

## SEGREGATED ACCOUNTS COMPANIES ACT 2000

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**BERMUDA  
2000 : 33**

### SEGREGATED ACCOUNTS COMPANIES ACT 2000

[Date of Assent 22 August 2000]

[Operative Date 1 November 2000]

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WHEREAS it is expedient to provide for the registration and regulation of companies that operate segregated accounts:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

### **PART I**

#### **INTERPRETATION AND APPLICATION**

##### **Citation**

1 This Act may be cited as the Segregated Accounts Companies Act 2000.

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### **Interpretation and application**

2 (1) In this Act—

"beneficial owner" means any person who is—

- (a) identified in or by reference to a governing instrument as having a legal or beneficial interest in a segregated account;
- (b) the registered holder of any security linked to a segregated account; or
- (c) designated as having a beneficial interest in a segregated account in the records of a segregated accounts company;

and includes that person's successors in title or assigns;

"counterparty" means any party (other than the segregated accounts company itself), or any person deriving any interest or title from a party, to a transaction to which the company is a party, which transaction does not by its terms go to the beneficial ownership of a segregated account;

"court" means the Supreme Court;

"general account" means an account maintained under section 16(1)(c) which records all of the assets and liabilities of a segregated accounts company which are not linked to a segregated account of that company;

"general shareholder" means any member of a segregated accounts company not being the holder of a share linked to a segregated account;

"governing instrument" in relation to a segregated account, means a written instrument evidencing a transaction and conforming to the provisions of section 11;

"insurance business" means insurance business as defined in section 1(1) of the Insurance Act 1978;

"linked" means linked by means of an entry made in the records of a segregated accounts company used in the preparation of the financial statements of the company in accordance with generally accepted accounting principles and made in respect of a transaction which—

- (a) records movement in value or changes in characteristics necessarily consequent on that transaction; and

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(b) identifies assets, rights, liabilities, obligations or contributions as belonging to or pertaining to a segregated account;

"manager" means any person who, by virtue of the terms of a governing instrument or otherwise with the consent of a segregated accounts company and the beneficial owners of any segregated account, has control of a segregated account;

"operative date" means the date on which this Act comes into force;

"the Minister" means the Minister of Finance;

"register" means the register of segregated accounts companies maintained under section 6;

"registered" means registered under section 6;

"Registrar" means the Registrar of Companies appointed under section 3 of the Companies Act 1981;

"security" in relation to a segregated accounts company, means any share, note, bond, debenture, evidence of indebtedness, certificate, unit, warrant, or right conferring an option to acquire shares or any other right issued by or pertaining to the company, but does not include a contract of insurance unless the terms of the contract so provide;

"segregated account" means a separate and distinct account (comprising entries recording data, assets, liabilities, rights and obligations linked to such account) of a segregated accounts company maintained in respect of a beneficial owner or a counterparty in accordance with this Act;

"segregated accounts company" means a company which is registered under section 6;

"transaction" means any dealing of whatever nature, including the issue of any security, by which the assets or liabilities linked to a segregated account are affected, or, in the case of assets intended by the parties to be applied to a risk of any nature, any dealing which exposes such assets to liability or loss.

(2) For the purposes of this Act—

(a) a segregated accounts company shall be deemed to be solvent if the general account is able to pay its liabilities as they become due;

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(b) a segregated account shall be deemed to be solvent if it is able to pay its liabilities as they become due.

(3) Nothing in this Act shall be construed as requiring a company which operates segregated accounts under the authority of a Private Act or otherwise to be registered.

(4) For the avoidance of doubt it is declared that, notwithstanding section 18, a segregated accounts company is not by reason only of the operation of segregated accounts carrying on trust business in or from within Bermuda for the purposes of the Trust Companies Act 1991.

### **PART II**

#### **REGISTRATION**

##### **Application for registration to operate segregated accounts**

3 (1) Any company to which the Companies Act 1981 applies—

(a) if it is engaged in insurance business; or

(b) if it is not so engaged, with the approval of the Minister,

may, by filing a notice under section 4, apply to be registered under section 6.

(2) From the date of registration of a segregated accounts company the provisions of this Act shall apply thereto and the company may enter into transactions.

(3) The establishment of a segregated account does not create a legal person distinct from the segregated accounts company.

##### **Companies to notify Registrar**

4 (1) Where a company intends to operate segregated accounts, the company shall file with the Registrar a notice thereof in writing not less than 28 days before establishing the segregated accounts.

(2) Notice given pursuant to subsection (1) shall not of itself confer any power under this Act, and the company shall not be entitled to avail itself of the provisions of this Act until it has been registered under section 6.

##### **Documents to be filed**

5 (1) The notice under section 4 shall be in such form as the Registrar may determine but shall contain the following information—

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- (a) the name of the company, which, subject to a direction from the Minister pursuant to section 26, shall include the expression "(SAC)";
  - (b) a statement that the company intends to operate segregated accounts;
  - (c) the address of the registered office of the company;
  - (d) the name and address of the segregated account representative of the company;
  - (e) the nature of the business of the company;
  - (f) the date of incorporation of the company; and
  - (g) a statement that the company has made provision to account for segregated accounts in the manner set out in section 16.
- (2) Where the company has conducted business prior to its registration, the company, in filing a notice under section 4, shall—
- (a) file with the Registrar a statutory declaration as at the date of the notice setting out a true and accurate statement of—
    - (i) the assets and liabilities of the company as at a date within three months prior to the date of the notice;
    - (ii) a description of any transaction or event which, as of the date of the notice, has occurred, or is expected to occur, between the date of the statement of assets and liabilities prepared pursuant to subparagraph (i) and the date of registration of the company as a segregated accounts company which, if it had occurred before the date of that statement, would have caused significant changes to the assets and liabilities disclosed therein; and
    - (iii) the segregated accounts the company intends to operate and the assets and liabilities which the company proposes to assign to each of those segregated accounts;
- and declaring that—
- (iv) on registration, the company will be solvent in respect of each segregated account and the general

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account as if each segregated account and the general account were a separate legal entity;

- (v) no creditor of the company will be prejudiced; or
- (vi) the creditors of the company have consented in writing to the company proceeding to register; and

(b) attach evidence of the consent in writing to registration of 75% in number of those persons who would, on the registration of the company, be the beneficial owners of the segregated accounts of the company and 75% in number of those persons who would, on the registration of the company, be counterparties to any undischarged or open transactions linked to a segregated account.

(3) Any person who, on the registration of the company, would be a beneficial owner or counterparty to an open or undischarged transaction and who does not consent to the registration of the company as a segregated accounts company under this Act may, within one month of the date of the notice under section 4, apply to the court for an order that such notice shall not have effect and that the company shall remain unregistered for the purposes of this Act.

(4) Without prejudice to the provisions of subsection (2)(b) and subsection (3), a beneficial owner or counterparty to an open or undischarged transaction linked to a segregated account who is aggrieved by a notice under section 4 may, within 21 days of receipt of the notice, apply to the Registrar to refuse to register the company.

(5) Where a company—

- (a) has conducted business prior to filing a notice under section 4; and
- (b) has filed such notice,

it shall cause a copy of the notice to be contemporaneously given to all beneficial owners and to all counterparties to any open or undischarged transactions linked to a segregated account.

(6) If there is any material alteration of the particulars set out in subsection (2) between the date of the notice filed pursuant to section 4 and the date of registration, then the company shall give further notice to the Registrar of such alteration of particulars.

(7) The notice filed pursuant to section 4 and any documents accompanying that notice shall be treated as confidential by the Registrar and all public officers having access thereto, but this subsection does not preclude the disclosure of information for the

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purpose of enabling the Minister to exercise any functions conferred upon him by this Act.

### **Register of segregated accounts companies**

6 (1) The Registrar shall maintain a register of segregated accounts companies.

(2) Upon application and upon payment of such fee as may be prescribed under the Government Fees Act 1965, the Registrar, if satisfied—

- (a) that the company will be in compliance with this Act; and
- (b) in the case of a financial institution as defined in section 1(1) of the Bermuda Monetary Authority Act 1969, that the Bermuda Monetary Authority has no objection to the registration,

shall register the company as a segregated accounts company.

(3) The Registrar may—

- (a) impose such conditions on the registration of a company as he may consider necessary to ensure the reputation of Bermuda and in particular, to vet the beneficial owners of segregated accounts and to ensure compliance with this Act;
- (b) require the company to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its segregated accounts business in a particular way.

(4) The Registrar may revoke or vary any condition or requirement imposed under subsection (3) by giving notice thereof to the company.

(5) After registering a company pursuant to subsection (2), the Registrar shall issue a certificate showing the date of registration.

(6) The Registrar shall place a copy of the certificate referred to in subsection (5) on the public file maintained by him in respect of the company.

(7) The register shall be available for inspection by members of the public.

(8) Where the Registrar refuses to register a company pursuant to subsection (2), he shall not be bound to assign any reason for his

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refusal and his decision shall not be subject to appeal or review in any court.

### **Removal from the register**

7 (1) Subject to this section, the Registrar, on receipt of a request in writing by a segregated accounts company attaching thereto evidence of the consent in writing of 75% in number of the beneficial owners of the segregated accounts of the company and of 75% in number of any counterparties to any undischarged or open transactions linked to segregated accounts, shall remove the company from the register and the provisions of this Act shall cease to apply to the company.

(2) A request under subsection (1) shall be in such form as the Registrar may determine, but shall include a statutory declaration averring that no creditor of the segregated accounts company will be prejudiced by, or that the creditors have consented in writing to, the removal of the company from the register and shall have attached to the declaration a true and accurate statement of—

- (a) the assets and liabilities of the company as at a date within the three months prior to the date of the request;
- (b) a description of any transaction or event which, as of the date of the request, is expected to occur between the date of the statement of assets and liabilities prepared pursuant to paragraph (a) and the date of the removal of the company as a segregated accounts company which, if it had occurred before the date of the statement of assets and liabilities, would have caused significant changes to the assets and liabilities disclosed therein; and
- (c) the segregated accounts which the company has operated and the assets and liabilities which were linked to each of those segregated accounts.

(3) If there is any material alteration of the particulars set out in subsection (2) between the date of the request given pursuant to subsection (1) and the removal of the company from the register, the company shall give notice to the Registrar of such alteration in particulars.

(4) A segregated accounts company shall circulate contemporaneously with the request to the Registrar under subsection (1) notice of that request to all beneficial owners of the segregated accounts company and to all counterparties to any undischarged or open transactions linked to a segregated account.

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(5) A beneficial owner of a segregated account or any counterparty to any undischarged or open transaction linked to a segregated account who is aggrieved by a request made pursuant to subsection (1) may, within 21 days of receipt of notice of the request, apply to the Registrar to refuse to remove the segregated accounts company from the register or, if the removal has already occurred, to reinstate the company on the register.

(6) Where an application has been made under subsection (5) and the Registrar has made a decision on the application, any person who is aggrieved by that decision may, within 21 days of the decision, appeal to the court and the court shall hear the matter and make such order as it thinks fit.

(7) The making of a request pursuant to subsection (1) shall not of itself effect the removal of a segregated accounts company from the register and the Registrar in his absolute discretion shall determine whether to give effect to the removal of the company from the register and, in this regard, may require such information from the company as he considers necessary to render such decision.

(8) Without prejudice to the provisions of Part VIII of the Companies Act 1981 (which relates to the powers of the Minister to investigate the affairs of a company), the Registrar may, whether on his own initiative or on application by a beneficial owner or a counterparty, remove a segregated accounts company from the register where the company has materially breached—

- (a) the provisions of this Act or a condition or requirement imposed under section 6(3); or
- (b) the terms of any direction given pursuant to section 26 or regulation made under section 27,

but the rights and obligations of any beneficial owner and of any counterparty to an open or undischarged transaction linked to a segregated account shall be unaffected by the removal, and the powers of the company shall continue in respect of such accrued rights and obligations but solely for the discharge thereof.

(9) Where the Registrar intends to remove a segregated accounts company from the register pursuant to subsection (8), he shall give the company notice of that intention and, before giving effect to the removal of the company from the register, he shall take into account any representations made by the company within such period as may be specified in the notice.

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### **Provisions relating to operation of segregated accounts pursuant to Private Act**

8 (1) Where a company has operated segregated accounts by virtue of authority conferred by a Private Act and the company has registered—

- (a) the provisions of this Act shall apply to that company and, to the extent of any inconsistency between this Act and the provisions of that Private Act, the provisions of this Act shall prevail;
- (b) any contracts to which the company was a party on the date of registration shall be construed in accordance with the Private Act but contracts renewed or entered into after the date of registration shall be construed in accordance with this Act.

(2) A company which has by virtue of authority conferred by a Private Act the right to operate segregated accounts shall, within six months from the operative date or, in the case of a Private Act that comes into force after the operative date, within six months of the coming into force of the Private Act, give notice of that fact in writing to the Registrar, attaching thereto a copy of the Private Act together with a copy of its most recent financial statements.

(3) For the avoidance of doubt it is declared that any provision of a Private Act that confers authority on a company to operate segregated accounts which does not go to the operation of such accounts shall not be affected by the registration of the company.

## **PART III**

### **MANAGEMENT AND ADMINISTRATION**

#### **Company to inform persons they are dealing with segregated accounts company**

9 A segregated accounts company shall—

- (a) inform any person with whom it enters into a transaction that it is a segregated accounts company; and
- (b) where the transaction relates to a segregated account, for the purposes of that transaction identify or specify that segregated account.

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### **Segregated account representative**

10 (1) A segregated accounts company shall appoint and maintain a segregated account representative in Bermuda.

(2) The particulars of the segregated account representative of a segregated accounts company shall be included in the register of directors and officers of the company maintained pursuant to section 92A of the Companies Act 1981.

(3) It is the duty of the segregated account representative within 30 days of—

- (a) his reaching the view that there is a likelihood of a segregated account or the general account of a segregated accounts company for which he acts becoming insolvent; or
- (b) it coming to his knowledge or his having reason to believe that the segregated accounts company for which he acts—
  - (i) has failed to comply with—
    - (A) any requirement or condition imposed under section 6(3),
    - (B) any requirement imposed by section 11 or 15,
    - (C) any direction given under section 26, or
    - (D) any regulation made under section 27; or
  - (ii) has become involved in any criminal proceedings in Bermuda or elsewhere,

to make a written report to the Registrar setting out all the particulars of the case that are available to him relating to the insolvency, failure or involvement.

### **Governing instrument**

11 (1) A transaction which is effected in connection with a segregated account shall be evidenced in a governing instrument which may consist of one or more agreements, instruments or other writings and may include or incorporate by reference bye-laws or other documents containing provisions setting out—

- (a) the beneficial ownership of the segregated account linked to that transaction;
- (b) the governance of the business of the segregated account;

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- (c) the conduct of its affairs and the rights, powers and duties of the company, any manager and the beneficial owner and their respective servants, agents, employees, successors or assigns;
  - (d) the identity of the segregated account to which the transaction and any assets or liabilities (and the respective proportions thereof as provided in section 12) are linked; and
  - (e) the extent of the interest of the parties therein and subordination thereof (if any).
- (2) The governing instrument of a transaction which goes to the beneficial ownership of a segregated account shall provide that—
- (a) the transaction is governed by Bermuda law;
  - (b) a person shall become a beneficial owner and shall become bound by the governing instrument if such person complies with the conditions for becoming a beneficial owner as set out in the governing instrument;
  - (c) a beneficial owner shall take such interest in a segregated account as is stipulated in respect of him and that, absent such stipulation, the extent of the interest of such beneficial owner shall be nil;
  - (d) if no other provision for management is specified in the governing instrument, the segregated accounts company shall manage the segregated account and may—
    - (i) appoint and supervise the officers, managers, employees and other persons who have management of the segregated account; and
    - (ii) enter into financial arrangements for payment for services including the charging of fees, disbursements and other charges which the manager shall be authorized to withdraw from the segregated account;
  - (e) unless otherwise provided in the governing instrument, the segregated accounts company may take any action, including—
    - (i) the amendment of the governing instrument subject, in relation to contracts of insurance and other contracts with third parties, to the consent of those parties;

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- (ii) the accomplishment of an amalgamation or consolidation pursuant to section 13;
- (iii) the appointment of one or more managers;
- (iv) for the benefit of the segregated account only, the sale, lease, exchange, transfer, pledge or other disposition of all or any part of the assets of the segregated account, or the dissolution of the segregated account;

or may provide for the taking of any action to create under the provisions of the governing instrument a class, group or series of beneficial interests that was not previously outstanding, without the vote or approval of any particular manager or beneficial owner, or class, group or series of managers or beneficial owners;

- (f) the segregated accounts company may grant to, or withhold from, all or certain managers or beneficial owners, or a specified class, group or series of managers or beneficial owners, the right to vote, separately or with any or all other classes, groups or series of managers or beneficial owners, on any matter, such voting being on a per capita, number, financial interests, class, group, series or any other basis;
- (g) the segregated accounts company may, if and to the extent that voting rights are granted under the governing instrument, set forth provisions relating to—
  - (i) notice of the time, place or purpose of any meeting at which any matter is to be voted on;
  - (ii) waiver of any such notice;
  - (iii) action by consent without a meeting;
  - (iv) the establishment of record dates;
  - (v) quorum requirements;
  - (vi) voting in person, by proxy or in any other manner; or
  - (vii) any other matter with respect to the exercise of any voting rights;
- (h) the segregated accounts company may create further segregated accounts to which all or any part of the assets, liabilities, profits or losses linked to any existing

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segregated account may be transferred, and for the conversion of beneficial interests in an existing segregated account into beneficial interests in the separate segregated account; and

- (i) any property linked to a segregated account which, on dissolution of the segregated accounts company, is found not to be linked to a beneficial owner, shall become *bona vacantia* and escheat to the Crown.

(3) The governing instrument of a transaction which does not go to the beneficial ownership of a segregated account shall provide—

- (a) the name and the extent of the interest of the counterparty and that the company is a segregated accounts company and that the transaction is to be linked to a segregated account and whether or not the transaction is subject to abatement pursuant to paragraph (d);
- (b) unless otherwise provided in the governing instrument, that the transaction is governed by the laws of Bermuda, and that the parties shall submit to the jurisdiction of the Bermuda courts;
- (c) that the counterparty to the transaction shall only have recourse to the assets which are linked to the segregated account to which the transaction relates;
- (d) subject to subsection (4), that the liabilities linked to a segregated account shall abate proportionately (either equally or otherwise in accordance with the terms of the transaction) if the assets linked to that segregated account prove insufficient to meet those liabilities.

(4) Where it is intended by the segregated accounts company and counterparty that there shall be no abatement as provided in subsection (3)(d), the governing instrument evidencing the transaction shall, and, if it does not do so, shall be deemed to contain a statement that in the event of the exhaustion of the assets linked to a segregated account the counterparty shall not have recourse to the assets which are linked to any other segregated account or to the general account.

(5) The provisions of this section shall operate to the exclusion of any law relating to trusts treating with the same subject matter, and no rule of law relating to trusts may be pleaded by any person to augment or modify the operation of this Act, but nothing in this section shall be construed to deny the remedy of tracing in law and in equity the

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assets or the proceeds of the assets of any segregated account where such assets or proceeds have been commingled.

(6) Where a transaction was entered into and the governing instrument does not comply with subsection (1), (2) or (3), the court may, either on the winding up of the segregated accounts company or on the application of any party to the transaction, declare that the provisions of subsection (1), (2) or (3) were implied terms of the transaction and, upon such declaration, they shall be deemed to be implied terms.

(7) In any proceedings before the court for a declaration pursuant to subsection (6), the onus of proof shall be on the party moving the court.

### **Apportionment of assets among segregated accounts**

12 (1) A segregated accounts company may apportion an asset or liability among two or more segregated accounts.

(2) Where a segregated accounts company has apportioned an asset or liability pursuant to subsection (1), the proportion in which the value of the asset or the extent of the liability is linked to each segregated account shall be clearly shown, by way of a percentage, in the governing instrument of the transaction linked to each segregated account.

### **Amalgamations and consolidations**

13 (1) A segregated accounts company may by agreement in writing amalgamate or consolidate a segregated account with or into one or more segregated accounts formed, organized or existing under the laws of any jurisdiction, or with such other segregated accounts company as the agreement shall provide.

(2) In relation to the amalgamation or consolidation of a segregated account pursuant to subsection (1), section 105 of the Companies Act 1981 shall have effect with the following modifications:—

- (a) references to "memorandum" or "bye-laws" shall be construed as including references to "governing instrument";
- (b) references to "director" shall be construed as including references to "manager";
- (c) references to "shares" shall be construed as including references to "securities".

(3) Unless otherwise provided in the governing instrument, an amalgamation or consolidation shall be approved by the managers of

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each segregated account which is to be amalgamated or consolidated and by all of the beneficial owners of that segregated account.

(4) In connection with an amalgamation or consolidation, rights or securities or interests linked to a segregated account which is a party to the amalgamation or consolidation may be exchanged or converted into cash, property, rights or securities of, or interests in, the resulting segregated account or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a segregated account in the amalgamation or consolidation.

(5) Notwithstanding prior approval, an agreement of amalgamation or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement.

(6) An amalgamation or consolidation of a segregated account with some other segregated account shall be effected in the same manner as a long-form amalgamation under Part VII of the Companies Act 1981 (which relates to arrangements, reconstructions and amalgamations), except that where Part VII refers to any member or creditor of the company it shall be construed as a reference to the beneficial owners or counterparties to an open or undischarged transaction, as the case may be, linked to the relevant segregated account.

### **Issue of securities linked to a segregated account**

14 (1) A segregated accounts company may create and issue securities in one or more classes linked to the same segregated account, the proceeds of issue of which shall be included in the assets linked to that segregated account.

(2) Where a segregated accounts company has effected a transaction by issuing a security linked to a segregated account, the issue of the security shall be identified as being linked to the segregated account in the accounts, books and records required to be kept by the company pursuant to this Act.

(3) The proceeds of the issue of shares or other securities, other than securities linked to a segregated account, shall be included in the general assets of the segregated accounts company only and the general shareholders shall have no rights to the assets of any segregated account by reason only of being a general shareholder.

### **Dividends, distributions, redemptions and repurchases**

15 (1) A segregated accounts company may pay a dividend or make a distribution in respect of securities of any class linked to a segregated account whether or not a dividend or distribution is declared

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on any other class of securities linked to the same or any other segregated account or any other securities issued by the company.

(2) Notwithstanding any other provision of this Act, a dividend shall not be declared or paid, or a distribution declared or made, in respect of securities linked to a segregated account if there are reasonable grounds for believing that—

- (a) the segregated account is, or would after the payment be, unable to pay its liabilities as they become due; or
- (b) the realisable value of the assets of the segregated account would thereby be less than the aggregate of its liabilities and its issued shared capital and share premium accounts.

(3) Dividends or distributions in respect of securities linked to a segregated account shall be paid or made on or in respect of those securities by reference only to the assets and liabilities of the segregated account linked to those securities, and not by reference to the general account or any other segregated account, and otherwise in accordance with the rights of such securities.

(4) Section 54 of the Companies Act 1981 does not apply to a segregated accounts company in relation to a dividend or distribution in respect of a segregated account, declared, paid or made under this section.

(5) Subject to subsections 42(2) and 42A(5) of the Companies Act 1981, a segregated accounts company may redeem or repurchase a security using the assets linked to the relevant segregated account provided that—

- (a) on the date of redemption or repurchase, after taking into account the redemption or repurchase, the relevant segregated account is solvent; or
- (b) any counterparties to open or undischarged transactions linked to that segregated account on that date have expressed in writing their concurrence to the redemption or repurchase.

### **Accounts, records and registers**

16 (1) A segregated accounts company shall—

- (a) maintain records in accordance with generally accepted accounting principles used in the preparation of the financial statements of the company prepared in accordance with section 84 of the Companies Act 1981,

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and the records shall clearly show the share capital, proceeds of securities, reserves, assets, liabilities, income and expenses, dividends and distributions that are linked to each segregated account;

- (b) maintain a record of each transaction linked to a segregated account maintained by the company; and
- (c) maintain a general account which records in accordance with this Act all of the assets and liabilities of the company which are not linked to a segregated account and which discloses any assets intended by the parties to be applied to a risk of any nature, and which therefore exposes such assets to liability or loss.

(2) For the purposes of subsection (1)(a), "reserves" includes retained earnings, contributed surplus and share premium.

(3) The records referred to in subsection (1) shall be kept in accordance with section 83 of the Companies Act 1981, provided that in the case of a segregated accounts company to which the Insurance Act 1978 applies, the records may be kept at the principal office.

(4) The records maintained with respect to a segregated account may be inspected by any beneficial owner of that segregated account, but a beneficial owner shall not have a right to inspect the records relating to any other segregated account.

(5) A segregated accounts company shall prepare or cause to be prepared financial statements in respect of each segregated account. and the provisions of sections 84, 88 and 90 of the Companies Act 1981 shall apply, with the necessary modifications, to the preparation of financial statements under this section and any reference in those provisions to "member" shall be construed as a reference to the beneficial owner of the segregated account.

(6) Subject to subsection (5), a copy of the financial statements of a segregated account shall be made available to the beneficial owner of a segregated account at such intervals and for such periods as are agreed between the segregated accounts company and the beneficial owner of the segregated account, but in any event shall be made available not less frequently than once in each financial year.

(7) If—

- (a) the records maintained with respect to a segregated account; or

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(b) the financial statements of a segregated account, are not made available for inspection by any beneficial owner of that segregated account, the court may by order compel immediate production of the records or financial statements.

(8) A segregated accounts company shall maintain a register of beneficial owners setting out their respective interests in any segregated account together with the particulars required in respect of members of the company as set out in section 65(1) of the Companies Act 1981.

(9) The register of beneficial owners shall not be open to public inspection.

### **Nature of segregated accounts; application of assets and liabilities**

17 (1) Notwithstanding any enactment or rule of law to the contrary, any asset which is linked by a segregated accounts company to a segregated account—

(a) shall be held by the company as a separate fund which is not part of the general account exclusively for the benefit of the beneficial owner of the segregated account and any counterparty to a transaction linked to that segregated account and in such proportions as may be specified in the governing instrument and shall only be available to meet liabilities to the creditors of that segregated account; and

(b) shall not be available or used to meet liabilities to, and shall be absolutely and for all purposes protected from, the general shareholders and from the creditors of the company who are not creditors in respect of the particular segregated account identified in the governing instrument.

(2) For the purposes of this Act, the Companies Act 1981 and otherwise at law, the assets recorded in the general account shall be the only assets of a segregated accounts company available to meet liabilities of the company that are not linked to a segregated account.

(3) No assets may be transferred from the general account to a segregated account unless, on the date from which the transfer is to be effective, and taking into account that transfer, the general account of the segregated accounts company is solvent or all the general shareholders and creditors entitled to the assets thereof on that date have expressed in writing their concurrence to the transfer.

(4) Where a liability of a segregated accounts company to a person arises from a matter relating to, or is otherwise imposed in

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respect of or attributable to, a particular segregated account, that liability—

- (a) shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the assets attributable to that segregated account;
- (b) shall not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to, the segregated account assets linked to any other segregated account; and
- (c) unless the parties otherwise provide, shall not extend to, and that person shall not in respect of that liability, be entitled to have recourse to, the general account.

(5) Where a liability of a segregated accounts company to a person—

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

that liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the general account.

(6) Where—

- (a) the governing instrument of a segregated account so provides; and
- (b) the aggregate entitlements of the beneficial owners or counterparties, as the case may be, exceed at any given time the value of the assets linked to that account,

the entitlement of each beneficial owner or counterparty shall, to the extent of the excess, be reduced pro rata.

(7) The order and priority of the paying out of funds from a segregated account shall be determined by the terms of the governing instrument of that segregated account taken together, and failing a sufficient statement of particulars governing the priority of those payments, they shall be made in order of the dates of the respective transactions, so that the first in time shall be first to be paid.

(8) A segregated accounts company may, with the consent in writing of any relevant beneficial owner or counterparty, transfer to the general account an asset from the segregated account to which it is linked, if—

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- (a) the terms of the governing instrument so allow; and
- (b) the segregated account to which such asset is linked, taking into account the proposed transfer, remains solvent.

(9) Any asset transferred in accordance with subsection (8) shall cease to be linked to the segregated account from which it was transferred on the date of the transfer.

(10) Any asset linked to a segregated account which, on a dissolution of the segregated accounts company is found not to be linked to a beneficial owner, shall become *bona vacantia* and escheat to the Crown.

### **Rights and obligations with respect to segregated accounts**

18 (1) Notwithstanding any enactment or rule of law to the contrary, any asset of a segregated accounts company which is linked to a particular segregated account is deemed to be owned by the company as a separate fund which is not part of the general account and which is not part of the company's own assets, in respect of which the company has the powers and the duties as managers pursuant to section 11(2)(d) and for which the company is accountable pursuant to the terms of the governing instrument.

(2) The governing instrument may provide that no creditor of a beneficial owner of a segregated account shall have any right or interest in any asset linked to that segregated account, and such provision shall have like effect for all purposes except that the provisions of section 36A to section 36G of the Conveyancing Act 1983 (which relate to fraudulent conveyances) continue to apply.

(3) To the extent provided in the governing instrument any person (including a beneficial owner) may give directions to the segregated accounts company or other persons in the management of the segregated account and the managers shall have regard to such directions.

(4) Except to the extent otherwise provided in the governing instrument but subject to subsection (7)(b), neither the power to give directions to the segregated accounts company or other persons nor the exercise thereof by any person (including a beneficial owner) shall cause the person giving directions to be a trustee or officer of the company.

(5) Except to the extent otherwise provided in the governing instrument, the beneficial owners are entitled to the same limitation of personal liability as is enjoyed by members of companies limited by shares under section 158(d) of the Companies Act 1981.

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(6) Except to the extent otherwise provided in the governing instrument but subject to subsection (7)(b), neither the segregated accounts company nor any of its officers, agents or employees is liable to any person other than the beneficial owners of the segregated account and any counterparty to a transaction to which that segregated account is linked for any contractual obligation of the segregated account or any act or omission of such officers, agents or employees.

(7) A segregated accounts company may—

(a) sue and be sued in respect of a particular segregated account, and service of process upon the company in accordance with subsection (9) shall be sufficient;

(b) be sued for debts and other obligations or liabilities contracted or incurred by the company in respect of a particular segregated account under the governing instrument, and for any damages to persons or property resulting from the negligence of the company acting in the performance of duties with respect to that account.

(8) The property of a segregated account is subject to orders of the court as if it were a separate body corporate.

(9) A segregated accounts company may be served with process in the manner prescribed in section 62A of the Companies Act 1981 in all civil actions or proceedings involving or relating to the activities of a segregated account or a breach by the company of a duty to the segregated account, or to any beneficial owner thereof or to a counterparty to a transaction linked thereto.

(10) Except to the extent otherwise provided in the governing instrument, a beneficial owner has an undivided beneficial interest in the assets linked to a segregated account by the relevant transaction and shall share in the profits and losses of the segregated account in the proportion (expressed as a percentage) of the entire undivided beneficial interest in the segregated account owned by that beneficial owner.

(11) A beneficial owner's beneficial interest in a segregated account is personal property notwithstanding the nature of the property of the segregated account.

(12) Except to the extent otherwise provided in the governing instrument, a beneficial owner has no interest in specific segregated account property.

(13) Except to the extent otherwise provided in the governing instrument, a beneficial owner's beneficial interest in the segregated account is freely transferable.

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(14) Except to the extent otherwise provided in the governing instrument, at the time a beneficial owner becomes entitled to receive a payment, distribution, allocation or dividend pursuant to any governing instrument, he has the status of, and is entitled to all remedies available to, a creditor of the segregated account with respect to the payment, distribution, allocation or dividend, and the governing instrument may provide for the establishment of record dates with respect to such payment, distribution, allocation or dividend.

(15) To the extent that, at law or in equity, a segregated accounts company or manager has duties (including fiduciary duties) and liabilities relating to a segregated account or to a beneficial owner or to a counterparty—

(a) that company or manager acting under a governing instrument is not liable to the segregated account or to any beneficial owner or counterparty for the company's good faith reliance on the provisions of that governing instrument; and

(b) the company's or manager's duties and liabilities may be expanded or restricted by provisions in a governing instrument.

(16) The provisions of this section and section 11 operate to the exclusion of any law relating to trusts treating with the same subject matter, and no rule of law relating to trusts may be pleaded by any person to augment or modify the operation of this Act, but nothing in this section shall be construed to deny the remedy of tracing in law and in equity the assets or the proceeds of the assets of any segregated account where such assets or proceeds have been commingled.

### **PART IV**

#### **RECEIVERSHIP AND WINDING UP**

##### **Receivership orders**

19 (1) Subject to the provisions of this section, if, in relation to a segregated accounts company, the court is satisfied that—

(a) without regard to any abatement provisions contained in the governing instrument, the assets linked to a particular segregated account are or are likely to be insufficient to discharge the claims of creditors in respect of that segregated account; and

(b) the making of a receivership order under this section would achieve the purposes set out in subsection (3),

## **SEGREGATED ACCOUNTS COMPANIES ACT 2000**

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the court may make a receivership order in respect of that segregated account.

(2) A receivership order may be made in respect of one or more segregated accounts.

(3) A receivership order shall direct that the business and assets linked to a segregated account shall be managed by a receiver specified in the order for the purposes of—

- (a) the orderly termination of the business of, or attributable to, the segregated account; and
- (b) the distribution of the assets linked to the segregated account to those entitled thereto.

(4) No resolution for the voluntary winding up of a segregated accounts company of which any segregated account is subject to a receivership order shall be effective without leave of the court.

### **Application for receivership orders**

20 (1) An application for a receivership order in respect of a segregated account may be made by—

- (a) the segregated accounts company;
- (b) the directors of the segregated accounts company;
- (c) any creditor of the segregated accounts company in respect of that segregated account;
- (d) any beneficial owner of that segregated account;
- (e) any counterparty to any open or undischarged transactions linked to that segregated account; or
- (f) the Registrar.

(2) The court, on hearing an application—

- (a) for a receivership order; or
- (b) for leave, pursuant to section 19(4), for a resolution for voluntary winding up,

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

(3) Notice of an application to the court for a receivership order in respect of a segregated account shall be served upon—

- (a) the segregated accounts company;

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

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

### **Functions and powers of receiver**

- 21 (1) The receiver of a segregated account—
- (a) may do all such things as may be necessary for the purposes set out in section 19(3); and
  - (b) shall have all the functions and powers of the directors and managers of the segregated accounts company in respect of the business and assets linked to the segregated account.
- (2) The receiver may at any time apply to the court for—
- (a) directions as to the extent or exercise of any function or power; or
  - (b) the receivership order to be discharged or varied.
- (3) In exercising his functions or powers the receiver is deemed to act as the agent of the segregated accounts company in respect of the segregated account, and does not incur personal liability except to the extent that his conduct amounts to fraud or dishonesty.
- (4) Any person dealing with the receiver in good faith is not concerned to enquire whether the receiver is acting within his powers.
- (5) During the period of operation of a receivership order the functions and powers of the directors and managers of the segregated accounts company cease in respect of the business and assets linked to the segregated account in respect of which the order was made.

### **Discharge and variation of receivership orders**

- 22 (1) The court shall not discharge a receivership order unless it appears to the court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.
- (2) The court, on hearing an application for the discharge or variation of a receivership order, may make any interim order it thinks fit or adjourn the hearing, conditionally or unconditionally.

### **Remuneration of receiver**

23 The remuneration of a receiver and any expenses properly incurred by him shall be payable in priority to all other claims from the

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assets linked to the segregated account in respect of which the receiver was appointed but not from any other assets of the segregated accounts company.

### **Winding up of segregated accounts companies**

24 (1) Subject to this section, a segregated accounts company shall be wound up in accordance with the provisions of this Act, the Companies Act 1981 and any other Act which applies to the winding up of a company, save that in the event of any conflict, the provisions of this Act shall prevail.

(2) Where—

- (a) a petition for the winding up of a segregated accounts company is presented pursuant to Part XIII of the Companies Act 1981 (which relates to winding up); and
- (b) the general account is otherwise solvent for the purposes of section 162 of that Act,

the court shall not proceed on the petition on any ground provided for in paragraph (a), (b), (c) or (d) of section 161 of that Act and shall not proceed unless the court is satisfied that to proceed would be just and equitable in all the circumstances.

### **Application of assets**

25 (1) Notwithstanding any statutory provision or rule of law to the contrary, in the winding up of a segregated accounts company the liquidator shall deal with the assets and liabilities which are linked to each segregated account only in accordance with this Act and accordingly the liquidator shall ensure that the assets linked to one segregated account are not applied to the liabilities linked to any other segregated account or to the general account, unless an asset or liability is linked to more than one segregated account, in which case the liquidator shall deal with the asset or liability in accordance with the terms of any relevant governing instrument.

(2) The remuneration to be paid to the liquidator shall be apportioned by the liquidator to each segregated account and the general account in such amounts as would best reflect the duties performed by the liquidator and the court must first approve that apportionment.

(3) The liquidator, or any person affected by a decision of the liquidator, may apply to the court for directions in relation to the remuneration of the liquidator.

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### **PART V**

#### **GENERAL**

##### **Directions of Minister to modify the provisions of this Act**

26 (1) The Minister may, on the application, or with the consent in writing, of any segregated accounts company or any company intending to file a notice pursuant to section 4, direct that—

- (a) any or all of the provisions of sections 5, 7, 11 and 16, shall not apply to such company; or
- (b) those provisions or any of them shall apply to it subject to such modifications as may be specified in the direction.

(2) A direction under this section may be made subject to conditions.

(3) A direction under this section may be revoked by the Minister at any time provided that the company shall be given an opportunity to make representations to the Minister before the revocation takes effect.

(4) An application for a direction under this section shall be supported by a statutory declaration to the effect that no creditor of the company or of any segregated account thereof shall be prejudiced by the effect of the direction, if given, or that each creditor has consented in writing to the giving of such direction.

(5) A direction under this section is a public document available for inspection on the records maintained by the Registrar in respect of the company.

(6) A direction under this section is not a statutory instrument having legislative effect.

(7) Where a direction is given under subsection (1), the relevant provision shall have effect subject to the direction.

##### **Minister may make regulations**

27 (1) The Minister may make regulations for the better carrying out of the provisions of this Act.

(2) The negative resolution procedure applies to regulations made under subsection (1).

##### **Suits and actions against Registrar and Official Receiver**

28 (1) No suit or action shall lie against the Registrar or Official Receiver or any person acting on their behalf in respect of anything done

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or omitted to be done in their official capacity in good faith without negligence.

(2) Nothing in subsection (1) shall be deemed to interfere with applications or references to the court under Part XIII of the Companies Act 1981 (which relates to winding up).

### **Registrar and Official Receiver to be indemnified in respect of foreign suits**

29 Neither the Registrar nor the Official Receiver shall be required to prosecute, defend or take part in any proceedings outside the jurisdiction of the court unless he is indemnified by or on behalf of the person who wishes him to act against any judgment, order or costs that may be awarded against that person by deed, guarantee or deposit, as he may require.

### **Offences**

30 Any person who—

- (a) for any purpose under this Act makes a statement or declaration that he knows or has reasonable grounds to believe to be false, deceptive or misleading in a material particular;
- (b) fails to comply with a condition or requirement under section 6(3); or
- (c) being a segregated account representative, fails to perform his duty under section 10(3),

is guilty of an offence and is liable on summary conviction to a fine of \$5000 or imprisonment for 12 months, or both.

### **Fees**

31 The Fifth Schedule to the Companies Act 1981 is amended by the addition of the following—

#### "C SEGREGATED ACCOUNTS COMPANIES

In addition to the annual fee or tax otherwise payable under this Schedule a segregated accounts company registered under section 6 of the Segregated Accounts Companies Act 2000 shall pay an annual fee of \$250 in respect of each segregated account operated by the company, subject to a maximum annual fee of \$1000 in the aggregate."

### **Commencement**

32 This Act comes into operation on such day as the Minister may appoint by notice published in the Gazette.

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