

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

INTERNATIONAL INSURANCE AND TAKAFUL ORDER, 2002

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PART I

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

INTERNATIONAL INSURANCE AND TAKAFUL ORDER, 2002

In exercise of the power conferred by subsection (3) of section 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 International Insurance and Takaful Order, 2002 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 long title of this Order is "An Order to provide for the licensing and regulation of persons carrying on international insurance business and international insurance-related activities, to provide for the security and protection of long-term international insurance business and to provide for matters incidental thereto or connected therewith".

Interpretation.

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

"actuary" means a person qualified as an actuary by examination of —

- (a) the Faculty of Actuaries in Scotland;
- (b) the Society of Actuaries in the United States of America;
- (c) the Society of Actuaries in Canada; or
- (d) 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;

"affiliated", in relation to a company, has the meaning given by Part II of the Schedule;

"approved auditor" has the meaning assigned thereto in subsection (1) of section 2 of the International Business Companies Order, 2000 (S 56/2000);

"Authority" means such person or body as is appointed by His Majesty the Sultan and Yang Di-Pertuan to be the Authority for the purposes of this Order, and includes any other person or body appointed by the Authority pursuant to this Order for the purposes thereof;

"benefit" in relation to a policy, includes any money, entitlement, right, interest, power, profit, whether vested or contingent, present or future, and whether direct or indirect, or any other benefit howsoever, whensoever and wheresoever arising;

"certificate" means a written statement of fact which the person making it signs and certifies to be true and complete;

"cellular" and "cell" refer to cells created by a DCC;

"company" includes any corporate legal person, co-operative enterprise, group formed to promote mutual interests of persons, mutual company or fraternal company or any other entity formed or incorporated with or without limited liability in any part of the world, and includes any IBC, DCC and foreign international company however constituted;

"constituent documents" includes instruments or documents, including the memorandum and articles of association, statute, charter, constitution, rules and by-laws, partnership agreement or other instrument, under or by which a person or body of persons is constituted and the scope of that person's or body's functions, business, powers and duties are established;

"controller" has the meaning given by Part I of the Schedule;

"controlling", in relation to a company, has the meaning given by Part II of the Schedule;

"Court" means the High Court;

"DCC" means a dedicated cell company incorporated or converted under Part XIII A of the International Business Companies Order, 2000 (S 56/2000);

"designated supervisory authority", in relation to a country or territory outside Brunei Darussalam, means an authority exercising in that country or territory supervisory functions corresponding to those of the Authority under this Order;

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

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

(b) a statutory body, means a member of the board, committee, council, or other governing body, howsoever called, of that statutory body;

(c) a co-operative society, means a member of the board, or other governing body, howsoever called, of that co-operative society;

(d) a partnership, means a partner;

(e) any other body, association or group of persons, whether corporate or unincorporate, means any person having the direction and control of the management of its affairs or business;

"document" includes information that is inscribed, stored or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

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

(a) property which at the time of the making of the contract is situated in or is in transit to or from Brunei Darussalam;

(b) a ship or aircraft registered in Brunei Darussalam and all liabilities arising from the ownership and operation of such ship or aircraft;

(c) the life or any contingency related to any person who, at the time of the making of the contract, is a resident;

(d) a risk of any nature in respect of any person who, at the time of the making of the contract, is a resident; or

(e) any other insurance business conducted with a resident within Brunei Darussalam pursuant to any written law relating to domestic insurance;

"establishment" in relation to —

(a) a limited company, means incorporation or other applicable constituting process;

(b) a statutory body, means coming into existence under the law establishing, appointing or constituting it;

(c) a co-operative society, means registration, incorporation or otherwise coming into legal existence as a mutual or co-operative society, and whether as a legal person or a legal relationship between persons;

(d) a partnership, means formation;

(e) a sole proprietorship, means lawful commencement of its business;

(f) any other body, association or group of persons, whether corporate or unincorporate, which requires registration or any other form of licensing, recording or recognition under any written law or by means of a legally binding agreement before it can lawfully commence its activities, means registration, licensing, recording, recognition, receiving of consent or completion under such written law or legally binding agreement;

"financial loss insurance business" includes general insurance business consisting of the effecting and carrying out of contracts of insurance —

(a) against risks of loss to the persons insured arising from the insolvency of their debtors or from the failure (otherwise than through insolvency) of their debtors to pay their debts to the persons insured when due;

(b) against risks of loss to the persons insured arising from their having to perform contracts of indemnity or guarantee entered into by them;

(c) for fidelity bonds, performance bonds, administration bonds, bail bonds, customs bonds or similar contracts of guarantee;

(d) against risks of loss to the persons insured attributable to interruptions of the carrying on of business carried on by them or to reduction of the scope of business so carried on;

(e) against risks of loss to the persons insured attributable to their incurring unforeseen expense;

and such other international insurance business which the Authority determines to be substantially similar to any of the foregoing;

"foreign currency" means any currency other than the currency of Brunei Darussalam;

"foreign international company" means a company established in a country or territory outside Brunei Darussalam and registered under Part XI of the International Business Companies Order, 2000 (S 56/2000);

"general insurance business" includes, subject to subsections (2) and (3), any insurance business which is not long-term business;

"holding", in relation to a company, has the meaning given by Part II of the Schedule;

"IBC" means an international business company incorporated or converted under the International Business Companies Order, 2000 (S 56/2000), and includes a DCC;

"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's worth upon the happening of an event,

and includes takaful, re-insurance and re-takaful business;

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

"international captive insurance business" includes international insurance business where the insured is a holding or affiliated company or other related or associate company of the international insurer or where the insured is a member of a common group, industry or association, or any other person in respect of whom the international insurer is authorised by the Authority to provide insurance or re-insurance, and without limiting the generality of the foregoing includes the classes of captive insurance business known as rent-a-captives, associated captive, cellular captives, agent captives and captive pools;

"international insurance broker" means a person who arranges —

(a) international insurance business on behalf of prospective or existing policy owners; or

(b) international re-insurance business on behalf of any insurer seeking re-insurance,

other than an appropriately licensed bank or registered agent and trustee licensed under the Banking Act (Chapter 95), the International Banking Order, 2000 (S 53/2000) or the Registered Agents and Trustees Licensing Order, 2000 (S 54/2000) respectively;

"international insurance business" means insurance business which is not domestic insurance business and which is transacted in a foreign currency, and includes international takaful and re-takaful business, and international captive insurance business;

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

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

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

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

"licensee" means a person licensed under this Order;

"linked long-term business" means long-term business consisting of contracts under which the benefits payable are determined substantially or exclusively by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of any property whether or not so specified;

"long-term business" means insurance business of any of the following kinds —

(a) effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life or which contains elements of both such insurance or annuities;

(b) effecting and carrying out contracts of insurance against risks of the persons insured sustaining injury as the result of an accident (whether of a specified class or otherwise) or dying as the result of an

accident (whether of a specified class or otherwise) or becoming incapacitated or dying in consequence of disease or disease of a specified class, being contracts that are expressed to be in effect for a period of not less than 18 months or without limit of time and either not expressed to be terminable by the insurer before the expiration of 18 months from taking effect thereof or expressed to be so terminable before the expiration of that period only in the special circumstances therein mentioned;

(c) effecting and carrying out contracts of insurance, whether effected by the issue of policies, bonds or endowment certificates or otherwise, whereby in return for one or more premiums paid to the insurer a sum or a series of sums is to become payable to the persons insured in the future, not being contracts such as fall within paragraph (a) or (b);

(d) effecting and carrying out contracts and schemes of family takaful business;

(e) permanent health insurance business whereby individuals rendered unable to work through illness or accident receive income during the period of such inability;

(f) any other insurance business or class of business as may be designated in writing by the Authority;

"long-term business fund" means a fund referred to in section 49;

"long-term insurance" has the same meaning as "long-term business";

"margin of solvency" has the meaning assigned thereto in section 21;

"member", in relation to —

(a) a limited company, means a shareholder;

(b) a statutory body, means a shareholder or, where the statutory body has no share capital, a person who, wholly or jointly with other persons, owns the statutory body;

(c) a co-operative society, means a shareholder or a subscriber;

(d) a partnership, means a partner;

(e) a sole proprietorship, means the sole proprietor; or

(f) any other body, association or group of persons, whether corporate or unincorporate, means any person who has any proprietary interest in such body, association or group of persons;

"Minister" means the Minister of Finance;

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

"office" means any place of business;

"officer", in relation to a limited company, includes —

(a) a director, executive, company secretary or manager of the limited company;

(b) a receiver or manager of any part of the undertaking of the limited company appointed under a power contained in a debenture or any similar instrument; and

(c) the liquidator of the limited company appointed in a voluntary winding-up;

"person" includes an individual and any company or association or body of persons, corporate or unincorporate;

"policy" means an insurance policy, bond, certificate, receipt or other document and includes any written contract of insurance and any amendment lawfully effected thereto however respectively concluded, and whether or not embodied in or evidenced by an instrument in the form of an insurance policy; and any reference to a policy of an insurer includes a reference to any policy in respect of which the insurer is under any liability, whether the policy was issued by the insurer or the liability was transferred to the insurer from another insurer;

"policy holder" includes any person however described who for the time being is the legal holder of a policy and, where the context so admits, the representatives, agents successors and assigns of such person;

"property" includes —

(a) money, goods, choses in action, land and every description of property whether movable or immovable; and

(b) obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of, or incidental to, any property as defined in paragraph (a);

"re-insurance business" means a business whereby the re-insurer assumes a part of the liability under an original contract of insurance of another insurer or re-insurer, and includes re-takaful;

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

"related", in relation to a company, has the same meaning as "affiliated";

"resident" means any person who is —

(a) an individual residing in Brunei Darussalam; or

(b) a company incorporated or registered under the Companies Act (Chapter 35);

"specify" means specify in writing, and a power to specify includes the power to specify differently for different persons or different classes, categories or descriptions of persons;

"subsidiary", in relation to a company, has the meaning given by Part II of the Schedule;

"takaful" means insurance based on principles of mutuality and co-operation consistent with the religion of Islam and effected in conformity with the Syariah, and includes family takaful business and general takaful business, and "re-takaful" means a business whereby a person called the re-takaful provider assumes part of the liability under an original contract of takaful or of another re-takaful provider;

"working funds" means —

(a) in relation to an IBC, or where applicable to a cell of a DCC, the paid-up capital, surplus and reserves thereof unimpaired by losses;

(b) in relation to a foreign international company or a company registered under Part IX of the Companies Act (Chapter 39), the surplus of assets over liabilities to be maintained in the books of its branch in Brunei Darussalam.

(2) The effecting and carrying out of a contract whose principal object is within any of the descriptions of long-term business but which contains related and subsidiary provisions which are not within any of those descriptions shall be taken to constitute long-term business.

(3) Notwithstanding the definition of long-term business, a licensee may elect to regard a contract of insurance on human life expressed to be for a term of less than 18 months as general business, and any such contract of insurance in relation to which he does so elect shall not for any of the purposes of this Order be taken to constitute long-term business.

PART II

ADMINISTRATION OF ORDER

Functions, powers and duties of Authority.

3. (1) Without limiting the provisions of section 37, the Authority shall have all the functions and powers conferred, and the duties imposed, on the Authority by this Order.

(2) The Authority may authorise any officer of the Authority to perform any of his functions, exercise any of his powers, or discharge any of his duties under this Order.

Confidentiality on the part of Authority.

4. Except for the purposes of the performance of the functions, the exercise of the powers or the discharge of the duties of the Authority under this Order or when lawfully required to do so by any written law relating to criminal activity or the proceeds of such activity or by the Court, the Authority and any officer, appointee or representative of the Authority shall not disclose any information relating to any person which the Authority or such officer, appointee or representative has acquired in the performance of the functions, the exercise of the powers or the discharge of the duties of the Authority under this Order.

PART III

LICENSING OF INTERNATIONAL INSURANCE BUSINESS AND RELATED ACTIVITIES

Licensing of international insurance business and related activities.

5. (1) No person shall carry on or transact or hold himself out as carrying on or transacting any international insurance business unless that person is an IBC (including a DCC), a foreign international company or a company incorporated or registered under the Companies Act (Chapter 39), and holds a licence under this Order.

(2) No person shall carry on or transact or hold himself out as carrying on or transacting any business as an international insurance manager, international underwriting manager or international insurance broker unless that person holds a licence under this Order relating to such business.

Criteria for licence to carry on international insurance business.

6. (1) Every applicant for a licence to carry on international insurance business shall satisfy the Authority that, subject to section 7, the working funds of the applicant shall meet the requirements prescribed by the Minister by notice in the *Gazette*, and until so prescribed —

(a) where the applicant proposes to carry on long-term insurance business (other than linked long-term business only), shall be at least \$500,000 or its equivalent in any foreign currency;

(b) where the applicant proposes to carry on only general insurance business, shall be at least \$250,000 or its equivalent in any foreign currency;

(c) where the applicant proposes to carry on only re-insurance business, shall be at least \$1,000,000 or its equivalent in any foreign currency;

(d) where the applicant proposes to carry on both general and long-term insurance business shall be at least \$750,000 or its equivalent in a foreign currency;

(e) where the applicant proposes to carry on only international captive insurance business shall be at least \$75,000 or its equivalent in any foreign currency or, if the applicant is a DCC having two or more cells, at least \$75,000 or its equivalent in any foreign currency in respect of each cell;

(f) where the applicant proposes to carry on only linked long-term business, shall be at least \$100,000 or its equivalent in any foreign currency plus such amount (if any) as the applicant may deem prudent having regard to that portion of any linked long-term business under which the benefits payable under any contract exceed benefits determined exclusively by reference to the value of, or the income from, property or fluctuations in, or in an index of, the value of property as provided for in such a contract.

(2) Every applicant for a licence to carry on international insurance business shall satisfy the Authority that —

(a) at the time the application is made, and subject to section 7, the amount of working funds specified in subsection (1) shall be certified to the

Authority by a bank or an approved auditor to be held in an account of the applicant with a bank in Brunei Darussalam;

(b) the controllers, directors and chief executive officers of the applicant are fit and proper persons to conduct the licensed activities of an international insurer under this Order;

(c) the applicant will establish its management in Brunei Darussalam which shall have adequate knowledge and expertise of the international insurance business to be carried on and shall appoint at least one director resident in Brunei Darussalam, or a licensed international underwriting manager resident in Brunei Darussalam, who shall have adequate knowledge and experience of the business to be carried on; and in both cases such persons shall be regarded as officers of the applicant responsible for the proper exercise of the licence granted.

Variation of working funds requirements.

7. Notwithstanding section 6, the Authority may, having regard to the nature, extent and volume of the international insurance business which the applicant proposes to carry on —

(a) specify in writing a greater or a lesser amount of working funds; and

(b) specify an amount (in no case to exceed 60% of the amount specified under section 6) which may be provided by way of guarantee to be governed by the law of Brunei Darussalam from a person and in a form acceptable to the Authority.

Licence applications for international insurers.

8. Every application for a licence to carry on international insurance business shall be submitted to the Authority in the prescribed form and shall be accompanied by the prescribed fee.

Business plans.

9. Every application under this Part shall be accompanied by the applicant's business plan for the first 3 years of operation; and by —

(a) copies of the applicant's constituent documents, certified by the relevant authority or a notary public in the place of incorporation or other establishment of the applicant;

(b) where applicable, a copy of the applicant's audited annual accounts for the 3 consecutive years immediately preceding the application;

(c) in the case of a takaful or re-takaful provider, the names of the Syariah Council duly appointed to advise that provider.

Authority may require information.

10. (1) The Authority may require from an applicant under section 8 such further information and documents as may be specified by the Authority for the purpose of determining the application.

(2) The matters specified under subsection (1) may differ as between applicants, or different classes, categories or descriptions of applicants and as between the class or classes of business to be conducted.

Licence applications for international insurance managers, underwriters and brokers.

11. (1) Every applicant for a licence to carry on business as an international insurance manager, international underwriting manager or international insurance broker shall satisfy the Authority that —

(a) the controllers, directors and chief executive officers of the applicant are fit and proper persons having knowledge of the insurance-related activities proposed to be conducted to properly discharge and perform such activities; and

(b) the applicant is able to satisfy to the best of its ability that it will be able to maintain sufficient funds in its business to cover its expenses in the proposed activities in Brunei Darussalam for the period covered by its business plan.

(2) Every application for a licence to carry on or transact any business as an international insurance manager, international underwriting manager or international insurance broker shall be submitted to the Authority in the prescribed form and shall be accompanied by the prescribed fee, together with such documents and information relating to such applicant as are referred to in section 9.

(3) The Authority may require from an applicant such further information and documents as may be specified by the Authority for the purpose of determining the application.

(4) The matters specified under subsection (3) may differ as between applicants, or different classes, categories or descriptions of applicants and as between the class or classes of business to be conducted.

Decision on application for licence.

12. The Authority shall, on an application having been made in accordance with section 8 or 11 and after being provided with all such information and documents as it may require, consider the application and determine whether the licence should be granted or refused and, if a licence is to be granted, the conditions, if any, to be imposed on the licensee.

Notification of refusal.

13. Where the Authority refuses to grant a licence, the Authority shall immediately notify the applicant in writing of his refusal and shall not be required to furnish any reasons for the refusal.

Register of licensees.

14. The Authority shall in such form as may be determined by him keep at his office a register of all licensees, and such register shall be open to public inspection during normal business hours.

Copies of extracts from register.

15. On payment of the prescribed fee, any person may obtain from the Authority a copy of any extract from the register referred to in section 14.

Surrender of licence.

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

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

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

Consequences of surrender or revocation of licence.

17. (1) Where the surrender of a licence under section 16 has taken effect, or where the licence has been revoked under section 47(2), the licensee shall as from the date such surrender or revocation takes effect, cease to transact any further business.

(2) Notwithstanding subsection (1), where a licensee continues to exist as a company after the revocation or surrender of its licence has taken effect, the Authority may authorise such licensee in writing to continue to transact its business activities to such extent and for such duration as the Authority may specify in the authorisation for the purposes of the winding-up of its affairs or for the purposes of meeting the claims of its policy owners, other customers or creditors.

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

Notification of change of information.

18. (1) Every licensee which is an IBC or a company incorporated under the Companies Act (Chapter 39) shall, prior to the making of any amendment or alteration to any of its constituent documents, or prior to any change of its controller, any director or chief executive officer, furnish to the Authority particulars in the prescribed form of any such proposed amendment, alteration or change, for the approval of the Authority.

(2) Every licensee which is a foreign international company or a company registered under Part IX of the Companies Act (Chapter 39) shall, upon the making of any amendment or alteration to any of its constituent documents, or prior to any change of its controller, any director or chief executive officer within Brunei Darussalam, notify the Authority in the prescribed form of any such amendment, alteration or change.

(3) Any person who contravenes this section is guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000.

Annual licence fee.

19. Every licensee shall, on the initial grant of a licence and within one month of the anniversary in subsequent years of such grant during the currency of the licence, pay to the Authority the prescribed annual licence fee in respect of each licence held.

PART IV

FINANCIAL REQUIREMENTS AND DUTIES OF AND
RESTRICTIONS ON LICENSEES**Appointment of auditor and actuary.**

20. (1) Every licensee shall appoint an approved auditor for the purposes of this Order.

(2) Every licensee carrying on long-term insurance business shall appoint an actuary for the purposes of this Order.

Margin of solvency.

21. (1) Every licensee shall ensure that the realisable value of its assets exceeds the amount of its liabilities by a margin (in this section referred to as the margin of solvency) which shall be prescribed by the Minister by notice in the *Gazette*, and until so prescribed shall be an amount equivalent to or more than —

(a) the working funds stipulated in section 6, subject to section 7; or

(b) 18% of the net premium income for the preceding year in respect of the general insurance business of the international insurer, or 2.5% of the actuarial valuation of the liabilities for long-term business, excluding linked long-term business to which section 6(1)(f) shall apply *mutatis mutandis* for the purposes of this subsection, as at the last valuation date in respect of the long-term business of the international insurer,

whichever is the greater, provided that the provisions of section 7 shall apply *mutatis mutandis* to paragraphs (a) and (b).

(2) If the margin of solvency of a licensee falls below the amount stipulated in subsection (1), the licensee shall submit to the Authority within one month of the deficiency in the margin of solvency becoming known, or such longer period as the Authority may approve, its short-term financial scheme to make good that deficiency and shall, if the Authority considers the scheme inadequate, effect modifications to it.

(3) The licensee shall, within a period approved by the Authority, implement to the satisfaction of the Authority such scheme under subsection (2) as may be approved by the Authority.

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

(5) Subsections (2)(a) and (b) of section 6 shall apply to this section *mutatis mutandis*.

Separate accounts to be kept by international insurers.

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

(2) Every international insurer which carries on both long-term business and general insurance business shall keep the accounts and funds in respect of its long-term business separate from the accounts and funds in respect of its general insurance business, and shall keep the accounts and funds in respect of linked long-term business separate from that of other long-term business.

Submission of financial statements.

23. (1) Every international insurer shall, within 6 months after the close of each financial year or such further period as the Authority may approve, submit to the Authority, in respect of its entire international insurance operations carried on in or from the Brunei Darussalam, 2 copies each of its audited annual balance sheet, profit and loss account, revenue account and, in respect of its life insurance business, a report setting out the actuarial valuation of its assets and liabilities.

(2) Every international insurer which is a foreign international company or a company registered under Part IX of the Companies Act (Chapter 39) shall submit to the Authority 2 copies each of the documents mentioned in subsection (1) as approved in accordance with its constituent documents, as soon as practicable after such approval.

(3) Every international insurer which is a foreign international company or a company registered under Part IX of the Companies Act (Chapter 39) shall, in addition to the documents required to be submitted under subsection (1) or (2), also submit each year a certified copy of its latest audited annual balance sheet in respect of its entire operations both in and outside the Brunei Darussalam within 3 months of its being filed with the regulatory authorities in its country or territory of establishment or origin.

(4) Every licensed international insurance manager, licensed international underwriting manager and licensed international insurance broker shall, within 4 months after the close of each financial year or such further period as the Authority may approve, submit to the Authority 2 copies each of its audited annual balance sheet and profit and loss account.

Subsidiaries and offices of licensee.

24. Without the prior written consent of the Authority, no licensee shall open any office, or acquire or establish any subsidiary, in Brunei Darussalam or elsewhere.

Restriction on business by international insurers.

25. (1) No international insurer shall carry on any business activities in Brunei Darussalam other than its international insurance business or business activities in connection with or for the purposes of such international insurance business.

(2) Notwithstanding the definition of "international insurance business" and notwithstanding subsection (1) or any other written law, an international insurer may, with the prior consent of the Authority and subject to such conditions as its Authority may deem appropriate, deal with the re-insurance of domestic insurance business, including the re-insurance of domestic insurance business transacted in the currency of Brunei Darussalam.

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

Restrictions on and duties of international insurance managers, international underwriting managers and international insurance brokers.

26. (1) Without the prior written consent of the Authority, no licensed international insurance manager shall provide any services other than administrative services, and no licensed international underwriting manager shall provide any services other than underwriting services.

(2) Without the prior written consent of the Authority, no licensed international underwriting manager shall provide underwriting services in or from Brunei Darussalam to any person not licensed under this Order or to any business carried on by an insurer registered under any written law relating to domestic insurance.

(3) Without the prior written consent of the Authority, no licensed international insurance broker shall act as a broker in respect of domestic insurance business, but a licensed international insurance broker may, notwithstanding any other written law, deal with the re-insurance of domestic insurance business, including the re-insurance of domestic insurance business transacted in the currency of Brunei Darussalam.

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

(5) Any consent given by the Authority under subsection (1), (2) or (3) may be given subject to such conditions, including the payment of a fee, as the Authority may determine, and may at any time be varied or revoked.

List of international insurers to be supplied by international insurance managers and international underwriting managers.

27. Every licensed international insurance manager and licensed international underwriting manager shall, within one month from the close of its financial year, submit to the Authority, in such form and manner as may be specified by the Authority, a list of all international insurers for whom such licensed international insurance manager provides administrative services or licensed international underwriting manager provides underwriting services.

Conduct of business.

28. Every international insurer shall —

(a) conduct its business with due diligence and care in accordance with sound insurance principles;

(b) maintain adequate and proper records and books of accounts as its office within Brunei Darussalam;

(c) follow accepted international accounting standards or such other standards as may be approved by the Authority;

(d) register all assets in its name or that of a nominee approved by the directors of the international insurer; and

(e) indicate clearly on its letterhead, stationery and all other documents containing its name that it is licensed under this Order, together with the number of its licence.

Misleading advertising.

29. (1) No international insurer shall, in any form, advertise or publish any information which is untrue or which is likely to mislead another person in

relation to the laws of Brunei Darussalam or to that international insurer's financial status, insurance or re-insurance plans or any other matter in respect of its international insurance business.

(2) The provisions of paragraphs (a), (b), (c) and (e) of section 28 and the provisions of subsection (1) of this section shall apply *mutatis mutandis* to a licensed international insurance manager, licensed international underwriting manager and licensed international insurance broker.

PART V

TRANSFER AND WINDING-UP, NOTIFICATION OF CHANGES

Transfer of international insurance business.

30. (1) The whole or any part of the international insurance business of an international insurer (in this section referred to as the transferor) may be transferred to another insurer (in this section referred to as the transferee) if the transfer is effected by a scheme (in this section referred to as the scheme) in accordance with this section.

(2) A scheme may provide for the international insurance business of the transferor to be transferred to a person who is not an insurer or who is not yet in existence if it is expressly provided in the scheme that it will only come into operation after such person becomes a licensed insurer.

(3) A scheme may include provision for giving effect to the transfer and provision for matters incidental to the transfer, and in particular may include provision for —

(a) any property, rights or liabilities of the transferor (including assets comprising the insurance fund) to vest, by virtue of the scheme and without further or other assurance, in the transferee;

(b) the registration by the transferee of policies transferred, for the amounts to be included in respect of those policies in the transferee's insurance fund, and for other matters arising under this Order out of the transfer;

(c) the continuation by or against the transferee or any legal proceedings pending by or against the transferor; and

(d) the dissolution, without the winding-up, of the transferor; and

such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be carried out.

(4) A scheme shall be null and void unless it is first approved by the Authority.

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

(a) the transferor shall submit to the Authority a copy of the scheme together with copies of actuarial and other reports, if any, setting out the terms of the scheme;

(b) the transferor shall submit to the Authority a report sufficient to indicate the opinion of the actuary on the likely effects of the scheme on policy owners or the parties to the scheme in respect of any transfer of life insurance business;

(c) each of the parties to the scheme shall, not later than one month after a copy of the scheme has been submitted to the Authority, cause to be published in the *Gazette* and in at least one newspaper circulating in Brunei Darussalam approved by the Authority a notice, containing such particulars as may be directed by the Authority;

(d) each of the parties to the scheme shall, for a period of 15 days after the publication of the notices mentioned in paragraph (c), keep a copy of the scheme at its office in Brunei Darussalam and such copy shall be open to inspection by such of its members and policy holders who are affected by the scheme.

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

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

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

(9) The Authority may approve or reject any scheme.

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

(11) An application to the Court with respect to any matter connected with a scheme may, at any time before confirmation of the scheme 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.

(12) The Court may confirm a scheme with or without modifications or may refuse to confirm the scheme, in which latter case the Court may make such order relating to the application as it thinks fit.

(13) A scheme which has been confirmed by the Court under subsection (12) shall have effect notwithstanding anything in this section, and shall be binding on any persons thereby affected.

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

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

(a) statements of the assets and liabilities of each of the parties to the scheme, as at the time immediately before the transfer, signed respectively on behalf of each of such parties;

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

(c) a declaration made by the chairman of the board of directors of the transferee, or by its chief executive officer in Brunei Darussalam, fully setting out every payment made or to be made to any person on account of the transfer, and stating that, to the best of his belief, no other payment beyond those so set out has been, or is to be, made on account thereof by or with the knowledge of the parties to the scheme.

(16) In this section, "parties to the scheme" means the transferor and the transferee.

Winding-up of international insurer.

31. (1) The Authority shall be made a party to any petition for the winding-up of any international insurer.

(2) The Authority may present a petition for the winding-up of an international insurer or its international insurance business within Brunei

Darussalam on the grounds of its inability to meet any liabilities or when it suspends payment to its creditors.

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

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

(a) first, the costs and expenses of the winding-up, including the costs of the liquidator or the receiver;

(b) secondly, all wages or salary (whether or not earned wholly or in part by way of commission), including any amount payable by way of allowance or reimbursement under any contract of employment, award or agreement regulating conditions of employment, of any employee not exceeding \$5,000 in respect of services rendered by him to the international insurer within a period of 4 months prior to the commencement of the winding-up;

(c) thirdly, all amounts due in respect of workmen's compensation under the Workmen's Compensation Act (Chapter 74) which accrued before the commencement of the winding-up;

(d) fourthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death to any other person in his right, which accrued in respect of any period before the commencement of the winding-up;

(e) fifthly, all amounts due in respect of contributions payable during the 12 months next before the commencement of the winding-up by the international insurer as the employer of any person under any written law relating to employees' superannuation or provident funds or under any scheme of superannuation or retirement benefit;

(f) sixthly, all the liabilities and expenses attributable to its international insurance business of the class for which the particular insurance fund is created; and

(g) lastly, after the liabilities and expenses attributable to the international insurance business of the class for which the particular insurance fund referred to in paragraph *(f)* is applicable have been fully met, the amounts required to make good any deficit in the other insurance funds.

(5) The debts in each class specified in subsection (4) shall rank in the order therein specified but debts of the same class shall rank equally between themselves, and shall be paid in full, unless the assets in the insurance fund are insufficient to meet them, in which case they shall abate in equal proportions between themselves.

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

(7) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the *Gazette* amend paragraph (b) of subsection (4) by varying the sum specified in that paragraph.

Notification of change of relevant particulars.

32. (1) Wherever, after a licence has been granted, a material change occurs in the particulars which were contained or supplied in either case pursuant to section 6, 8, 9 or 10 in the application for the licence, the licensee shall, as soon as practicable, give notice in writing to the Authority specifying the nature and circumstances of the change.

(2) A licensee who wilfully contravenes subsection (1) is guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 and, in the case of a continuing offence, to a further fine not exceeding \$1,000 for every day on which the offence continues after conviction.

Notification of becoming new or increased controller.

33. (1) Where the licensee is an IBC or a company incorporated under the Companies Act (Chapter 39), no person shall become a controller or an indirect 20%, 33% or majority controller of a licensee unless he has served on the Authority a written notice that he intends to become such a controller and the Authority has given its prior written approval.

(2) Where the licensee is a foreign international company or a company registered under Part IX of the Companies Act (Chapter 39), a person who becomes, or ceases to be, a controller or an indirect 20%, 33% or majority controller of a licensee shall prior to, or within one month of acquiring or disposing of such an interest, notify the Authority in writing of such acquisition or disposal, giving in every case the percentage of shares (if any) retained by him.

Contravention of section 33.

34. (1) A person shall be guilty of an offence if he knowingly contravenes section 33 by failing to seek the consent of the Authority or, as the case may be,

by failing to serve notice on the Authority as required by that section; or by becoming a controller of a description falling within that section without the approval of the Authority under subsection (1) of section 33 or notifying the Authority in accordance with subsection (2) of section 33.

(2) A person guilty of an offence under subsection (1) shall be liable on conviction to a fine not exceeding \$100,000 and to imprisonment for a term not exceeding 2 years.

Notification of controllers etc. by licensee.

35. (1) At least once in each calendar year, every licensee shall give to the Authority written notice of the name of every person who is, to the knowledge of the licensee at the date of the notice, a controller or indirect controller of the licensee.

(2) In relation to each person named in a notice under subsection (1) as a controller or indirect controller of a licensee, the licensee shall state to the best of its knowledge —

(a) what percentage of shares of the licensee he holds, either alone or with any associates; and

(b) what percentage of the voting power at a general meeting of the licensee he is entitled to exercise, or control the exercise of, either alone or with any associate or associates.

Contravention of section 35.

36. A licensee which fails to comply with section 35 or with any notice thereunder is guilty of an offence and liable on conviction to a fine not exceeding \$20,000.

PART VI

ADMINISTRATIVE PROVISIONS

Further functions of Minister and Authority.

37. (1) Under the general supervision of the Minister, the Authority shall be responsible for ensuring the proper administration of this Order.

(2) In addition to any functions conferred on it by or under by other provisions of this Order, the Authority shall have the following functions —

(a) where it thinks fit or when required to do so by or under this Order or any other written law, to examine by way of the receipt of regular returns or in such other way as it thinks fit the affairs or business of any licensee for the purpose of determining that all the requirements of this Order are being met and that the licensee is carrying on its business in a satisfactory manner;

(b) where it has reasonable grounds to believe that a licensee or any director or other officer of a licensee has or may have contravened any of the provisions of this Order or of any other written law, to conduct or assist in the investigation of that contravention;

(c) to examine the accounts of licensees of which copies are required to be sent to it under this Order.

(3) The Authority may exercise any of the powers conferred by this Part for the purpose of assisting a designated supervisory authority in the performance of any of its material supervisory functions.

(4) Any reference in this Part to a designated supervisory authority is a reference to that authority which, in a country or territory designated by the Minister for the purposes of this Order, exercises in that country or territory functions corresponding to those of the Authority under this Order and, in relation to such an authority, "material supervisory functions" means functions which so correspond.

(5) The Minister shall not designate any country or territory for the purposes of this Order unless he is satisfied that the supervisory authority there is subject to provisions of confidentiality which are at least equivalent to those which apply to the Authority, whether under this Order or otherwise.

Power to obtain information and reports.

38. (1) The Authority may by notice in writing served on a licensee —

(a) require the licensee to provide the Authority, at such times or at such intervals or in respect of such period or periods as may be specified in the notice, with such information as the Authority may reasonably require for the performance of its functions under this Order;

(b) require the licensee to provide the Authority with a report by a nominated or approved accountant, legal counsel, actuary or other person with relevant professional skill on, or on any aspect of, any matter about which the Authority has required or could require the licensee to provide information under paragraph (a);

and a notice under this subsection may require the information or report to be in such form as is specified in the notice.

(2) In paragraph (b) of subsection (1), "nominated or approved" means nominated or approved by the Authority.

Notice to produce documents.

39. (1) The Authority may —

(a) by notice in writing served on a licensee, a director or other officer require the licensee or such director or officer to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;

(b) authorise a person appointed by the Authority (in this section referred to as the appointee), on production of his authority, to require the licensee to provide the appointee forthwith with such information or to produce to the appointee forthwith such documents as he may specify,

being such information or documents as the Authority may reasonably require for the performance of its functions under this Order.

(2) Where, by virtue of subsection (1), the Authority or any appointee has power to require the production of any documents from a licensee, the Authority or appointee shall have the same power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom production of any documents is required under this section claims a lien on documents produced by him, the production shall be without prejudice to that lien.

(3) Any power under this section to require a person to produce documents includes the power —

(a) if the documents are produced, to take copies of them or extracts from them and to require the person in question or, where that person is an institution, any other person who is a present or past director, controller or manager of, or is or was at any time employed by or acting as an employee of, that institution, to provide an explanation of them; and

(b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

Confidentiality on part of licensee.

40. (1) Except as provided by sections 37, 38, 39 and 43, no licensee and no official of a licensee (including a director and an employee) and no person who, by reason of his professional relationship with a licensee, has by any means access to the records of a licensee or any register or correspondence or material with regard to the affairs of any policy holder of that licensee shall, at any time (while he continues as such an official or while his professional relationship continues, and thereafter) give, divulge or reveal any information regarding the moneys or other relevant particulars of the affairs of that policy holder.

(2) In subsection (1), "professional relationship" includes a relationship between a licensee and a bank, and such other relationship as the Authority may from time to time decide.

Contravention of section 40.

41. Any person who contravenes the provisions of section 40 shall be guilty of an offence and liable on conviction to a fine not exceeding \$100,000 and to imprisonment for a term not exceeding 2 years, and any such contravention shall constitute a breach of statutory duty actionable at the suit of any person who suffers loss or damage by virtue of that contravention.

Exceptions from confidentiality requirements.

42. The confidentiality imposed by section 40 does not apply to any information relating to the affairs of a policy holder of a licensee if —

(a) the policy holder or his authorised representative gives written permission to the disclosure of that information;

(b) the policy holder is adjudicated bankrupt or, if the policy holder is a body corporate, is being wound up;

(c) the disclosure of the information is with a view to the institution of, or for the purposes of civil proceedings before the Court relating to the business of the licensee;

(d) the officials of a licensee by compulsion under any written law are required to give information to the Authority, to any police officer or public officer who is duly authorised under that law to obtain that information or to any court in the investigation or prosecution of an offence under any such law;

(e) the licensee has been served with a garnishee order of the Court attaching moneys in the account of the policy holder;

(f) the policy-holder or a life assured has died and the information is required by his personal representative solely in connection with an application for a grant of probate or letters of administration or otherwise in the administration of his estate;

(g) in accordance with such conditions as the Authority may determine, information of such class or classes as the Authority may from time to time approve is transmitted from the licensee to a parent undertaking incorporated under the law of a country or territory outside Brunei Darussalam, solely for the purposes of carrying out collation, synthesis or processing of the information by the parent undertaking for the licensee.

Hearings in camera.

43. (1) In any proceedings as are referred to in paragraph (b) or (c) of section 42, where information is likely to be disclosed in relation to a policy holder or his affairs the proceedings may, if the Court, of its own motion or on the application of any party to the proceedings, so orders, be held in camera and the information shall be secret as between the Court and the parties thereto.

(2) Where an order is made under subsection (1) in relation to any proceedings, no person shall publish the name, address or photograph of any parties to the proceedings or any information likely to lead to the identification of the parties thereto either during the currency of the proceedings or at any time thereafter.

(3) Every decision of the Court in respect of any proceedings concerning the application or interpretation of this Order may be reported or published for the purposes of affording a record of those proceedings, provided that in every case —

- (i) the written decision of the Court shall be edited to such extent as shall be necessary to preserve confidentiality in respect of the identity of every interested party and of the subject-matter of the proceedings; and
- (ii) no such decision shall be reported or published unless or until the Court shall have ascertained the views of the parties to the proceedings as to the adequacy of any editing undertaken, and certified in writing to the Chief Registrar of the Court that the decision as edited may be released for publication or reporting.

(4) Any person who contravenes subsection (2) is guilty of an offence and liable on conviction to a fine not exceeding \$20,000 and to imprisonment for a term not exceeding 2 years.

Administrative notices.

44. (1) The Authority shall cause to be published in the form of administrative notices statements setting out the criteria by reference to which the Authority proposes to exercise its functions under this Order including, in particular, its powers to grant, refuse or revoke licences or to impose conditions on licences.

(2) The Authority may also publish in the form of administrative notices criteria to facilitate compliance with any other requirements of this Order.

(3) An administrative notice published under this section shall be admissible in evidence in any proceedings arising out of or otherwise in connection with the operation or application of this Order.

Communications to Authority by auditor.

45. In the circumstances specified in section 46, an auditor of a licensee shall notify the Authority of any information which relates to the business or affairs of the licensee and of which he becomes aware —

(a) in his capacity as auditor of the licensee or of a body with which it is closely linked; or

(b) in preparing any report under this Order.

Circumstances for notification under section 45.

46. (1) The circumstances referred to in section 45 are those in which the information referred to in that section is —

(a) such as to give the auditor reasonable cause to believe, as regards the licensee concerned —

(i) that there is or has been or may have been a failure to fulfil any of the criteria in section 6 or 21 and that the failure is likely to be of material significance;

(ii) that its licence should be revoked, or the Authority should take any other action under section 47;

(iii) that there is or has been, or may be or may have been, a contravention of any provision of this Order and that the contravention is likely to be of material significance; or

(iv) that the continuous functioning of the licensee may be affected; or

(b) in any case where the auditor is the auditor of the licensee concerned, such as to lead to his refusal to certify the accounts or to his expression of reservations.

(2) In subsection (1), "of material significance" means of material significance for the exercise of the Authority's functions under this Order.

(3) No duty to which an auditor of a licensee may be subject shall be regarded as contravened by reason of his communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information of which he becomes aware or opinion that he may form in his capacity as auditor and which —

(a) relates to the business or affairs of the licensee or of a body with which the licensee is closely linked; and

(b) is relevant to any function of the Authority under this Order.

Regulatory powers of Authority.

47. (1) If the Authority is satisfied that a licensee —

(a) has ceased to carry on international insurance business;

(b) has gone into liquidation, is wound up or in the process of being wound up or is otherwise dissolved;

(c) has made an arrangement or composition with its creditors;

(d) is unable or appears likely to become unable to meet its obligations as they fall due;

(e) is carrying on business in a manner detrimental to the public interest, the interests of its policy holders, other creditors or persons conducting transactions with it;

(f) has failed to comply with any condition of its licence;

(g) has failed to pay any fee due under this Order or has otherwise contravened any provision of this Order;

(h) has surrendered, had revoked or had suspended an insurance licence of any description in any other jurisdiction in circumstances which affect, or are likely to affect, the licensee's compliance with this Order;

(i) has been convicted of a criminal offence which in the opinion of the Authority warrants action under this section;

(j) has acted in any other way in a manner which might adversely affect the interests of Brunei Darussalam or the insurance industry,

the Authority may take any of the courses of action specified in subsection (2).

(2) The courses of action referred to in subsection (1) are —

(a) the revocation or suspension of the licence;

(b) the imposition of varied or additional conditions on the licence;

(c) the substitution of any director or officer of the licensee;

(d) the appointment, at the expense of the licensee, of a person to advise the licensee on the proper conduct of its affairs and to report to the Authority thereon within 3 months of his appointment;

(e) the appointment, at the expense of the licensee, of a person to assume control of the licensee's affairs, being a person who shall have *mutatis mutandis* all the powers of a person appointed as a receiver or manager of a company under the International Business Companies Order, 2000 (S 56/2000) and the Companies Act (Chapter 39);

(f) where the licensee is incorporated under the laws of a jurisdiction other than Brunei Darussalam, at the expense of the licensee to take such advice and steps in such other jurisdiction as may be appropriate, having regard to the provisions of this Order including the investigation of winding-up, liquidation or analogous procedures or proceedings;

(g) to require the licensee to take such other action as the Authority considers necessary.

(3) Before taking any of the courses of action specified in subsection (2), the Authority shall give the licensee an opportunity to make representations why the course of action in question should not be taken; and, whether or not such representations are made, if the Authority does take a course of action under subsection (2), the licensee may appeal to the Court against the taking of the action.

(4) A person appointed under paragraph (d) or (e) of subsection (2) (in the following provisions of this section referred to an appointee) shall from time to time and in any case within 3 months of his appointment or, as the case may be, the extension of his appointment under paragraph (b) of subsection (5), prepare

and furnish a report to the Authority on the affairs of the licensee and may make recommendations therein.

- (5) On receipt of a report under subsection (4), the Authority may —
- (a) revoke the appointment of the appointee;
 - (b) extend the period of the appointment of the appointee;
 - (c) subject to any conditions that the Authority may impose, allow the licensee to reorganise its affairs in a manner approved by the Authority;
 - (d) revoke the licence and request the Attorney General to apply to the Court for an order that the licensee be wound up in accordance with Part V of the Companies Act (Chapter 39), either by the Court or subject to the supervision of the Court (and in this subsection "Court" has the same meaning as in that Act).

(6) In the case of a licensee which is an international business company, the reference in paragraph (d) of subsection (5) to Part V of the Companies Act (Chapter 39) is a reference to that Part as it applies to such a company by virtue of the First Schedule to the International Business Companies Order, 2000 (S 56/2000).

(7) Whenever the Authority revokes or suspends a licence under paragraph (a) of subsection (2) or paragraph (d) of subsection (5), it shall cause notice of that revocation or suspension to be published in the *Gazette* and may also cause notice to be published, whether within Brunei Darussalam or elsewhere, in such newspaper or other publication as it may think fit.

PART VII

PROTECTION OF LONG-TERM BUSINESS

Interpretation of this Part.

48. (1) In this Part, unless the context otherwise requires —

"creditor" means a person to whom an obligation is owed and includes any person who alleges or pursues a claim or claim or cause of action on behalf of or in the name of a creditor;

"intent to defraud" means an intention wilfully to defeat an obligation owed to a creditor;

"long-term premium" means any money, money's worth or property (including existing policies of insurance or annuities) that is paid or transferred to an insurer licensed under this Order as, or held by such insurer as security for payment of, a *bona fide* premium under a contract of long-term insurance issued by that insurer;

"obligation" means a qualified binding obligation or liability due to a specific creditor that existed on or before the date of a transfer of a long-term premium to an insurer and of which the debtor had actual knowledge or notice;

"protected policy holder" means a policy holder in respect of long-term business, and who pays or is obligated under that contract or an associated contract or policy to pay a long-term premium.

(2) This Part applies to —

(a) any action or proceedings in any jurisdiction relating to the transfer or payment of money or other property, or the exchange of an existing policy, as a long-term premium payment to a licensee hereunder in return for a contract or policy of long-term international insurance, whether the money or property so transferred has its *situs* within Brunei Darussalam or elsewhere after such transfer or disposition, so long as the transfer, payment or exchange of policies takes place after the date of commencement of this Order;

(b) any action or proceeding by a creditor alleging fraudulent conveyance, fraud or a cause of action sounding in fraud against a protected policy holder who has paid a long-term insurance premium to an insurer, whether or not against the insurer to which or for whose benefit such premium was paid, to the exclusion of any other remedy, principle or rule of law of any jurisdiction, whether provided by statute, the common law or the doctrines of equity.

(3) For the purposes of this Part, a premium shall be deemed paid when it is transferred to an international insurance agent, an appropriately licensed bank or registered agent as mentioned in section 2(1) or a broker when an existing contract or policy is exchanged in lieu of payment of a premium.

(4) This Part shall operate subject to the provisions of any written law relating to money-laundering or the recovery of the proceeds of crime.

Assets attributable to long-term business.

49. (1) Every insurer shall maintain books of account and other records such that —

- (a) the assets in its long-term business fund or funds; and
- (b) the liabilities of its long-term business,

can be readily identified at any time.

(2) Subject to subsection (3), the assets in an insurer's long-term business fund shall be applicable only for the purposes of that business, notwithstanding any arrangement for its subsequent repayment out of receipts of business other than long-term business.

(3) The restriction imposed by subsection (2) shall not apply to so much of those assets as are certified by the actuary to the insurer to exceed the extent (as so certified) of the liabilities of the insurer's long-term business.

(4) No transfer of assets from the long-term business fund, other than a transfer in accordance with subsection (3), shall be made without the authority of a resolution of the directors of the insurer.

Restrictions on proceedings.

50. (1) No creditor of a person who has paid a long-term premium to an insurer may set aside or seek to set aside a transfer or payment of any long-term premium by that person to that insurer unless it is determined, in a final order or judgment by the Court, that the transfer or payment of the premium by that person was made with the principal intent to defraud that creditor.

(2) The onus of proof of that person's intent to defraud a creditor shall lie on the creditor, and the required standard of proof in such a case being to prove such intent beyond reasonable doubt.

(3) Notwithstanding anything to the contrary in this Order or in any other written law, no action or proceedings may be commenced in any jurisdiction to rescind, avoid, set aside or divert any payment of a long-term premium to which this Part applies later than 2 years after the date of transfer or payment of that premium.

(4) A person shall not have imputed to him any intent to defraud a creditor by reason only that he is a policy holder, recipient of a benefit or is the settlor, trustee, protector or a beneficiary of a trust, a shareholder, director or officer of a company, a member of a partnership or other person or group of persons which is a beneficiary under the policy.

(5) This section applies to claims, actions, proceedings and arbitrations against any person who has paid a long-term premium, policy holders, beneficiaries of policies insurers, and each of their successors, assigns, officers, directors, employers and agents.

Nature and extent of protection.

51. (1) Notwithstanding any other provision of this Order, any other written law, the common law or the doctrines of equity to the contrary, no long-term business fund or funds shall be chargeable with or liable for —

(a) any liability, obligation or loss arising from any general or other business of the insurer maintaining such account;

(b) the claims of any creditor or of any person, except as provided in this Part or expressly in the policy; or

(c) any liability, obligation or loss arising from or primarily relating to any other policy holder of the insurer, whether that other policy holder is entitled to the protections of this Part or not.

(2) Neither the cash, liquidation or residual value under any policy as to which a protected premium account is maintained, nor dividends or other income paid to, by or for any such account, shall be subject to any lien, charge, charging order, encumbrance, attachment or sequestration by any court except to the extent provided in a final order or judgment made under section 50.

(3) No residual interest of an insurer, or any interest of a beneficiary in or under a policy to which this Part applies shall be subject to any injunction, lien, charge, charging order, encumbrance, injunction, attachment or sequestration.

(4) No judgment or order made by any court, tribunal, arbitration panel or government of any other country or jurisdiction which is contrary to this Part shall be enforceable in Brunei Darussalam.

Extent of avoidance of payment of premium.

52. (1) A transfer of a long-term premium may be set aside only as provided in this Part and then only to the extent necessary to satisfy the actual obligation to the creditor at whose instance the transfer has been set aside.

(2) Other creditors of the person who has paid a long term premium or of the insurer shall not benefit or be entitled to any presumption from any judgment or order in favour of a creditor against that person or insurer.

Section 172 of Law of Property Act, 1925.

53. Section 172 of the Law of Property Act, 1925 of the United Kingdom, so far as it is in force in Brunei Darussalam by virtue of the Application of Laws Act (Chapter 2), shall have no application to a payment of a long-term premium.

Benefits to in sure to beneficiary.

54. Notwithstanding any other provision of this Order, any other written law, the common law or the doctrines of equity, except to the extent provided in a final order or judgment made under section 50, all money or benefits of any kind, including policy proceeds and cash values, to be paid or rendered to the insured a policy holder or any beneficiary under any policy of long-term business shall —

(a) enure to the benefit of the person or persons for whose use and benefit the insurance or annuity is designated in the policy or any person lawfully entitled to such benefit or part thereof; and

(b) be fully exempt from execution, attachment, garnishee order and other process:

Provided that nothing contained in this Part shall be construed as validating any disposition of property which is neither owned by, nor is the subject of a power of disposal with respect thereto vested in, the transferor or affecting the recognition of any foreign law in determining whether the transferor is the owner of such property or the holder of such a power.

Protection regardless of revocability.

55. The protection provided by this Part applies without regard to whether the power to change a policy holder, beneficiary or other person entitled to a benefit is reserved to him or to any other person.

Certain transfers excluded.

56. (1) The protection provided by this Part does not apply to a debt of the insured or beneficiary secured by a pledge, assignment or mortgage of the policy or its proceeds.

(2) This Part does not prevent the proper assignment of any money or benefits to be paid or rendered under a policy to which this Part applies, or any rights under the policy in favour of any person in accordance with the terms of the policy or contract.

(3) Wherever any long-term policy shall contain a provision against assignment or commutation by any person entitled to a benefit thereunder of any benefits to be paid or rendered thereunder, or any rights therein, any assignment or commutation or any attempted assignment or commutation by such person of such benefits in violation of such provision shall be void.

(4) The exemptions and protection under this Part are in addition to the exemptions from execution, attachment, garnishee order and other process under this Order or under any other written law.

Forfeiture of beneficiary's rights.

57. The interest of a person in a long-term policy, whether issued before or after the commencement of this Order, shall be forfeited when such person is the principal or an accomplice in wilfully bringing about the death of the life insured. When such is the case, a contingent beneficiary named by the insured in the policy shall receive the insurance unless that contingent beneficiary was also such a principal or an accomplice. If no contingent beneficiary is named by the insured in the policy or if all contingent beneficiaries named by the insured in the policy were such principals or accomplices, the personal representatives of the insured shall be entitled to the insurance.

Beneficiary may enforce policy or contract.

58. Subject to this Order and notwithstanding any rule of law or equity whether relating to privity of contract or otherwise, the beneficiary under a policy or his successors in title or any other person nominated to benefit under such policy shall have the full right to enforce the terms of the same against the insurer.

Insurable interest.

59. (1) Notwithstanding any written law or rule of law or equity, a person shall, for the purposes of this Order and without prejudice to any other insurable interest however arising, be deemed to have an insurable interest relative to any life insured under a policy of long-term business where —

(a) he establishes that he is a beneficiary of a policy holder under a policy and the life insured has, without reserving his right to claim compensation, prior to the effecting of the policy, irrevocably agreed in writing that the policy may be effected upon his life;

(b) the person effecting the policy has a legal liability or moral obligation, howsoever arising, to insure the life insured; or

(c) the life insured has irrevocably given his prior written consent to the effecting of a policy nominating a third party to be the recipient of benefits,

and in any of such cases, the policy holder shall, subject to the terms of the policy, have full power of disposition in relation to the policy prior to the time or event at or upon which the insured risk has materialised.

(2) No insurable risk shall be deemed to arise or exist pursuant to subsection (1) where the terms of the policy are held by the Court to constitute or to further a result or event which is unlawful under any written law or is otherwise contrary to public policy in Brunei Darussalam.

Provision of information to designated supervisory authority.

60. The Authority may provide information on the operations of a licensee which is incorporated in a country or territory outside Brunei Darussalam, including any report under paragraph (b) of subsection (1) of section 38, to a designated supervisory authority in the country or territory of incorporation for the purpose of assisting that authority in any of its material supervisory functions.

PART VIII

EXEMPTIONS FROM TAXATION AND DUTIES

Exemptions from taxes and duties.

61. (1) No income tax, tax on capital gains or other tax, duty, levy or imposition of any description shall be payable, levied, withheld or collected in respect of the business of any licensee carried on or transacted under this Order.

(2) No estate, inheritance, succession or similar tax shall be levied in respect of any business of any licensee carried on or transacted under this Order.

(3) Notwithstanding anything in the Stamp Act (Chapter 34), duty shall not be chargeable on any instruments relating to the business of any licensee carried on or transacted under this Order, or relating to any policy or other document in any way concerning such business.

(4) Notwithstanding any other written law, no filing or presentation of documents with or to any taxing or other analogous authority in Brunei Darussalam shall be required.

(5) Expressions used in subsection (3) have the same meaning as in the Stamp Act (Chapter 34).

(6) The exemptions conferred on a licensee by subsections (1) to (4) may, at no extra charge, be evidenced by a certificate issued by the Minister confirming that the licensee is so exempt; and, without prejudice to the possibility of the issue of a further such certificate, any such certificate shall be valid for a period of 10 years from the date thereof.

PART IX

MISCELLANEOUS AND GENERAL

Recovery of fees etc.

62. There shall be recoverable as a civil debt due to the Authority from the party concerned —

(a) the amount of any fee payable under this Order;

(b) any remuneration and expenses payable to any person nominated or approved under paragraph (b) of subsection (1) of section 38; and

(c) any remuneration and expenses payable to any person appointed under paragraph (d) or (e) of subsection (2) of section 47.

Indemnity.

63. Neither the Authority nor any of the following —

(a) any officer of the Authority;

(b) any person nominated or approved by the Authority under section 38;

(c) any other person appointed by the Authority pursuant to this Order for the purposes thereof,

shall be liable in damages or otherwise as a result of anything done *bona fide* in the exercise of any power or the performance of any function or duty conferred or imposed by or under this Order.

Offences in relation to false statements.

64. (1) A person is guilty of an offence if, in connection with any application or any document required or made for the purposes of this Order, or in compliance or purported compliance with any requirement of this Order or otherwise for the purposes of this Order —

(a) he wilfully makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;

(b) he recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular;

(c) he wilfully produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or

(d) he recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular.

(2) A person guilty of an offence under this section shall be liable on conviction to a fine not exceeding \$200,000 and to imprisonment for a term not exceeding 3 years.

Offences by bodies corporate.

65. Where an offence under this Order committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of that body, or any person who was purporting to act in that capacity or any other person who holds a controlling interest in that body, he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

Power of Authority to compound.

66. The Authority may, without instituting proceedings against any person for any offence under this Order which is punishable only by a fine, demand and receive the amount of the fine or such reduced amount as the Authority thinks fit from that person, whereupon —

(a) if that person pays the amount to the Authority within 14 days after the demand, no proceedings shall be taken against him in relation to that offence; and

(b) if that person does not pay the amount so demanded, the Authority may cause proceedings to be instituted in relation to that offence.

Regulations, guidelines.

67. (1) The Minister may, with approval of His Majesty the Sultan and Yang Di-Pertuan, make such regulations as he considers necessary or expedient for carrying into effect the provisions of this Order including, without limitation, the establishment of a fidelity fund or compensation scheme for the protection of policy holders, beneficiaries or other interested persons under policies of international insurance.

(2) The Authority may, with the approval of the Minister, issue such guidelines as the Authority considers necessary to achieve transparency in the licensing process hereunder or in respect of the nature of assets to be maintained or held in satisfaction of the provisions hereof and for any other administrative purpose.

PART X**TRANSITIONAL, EXEMPTIONS AND SAVINGS****Transitional.**

68. Subject to section 69, any person who is at the date of commencement of this Order carrying on any business for which a licence is required under the provisions of this Order shall within a period of 12 months from that date comply with the provisions of this Order.

Exemptions.

69. (1) The Authority may in such manner and on such terms as it thinks fit exempt any person or business or class of person or business from any of the provisions of this Order.

(2) Any exemption given under subsection (1) may contain different provisions for different classes of person or business, or of international insurance business, or with respect to any provision of this Order or from any regulations, administrative notice or guidelines made, issued or published under this Order.

Saving of private rights.

70. Nothing in this Order shall prejudice any right that any person may have to take civil proceedings or obtain relief against a licensee, former licensee, associate, director or employee of any licensee or former licensee or any other person connected in any way with international insurance business.

Limitation on laws relating to domestic insurance.

71. (1) Nothing in any written law relating to domestic insurance shall be construed so as to apply to the regulation or licensing of persons carrying on exclusively international insurance business or to any business carried on in or from within Brunei Darussalam that is incidental to international insurance business.

(2) Nothing in this Order shall be construed so as to apply to the regulation or licensing in Brunei Darussalam of persons carrying on only domestic insurance business or to limit the application of any law in Brunei Darussalam relating to the regulation of such business.

Non-application of laws relating to domestic insurance and takaful.

72. No licensee shall, in respect of any business carried on by such licensee under this Order, be subject to the provisions of any written law relating to domestic insurance or domestic takaful.

Application of International Business Companies Order, 2000 (S 56/2000) and Companies Act (Chapter 39).

73. (1) In addition to the provisions of this Order —

(a) the International Business Companies Order, 2000 (S 56/2000) shall apply to a licensee which is an international company or a foreign international company; and

(b) the Companies Act (Chapter 39) shall apply to a licensee which is incorporated or registered under that Act.

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

SCHEDULE
(section 2(1))

PART I

DEFINITION OF CONTROLLER

1. In this Order, "controller", in relation to body, means a person who, either alone or together with any associate or associates —

(a) holds 20% 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% 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 that first-mentioned body.

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

(a) a "20% controller" means a controller in whose case the percentage referred to in the relevant paragraph is 20 or more but less than 33;

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

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

(2) In sub-paragraphs (a) to (d) of sub-paragraph (1), "relevant paragraph", in relation to a controller, means whichever of those sub-paragraphs gives the greater percentage in his case.

PART II

DEFINITION OF SUBSIDIARY, HOLDING, AFFILIATED AND CONTROLLING COMPANIES

1. For the purposes of this Order, a company is a subsidiary of another company if —

(a) it is controlled by —

(i) that other company;

(ii) that other company and one or more companies, each of which is controlled by that other company; or

(iii) two or more companies, each of which is controlled by that other company; or

(b) it is a subsidiary of a subsidiary of that other company.

2. For the purposes of this Order, a company is the holding company of another only if that other company is its subsidiary.

3. For the purposes of this Order, one company is affiliated with another company only if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person or persons.

4. For the purposes of this Order, a company is controlled by another company or person or by 2 or more companies only if —

(a) shares of the first-mentioned company carrying more than 50% of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of that other company or person or by or for the benefit of those other companies; and

(b) the votes carried by such shares are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned company.

Made this 15th. day of Rabiulawal, 1423 Hijriah corresponding to the 28th. day of May, 2002 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM