recovery of its assets;

(d) to take any available steps for the recovery by the insurer of sums appearing to the Authority to have been illegally or improperly paid;

(e) to stop renewing or issuing further policies of the class of business to which the direction relates;

(f) to make such arrangements with respect to reinsurance as the Authority so specifies in the directions; and

(g) to take action to make good any default under section 18, 19, 20, 21, 22 or 23.

(2) The Authority may, upon representation being made to him, or on his own motion, modify or cancel any direction issued under subsection (1) and, in so doing, may impose such conditions as he thinks fit.

(3) Any insurer which fails to comply with any direction made under subsection (1) shall be guilty of an offence and shall be liable on conviction to a

fine not exceeding \$20,000 or to imprisonment for a term not exceeding 6 months or both, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

Winding-up

General provisions as to winding-up.

66. (1) The persons who petition under the Companies Act (Chapter 39) for the winding-up of an insurer or insurance broker registered under this Order, or for the continuance of the winding-up of such an insurer or insurance broker subject to the supervision of the Court, shall include the Minister.

(2) The Minister may, in accordance with the provisions of the Companies Act (Chapter 39), present a petition for the winding-up of an insurer or insurance broker registered under this Order if the insurer or insurance broker has contravened or failed to comply with any provision of this Order.

(3) The Minister shall be a party to any proceedings under the Companies Act (Chapter 39) relating to the winding-up of such an insurer or insurance broker, and the liquidator in such a winding-up shall give him such information as he may require about the affairs of the insurer or insurance broker, as the case may be.

(4) The Minister if he thinks fit, may support or oppose the petition.

(5) For the purposes of any proceedings under the Companies Act (Chapter 39) for the winding-up of such an insurer by the court, the contingent and prospective liabilities of the insurer in respect of policies shall, in determining whether it is unable to pay its debts, be estimated in accordance with such rules as may be prescribed; and evidence that the insurer was insolvent at the close of the last accounting period for which statements of account have been lodged with the Authority under section 59 shall be evidence that the insurer continues to be unable to pay its debts.

(6) In the winding-up of an insurer registered under this Order, section 249 of the Companies Act (Chapter 39) shall not apply to the valuation of liabilities in respect of policies; but in any such winding-up, whether the insurer is insolvent or not, those liabilities shall be estimated in accordance with any prescribed rules or, as regards matters not fixed by the rules, on a basis approved by the Authority.

(7) References in this section to an insurer registered under this Order shall extend to a Brunei Darussalam insurer which has ceased to be so registered but remains under any liability in respect of Brunei Darussalam policies.

Transfers of business

Special provision for insurers directed to cease insurance business.

67. (1) Where the Authority gives an insurer a direction under paragraph (e) of subsection (1) of section 65 by reason of the insolvency of the fund maintained by the insurer under this Order for either class of insurance business, the affairs of the insurer may be wound up by the Court under the Companies Act (Chapter 39) as if it had suspended its business for a whole year or as if it had ceased to carry on business.

(2) Where the Authority gives an insurer a direction under paragraph (e) of subsection (1) of section 65 but, on a petition for the insurer to be wound up by the Court, the Court is satisfied that the insurer will be able to pay its debts in full within one year or such longer period as the Court thinks reasonable, the court may (if it thinks fit) order the affairs of the insurer to be wound up only as regards the insurance fund maintained for the class of business to which the direction relates.

(3) An order made under subsection (2) for a limited winding-up shall be of the same effect as an order for the affairs of the insurer to be wound up generally, except in so far as this section otherwise provides.

(4) Where such an order is made, the powers of the liquidator shall be exercisable only for the purpose of applying the assets of the relevant insurance fund (including the deposit under this Order) in discharging the liabilities to which they are applicable, together with the costs, charges and expenses incurred in the winding-up; but the insurer shall, as the Court may direct, make such additions to those assets as are required to secure that they are sufficient for the purpose or shall, if the court so directs, discharge any of those liabilities out of other assets.

(5) In the winding-up of an insurer under such an order, the Companies Act (Chapter 39) shall have effect subject to the following modifications —

(a) section 155 of that Act and other sections so far as they relate to contributories shall not apply;

(b) section 166 of that Act shall apply after, as it applies before, the making of the winding-up order;

(c) sections 167, 168, 224 and 251 to 255 of that Act shall not apply.

(6) Where such an order is made, the Court may at any time, on the application of the liquidator or of any person who has a right to petition for the insurer to be wound up, substitute an order for the insurer to be wound up

generally and give such directions as it thinks fit as to matters in progress under the previous order; and, subject to any such directions, the winding-up shall for all purposes connected with the substituted order be deemed to have commenced at the time of the application for that order.

(7) Notwithstanding any written law, the Court may allow the liquidator of an insurer who carries on life insurance business to continue on its business with a view to transfer it to another insurer but the insurer shall not issue any new policy.

(8) The liquidator may transfer its assets and liabilities to another insurer.

(9) The liquidator, for the purpose of subsection (7) may apply to the Court for an order to reduce the amount of liabilities to the extent necessary taking into consideration the value of its available assets subject to such condition as it thinks fit.

Priority of claim of policy owners.

68. Where a registered insurer becomes insolvent or is unable to meet its obligations, the assets of the insurer shall be available to meet its liabilities to all policy owners of Brunei Darussalam policies and these liabilities shall have priority over all unsecured liabilities of the insurer other than preferential debts specified under the Companies Act (Chapter 39).

Policy Owners' Protection Fund.

69. (1) The Minister shall establish and maintain in accordance with this section and regulations, a Policy Owners' Protection Fund (referred to in this section as the Fund) for the purposes of indemnifying in whole or in part, or otherwise assisting or protecting, policy owners and others who have been or may be prejudiced in consequence of the inability of registered insurers to meet their liabilities under life policies and compulsory insurance policies issued by them.

(2) Subject to such exceptions or restrictions as may be prescribed, the Authority shall —

(a) secure that a sum equal to —

- (i) the full amount of any liability of a registered insurer in liquidation in respect of a sum payable to any person entitled to the benefit under the terms of any compulsory insurance policy, being a liability arising in respect of a liability of the policy owner which is a liability subject to compulsory insurance; and

- (ii) 90 per cent of the amount of any liability of a registered insurer in liquidation towards a policy owner under the terms of any life policy which was a Brunei Darussalam policy and not being a contract of reinsurance is paid to the person or policy owner as soon as reasonably practicable after the beginning of the liquidation; and

(b) make arrangements, so far as reasonably practicable, for securing continuity of insurance for every policy owner of a registered insurer in liquidation or in financial difficulties who is a policy owner in respect of a life policy which was a Brunei Darussalam policy and not being a contract of reinsurance, and for this purpose the Authority may take measures to secure or facilitate the transfer of the life business of the insurer, or part of that business, to another registered insurer or to secure the issue by another registered insurer to the policy owners of life policies in substitution of their existing policies.

(3) For the purposes of financing the expenditure of the Fund, regulations may impose a levy on registered insurers carrying on —

(a) general business in Brunei Darussalam (referred to in this section as a general business levy); and

(b) life business in Brunei Darussalam (referred to in this section as a life business levy).

(4) The proceeds of general business levies and life business levies shall be paid into the Fund.

s 28/07 (5) The amounts required to be paid by any registered insurer under general business levies or ^{life} business levies imposed under subsection (3) in any financial year shall not exceed one per cent of any income of the insurer for the year ending last before the beginning of that financial year which income is liable to the general business levy or the life business levy, as the case may be.

(6) The amount each registered insurer may be required to pay under general business levies imposed in any financial year shall be calculated by reference to the gross premium income of Brunei Darussalam policies of the insurer for the year ending last before the beginning of that financial year in respect of general business carried on in Brunei Darussalam other than reinsurance business; and any such income is hereinafter in this section referred to, in relation to any registered insurer, as income of the insurer for the year in question which is income liable to the general business levy.

(7) The amount each registered insurer may be required to pay under life business levies imposed in any financial year shall be calculated by reference to the gross premium income of the insurer for the year ending last before the

beginning of that financial year in respect of life business carried on in Brunei Darussalam other than reinsurance business; and any such income is hereinafter in this section referred to, in relation to any registered insurer, as income of the insurer for the year in question which is income liable to the life business levy.

(8) In subsections (6) and (7), the gross premium income of a registered insurer for any year in respect of any class of insurance business carried on in Brunei Darussalam, other than reinsurance business, means the gross amounts after deducting any return of premiums recorded in the accounts of the insurer during that year as paid or due to the insurer by way of premiums under that class.

(9) Subject to subsection (10), the proceeds of general business levies may be applied only on expenditure incurred by the Authority under sub-paragraph (i) of paragraph (a) of subsection (2), and the proceeds of life business levies may be applied only on expenditure incurred by the Authority under sub-paragraph (ii) of paragraph (a) of subsection (2) and paragraph (b) of subsection (2).

(10) The Authority may deduct from the Fund any expenditure incurred by him in performing his functions under this section.

(11) Where it appears to the Authority that any circumstances have occurred in relation to a registered insurer incorporated outside Brunei Darussalam which are the equivalent of a registered insurer in liquidation or in financial difficulties under the law relating to companies in force in the country in which it is incorporated, the Authority may treat that insurer as a registered insurer in liquidation or in financial difficulties for the purposes of this section and this section shall thereupon apply to that insurer subject to such modifications as appear to the Authority to be necessary.

(12) Without prejudice to the generality of section 89, regulations may provide —

(a) for the imposition, distribution and enforcement of general business levies and life business levies, and other matters in connection with or in relation to those levies; and

(b) for the investment of such part of the Fund as appears to the Authority to be surplus to its requirements for the time being.

(13) For the purpose of this section, "compulsory insurance policy" means any policy or security which satisfies the requirements of the Motor Vehicles Insurance (Third Party Risks) Act (Chapter 90) or the Workmen's Compensation Act (Chapter 74).

Schemes for transfer of business.

70. (1) The whole or part of the insurance business of a registered insurer may be transferred to another insurer registered in respect of the class or classes of business to be transferred, if the transfer is effected by a scheme under this section, but shall not be transferred except by such a scheme:

Provided that this subsection shall not apply to the transfer of any insurance business of a company incorporated or established outside Brunei Darussalam, except in so far as it relates to Brunei Darussalam policies.

(2) Any registered insurer, not being a company incorporated or established outside Brunei Darussalam, shall by virtue of this section have power to make such a transfer by a scheme under this section, and the directors shall have authority on behalf of the insurer to arrange for and do all things necessary to give effect to such a transfer; and this subsection shall apply notwithstanding the absence of that power or authority under the constitution of that insurer or any limitation imposed by its constitution on of its powers or on the authority of its directors.

(3) A scheme under this section may provide for the business in question to be transferred to a body not registered as an insurer under this Order (including a body not yet in existence) in respect of the relevant class of business, if the scheme is so framed as to operate only in the event of the body becoming so registered.

(4) A scheme under this section for the transfer of any insurance business may extend to the transfer with it of any other business, not being insurance business, where the other business is carried on by the insurer as ancillary only to the insurance business transferred.

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

(a) for any property, rights or liabilities of the transferor (including assets comprised in a deposit under this Order or in an insurance fund) to vest, by virtue of the scheme and without further or other assurance, in the transferee; and

(b) for 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 Order out of the transfer.

(6) A scheme under this section shall be of no effect unless confirmed by the High Court, but may be prepared and submitted for confirmation to the High

Court by any of the insurers concerned; and if so confirmed, the scheme shall have effect according to its tenor notwithstanding anything in the preceding sections of this Order and be binding on any person thereby affected.

Confirmation of schemes.

71. (1) Before an application is made to the High Court for confirmation of a scheme under section 70 —

(a) a copy of the scheme shall be lodged with the Authority, together with copies of the actuarial and other reports, if any, upon which the scheme is founded;

(b) not earlier than one month after the copy is so lodged, notice of the intention to make the application (containing such particulars as are prescribed) shall be published in the *Gazette* and in not less than 2 newspapers approved by the Authority; and

(c) for a period of 15 days after the publication of the notice a copy of the scheme shall be kept at each office in Brunei Darussalam of every insurer concerned, and shall be open to inspection by all members and policy owners of such an insurer who are affected by the scheme.

(2) The Authority may cause a report on the scheme to be made by a qualified 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 ~~to each~~ of the insurers concerned.

S 28/07

(3) Copies of the scheme and any report as is mentioned in paragraph (a) of subsection (1) or in subsection (2), or summaries approved by the Authority of the scheme and of any such report, shall except in so far as the High Court upon an application made in that behalf otherwise directs, be transmitted by the insurers concerned, at least 15 days before the application is made for confirmation of the scheme, to every policy owner affected by the scheme.

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

S 28/07

(5) The Court may confirm the scheme without modification or subject to modifications agreed to by the insurers concerned, or may refuse to confirm the scheme.

(6) The insurers concerned shall be jointly and severally liable to reimburse to the Authority any expenses incurred by him under this section in connection with any scheme or proposed scheme (subject to any order of the Court as to

S 28/07

s 28/07 costs); and a scheme shall include provision as to how that liability is, as between the insurer^s to be borne.

Documents to be filed when scheme confirmed.

72. (1) Where by a scheme under section 70, insurance business of one insurer is transferred to another, the transferee shall, within one month after the scheme takes effect, lodge with the Authority —

(a) statements of the assets and liabilities of each insurer concerned as at the time immediately before the transfer, signed on behalf of the insurer and, in the case of the transferor, indicating whether the transfer is of the whole of the transferor's business and, if not, the extent to the transferor's assets and liabilities relate to the business transferred;

(b) a copy of the scheme as confirmed by the Court, and a certified copy of the order of the Court confirming the scheme;

s 54/07 (c) copies of any actuarial or other reports upon which the scheme was founded (being reports made since a copy of the scheme was lodged under subsection (1) of section ~~63~~⁷¹; and

(d) a statutory declaration made by the chairman of directors of the transferee or by its principal officer in Brunei Darussalam, fully setting forth 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 forth has been, or is to be, made on account thereof by or with the knowledge of any insurer concerned. In this paragraph, references to the making of a payment include references to the transfer of property or rights of any description.

s 38/07 (2) On the confirmation of ^a scheme under section 71, each of the insurers concerned shall file a copy of the scheme with the Registrar of Companies.

PART V

MISCELLANEOUS AND GENERAL

Administration and enforcement

Exemption.

73. (1) The Authority may, subject to such conditions as he thinks fit exempt any person or class of persons from any or all of the provisions of the Order.

(2) An exemption granted under this section may be withdrawn by the Authority at any time.

Annual reports.

74. (1) Not later than the end of June in any calendar year, the Authority shall prepare and present to the Minister who shall submit to His Majesty the Sultan and Yang Di-Pertuan in Council a report on the working of this Order during the preceding calendar year.

(2) The Authority shall include in this report under this section for any year copies or summaries of documents lodged with it in that year under sections 59 and 60, other than documents excepted from subsections (1) and (2) of section 62, and may include copies or summaries of documents accompanying those lodged; and it may also include in the report such notes on any such documents or summaries as it thinks fit, and copies of any correspondence between it and an insurer about any such documents lodged by or received from the insurer.

Statistics.

75. (1) Regulations may provide for the collection by or on behalf of the Authority, at such intervals or on such occasions as may be prescribed, of statistical information as to such matters relevant to insurance as may be prescribed, and may provide for the collection and use of such information for any purpose, whether or not connected with insurance.

(2) Such regulations may make provision for requiring Brunei Darussalam insurers, insurance intermediaries, insurance brokers, and adjusters to furnish to the Authority, in the prescribed form, such information as may be prescribed.

(3) No use shall be made of any information obtained by or on behalf of the Authority by virtue only of this section, except in a form which does not disclose the affairs of any particular person.

Service of notices.

76. A letter containing a notice or other document to be served by the Authority under this Order shall be deemed to be properly addressed if it is addressed to the place in Brunei Darussalam which the addressee last indicated to the Authority as his address or to the addressee's latest address in Brunei Darussalam known to the Authority.

Secrecy and penalty.

77. (1) Except for the purposes of this Order or of any criminal proceedings under this Order, no person appointed to exercise any powers under this Order shall disclose any information which has been obtained in the course of his duties and which is not published in pursuance to this Order.

(2) Any person knowingly contravening the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding one year.

77A. ... s 54/07

General provisions as to offences.

78. (1) Any person who —

(a) signs any document lodged with the Authority under section 59 or paragraph (a) of subsection (1) of section 69; or

(b) furnishes the Authority with any information under or for the purposes of any other provision of this Order,

shall use due care to secure that the document or information is not false in any material particular; and if he does not use due care in this behalf and the document or information is false in a material particular, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000, imprisonment for a term not exceeding 2 years or both.

(2) Any person who is in breach of any duty imposed on him by this Order as being or having been an insurer, insurance agent, insurance broker or adjuster shall, in a case where no other punishment is provided for by this Order, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000, and in the case of a continuing offence to a further fine not exceeding \$1,000 for every day during which the offence continues after conviction.

(3) Where an offence against this Order is committed by any body corporate, any person who at the time of the commission of that offence was a director, manager, secretary or other similar officer of that body, or who was purporting to act in any such capacity, shall, as well as the body corporate, be guilty of the offence unless he proves that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(4) Where an offence against this Order is committed by a body corporate, being an offence consisting in the breach of a duty imposed only on bodies corporate, any individual guilty of the offence (whether by virtue of subsection (3) or otherwise) shall be liable on conviction to a fine, imprisonment for a term not exceeding one year or both.

"Identification of officers.

77A. (1) Any person exercising any functions under this Order shall carry an authority card in a form approved by the Authority which card shall identify the holder and his office and which shall be produced by the holder on demand to any person having reasonable grounds to make that demand.

(2) Where any person exercising any functions under this Order produces an authority card in a form approved under subsection (1) or any other written identification or authority, then, until the contrary is proved, that authority card or other written identification or authority shall be presumed to be genuine and he shall be presumed to be person referred to therein.

(3) It shall not be an offence for any person to refuse to comply with any demand or order made by any person exercising any functions under this Order, if such latter person refuses on demand being made by such first-mentioned person to declare his office and to produce his authority card or other written identification or authority."

shall be void unless the person effecting the insurance insures that life at the time the insurance is effected; and the policy moneys paid under such a policy shall not exceed the amount of that insurable interest at that time.

(2) The lives excepted from subsection (1), besides that of the person effecting the insurance, are those of the person's wife or husband, of the person's child or ward being the age of majority at the time the insurance is effected, and of anyone on whom that person is at that time wholly or partly dependent.

(3) In so far as in the case of any life policy the policy moneys do not consist wholly of a cash payment due on the death in question, the limit under this section on the amount to be paid shall be applied by reference to the value of the right to the policy moneys immediately after the death or the happening before the death of any event on which they become payable.

(4) In this section, "insuring the life" of a person means insuring the payment of money (or the equivalent) on the person's death or on the happening of any contingency dependent on the termination or continuance of that person's life, and includes granting an annuity to commence on that death or at a time to be determined by reference thereto or to any such contingency.

Capacity of infant to insure.

81. Notwithstanding any law to the contrary, a person over the age of 10 years shall not by reason only of being under the age of majority lack, and shall be deemed never to have lacked, the capacity to enter into a contract of insurance, but a person under the age of 16 years shall not have, and shall be deemed never to have had, the capacity to enter into such a contract except with the consent in writing of his parent or guardian.

Particulars to be set forth in life policy.

82. Every life policy issued shall contain a statement in distinctive type setting forth whether it is or is not a participating policy.

Life policy moneys to be paid without deduction.

83. (1) Any policy moneys payable under a life policy or moneys payable on the surrender of a life policy shall be paid without any deduction for sums not due under the policy or under an agreement charging them on the policy, unless the deduction is made with the consent of the person entitled to these moneys; and any provision contained in a life policy or in any agreement relating thereto shall be void, in so far as it entitles the insurer to make any such deduction without that consent.

(2) In any proceedings for the recovery of policy moneys due under the life policy or of moneys payable on the surrender of a life policy, no set-off or counterclaim shall be allowed except for sums due under the policy or under an agreement charging them on the policy.

Life policies (surrenders; non-payment of premiums; paid-up policies).

84. (1) Where a life policy, has been in force, in the case of an ordinary policy, for 3 years or more, the policy owner may by notice in writing to the insurer surrender the policy and shall thereupon become entitled to receive the surrender value thereof, determined in accordance with the terms and conditions applicable to the policy (but subject to any deduction for sums due under the policy or under an agreement charging them on the policy).

(2) Where a life policy has been in force for 3 years or more, the policy shall not lapse or be forfeited by reason of the non-payment of premiums, but shall have effect subject to such modifications as to the period for which it is to be in force or the benefits receivable thereunder or both as may be determined in accordance with any^{of} the terms and conditions applicable to the policy.

(3) Where a life policy has been in force for 3 years or more, the policy owner may by notice in writing to the insurer elect to exchange the policy for a paid-up policy, which shall be a non-participating policy for an amount determined in by the insurer.

(4) A policy issued in place of an earlier policy shall for the purposes of this section (including this subsection) be treated as having been in force since the earlier policy began to be in force.

(5) Subsections (1) to (3) shall not apply —

(a) to a policy securing the grant of an annuity for a term dependent upon human life; or

(b) to a policy under which no policy moneys are necessarily payable, not being a policy which provides for the payment of policy moneys on a death after a specified period.

(6) The rights conferred by this section shall be in addition to, and not in derogation of, any other rights available to the policy owner under the terms of the policy or otherwise; but this section shall not be taken to confer on a policy owner any rights except against the insurer as such.

(7) This section shall apply to policies whenever issued; and subject to subsection (5), shall extend to any Brunei Darussalam policy.

Payment of life policy and personal accident policy claims without probate etc.

85. (1) In any case where the policy owner of any ^{life} policy or personal accident policy of an insurer dies, and the policy moneys are payable thereunder on his death, the insurer may make payment to a named beneficiary a prescribed amount of the policy moneys of all such policies issued by the insurer on the deceased's life without the production of any probate or letters of administration; and the insurer shall be discharged from all liability in respect of the amount paid.

s 28/07

(2) If, in any case as is mentioned in subsection (1), estate duty is payable in Brunei Darussalam on any such policy moneys as are there mentioned, the insurer may, notwithstanding Part IX of the Stamp Act (Chapter 34), pay to a named beneficiary a prescribed amount of the policy moneys of all such policies issued by the insurer, without the policy moneys having been included in such a schedule or certificate as is mentioned in that subsection.

(3) Before making any payment under subsection (2), the insurer shall give notice of the payment by registered post to the Collector appointed for the purposes of the Stamp Act (Chapter 34) with such particulars as the Collector may require.

(4) Subsection (2) shall apply in relation to policy moneys under policies of which the deceased was not the policy owner at his death as it applies in relation to any such policy moneys as are mentioned in subsection (1).

(5) Where an amount is paid under subsection (2) on account of any policy moneys, the insurer may, before payment of the balance of such policy moneys to

a named beneficiary, apply the whole or part of the policy moneys to pay any unpaid estate duty payable on the death of the insured.

(6) In this section, "policy owner" includes a part owner of a policy, and "named beneficiary" means a person who is named to benefit from the sum in question.

Knowledge of and statement by authorised agent to be deemed knowledge and statement by insurer.

86. (1) A person who has at any time been authorised as its agent by an insurer and who solicits or negotiates a contract of insurance in such capacity shall in every such instance be deemed for the purpose of the formation of the contract to be the agent of the insurer, and the knowledge of such person relating to any matter relevant to the acceptance of the risk by the insurer shall be deemed to be the knowledge of the insurer.

(2) Any statement made or any act done by any such person in his representative capacity shall be deemed, for the purpose of the formation of the contract, to be a statement made or act done by the insurer, notwithstanding any contravention of section 37 or of any other provision of this Order by such person.

(3) This section shall not apply –

(a) where there is collusion or connivance between such person and the proposer in the formation of the contract; or

(b) where such person has ceased to be its agent, and the insurer has taken all reasonable steps to inform or bring to the knowledge of potential policy owners and the public in general the fact of such cessation.

Application of other laws.

87. Where there is any conflict or inconsistency between the provisions of this Order and those of the Companies Act (Chapter 39) (other than sections 135A to 135N, sections 149A to 149U and the Thirteenth and Fourteenth Schedules), the Contracts Act (Chapter 106), the Road Traffic Act (Chapter 68) or the Motor Vehicles Insurance (Third Party Risks) Act (Chapter 90), the provisions of this Order shall prevail.

Supplementary

Power to issue guidelines.

88. The Minister may issue guidelines, circulars or notices in respect of this Order relating to the conduct of the business and affairs of the insurer.

Regulations.

89. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and of any other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

Transitional provisions.

88/06
90. (1) Any insurer which on the coming into force of this Order is already permitted under administrative arrangements by the Ministry of Finance to carry on general business or life business, as the case may be, shall be deemed to be registered under subsection (2) of section 9 for a period of 6 months from the date of commencement of this Order ^{or from such later date as the Authority may in any particular case determine} and may within that period carry on the insurance business which was being lawfully carried on by it immediately before the commencement of this Order.

(2) Within the period of 6 months referred to in subsection (1), the insurer shall apply for registration in accordance with subsection (1) of section 9 in respect of the period after the period referred to in subsection (1).

(3) An insurer which is deemed by virtue of subsection (1) to be registered under subsection (2) of section 9 shall no later than 3 months after the date of commencement of this Order comply with section 5 regarding the requirements for carrying on business as an insurer (save the requirement as to registration).

FIRST SCHEDULE

DEFINITION OF "ASSOCIATE", "PARENT" AND SUBSIDIARY UNDERTAKINGS

PART I

ASSOCIATE

1. (1) In this Order, "associate", in relation to another person, means any of the following —

(a) the wife or husband, or son, daughter or more remote issue, of that person;

(b) the brother or sister, or parent or more remote lineal ancestor, of that person;

(c) the trustees of any settlement under which that person has a life interest in possession;

(d) any company of which that person is a director;

(e) any person who is an employee or partner of that person;

(f) if that person is a company, any director or subsidiary undertaking of that company and any director or employee of such a subsidiary undertaking.

(2) In relation to a person entitled to exercise or control the exercise of voting power in relation to, or holding shares in, ~~any~~ ^{any} undertaking, sub-paragraph (3) applies in addition to sub-paragraph (1). 628/07

(3) If such person as is referred to in sub-paragraph (2) (call him "A"), has with any other person ("B") an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in the undertaking concerned, or under which they undertake to act together in exercising their voting power in relation to that undertaking, B is an associate of A.

2. For the purposes of paragraph 1 —

"daughter" includes step-daughter;

"settlement" includes any disposition or arrangement under which property is held on trust;

"son" includes step-son.

PART II

CONTROLLERS

s 28/07 3. (1) In this Order, "controller", in relation to an insurer, means a person who, either alone or together with any associate —

(a) holds 20 per cent or more of the shares in that body or in another body of which that first-mentioned body is a subsidiary undertaking;

(b) is entitled to exercise or control the exercise of 20 per cent or more of the voting power at any general meeting of that body or of another body of which that first mentioned body is a subsidiary undertaking; or

(c) is able to exercise a significant influence over the management of that body or of another body of which that first-mentioned body is a subsidiary undertaking, by virtue either of a holding of shares in that body or in the other body or of an entitlement to exercise, or control the exercise of, the voting power at a general meeting of the insurer.

(2) Without prejudice to a generality of sub-paragraph (c) of sub-paragraph (1), in the case of an insurer, which is a partnership, every partner shall be regarded as a person falling within that paragraph.

4. (1) In this Order, "indirect controller" means a controller falling within sub-paragraph (c) of sub-paragraph (1) of paragraph 3 and references to other descriptions of controller shall be construed as follows —

(a) a "10 per cent controller" means a controller in whose case the percentage referred to in the relevant paragraph is 10 or more but less than 20;

(b) a "20 per cent controller" means a controller in whose case the percentage referred to in the relevant paragraph is 20 or more but less than 22;

(c) a "33 per cent controller" means a controller in whose case the percentage referred to in the relevant paragraph is 33 or more but less than 50;

(d) a "majority controller" means a controller in whose case the percentage referred to in the relevant paragraph is 50 or more.

s 28/07 (2) In sub-paragraphs (a), (b), (c) and (d) of sub-paragraph (1), "the relevant paragraph", in relation to a controller, means whichever of sub-paragraphs (a) and (b) of sub-paragraph (1) of paragraph 3 gives the greater percentage in his case.

PART III

PARENT AND SUBSIDIARY UNDERTAKING ETC.

Undertakings.

5. In this Order, "undertaking" means —

- (a) a body corporate or a partnership; or
- (b) unincorporated association carrying on a trade or business with or without a view to profit.

Parent and subsidiary undertakings.

6. (1) For the purposes of this Order, an undertaking is a parent undertaking in relation to another undertaking (a "subsidiary undertaking") if —

- (a) it holds a majority of the voting rights in the undertaking;
- (b) it is a member of the undertaking and has a right to appoint or remove a majority of its board of directors;
- (c) it has a right to exercise a dominant influence over the undertaking —
 - s 28/07 (i) by virtue of provisions contained in the undertaking's memorandum or articles; or
 - (ii) by virtue of a control contract;
- (d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking;
- (e) it is a member of the undertaking, no other person is the undertaking's parent by virtue of any of sub-paragraphs (a) to (c), and at all times since the beginning of the undertaking's immediately preceding financial year, a majority of the undertaking's board of directors have been directors who were appointed solely as a result of the exercise of its voting rights; ~~or~~
- s 28/07 (f) it has a participating interest in the undertaking and either actually exercises a dominant influence over the undertaking or it and the undertaking are managed on a unified basis; ~~or~~
- s 28/07

(g) it has a participating interest in the undertaking which either entitled it to 20 per cent or more of the voting rights in the undertaking or comprises 20 per cent or more of the shares in the undertaking,

and any reference to the participating interest provisions of this paragraph is a reference to sub-paragraphs *(f)* and *(g)*.

(2) For the purposes of sub-paragraph (1) an undertaking shall be treated as a member of another undertaking —

(a) if any of its subsidiary undertaking is a member of that other undertaking; or

(b) if any shares in that other undertaking are held by a person acting on behalf of the undertaking ~~are held by a person acting on behalf of the undertaking~~ or any of its subsidiary undertakings.

s 28/7

(3) Subject to sub-paragraph (4), a parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings.

(4) An undertaking ("A") shall not be treated as a parent undertaking of an undertaking ("B") by reason only that another undertaking which is A's subsidiary undertaking by virtue of sub-paragraph *(g)* of sub-paragraph (1) is a parent undertaking of B.

(5) Expressions used in the preceding provisions of this paragraph shall be construed in accordance with the following provisions of this Part.

Fellow subsidiary undertakings.

7. (1) Subject to sub-paragraph (2), "fellow subsidiary undertakings" are undertakings which are subsidiary undertakings of the same parent undertaking but are not parent undertakings or subsidiary undertakings of each other.

(2) 2 subsidiary undertakings of the same parent undertaking are not fellow subsidiary undertakings if either of them is a subsidiary undertaking by virtue only of sub-paragraph *(g)* of sub-paragraph (1) of paragraph 6.

Participating interests.

8. (1) A "participating interest" is an interest held by an undertaking in the shares of another undertaking which it holds on a long term basis for the purpose of securing a contribution to its activities by the exercise of control of influence arising from or related to that interest.

(2) A holding of 20 per cent or more of the shares of an undertaking shall be presumed to be participating interest unless the contrary is shown.

(3) The reference in sub-paragraph (1) to an interest in shares includes —

(a) an interest which is convertible into an interest in shares; and

(b) an option to acquire shares or any such interest,

and an interest or option falls within sub-paragraph (a) or (b), notwithstanding that the shares to which it relates are, until conversion or the exercise of the option, unissued.

(4) For the purposes of this paragraph, an interest held on behalf of an undertaking shall be treated as held by it.

(5) For the purposes of this Part —

(a) there shall be attributed to an undertaking any interest held by any of its subsidiary undertakings; and

(b) the reference in sub-paragraph (1) to the purpose and activities of an undertaking shall be taken to include the purposes and activities of any of its subsidiary undertakings and of the group as a whole.

Shares.

9. (1) In this Part, references to shares —

(a) in relation to an undertaking with share capital, are to allotted shares;

(b) in relation to an undertaking with no share capital, are to rights to shares in the capital of the undertaking;

(c) in relation to an undertaking without capital, are to interests —

(i) conferring any right to share in the profits or liability to contribute to the losses of the undertaking;

(ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding-up;

(iii) permitted by the law under which the undertaking is established.

(2) Nothing in this paragraph affects the construction of the expression "actually exercised a dominant influence" in sub-paragraph (f) of sub-paragraph (1) of paragraph 6.

Rights exercisable only in certain circumstances or temporarily incapable of exercise.

10. (1) Rights which are exercisable only in certain circumstances shall be taken into account for the purposes of this Part only —

(a) when the circumstances have arisen, and for so long as they continue to obtain; or

(b) when the circumstances are within the control of the person having the rights.

(2) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

Rights held by one person on behalf of another.

11. (1) Rights held by a person in a fiduciary shall be treated for the purposes of this Part as not held by him.

(2) Rights held by a person as nominee for another shall be treated for the purposes of this Part as held by the other.

(3) Rights shall be regarded as held as nominee for another if they are exercisable only on these instructions or with his consent or concurrence.

Rights attached to shares held by way of security.

12. Rights attached to shares held by way of security shall be treated for the purposes of this Part as held by the person providing the security —

(a) where, apart from the right to exercise them for the purposes of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with instructions; and

(b) where the shares are held in connection with the granting of loans as part of normal business activities and, apart from ^{the} ~~form~~ the right to exercise them for the purposes of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

s 28/07

Rights attributed to parent undertaking.

13. (1) Rights shall be treated for the purposes of this Part as held by a parent undertaking if they are held by any of its subsidiary undertakings.

(2) Nothing in paragraph 14 or 15 shall be construed as requiring rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings.

(3) For the purposes of paragraph 15, rights shall be treated as being exercisable in accordance with the instructions, or in the interests of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of any group undertaking.

Group undertakings.

14. In this Part "group undertaking", in relation to an undertaking, means an undertaking which is —

(a) a parent or subsidiary undertaking of that undertaking; or

(b) a subsidiary undertaking of any parent undertaking of that undertaking; and references to a group shall be construed accordingly.

Disregard of certain rights.

15. For the purposes of this Part, the voting rights in an undertaking shall be taken to be reduced by any rights held by the undertaking itself.

Undertakings which are not companies.

16. Subject to any specific provision made by this Part, expressions used in this Part which are appropriate to companies shall be construed, in relation to an undertaking which is not a company, as references to the corresponding person, officers or organs, as the case may be, appropriate to undertakings of that description.

SECOND SCHEDULE
[Section 3(7)]

~~PART I~~ s 28/07

DEFINITION OF INSURANCE TERMS

General.

1. (1) "Policies" includes any contract of insurance whether or not embodied in or evidenced by an instrument in the form of a policy, and references to issuing a policy shall be construed accordingly.

(2) References to a policy of an insurer include any policy in respect of which the insurer is under any liability, whether the policies were issued by the insurer or the liability was transferred to the insurer from another.

2. (1) Subject to this paragraph and to subsections (3) and (4) of section 19 of the Order, "Brunei Darussalam policy", in relation to any insurer, means a policy issued in the course of the insurer's business in Brunei Darussalam and falling within one of the following descriptions —

(a) a life policy or personal accident policy in the case of which, at the date of issue of the policy and (if the policy was issued before then) at the date of the establishment of the insurer's register of Brunei Darussalam policies, the policy owner's address is or was an address in Brunei Darussalam;

(b) in relation to direct general insurance (other than personal accident policies) and facultative general reinsurance, a policy in the case of which the risk arises in Brunei Darussalam or where the insured is a person resident in Brunei Darussalam or has a permanent establishment in Brunei Darussalam; and

(c) in relation to treaty general reinsurance, a policy in the case of which more than 10 per cent of the total risks in terms of gross premiums arises in Brunei Darussalam.

(2) For the purposes of this paragraph —

(a) any policy belonging to the insurer's life business shall be deemed to be a life policy, and not to be a policy of any other description;

(b) "permanent establishment" means a fixed place where a business is wholly or partly carried on including —

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a warehouse;

(f) a workshop;

(g) a farm or plantation;

(h) a mine, oil-well, quarry or other place of extraction of natural resources;

(i) a building or work site or a construction, installation or assembly project; and

without prejudice to the generality of the foregoing, a person shall be deemed to have a permanent establishment in Brunei Darussalam if that person —

(j) carries on supervisory activities in connection with a building or work site or a construction, installation or assembly project; or

(k) has another person acting on that person's behalf in Brunei Darussalam who —

(i) has and habitually exercises an authority to conclude contracts;

(ii) maintains a stock of goods or merchandise for the purpose of delivery on behalf of that person; or

(iii) habitually secures orders wholly or almost wholly for that person or for such other enterprises as are controlled by that person;

(c) "policy owner's address" means the address for the time being known to the insurer as the address for communicating with the policy owner about the policy;

(d) "resident in Brunei Darussalam" has the same meaning as in section 2 of the Income Tax Act (Chapter 35); and

(e) where any risk is in transit in Brunei Darussalam it shall be deemed to be a risk outside Brunei Darussalam,

but sub-paragraph (a) of sub-paragraph (1) shall apply to a policy of reinsurance as if the references to the date of issue of the policy and to the policy owner's address refer to those of the policy under which the liability reinsured ultimately arises.

3. "Policy owner" means, where a policy has been assigned, the assignee for the time being and, where they are entitled as against the insurer to the benefit of the policy, the personal representatives of the estate of a deceased policy owner.

4. "Policy moneys" includes any benefit, pecuniary or not, which is secured by a policy, and "pay" and other expressions, where used in relation to policy moneys, shall be construed accordingly.

Definitions related to life business.

5. "Cancellable group life insurance business" means the business of insuring the lives of a group of persons where it is written on a yearly renewable term basis and where the contract can be terminated by either the insured or the insurer at any policy anniversary.

6. "Life policy" means any policy by which payment of policy moneys is insured on death (otherwise than by way of insurance against personal accident, disease or sickness only) or on the happening of any contingency dependent on the termination or continuance of human life, and includes a policy which is subject to payment of premiums for a term dependent on the termination or continuance of human life and a policy securing the grant of an annuity for such a term.

7. "Participating policy" means a life policy conferring any right to share in the profits or surplus arising from the business of the insurer or any part of it, and "non-participating policy" means a life policy not conferring any such right.

Definitions related to general business.

8. "Bond investment business" means the business of issuing bonds or endowment certificates by which the company, in return for subscription payable at periodic intervals of less than 6 months, contracts to pay the bond holder a sum at some future date, not being life assurance business but includes sinking fund and capital redemption insurance business.

9. "Employers liability insurance" means the issue of or the undertaking of liability under policies insuring employers against liability to pay compensation or damages to workmen in their employment but does not include any business carried on as incidental only to marine, aviation and transit insurance business.

10. "Marine, aviation or transit insurance policy" means a policy of insurance —

(a) upon vessels or aircraft, or upon the machinery, tackle, furniture or equipment of vessels or aircraft;

(b) upon goods, merchandise or property of any description whatever on board vessels or aircraft;

(c) upon the freight of, or any other interest in or relating to, vessels or aircraft;

(d) against damage arising out of or in connection with the use of vessels or aircraft, including third-party risks;

(e) against risks incidental to the construction, repair or docking of vessels, including third-party risks; or

(f) against transit risks (whether the transit is by sea, inland water, land or air, or partly one and partly another) including risks incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance.

11. "Motor vehicle insurance business" means the business of effecting contracts of insurance against loss of, or damage to or arising out of or in connection with the use of motor vehicles, including third-party risks.

12. "Personal accident policy" means a policy of insurance upon the happening of personal accidents, whether fatal or not, disease or sickness, or any class of personal accidents, disease or sickness.

13. "Property insurance business" means the business of effecting contracts of insurance against loss of or damage to real or personal property of every kind and interest therein, from any or all hazard or cause and against loss consequential upon such loss or damage, but does not include risks the insurance of which is motor vehicle insurance business or marine, aviation and transit insurance business.

THIRD SCHEDULE
[Sections 5(3), 16(7)(c), 23(3)(a) and (4)]

**BRUNEI DARUSSALAM ASSETS AUTHORISED
FOR INSURANCE FUNDS**

1. The bonds, debentures or other evidences of indebtedness of the Government.
2. The bonds, debentures or evidences of indebtedness of any other government approved by the Authority.
3. The bonds, debentures or other evidences of indebtedness of a company incorporated in Brunei Darussalam that are fully secured by a statutory charge upon immovable property or upon the plant or equipment of the company.
4. The bonds or debentures or other evidences of indebtedness of a company incorporated in the country in which it is incorporated or established that is fully secured by a statutory charge upon immovable property or upon the plant or equipment of the company.
5. The fully paid-up common shares of a company incorporated in Brunei Darussalam quoted on any stock exchange which is a recognised stock exchange approved by the Authority.
6. The fully paid-up common shares of a company incorporated in the country in which it is incorporated or established and quoted on any recognised stock exchange approved by the Authority.
7. Immovable property in Brunei Darussalam required by the company for its actual use or occupation or other immovable property in Brunei Darussalam.
- 28/01 8. Fixed deposit certificate~~d~~ issued by a bank licensed under the Banking Act (Chapter 95), the Islamic Banking Act (Chapter 168) or with such other financial institution as may be prescribed.
9. Units in a unit trust approved by the Authority.
10. Such other investments as the Authority may approve from time to time.

FOURTH SCHEDULE

RETURNS BY INSURERS

PART I

DOCUMENTS TO BE LODGED YEARLY

1. (1) An insurer, to comply with subsection (1) of section 59, shall lodge such statements of account and other statements as are mentioned in this paragraph.

(2) There shall be lodged for each accounting period —

(a) a statement that the insurer has, during the relevant accounting period, complied with the provisions of sections 60 and 61;

(b) by an insurer registered in respect of life business or general business, a revenue account in respect of that business; and

(c) by any insurer, a profit and loss account for the whole of the insurer's business, together with separate balance sheets, as at the end of that accounting period, for each class of insurance business in respect of which the insurer is registered:

Provided that in the case of a company incorporated or established outside Brunei Darussalam, the accounts and balance sheets need not show the results of or relate to business other than insurance business for which the company maintains an insurance fund under this Order.

(3) There shall be lodged —

(a) by an insurer registered in respect of life business, statements for each accounting period giving, as regards policies belonging to that class of business, particulars —

(i) as to the issue of new policies during that period;

(ii) as to the termination or reduction of the liability, or of the premiums on policies during that period, and transfers of policies to or from the register during that period; and

(iii) as to policies in force at the end of that period;

(b) by an insurer registered in respect of general business, statements for each accounting period giving, as regards policies belonging to that class of business, particulars as to premiums and claims; and

(c) by an insurer registered in respect of either class of business, a statement for each calendar year giving particulars of the assets held at the end of each year as assets of the insurance fund maintained for that class of business.

(4) Regulations may modify sub-paragraph (c) of sub-paragraph (3) so that it requires statements of the assets of an insurance fund to be made for parts of a calendar year instead of an entire year.

(5) The statement required by sub-paragraph (c) of sub-paragraph (3) shall be excepted from subsections (1) and (2) of section 60.

2. (1) With any accounts and balance sheet lodged under paragraph 1, there shall be lodged a certificate of the auditor signed by him and advised to the Authority stating whether in his opinion —

(a) the accounts and balance sheet are in accordance with this Order;

(b) the balance sheet truly represents the financial position of the insurer; and

(c) the books of the insurer have been properly kept and correctly record the affairs and transactions of the insurer:

Provided that where the audit does not extend to the whole business of the insurer, the certificate shall, as regard paragraphs (b) and (c), be given subject to an appropriate limitation.

(2) The certificate of the auditor shall also state —

(a) whether in the relevant accounting period any part of the assets of the insurance fund or funds maintained under this Order has been applied in contravention of section 20, and whether during that period, section 23 has been complied with relation to those assets and any assets falling within subsection (6) of section 23;

(b) as regards the documents evidencing the insurer's title to any such assets, whether he has inspected such of those documents as are held by or on behalf of the insurer within Brunei Darussalam, and whether he has received satisfactory information as to the whereabouts and custody of any others, specifying whether the insurer has complied with the requirements of section 27;

(c) whether all necessary and proper apportionments have been made in preparing the accounts and balance sheet, and have been made in an equitable manner; and

(d) such other contravention of this Order as may be discovered in the course of the audit.

3. In respect of an insurer carrying on life insurance business, a separate certificate from its actuary stating whether or not in his opinion the liabilities of its life business exceed the amount shown on the balance sheet should be included.

PART II

DOCUMENTS TO BE LODGED ON ACTUARIAL INVESTIGATION OF LIFE BUSINESS

4. (1) An insurer registered in respect of life business in order to comply with subsection (1) of section 59 in the case of any actuarial investigation, shall lodge such documents as are mentioned in this paragraph.

(2) There shall be lodged an abstract of the actuary's report, which shall be signed by the actuary and shall include —

(a) a summary and valuation of the policies as at the date of the investigation; and

(b) a valuation balance sheet as at the date of the business to which the report relates.

(3) There shall be lodged a certificate by the actuary, signed by him, that he has satisfied himself as to accuracy of the valuation made for the purposes of the investigation and as to their being made in accordance with this Order, and as to the accuracy of the data on which they are based:

Provided that, if the actuary is not a permanent officer of the insurer, the certificate shall, so far as it relates to the accuracy of the data on which the valuations are based, be given and signed by or on behalf of the insurer's principal officer in Brunei Darussalam, and the actuary shall in his part of the certificate state the precautions taken by him to ensure the accuracy of the data.

(4) There shall be lodged statements signed by the actuary analysing, as at the date of the investigation, the position as regards policies and premiums of the business to which the report relates.

PART III

LODGEMENT, FORM AND CONTENTS

5. (1) A document to be lodged by an insurer shall be lodged by sending to the Authority 5 copies thereof, of which (unless the document itself is required by this Schedule to be signed) one copy at least shall be signed by 2 of the insurer's directors and by or on behalf of the insurer's principal officer in Brunei Darussalam.

(2) The persons signing any balance sheet shall certify that in their belief the assets set forth in the balance sheet are fully of the value stated in the balance sheet, less any investment reserve fund taken into account; and they shall also either certify that in the relevant accounting period no part of the assets of the insurance fund maintained under this Order has been applied in contravention of section 20, and during that period, section 23 has been complied with in relation to those assets and any asset falling within subsection (6) of section 23, or shall state the exceptions.

(3) The persons signing a balance sheet in respect of life business shall certify that in the relevant accounting period the provisions of subsection (5) of section ~~81~~⁸² with respect to deposits of balance of policy moneys with the Authority have been complied with.

6. A document shall be lodged within 6 months of the relevant date, or within such longer period as the Authority may allow (but not exceeding, except in the case of the documents to be first lodged by an existing insurer, 9 months from the relevant date); and for this purpose the relevant date is the date to which the document relates or, in the case of an account or statement for an accounting period, the end of that period:

Provided that the Authority, upon being satisfied that the affairs of any insurer are being conducted in a manner likely to be detrimental to the public interest, the interest of the policy owners, or the interests of the insurer, may in any such case specify a period shorter than 6 months for the purposes of this paragraph.

7. A document shall be in the Malay or English language, and shall (as regards all 5 copies) be either printed or, with the permission of the Authority produced by other mechanical means approved by him.

8. Where by this Schedule a document is required to be signed by or on behalf of the insurer's principal officer in Brunei Darussalam, it shall, if not signed by that person, be signed by one of the insurer's officers in Brunei Darussalam who

has been notified to the Authority as having authority for the purposes of this Schedule to sign in the place of the principal officer in Brunei Darussalam.

9. (1) Subject to the following sub-paragraphs, a document shall be in the prescribed form and contain the prescribed particulars, and be prepared in accordance with the regulations, including regulations for the way in which any valuation is to be made or in which any item is to be dealt with.

(2) The Authority may in any particular case permit such departure as he thinks fit from any requirement of the regulations made under sub-paragraph (1), if he is satisfied that the purpose of the document in question will nevertheless be substantially fulfilled.

(3) Without prejudice to sub-paragraph (2), where an abstract is to be lodged of an actuary's report on an investigation made otherwise than to comply with subsection (1) of section 60, the abstract may conform with the regulations made under sub-paragraph (1) subject to any modification which the Authority may approve, having regard to the purpose of the actuary's investigation and the form and contents of his report.

Made this 4th. day of Safar, 1427 Hijriah corresponding to the 4th. day of March, 2006 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

No. S 49

**INSURANCE ORDER, 2006
(S 48/06)**

INSURANCE REGULATIONS, 2006

ARRANGEMENT OF REGULATIONS

Regulation

PART I

PRELIMINARY

1. Citation and commencement.

PART II

REGISTRATION AND FEES

2. Documents and information required for registration.
3. Registration and annual fees.
4. Insurance agent's fees.
5. Insurance broker's fees.
6. Adjusters' fees.
7. Inspection fee.

PART III

FINANCIAL AND OTHER REQUIREMENTS

8. Surplus of assets over liabilities.
9. Deposit with Authority.
10. Margins of solvency.
11. Minimum paid-up share capital.

12. Professional indemnity insurance.

PART IV

VALUATION OF ASSETS

13. Application of this Part.
14. Immovable property.
15. Government securities.
16. Unit trusts and equity shares.
17. Corporate bonds and bills of exchange.
18. Loans.
19. Cash, deposits and negotiable certificates of deposits.
20. Outstanding premiums and agents' balances.
21. Deposits withheld by cedents and other recoverables.
22. Investment income due or accrued and other receivables.
23. Motor vehicles and computer equipment.
24. Valuation of assets.

PART V

ASSETS OF BRUNEI DARUSSALAM INSURANCE FUND

25. Definitions of this Part.
26. Application of this Part.
27. Investment limits.
28. Counterparty exposure limits.
29. Liquid assets.

PART VI

DETERMINATION OF LIABILITIES

30. Determination of liabilities.
31. Withdrawal from insurance fund in respect of life policy removed from register of Brunei Darussalam policies.
32. Minimum surrender.
33. References to statutory valuation of life policies.

PART VII

MISCELLANEOUS

34. Withdrawals from fund upon removal of life policy from register.
35. Assumption of risk.

MINIMUM CRITERIA OF A "FIT AND PROPER PERSON"

36. Minimum criteria of a "fit and proper person".
37. Criteria for managing director or director of registered insurer.
38. Criteria for a chief executive or principal officer of registered insurer.
39. Discretion of the Authority.

SCHEDULE – INVESTMENT LIMITS

INSURANCE ORDER, 2006
(S 48/06)

INSURANCE REGULATIONS, 2006

In exercise of the power conferred by subsection (1) of section 89 of the Insurance Order, 2006, the Minister of Finance, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

PART I

PRELIMINARY

Citation and commencement.

1. These Regulations may be cited as the Insurance Regulations, 2006 and shall commence on the same date as the Insurance Order, 2006.

PART II

REGISTRATION AND FEES

Documents and information required for registration.

2. For the purposes of section 9 of the Order, the prescribed documents and information to be furnished in respect of an application for registration are —

- (a)* the name of the applicant company;
- (b)* its place of incorporation;
- (c)* if incorporated outside Brunei Darussalam, the address of its principal place of business in Brunei Darussalam;
- (d)* a copy of the company's memorandum and articles of association;
- (e)* the amount of the company's paid-up share capital;
- (f)* the names of the company's directors and, for each director, the address of the director's principal place of business;
- (g)* the name and registered address of any shareholder of the company holding 5 per cent or more of the company's paid up share capital;

(h) the number of the company's employees and the proportion of those who are citizens of Brunei Darussalam;

(i) a copy of the company's audited accounts for each of the last 5 years for which these are available;

(j) whether the application is for registration in respect of life business or general business of insurance;

(k) in the case of a company incorporated outside Brunei Darussalam, confirmation from the appropriate authority in its home jurisdiction that it is authorised in that jurisdiction to carry on the type of insurance business for which registration is sought and complies with all relevant regulatory requirements in respect of such business within that jurisdiction;

(l) a business plan describing the company's intended strategy for the following 5 years in respect of the insurance business for which registration is sought; and

(m) any other related documents.

Registration and annual fees.

3. (1) A registered insurer shall pay to the Authority the following fees —

(a) for registration in respect of life business, a fee of \$20,000;

(b) for registration in respect of general business, a fee of \$20,000.

(2) A registered insurer shall pay to the Authority the following fees on or before 1st. January of each year —

(a) for carrying on life business, a fee of \$10,000;

(b) for carrying on general business, a fee of \$10,000;

(c) for opening a branch office, a fee of \$3,000;

(d) for opening of a counter, a fee of \$1,000.

(3) Where a registered insurer becomes registered in respect of life business or general business forms of business after 1st. January in any year, that insurer shall pay to the Authority, in addition to the fee payable under sub-regulation (1), one-twelfth of the fee which will become payable under sub-regulation (2) on or before 1st. January in the following year for each remaining calendar month in that year.

Insurance agent's fees.

4. The fee payable to the Authority in respect of registration to any person under section 48 of the Order to act or hold himself out as —

(a) a corporate agent is \$2,000;

(b) an individual agent is \$300.

Insurance broker's fees.

5. The fees payable to the Authority in respect of registration to any person under section 53 of the Order —

(a) to act or hold himself out as an insurance broker is \$5,000;

(b) for opening a branch office is \$2,000.

Adjusters' fees.

6. The fees payable to the Authority in respect of registration to any person under section 56 of the Order —

(a) to act or hold himself out as an adjuster is \$2,000;

(b) for opening a branch office is \$1,000.

Inspection fee.

7. The fee payable to the Authority by a person for inspection of or inspection and copying of any document pursuant to subsection (2) of section 63 of the Order is \$5.00 in respect of each document inspected on each occasion of inspection together with such reasonable charge as may be levied in respect of any photocopy then requested by and supplied to that person.

PART III

FINANCIAL AND OTHER REQUIREMENTS

Surplus of assets over liabilities.

8. For the purposes of paragraph (b) of subsection (2) of section 5 and paragraph (b) of subsection (1) of section 10 of the Order, an insurer shall have a surplus of assets over liabilities of not less than 20 per cent.

Deposit with Authority.

9. (1) For the purposes of subsection (1) of section 16 of the Order, the amount to be deposited by an insurer with the Authority shall be as follows —

(a) in respect of an insurer carrying on life insurance business, the minimum deposit shall be \$1,000,000; and

(b) in respect of an insurer carrying on general insurance business, the minimum deposit shall be \$1,000,000.

(2) In addition, in respect of an insurer carrying on general insurance business, the minimum deposit from the year after registration shall be subject to 40 per cent of its premium income net of payment on account of reinsurance in excess of an amount to be prescribed by the Minister.

(3) If in a subsequent year, there is a decrease in the net premium income of the insurer, it shall be refunded the difference between 40 per cent of its premium income in that year and that of the previous year.

(4) Any refund as referred to at sub-regulation (3) will be subject to the insurer having satisfied the requirement of the Order relating to the pledging of assets to the appropriate insurance fund as well as satisfying the solvency requirement.

Margins of solvency.

10. (1) For the purposes of paragraph (a) of subsection (1) of section 21 of the Order, the fund margin of solvency of an insurance fund, to be maintained by the insurer at all times during an accounting period, is prescribed as follows —

(a) in the case of an insurance fund established in respect of general business, not less than 20 per cent of net premium income of the fund in the last accounting period;

(b) in the case of an insurance fund established in respect of life business, not less than 20 per cent of net premium income of the fund in the last accounting period.

(2) For the purposes of paragraph (a) of sub-regulation (1), assets representing the surplus of the assets over the liabilities of any insurer may be counted towards meeting the fund margin of solvency, provided that those assets —

(a) are maintained in Brunei Darussalam, Singapore or Malaysia;

(b) are valued in accordance with Part IV; and

(c) cannot be used for any purpose other than to meet the fund's liabilities.

(3) Separate accounts shall be kept for the assets referred to in sub-regulation (2) and the Authority may direct that the whole or a specified proportion of those assets be held by an approved trustee.

(4) Assets in the separate account may be withdrawn with the approval of the Authority if they are no longer needed to meet the fund solvency margin requirements, but only after a valuation of the assets and liabilities of the fund is carried out.

(5) For the purposes of paragraph *(b)* of subsection (1) of section 21 of the Order, the margin of solvency to be maintained by an insurer at all times is prescribed as 20 per cent of assets over liabilities.

(6) The assets representing the fund margins of solvency required in sub-regulation (1) may be taken into account in calculating the margins of solvency for the purposes of sub-regulation (5).

Minimum paid-up share capital.

11. (1) For the purposes of paragraph *(b)* of subsection (2) of section 21 of the Order, the paid-up share capital of an insurer having share capital unimpaired by losses, shall be —

(a) in the case of an insurer carrying on life business, an amount of not less than \$8,000,000; and

(b) in the case of an insurer carrying on general business, an amount of not less than \$8,000,000.

(2) An insurer established or incorporated outside Brunei Darussalam who does not have a share capital, shall maintain in Brunei Darussalam, a surplus of assets over liabilities of an amount not less than the requirement for the minimum amount of paid-up share capital of an insurer incorporated in Brunei Darussalam.

(3) For the purposes of section 56 of the Order, the minimum paid-up share capital of an insurance broker shall be \$200,000.

(4) For the purposes of section 56 of the Order, the minimum paid-up share capital of an adjuster shall be \$100,000.

Professional indemnity insurance.

12. For the purposes of section 53 of the Order, the minimum limit of indemnity to be covered under a professional indemnity insurance for a person who intends to be registered as an insurance broker shall be an amount not less than \$1,000,000 under which the deductible allowed shall be \$10,000.

PART IV

VALUATION OF ASSETS

Application of this Part.

13. (1) The assets of any insurance fund established under section 20 of the Order and the assets of any registered insurer for the purposes of section 21 of the Order shall be valued in accordance with this Part.

(2) In determining the surplus of any insurance fund established in respect of Brunei Darussalam policies, only Brunei Darussalam Insurance Fund Assets as defined in Part V shall be taken into account.

Immovable property.

14. (1) The value of any immovable property of an insurer (other than immovable property held by the insurer as security for a debt) shall, where the amount representing such value has been put into account for the first time or where a change is made reflecting an increase in the relevant amount stated or shown in a previous account, be not greater than the amount which, after deduction of the reasonable expenses of sale, would be realised if the immovable property were sold at a price equal to the most recent proper valuation of immovable property which has been provided to the insurer and any such immovable property of which there is no proper valuation shall be left out of account for the purpose of these Regulations.

(2) Any revaluation has to be approved by the Authority.

(3) In these Regulations —

"proper valuation" means, in relation to any immovable property, a valuation made by a qualified valuer not more than 3 years before the relevant date which determined the amount which would be realised at the time of valuation on an open market sale of that immovable property free from any mortgage or charge;

"qualified valuer" means a person so recognised as a valuer in Brunei Darussalam or elsewhere by the Authority.

Government securities.

15. The value of securities issued by a government or a public authority of that government shall, at the election of the insurer, be —

(a) their amortised values; or

(b) the aggregate cost or the aggregate of the nominal value of the securities, whichever is the lower.

Unit trusts and equity shares.

16. (1) The value of unit trusts and quoted equity shares shall be —

(a) an amount not exceeding the aggregate of the cost of the unit trusts and shares; or

(b) the aggregate of the market value of the unit trusts and shares, whichever is the lower.

(2) Shares that have been suspended by any stock exchange from trading in excess of 10 consecutive trading days at the date for which the value is to be determined shall be given zero value.

(3) The value of unquoted equity shares shall be an amount not exceeding the net asset valuation basis.

Corporate bonds and bills of exchange.

17. (1) The value of quoted corporate bonds, including convertible bonds, shall be an amount not exceeding the aggregate book value of the bonds or the aggregate of the market value of the bonds, whichever is the lower.

(2) Bonds that have been suspended by any stock exchange from trading in excess of 10 consecutive trading days at the date for which the value is to be determined shall be given zero value.

(3) The value of unquoted corporate bonds shall be an amount not exceeding the book value of the bonds.

(4) For the purpose of determining the book value of a bond, other than convertible bonds, the premium or discount on purchase of the bond in relation to

its par value may be amortised over the remaining term of the bond to its maturity.

(5) The value of bills of exchange accepted or endorsed by banks licensed under the Banking Act (Chapter 95), the Islamic Banking Act (Chapter 168) or any other financial institution approved by the Authority shall not exceed its cost.

Loans.

18. (1) The value of secured loans shall be an amount not exceeding —

(a) the principal amount outstanding; or

(b) in the first year in which the secured loans are granted, 70 per cent of the net realisable value of the collateral and in subsequent years, 90 per cent of the net realisable value of the collateral,

whichever is the lower.

(2) Notwithstanding sub-regulation (1), the value of residential loans shall be an amount not exceeding the principal amount outstanding or the net realisable value of the collateral, whichever is the lower.

(3) Notwithstanding sub-regulation (1), the value of policy loans shall be an amount not exceeding the principal amount outstanding or the cash value of the policy, whichever is the lower.

(4) Notwithstanding sub-regulation (1), the value of loans guaranteed by a bank licensed under the Banking Act (Chapter 95), the Islamic Banking Act (Chapter 168) or any other financial institution approved by the Authority, shall be an amount not exceeding the principal amount outstanding.

Cash, deposits and negotiable certificates of deposits.

19. (1) The value of cash and deposits with financial institutions other than negotiable certificates of deposits shall be an amount not exceeding the aggregate of the nominal amount of the holdings.

(2) The value of negotiable certificates of deposits shall be an amount not exceeding the aggregate of the market value or the aggregate of the nominal amount, whichever is the lower.

Outstanding premiums and agents' balances.

20. (1) The value of the aggregate of outstanding premiums and agents' balances due from policy owners, insurance agents or insurance brokers shall be an amount not greater than the principal amount outstanding after deducting any provision for doubtful debts.

(2) Notwithstanding sub-regulation (1), an insurer shall provide all balances which are outstanding for more than 6 months from the inception date of the policy as doubtful debts.

Deposits withheld by cedents and other recoverables.

21. (1) The value of deposits withheld by ceding insurers shall be an amount not exceeding the aggregate of the amount outstanding after deducting any amount deemed to be uncollectable.

(2) The value of net claims recoverable from reinsurers shall be an amount not exceeding the aggregate of the amount outstanding after deducting any amount deemed to be uncollectable.

(3) The amount of any income tax recoverable shall not include any amount which is likely to be disallowed by the tax authorities.

(4) Notwithstanding sub-regulations (1) and (2), an insurer shall provide all balances which are outstanding for more than 6 months from the inception date of the policy as doubtful debts.

Investment income due or accrued and other receivables.

22. (1) The value of investment income due or accrued shall not include any amount outstanding for more than one year.

(2) The value of any accounts receivable arising from the sale of investments shall be an amount not greater than the principal amount outstanding.

(3) Notwithstanding sub-regulations (1) and (2), an insurer shall provide all balances which are outstanding for more than 6 months from the inception date of the policy as doubtful debts.

Motor vehicles and computer equipment.

23. The value of any computer equipment, office machinery, furniture and motor vehicles of an insurer —

(a) in the financial year of the company in which it is purchased, shall not be greater than three-quarters of the cost thereof to the insurer;

(b) in the first financial year thereafter, shall not be greater than one-half of that cost;

(c) in the second financial year thereafter, shall be not greater than one-quarter of that cost; and

(d) in any subsequent financial year, shall be left out of accounts for the purposes for which these Regulations apply.

Valuation of assets.

24. (1) Any assets for which no provision is made in this Part shall be valued in accordance with internationally accepted accounting principles.

(2) If, in the circumstances of a particular case, it appears that the value of any asset is of a lesser value than that determined in accordance with this Part, that lesser value shall be the value of the asset.

(3) Notwithstanding the provisions of these Regulations, the Authority may assign such other value to any asset or type of assets as the Authority considers fit or require that any asset or type of assets be left out of account.

(4) Assets of any insurance fund established by an insurer under the Order shall not include —

(a) assets comprised in the deposit made by the insurer under section 16 of the Order;

(b) any amounts on account of goodwill; and

(c) the benefit of development expenditure or similar items not realisable apart from the business or part thereof.

PART V

ASSETS OF BRUNEI DARUSSALAM INSURANCE FUND

Definitions of this Part.

25. For the purposes of this Part —

"approved financial institutions" means commercial banks, finance companies and merchant banks approved by the Authority;

"Brunei Darussalam Insurance Fund" means any insurance fund established in respect of Brunei Darussalam policies under subsection (1) of section 20 of the Order;

"Brunei Darussalam Insurance Fund Assets" shall be the aggregate of all assets for which valuation bases are specified in regulations 13 to 24 and any other asset which the Authority may allow;

"liquid assets" shall consist of securities of the Government and public authorities of Brunei Darussalam, cash and deposits in Brunei Darussalam dollars in approved financial institutions, and bills of exchange in Brunei Darussalam dollars accepted or endorsed by banks licensed under the Banking Act (Chapter 95), the Islamic Banking Act (Chapter 168) or any other financial institution approved by the Authority which arise from *bona fide* commercial transactions and which are payable within 3 months;

"office buildings" means buildings owned by the insurer and used as the headquarters for its operations in Brunei Darussalam and which the insurer occupies at least one-third of the office space;

"overseas assets" means loans to and securities issued by non-residents, deposits and property held overseas;

"property shares" means shares that are classified by a recognised stock exchange as property shares and, in the case of unquoted shares, means shares of any company whose investment in property constitutes not less than 50 per cent of its total assets;

"written premiums" means gross premiums during the accounting period in respect of Brunei Darussalam policies issued, and reinsurances accepted, which are entered in an insurer's register of Brunei Darussalam policies, reduced by return premiums and premiums in respect of reinsurances on Brunei Darussalam policies ceded during the accounting period to a registered insurer.

Application of this Part.

26. (1) In determining the Brunei Darussalam Insurance Fund Assets of a Brunei Darussalam Insurance Fund, only the classes of assets specified in regulations 13 to 24 and any other asset which the Authority may allow shall be taken into account.

(2) Such assets shall be valued as prescribed in Part IV and the extent to which such assets may be taken into account (referred to in this Part as admitted value) shall be determined as specified in regulations 21 and 22.

(3) The total admitted value of the Brunei Darussalam Insurance Fund Assets shall be compared against the liabilities of the Fund for the purposes of —

(a) determining the surplus of the Fund under subsections (4), (5) and (6) of sections 20 and paragraph *(a)* of subsection (4) of section 21 of the Order;

(b) any return to which section 59 of the Order applies; and

(c) any investigation made pursuant to the requirements of section 60 of the Order.

(4) In respect of life business, the investment limits specified in the Schedule shall be applied to the total life business of a Brunei Darussalam Insurance Fund.

Investment limits.

27. (1) For the purposes of regulation 26, the extent to which the Brunei Darussalam Insurance Fund Assets shall be taken into account shall be subject to the investment limits specified in the Schedule.

(2) To determine whether the investment limits specified in the Schedule have been complied with, the assets shall be valued as prescribed in Part IV.

Counterparty exposure limits.

28. (1) For the purposes of regulation 26, the extent to which the Brunei Darussalam Insurance Fund Assets shall be taken into account shall be subject to the counterparty exposure limits specified in sub-regulation (2).

(2) The counterparty exposure limits mentioned in sub-regulation (1) are —

(a) where the counterparty is an approved financial institution or group of approved financial institutions related to one another, 20 per cent of the Brunei Darussalam Insurance Fund Assets;

(b) where the counterparty is a company listed on any stock exchange or group of companies related to one another, 10 per cent of the Brunei Darussalam Insurance Fund Assets; and

(c) where the counterparty is an unlisted company or group of unlisted companies related to one another, a merchant bank or a finance company, and in all other cases, 5 per cent of the Brunei Darussalam Insurance Fund Assets.

(3) The exposure to any one counterparty shall be calculated on the basis of the aggregate of the value of investments issued by the counterparty, all debts due from the counterparty (including deposits placed with the counterparty) and the value of all rights against the counterparty.

Liquid assets.

29. The assets of any insurance fund established by an insurer in respect of general business and relating to Brunei Darussalam policies shall be such that the aggregate admitted value of liquid assets shall not be less than 30 per cent of the aggregate of loss reserves and outstanding claims.

PART VI

DETERMINATION OF LIABILITIES

Determination of liabilities.

30. (1) Subject to this Part, the amount of liabilities of an insurer shall be determined in accordance with internationally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurers.

(2) In determining the amount of liabilities under sub-regulation (1), all contingent and prospective liabilities shall be taken into account but not liabilities in respect of share capital.

(3) The amount of reserves for unearned premiums in respect of general business shall be —

(a) subject to paragraphs *(b)* and *(c)*, an amount calculated on a basis not less accurate than the one-twenty-fourth method;

(b) in the case of direct insurance business relating to cargo policies, at the election of the insurer, an amount not less than 25 per cent of the premiums for those policies or an amount calculated on a basis not less accurate than the one-twenty-fourth method; and

(c) in the case of reinsurance business, at the election of the insurer, an amount not less than 25 per cent of the premiums in the case of marine and aviation policies or 40 per cent of the premiums in other cases or an amount calculated on a basis not less accurate than the one-twenty-fourth method.

(4) For the purposes of sub-regulation (3) —

"marine and aviation policy" means a policy of insurance —

(a) upon goods, merchandise or property of any description transported on board vessels, aircraft or other means of conveyance including incidental transit before and after shipment;

(b) upon the freight of, or any other interest in or relating to vessels, aircraft or other means of conveyance;

(c) upon vessels or aircraft, or upon machinery, tackle furniture or equipment of vessels or aircraft;

(d) against damage arising out of or in connection with the use of vessel or aircraft, including third-party risks; or

(e) against risks incidental to the construction, repair or docking of vessels, including third-party risks;

"premiums" means the net amount of the premiums receivable in the accounting period after deduction of return premiums and payments in respect of reinsurances or retrocessions, except that no deduction shall be made in respect of reinsurances other than reinsurances with a registered insurer or insurer authorised under the Order and reinsurances of special risks, unless the deduction is made against a reinsurer's deposit equivalent to the reserve calculated in accordance with sub-regulation (3);

"the one-twenty-fourth method" means the method of computation which operates on the assumption of premiums accounted during each month of a year being uniformly spread over the respective month and on the assumption that all policies are for a duration of 12 months.

Withdrawal from insurance fund in respect of life policy removed from register of Brunei Darussalam policies.

31. (1) Where a policy belonging to the insurer's life business is under subsection (4) of section 19 of the Order removed from the register of Brunei Darussalam policies, the maximum amount that may be withdrawn from the insurance fund in respect of that policy shall be an amount equal to the insurer's liabilities in respect of the policy as at the date of the removal.

(2) The said liabilities shall be valued on the basis adopted for the last statutory valuation relating to the insurer's life business (or, if there has been no such valuation, on the minimum basis in the case of a life policy and on a basis approved by the Authority in other cases) and shall be valued as for a statutory valuation.

Minimum surrender.

32. An insurer shall not issue a long term insurance policy unless there is incorporated in that policy a table indicating the minimum cash surrender value of that policy or contains provisions enabling the exercise options in lieu of forfeiture of the policy.

References to statutory valuation of life policies.

33. (1) Any reference in these Regulations to a statutory valuation of an insurer's liabilities shall be read as a reference to a valuation made for the purposes of section 60 of the Order.

(2) Where by these Regulations the liabilities of an insurer in respect of a Brunei Darussalam policy belonging to the insurer's life business are required to be valued on a specified basis as for a statutory valuation, the liabilities shall be valued on that basis with the like deduction (if any) for any reinsurance of those liabilities as would be made on a statutory valuation.

(3) For the purpose of sub-regulation (2), the total deduction that may be made against a reinsurer's deposit in respect of the reinsurances secured thereby shall (if the case requires) be apportioned rateably between those reinsurances according to the value of the liabilities reinsured.

PART VII

MISCELLANEOUS

Withdrawals from fund upon removal of life policy from register.

34. For the purposes of subsection (7) of section 20 of the Order, the maximum amount which may be withdrawn from an insurance fund in respect of that policy shall be an amount equal to the insurer's liabilities in respect of the policy as at the date of the removal.

Assumption of risk.

35. (1) Pursuant to subsection (3) of section 31 of the Order, subsections (1) and (2) of that section concerning the assumption of risk by an insurer shall apply in respect of any general business.

(2) The form of guarantee required by paragraph (a) of subsection (1) of section 31 of the Order, where the premium payable has not been received by the insurer and a deposit in the prescribed form has not been made, is an irrevocable bank guarantee from an insurance agent or insurance broker guaranteeing payment by the end of the month following the month in which the policy is issued, failing which a demand is made on the bank guarantee.

(3) The form of deposit required by paragraph (b) of subsection (1) of section 31 of the Order (where the premium payable has neither been received nor guaranteed in accordance with sub-regulation (2)) is an amount of at least 50 per cent of the premium, with the balance being secured for payment within 30 days of the date of the issue of the policy.

(4) For the purposes of subsection (5) of section 31, the period for depositing with, or despatching by post to, the insurer the premium collected is one calendar month.

MINIMUM CRITERIA OF A "FIT AND PROPER PERSON"

Minimum criteria of a "fit and proper person".

36. (1) Pursuant to section 41 of the Order, an insurer or a controller of an insurer, in determining whether a person is a "fit and proper person" to hold the position of a managing director, director, chief executive or principal officer, regard shall be made to —

(a) his probity, competence and soundness of judgment for fulfilling the responsibilities of that position;

(b) the diligence with which he is fulfilling or likely to fulfill those responsibilities; and

(c) whether the interests of policy owners, potential policy owners, named beneficiaries and creditors, as the case may be, are likely to be, in any way threatened by his holding that position.

(2) Notwithstanding sub-regulation (1), a registered insurer, shall also have regard to the criteria under regulations 37 and 38 in determining whether a person is "fit and proper person".

(3) Without prejudice to the generality of sub-regulation (1), regard may be had to the previous business conduct and activities of the person in question and in particular, to any evidence that he —

(a) has been compounded or convicted, or as managing director, director, chief executive or principal officer, of a registered insurer or a controller of a registered insurer, has caused to be compounded or convicted, of an offence under the Order, the Companies Act (Chapter 39), the Banking Act (Chapter 95) or the Finance Companies Act (Chapter 89), which is punishable with, as the case may be —

(i) imprisonment for one year or more, whether by itself, or in lieu of, or in addition to, a fine; or

(ii) a fine of \$50,000 or more;

(b) has been compounded or convicted, or as managing director, director, chief executive or principal officer, of a registered insurer or a controller of a registered insurer has caused it to be compounded or convicted, of an offence under the Banking Act (Chapter 95) which is punishable with, as the case may be —

(i) imprisonment of 6 months or more, whether by itself, or in lieu of, or in addition to, a fine; or

(ii) a fine of \$10,000 or more;

(c) has engaged in any business practices appearing to the Authority to be deceitful, oppressive or otherwise improper, whether unlawful or not, or which otherwise reflect discredit on his method of conducting business; or

(d) has engaged in, or been associated with, any other business practices, or otherwise conducted himself in such a way, as to cast doubt on his competence and soundness of judgment.

Criteria for managing director or director of registered insurer.

37. A person who is, or is to be, a managing director or director of a registered insurer, —

(a) shall have educational qualifications and experience which will enable him to effectively perform his duties;

(b) shall not have acted in a manner which may cast doubt on his fitness to hold the position of a director;

(c) shall have agreed to attend, or have attended, at least 75 per cent of the registered insurer's board of directors meetings in a year unless his absence is with the approval of the Authority; and

(d) shall not have been a party to any action or decision of the board or management of the registered insurer, which is detrimental to the interests of the registered insurer and its policy owners.

Criteria for a chief executive or principal officer of registered insurer.

38. A person who is, or is to be, a chief executive or principal officer of registered insurer —

(a) shall have educational qualifications and experience which will enable him to satisfactorily discharge his responsibilities;

(b) shall not have held a position of responsibility in the management of any company which has been convicted of an offence under any written law during his tenure of office unless he proves that such offence was committed without his knowledge or consent and he was not in a position to prevent the offence;

(c) shall not have held a position of responsibility in the management of any company which during his tenure of office —

(i) has defaulted in payment of any judgment sum against it;

(ii) has suspended payment or has compounded with its creditors; or

(iii) has had a receiver or manager appointed in respect of its property;

(d) shall be available for full-time employment, and shall not carry on any other business or vocation, except as a non-executive director or shareholder of another company;

(e) shall not be engaged actively in any political activity;

(f) shall not cause a conflict of interest situation with that of the registered insurer, either by himself or his wife, husband, father, mother, son and daughter;

(g) shall not have acted in a manner which may cast doubt on his fitness to hold the position of chief executive or principal officer, or acted in blatant disregard for proper professional conduct, especially in dealings with policy owners, potential policy owners and named beneficiaries; and

(h) shall not have been a party to any action or decision of the management of the registered insurer which is detrimental to the interests of the registered insurer, and its policy owners.

Discretion of the Authority.

39. The Authority shall have full discretion to determine whether a person has complied with this Part.

SCHEDULE

INVESTMENT LIMITS
(regulation 27(1))

<i>Description</i>	<i>Per cent of Brunei Darussalam Insurance Fund Assets</i>
1. The combined total of investment in fully paid-up common shares of a company with a rating by a reputable international credit rating agency rated AAA, AA, A to not less than B.	40%
2. Quoted shares in any one company as indicated in item (1) not more than	15%
3. Units in any one unit trust	10%
4. Debentures - fully secured	25%
5. Immovable property – total investment	25%

It is recommended that the total value of approved foreign denominated assets of each insurance fund which are recognised by the reputable international credit rating agency be limited to 20 per cent.

For the purpose of the above-mentioned investment limits, "insurance fund" means a Life Insurance Fund^{or} a General Business Insurance Fund ~~or both.~~

s 55/07

Made this 4th. day of Safar, 1427 Hijriah corresponding to the 4th. day of March, 2006.

DATO PADUKA AWANG HAJI ALI BIN APONG
Permanent Secretary,
Ministry of Finance,
Brunei Darussalam.