

INSURANCE (AMENDMENT) ORDINANCE 2002

(Ordinance 3 of 2002)

Arrangement of Sections

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TURKS AND CAICOS ISLANDS

**INSURANCE (AMENDMENT) ORDINANCE 2002
(Ordinance 3 of 2002)**

Assent..... *March 20, 2002*
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AN ORDINANCE TO AMEND THE INSURANCE ORDINANCE: AND FOR CONNECTED PURPOSES.

ENACTED by the Legislature of the Turks and Caicos Islands.

Citation and commencement

1. This Ordinance may be cited as the Insurance (Amendment) Ordinance 2002 and shall come into operation on such day as the Governor may appoint by notice published in the Gazette.

Amendment of Insurance Ordinance cap 121

2. The Insurance Ordinance shall be amended as set out in the Schedule.

Transitional and savings provisions

3. The Governor may by rules make such provision including amending any legislation, as he considers necessary, convenient or expedient for savings, transitory or transitional purposes in connection with the coming into operation of any provision of this Ordinance.

SCHEDULE

(Section 2)

Amendment of Insurance Ordinance

1. The Insurance Ordinance shall be amended as set out below and reference to section numbers shall be to those sections as numbered in that Ordinance.

2. In section 2 –

(a) in the definition of “auditor” for the words “under the hand of” and “his” there shall be substituted “from” and “its” respectively;

- (b) in the definition of “external insurer)” for the word “his” there shall be substituted “its”; and
 - (c) in the definition of “insurance broker”-
 - (i) between “insurer)” and “who” there shall be inserted “- (a)”;
 - (ii) for the words from “for” to the end there shall be substituted “(b) who places or arranges insurance business with insurance companies’ agents or sub-agents on behalf of prospective policy holders, who advises policy holders on the business of insurance or who assists policy holders in the settlement of claims;”.
3. In section 3(2)(c) for the word “him” there shall be substituted “it”.
4. In section 5 –
- (a) in subsection (2) at the end of the first sentence there shall be inserted “and such other information and documents as may be prescribed.”; and
 - (b) in subsection (4) for the word “he” there shall be substituted “the licensing committee”.
5. In section 6(2) for the word “his” there shall be substituted “its”.
6. In section 7 –
- (a) at the end of subsection (7) there shall be added the following subsection –
 - “(7A) The auditor referred to in subsections (6) and (7) shall report to the licensing committee breaches of this Ordinance and failure by the licensed insurer to conduct business in accordance with its business plan or its internal controls.”; and
 - (b) subsection (11) shall be repealed.
7. At the end of section 7 there shall be added the following sections –
- “7A. (1) For the purpose of this section “a producer owned reinsurance company” is a company –
 - (a) which carries on the business of reinsurance;
 - (b) whose affairs are under the control of a direct writer; and

(c) which is beneficially owned by the producers of the business reinsured.

(2) A producer owned reinsurance company shall –

(a) submit annual financial statements to the financial services commission in such form as may be prescribed; and

(b) deposit with the financial services commission an undertaking satisfactory to the commission that the company shall not engage in business other than the reinsurance of risks covered by a insurer acceptable to the financial services commission.

(3) The insurer referred to in subsection (2)(b) shall meet such requirements as may be prescribed.

(4) Agreements between the producer owned reinsurance company and the insurer referred to in subsection (2)(b) shall have the prior approval of the financial services commission.

(5) Section 7(3), (6), (7), (8) and 9(a) and section 9 shall not apply to a producer owned reinsurance company.

Prohibition on
cancellation of
contract

(7B) A licensed insurer shall not cancel a contract of insurance if and only if a claimant under the contract of insurance has not paid the premium under the contract.”.

8. In section 8 –

(a) at the end of subsection (2) there shall be added –

“(2A) A licensed insurance broker shall maintain separate books of accounts in respect of –

(a) premiums collected on behalf of insurers; and

(b) its other business.”; and

(b) at the end of subsection (5) there shall be added –

“(5A) A licensed insurance manager in respect of his insurance and reinsurance business, shall maintain in force professional indemnity insurance, placed with an insurer and for an indemnity of not less than \$100,000 for any one loss, or such other figure as may be specified by the financial services commission.

(5B) If the professional indemnity insurance maintained under subsection (5A) is withdrawn,

cancelled, or not renewed, the licensed insurance manager shall immediately –

- (a) notify the financial services commission; and
- (b) cease to solicit further insurance business until such professional indemnity insurance has been reinstated or replaced.”.

9. At the end of section 9 there shall be added –

“(3) A licensed insurer which does not make the returns referred to in subsection (1) –

- (a) within the period which may be allowed under that subsection, shall be liable to a penalty of \$5,000;
- (b) within such further period as may be allowed by the licensing committee, shall not accept business which it did not have at the end of the period allowed under this paragraph; and
- (c) within such further period as may be allowed by the licensing committee beginning on the day after the end of the period allowed under paragraph (b), may have its licence revoked by the licensing committee.

(4) The licensing committee where it is satisfied that failure to comply with the periods allowed under subsection (3) is because of circumstances outside the control of the licensed insurer or its auditors, may extend an allowed period for such length of time as it considers appropriate in the circumstances.”.

10. At the end of section 10 there shall be added –

“PART VA

REGULATION

10A. For the purposes of this Part –

Definition

- (a) “documents” includes information recorded in any form; and
- (b) the power to require the production of information or documents includes power to require the production of the information or documents in legible form.

Inspection,
investigation and
complaints

10B. (1) The licensing committee may –

- (a) inspect the affairs or business of a licensee for the purpose of ensuring that the licensee is or has been acting in accordance with this Ordinance and with the terms and conditions of its licence;
- (b) investigate the affairs or business of a licensee; and
- (c) investigate the affairs or business of a person who, it has reasonable grounds to believe, has committed or is committing an offence under section 4.

(2) The licensing committee shall receive and examine complaints against licensees.

Powers of the
licensing
committee to
appoint
investigator

10C. (1) The licensing committee in exercise of the powers conferred by section 10B(1)(b) and (c) may authorise a person as an investigator to investigate –

- (a) the affairs or business of a person specified in the authorisation; or
- (b) a subject matter specified in the authorisation,

being a person who or subject matter which, is the subject of the investigation.

(2) A person shall not be obliged to comply with a requirement imposed by an investigator exercising powers under this section unless the investigator produces if requested evidence of his authority.

(3) The person referred to in subsection (1)(a) –

- (a) shall be given written notice by the licensing committee of the appointment of an investigator unless the licensing committee believes that the notice would be likely to result in the investigation being frustrated; and
- (b) shall not be obliged to comply with a requirement imposed by an investigator exercising powers under this section unless the investigator produces if requested –
 - (i) evidence of his authority, and
 - (ii) directions under subsections (7) to (9).

(4) An authorisation under subsection (1) shall –

- (a) specify the provisions under which the investigator was appointed; and
- (b) state the reason for his appointment.

(5) An investigator –

- (a) may require a person to attend before the investigator at a specified time and place to answer questions;
 - (b) may require a person to provide such documents and information as the investigator may require for the purposes of the inquiry; and
 - (c) may examine a person on oath and may administer an oath accordingly.
- (6) A person who is to be examined on oath under this section may be represented by an attorney.
- (7) The licensing committee shall direct an investigator as to –
- (a) the scope of the investigation;
 - (b) the period during which the investigation is to be conducted;
 - (c) the conduct of the investigation; and
 - (d) the reporting of the investigation.
- (8) A direction under subsection (7) may –
- (a) confine the investigation to particular matters;
 - (b) extend the investigation to additional matters;
 - (c) require the investigator to discontinue the investigation or to take only such steps as are specified in the direction; or
 - (d) require the investigator to make such interim reports as are specified.
- (9) If there is a change in the scope or conduct of the investigation and, in the opinion of the licensing committee the person subject to investigation is likely to be significantly prejudiced by not being made aware of it, that person shall be given written notice of the change.
- (10) An investigator shall make a report of his investigation to the licensing committee.

- 10D. (1) An investigator may direct a person –
- (a) to attend before the investigator at a specified time and place to answer questions;
 - (b) to produce documents relevant to the investigation;
 - (c) to furnish him with information with respect to a matter relevant to the investigation; and
 - (d) to provide him with such assistance in relation to the investigation as he may specify.

Powers of
investigator to
require
information

(2) Where a person fails to comply with a direction issued under subsection (1) within the period of three days beginning with the date of the direction or such longer period as the investigator may permit, he may apply to the court for an order requiring the person to comply with the direction.

(3) Where under a direction issued under subsection (1) the investigator considers it necessary to examine a person on oath, he may apply to the court to have the person examined by the court and the transcript of the examination sent to him.

(4) A person who is to be examined under subsection (3) may be represented by an attorney and the examination shall be held in camera.

(5) An order of the court made under subsection (3) may limit the scope and nature of the examination of a person and may provide for the payment of costs incurred by the person in connection with the examination.

(6) Where documents are produced under this section the investigator may take copies of or extracts from, them.

(7) A person shall not under this section be required to disclose information or produce a document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings, except that an attorney may be required to furnish the name and address of his client.

(8) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.

(9) The licensing committee may make a contribution to the costs of a person who complies with a direction given under this section other than the person who or whose affairs are the subject of the investigation in respect of which the direction was issued.

Powers of entry
and search

10E. (1) The court may issue a warrant under this section if satisfied on information on oath given by or on behalf of the licensing committee that there are reasonable grounds for believing that the conditions referred to in subsection (2) or (3) are satisfied.

(2) The conditions referred to in subsection (1) are –

- (a) that a person on whom an order of the court under section 10D has been imposed has failed wholly or in part to comply with it; and
- (b) that on the premises specified in the warrant –
 - (i) there are documents which have been required; or
 - (ii) there is information which has been required.

- (3) The conditions referred to in subsection (1) are –
- (a) that there are on the premises specified in the warrant documents or information in relation to which a direction of the investigator or an order of the court under section 10D could be imposed; and
 - (b) that if such a requirement were to be imposed the documents or information to which it related would be removed, tampered with or destroyed.

(4) A warrant under this section shall authorise a police officer –

- (a) to enter the premises specified in the warrant;
- (b) to search the premises and take possession of any documents or information specified in the warrant or take, in relation to any such documents or information, any other steps which appear necessary for their preservation or preventing interference with them;
- (c) to take copies of or extracts from documents or information specified in the warrant;
- (d) to require a person on the premises to provide an explanation of a document or information specified in the warrant or to state where it may be found; and
- (e) to use reasonable force.

(5) A document of which possession is taken under this section may be retained –

- (a) for a period of three months beginning with the date on which possession is taken; or
- (b) if within that period proceedings to which the document is relevant are commenced against a person for a criminal offence, until the conclusion of the proceedings.

10F. (1) A statement made by a person in compliance with this Ordinance shall be admissible in evidence in proceedings, if it complies with the requirements governing the admissibility of evidence in the proceedings.

Admissibility of answers obtained under this Ordinance

(2) In criminal proceedings in which the person referred to in subsection (1) is charged with an offence to which this subsection applies or in proceedings in relation to action to be taken against that person –

- (a) no evidence relating to the statement may be adduced; and
- (b) no question relating to it may be asked.

(3) Subsection (2) applies to an offence other than perjury.

Immunity from
action or
proceedings

10G. No action or proceedings for breach of confidentiality or contravention of any duty to which a person is subject shall lie against a person who furnishes information, produces documents, renders assistance or provides an explanation in relation to a direction, examination, search warrant, inspection or investigation under this Ordinance.”.

11. In section 12(2) –

- (a) at the beginning there shall be inserted “For the purposes of this section – (a)”;
- (b) for the words from “the Superintendent” where they first occur to the end there shall be substituted –
 - (i) the Superintendent and the licensing committee under this Ordinance;
 - (ii) the Governor, the licensing committee, the Attorney General and the Superintendent of Banking under the Banking Ordinance;
 - (iii) the Superintendent of Company Management and the licensing committee under the Company Management (Licensing) Ordinance 1999;
 - (iv) the financial services commission and the licensing committee under the Investment Dealers (Licensing) Ordinance 2001;
 - (v) the Superintendent of Mutual Funds and the licensing committee under the Mutual Funds Ordinance 1998;
 - (vi) the Superintendent of Trustees and the licensing committee under the Trustees Licensing Ordinance; and
 - (vii) regulatory functions; and
- (b) “regulatory functions” has the same meaning as in section 2 of the Overseas Regulatory Authority (Assistance) Ordinance 2001.”.

12. At the end of section 13(1)(h) there shall be added “(i) is being managed or controlled by persons not fit and proper to control or manage a company in respect of which the licence has been granted.”.

13. At the end of section 13 there shall be added –

Director or
officer or auditor
no longer fit and
proper person

“13A. Where the licensing committee is of the opinion that a director or officer or auditor of a licensee is no longer a fit and proper person to be a director or officer or auditor of the licensee the

licensing committee may request the licensee to replace the director or officer or auditor with a person approved by the licensing committee as a fit and proper person.”.

14. In section 15(1) and (3) for the words “he” and “his” respectively there shall be substituted “the licensing committee” and “its” respectively.

15. In section 16(1)(b) for the words “he” and “his” in both places where they occur there shall be substituted “it” and “its” respectively.