

MALAYSIA

**OFFSHORE INSURANCE ACT 1990
(Act 444)**

As amended on 1 September 2004

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OFFSHORE INSURANCE ACT 1990

(Act 444)

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

[1st October 1990]

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

PART I

PRELIMINARY

Short Title and Commencement

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

Interpretation

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

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

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

“Bank” means the Labuan Offshore Financial Services Authority established under the Labuan Offshore Financial Services Authority Act 1996.

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

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

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

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

- (a) any corporation sole; or

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

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

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

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

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

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

“establishment”, in relation to—

- (a) a company, means incorporation;
- (b) a statutory body, means coming into existence under the law establishing, appointing or constituting it;
- (c) co-operative society, means registration, incorporation or otherwise coming into legal existence as a co-operative society;
- (d) a partnership, means formation;
- (e) a sole-proprietorship, means registration of its business; or
- (f) any other body, association or group of persons, whether corporate or unincorporate, which requires registration or any other form of recording or recognition under any written law before it can lawfully commence its activities, means registration, recording or recognition under such written law;

“foreign currency” means any currency other than Malaysian currency;

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

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

“Governor” means the Chairman appointed under section 5 of the Labuan Offshore Financial Services Authority Act 1996;

“home supervisory authority” mean any body or authority which is responsible for the supervision of a licensee in any country;

“insurance business” means the business of effecting and carrying out contracts—

(a) protecting persons against loss or liability to loss in respect of risks to which such persons may be exposed; or

(b) to pay a sum of money or other thing of value upon the happening of an event,

and includes reinsurance business;

“insurer” means a person who carries on insurance business;

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

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

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

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

“Malaysian company” means a company incorporated under the Companies Act 1965;

“Malaysian insurer” means an insurer which is a Malaysian company;

“Malaysian offshore insurer” means an offshore insurer which is—

(a) a subsidiary, established as an offshore company, of a Malaysian company; or

(b) a branch of a Malaysian insurer;

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

“member”, in relation to—

(a) a company, means a shareholder;

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

(c) a partnership, means a partner;

- (d) a co-operative society, means a shareholder or a subscriber;
- (e) a sole proprietorship, means the sole proprietor; or
- (f) any other body, association or group of persons, whether corporate or unincorporate, means any person who has any proprietary interest in such body, association or group of persons;

“Minister” means the Minister for the time being charged with the responsibility for finance;

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

“office” means any place of business;

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

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

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

“offshore insurance broker” means a person who arranges—

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

“offshore insurance business” means insurance business which is not domestic insurance business and which is transacted in foreign currency, and includes offshore captive insurance business and such other offshore insurance business as may be approved by the Bank;

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

“offshore insurer” means a licensee who carries on offshore insurance business;

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

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

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

“policy owner” means any person who effects a policy;

“prescribed” means prescribed by this Act or any regulation made under this Act;

“reinsurance business” means a business whereby the reinsurer assumes a part of the liability under an

original contract of insurance of another insurer or reinsurer;

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

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

“resident” means any person who is—

- (a) a citizen of Malaysia who is residing in Malaysia;
- (b) the holder of an entry permit under the Immigration Act 1959/63 who is lawfully residing in Malaysia; or
- (c) a corporation established under the laws of Malaysia, other than the Offshore Companies Act 1990, or established as a foreign company under the Companies Act 1965;

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

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

“working funds” means—

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

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

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

PART II

ADMINISTRATION OF THE ACT

Functions, powers and duties of the Bank

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

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

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

Confidentiality on the part of the Bank

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

PART III

LICENSING OF OFFSHORE INSURANCE BUSINESS AND OFFSHORE INSURANCE-RELATED ACTIVITIES

Licensing of offshore insurance business and offshore insurance-related activities

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

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

and holds a valid licence.

(2) No person shall carry on or transact or hold himself out as carrying on or transacting any business as an offshore insurance manager, offshore underwriting manager or offshore insurance broker unless that person holds a valid licence.

(3) Except with the prior written approval of the Bank, a person who is not a licensee shall not assume or use the words “offshore insurer”, “offshore insurance manager”, “offshore underwriting manager”, “offshore insurance broker” or any derivative of such words in any language capable of being construed as indicating the carrying on of offshore insurance business or offshore insurance-related activities by such person.”

Application for licence to carry on offshore insurance business

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

- (a) the applicant is, or will be, an offshore company or a foreign offshore company or a branch of a Malaysian insurer;
- (b) the working funds of the applicant—
 - (i) in a case where the applicant proposes to carry on either life insurance business or general insurance business, are at least seven million and five hundred thousand ringgit or its equivalent in any foreign currency or such other higher amount as may be specified by the Bank;
 - (ii) in a case where the applicant proposes to carry on solely reinsurance business, are at least ten million ringgit or its equivalent in any foreign currency or such other higher amount as may be specified by the Bank; or
 - (iii) in a case where the applicant proposes to carry on solely offshore captive insurance business, are at least three hundred thousand ringgit or its equivalent in any foreign

currency or such other higher amount as may be specified by the Bank;

- (c) the sum of money specified in paragraph (b) is maintained in an account of the applicant with a bank in the Federal Territory of Labuan, as evidence by a certificate of such bank, at the time when the application is made;
- (d) the controller, director and chief executive officer of the applicant are fit and proper persons to be associated with an offshore insurer;
- (e) the applicant either -
 - (i) has established, or will establish, its management in the Federal Territory of Labuan with adequate knowledge and expertise of the offshore insurance business to be carried on and has at least one director resident in the Federal Territory of Labuan; or
 - (ii) has appointed, or will appoint, a licensed offshore underwriting manager or offshore insurance manager in the Federal Territory of Labuan with adequate knowledge and experience of the offshore insurance business to be carried on;
- (f) except in relation to an application to carry on an offshore captive insurance business, the applicant is a member of such recognized insurance association as may be specified by the Bank; and
- (g) the applicant will become a member of an association of Labuan offshore insurers.

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

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

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

- D. except in relation to an application to carry on an offshore captive insurance business, a letter of awareness from the applicant's home supervisory authority or such authority as may be specified by the Bank.
- (ii) a copy of the applicant's audited annual accounts for the three consecutive years immediately preceding the application, where applicable;
- (iii) a statement on -
 - A. the name, place and date of the establishment of the applicant;
 - B. the names, addresses, qualifications and experience of the directors and officers responsible for the overall management of the affairs of the applicant; and
 - C. the name and address of each member who holds ten per centum or more of the voting shares of the applicant; and
- (iv) a declaration by the applicant on the probity of the applicant's directors and officers who would be concerned in the management of the proposed offshore insurer.

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

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

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

Application for licence to carry on offshore insurance-related activities

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

- (a) the controller, director and chief executive officer of the applicant are fit and proper persons;
- (b) the applicant is able to maintain sufficient funds in its business to cover its expenses of operations and management in the Federal Territory of Labuan for at least six months;
- (c) in respect of an applicant for a licence to carry on the business of offshore insurance manager or offshore underwriting manager, the applicant has established, or will establish, its management in the Federal Territory of Labuan with adequate knowledge and expertise of the offshore insurance business to be carried on;
- (d) in respect of an applicant for a licence to carry on business as an offshore insurance broker –
 - (i) the applicant has established, or will establish, its management in the Federal Territory of Labuan with adequate knowledge and expertise of the offshore insurance business to be carried on; or
 - (ii) the applicant has appointed, or will appoint, a licensed offshore insurance manager in the Federal Territory of Labuan with adequate knowledge and experience of the

offshore insurance business to be carried on;

- (e) the applicant either has obtained or will obtain any professional indemnity insurance policy of not less than two million and five hundred thousand ringgit or its equivalent in any foreign currency or such other higher amount as may be specified by the Bank, and remain indemnified under such policy throughout its operation in Labuan;
- (f) the applicant holds such qualification as may be specified the Bank;
- (g) the applicant is a member of such recognized insurance association as may be specified by the Bank; and
- (h) the applicant will become a member of an association of Labuan offshore insurers.

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

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

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

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

Bank's recommendation on an application for a licence

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

Grant of licence

9. (1) Upon receiving an application for a licence, and the recommendation of the Bank under section 8, the Minister may approve the application, with or without conditions, or reject the application.

(2) Where the Minister rejects the application, the Bank shall immediately notify the applicant in writing of his rejection and shall not be required to furnish any reasons for the rejection to the applicant.

(3) Where the Minister approves the licence under subsection (1), the Bank shall issue the licence to the applicant.”

Publication of list of all licensees

10. The Bank shall cause to be published in the *Gazette* not later than the 31st March in each year a list, in such form as may be determined by the Bank, of all licensees whose licenses are valid as at the 31st December of the preceding year.

Revocation of licence

11. (1) The Minister may, on the recommendation of the Bank, revoke any licence if he is satisfied that—
- (a) the licensee has contravened any condition imposed under the licence, the licensee's constituent documents or any provision of this Act; or
 - (b) the Bank has, either in connection with the application for the licence, or at any time after the grant of the licence, been provided with false or misleading information, document or declaration by or on behalf of the licensee.
- (2) The Minister shall revoke a licence if he is satisfied that -
- (a) a winding-up order has been made against the licensee; or
 - (b) a resolution for the licensee's voluntary winding up has been passed.
- (3) A revocation of a licence under this section shall take effect on the date the decision of the Minister is communicated to the licensee.
- (4) The Bank shall, as soon as practicable, publish in the *Gazette* a notice of every revocation of a licence under this section but any delay in publishing such notice or failure to publish such notice shall not in any manner affect the validity of such revocation.

Surrender of licence

12. (1) A licensee may surrender his licence by forwarding it to the Bank with a written notice of its surrender.
- (2) The surrender of a licence under subsection (1) shall take effect on the date the Bank receives the licence.
- (3) The Bank shall, as soon as practicable, publish in the *Gazette* a notice of every surrender of a licence under this section but any delay in publishing such notice or failure to publish such notice shall not in any manner affect the validity of such surrender.

Consequences of revocation or surrender of licence

13. (1) Where the revocation of a licence under section 11 or the surrender of a licence under section 12 has taken effect, the licensee shall, as from the date such revocation or surrender takes effect, cease to transact any further business.
- (2) Notwithstanding subsection (1), where a licensee continues to exist as a corporation after the revocation of its licence has taken effect, the Minister may, on the recommendation of the Bank, authorize in writing such licensee to continue to transact its business activities to such extent and for such duration as the Minister may specify in the authorization for the purposes of the winding up of its affairs or for the purposes of meeting the claims of its policy owners, other customers or creditors.
- (3) Every licensee whose licence has been revoked or surrendered shall continue to be subject to the provisions of this Act as long as its liabilities remain unsatisfied or not otherwise provided for.

Notification of change of information

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

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

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

Annual licence fee

15. Every licensee shall, on or before every 15th day of January during the currency of the licence, pay to the Bank the annual licence fee as prescribed by regulations made under section 32 in respect of each licence held.

PART IV

FINANCIAL REQUIREMENTS AND DUTIES OF AND RESTRICTIONS ON LICENSEES

Appointment of auditor and actuary

16. (1) Every licensee shall appoint an auditor annually within such period as may be specified by the Bank.

(2) An auditor appointed under subsection (1) shall carry out an audit of the accounts or any other areas as the Bank may specify of the licensee's business and operations in, from and through the Federal Territory of Labuan and shall submit a report of such audit together with his comments on the accounting system and controls of the licensee to the Bank.

(3) Subject to section 25, the Bank may, at any time, require an auditor to submit to the Bank such clarifications in relation to his audit as the Bank may specify.

(4) An auditor shall immediately report to the Bank if, in the course of his duties as an auditor of a licensee, he is satisfied that-

- (a) there has been a contravention of the provisions of this Act or that an offence under any written law has been committed by the licensee or any of its employees;
- (b) any irregularity which jeopardises the interests of policy owners or creditors of the licensee, or any other serious irregularity, has occurred; or
- (c) the requirements of subsections 17(2), (3) and (4) apply to the offshore insurer.

Internal audit and internal auditor

16A. (1) Every licensee shall conduct an internal audit of the licensee's books and operations annually and shall submit to the Bank a report of such audit together with the internal auditor's comments which includes comments on the licensee's accounting system and controls.

(2) For the purpose of this section, an internal audit of a licensee shall be carried out -

- (a) by authorized officers from the licensee's head office or holding company or any corporation which is related to the licensee; or
- (b) by a qualified offshore insurance manager as may be approved by the Bank; or
- (c) in the case of a licensee who is either an individual or does not have an internal auditor, by an auditor who shall not be the same auditor appointed for the purpose of section 16.

(3) The Bank may from time to time specify the terms or scope of the internal audit to be carried out under subsection (1).

(4) An internal auditor appointed by a licensee to carry out an internal audit under subsection (1) shall for the purposes of this Act be deemed to be an officer of the licensee and shall, at all time, be subject to section 25.

(5) The provisions of subsection 16(4) shall apply to an internal auditor.

Appointment of actuary

16B. Every offshore insurer carrying on life insurance business shall appoint an actuary annually within such period as may be specified by the Bank.

Margin of solvency

17. (1) Every offshore insurer, including a licensee which carries on offshore captive insurance business, shall ensure that the realizable value of its assets exceeds the amount of its liabilities by a margin (hereinafter referred to as “the margin of solvency”) which is equivalent to or more than—

(a) an amount –

(i) which is fifty per centum of the amount of the working funds stipulated under paragraph 6(1)(b), for the first year of its operation; and

(ii) which is the amount of the working funds stipulated under paragraph 6(1)(b), for the subsequent years; or”

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

whichever is the greater.

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

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

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

(a) the working funds; or

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

Separate accounts to be kept by offshore insurer

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

(2) Every offshore insurer which carries on both life insurance business and general insurance business shall keep the accounts and funds in respect of its life insurance business separate from the accounts and funds in respect of its general insurance business.

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

Submission of financial statements

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

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

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

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

(5) Notwithstanding any provision in this Act, the Bank may require a licensee to submit to the Bank any document relating to its operation in such manner as may be specified in writing by the Bank.

Verification of offshore insurer's submission

19A. (1) The Bank, or the home supervisory authority of an offshore insurer if so approved by the Bank, may from time to time examine and inspect, under conditions of secrecy, the books or other documents, accounts and transactions of any offshore insurer and office of any offshore insurer for the purposes of verifying the submissions under sections 16, 16A and 19 or for such other purposes as may be deemed necessary by the Bank.

(2) Nothing in this section shall authorize the Bank or the home supervisory authority to enquire specifically into the identity, accounts or affairs of any particular policy owner of any particular offshore insurer except as permitted by section 25.

Subsidiaries and offices of licensee

20. (1) Without the prior written consent of the Bank -

(a) no licensee shall open any office or acquire or establish any subsidiary in Malaysia;

(b) no Malaysian offshore insurer shall open any office or acquire or establish any subsidiary outside Malaysia.

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

Restriction on business by offshore insurer

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

(2) Notwithstanding the definition of “offshore insurance business” and notwithstanding subsection (1), an offshore insurer may carry on the reinsurance of domestic insurance business, including the reinsurance of domestic insurance business transacted in the Malaysian currency and such other business as may be specified in writing by the Bank.

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

Restrictions on and duties of offshore insurance manager, offshore underwriting manager and offshore insurance broker

22. (1) No licensed offshore insurance manager shall provide any services other than administrative services and no licensed offshore underwriting manager shall provide any services other than underwriting services.

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

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

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

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

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

Conduct of business

24. (1) Every offshore insurer shall -

- (a) conduct its business with due diligence and care in accordance with sound insurance principles;
- (b) maintain adequate and proper records and books of accounts at its office within the Federal Territory of Labuan;
- (c) follow accepted international accounting standards or such other standards as may be approved by the Bank;
- (d) register all assets in its name, and in the case of bearer shares, hold them in safe custody;

and

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

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

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

Secrecy on the part of licensee

25. (1) No director or officer of a licensee and no person who has access to the information or document relating to the affairs or account of any policy owner shall disclose to any person, or make a record for any person of, any information or document relating to the affairs or account of any policy owner except-

- (a) for the purpose of the performance of his duties or the exercise of his functions under this Act;
- (b) when lawfully required to make such disclosure by any court or under the provisions of any law relating to offshore financial business for the time being in force in the Federal Territory of Labuan;
- (c) with the consent of the policy owner or his personal representative;
- (d) in the course of placement of reinsurance business; or
- (e) for the purpose of facilitating the Bank's supervisory functions.

(2) Nothing in this subsection shall prohibit the Bank, as may be permitted under the Labuan Offshore Financial Services Authority Act 1996 or the Anti-Money Laundering Act 2001[Act 613], to provide the information under subsection (1) to any home supervisory authority of a licensee."

PART IVA

PAYMENT OF POLICY MONEYS UNDER A LIFE POLICY AND PERSONAL ACCIDENT POLICY

Application of this Part

25A. In this Part, a reference to a policy is a reference to a life policy, including a life policy under section 23 of the Civil Law Act 1956 [Act 67], a personal accident policy effected by a policy owner upon his own life providing for payment of policy moneys on his death.

Power to make nomination

25B. (1) A policy owner who has attained the age of eighteen years may nominate a natural person to receive policy moneys payable upon his death under the policy by notifying the offshore insurer in writing of the name, date of birth, identity card number or birth certificate number and address of the nominee at the time the policy is issued.

(2) Where a nomination is made after the policy is issued, the policy owner shall submit together with the particulars of the nominee mentioned in subsection (1) for the offshore insurer's endorsement of the nomination on the policy.

(3) A nomination made under subsection (1) shall be witnessed by a person of sound mind who has attained the age of eighteen years and who is not a nominee named under that subsection.

(4) The offshore insurer -

(a) shall prominently display in the nomination form a notice that the policy owner has to assign the policy benefits to his nominee if his intention is for his nominee, other than his spouse, child or parent, to receive the policy benefits beneficially and not as an executor;

(b) shall record the nomination and the particulars of the nominee in its register of policies; and

(c) shall register in its register of policies the nomination made under subsection (1) and such nomination shall take effect from the date the nomination is registered.

(5) A failure to comply with subsection (4) shall not affect the validity of the nomination if it is otherwise proved that the nomination was notified by the policy owner and given to the offshore insurer for endorsement on the policy.

(6) A nomination made under subsection (1) may be in favour of one person or several persons and where there is more than one person nominated, the policy owner may direct that specified shares be paid to the persons nominated and in the absence of direction by the policy owner, the offshore insurer shall pay such persons in equal shares.

Revocation of nomination

25C. (1) A nomination including a nomination to which section 25E applies, shall be revoked –

(a) upon the death of the nominee, or where there is more than one nominee, upon the death of all the nominees, during the lifetime of the policy owner;

(b) by a notice in writing given by the policy owner; or

(c) by any subsequent nomination.

(2) Subject to subsection (1), a nomination shall not be revoked by a will or by any other act, event or means.

(3) Where there is more than one nominee and one of the nominees predeceases the policy owner, in the absence of any subsequent nomination by the policy owner disposing of the share of the deceased nominee, the offshore insurer shall pay the share of the deceased nominee to the remaining nominees in proportion to their respective shares.

Payment of policy moneys where there is nomination

25D. (1) Subject to subsection (2), where a policy owner dies having made a nomination, the offshore insurer shall pay the policy moneys of the deceased policy owner according to the direction of the nomination upon receipt of a claim by the nominee and the claim is accompanied by proof of death of the policy owner.

(2) Where a nominee fails to claim the policy moneys within two months of the offshore insurer becoming aware of the death of the policy owner, the offshore insurer shall notify the nominee in writing at his last known address of his entitlement to claim the policy moneys.

(3) Where a nominee fails to claim the policy moneys within twelve months of the notification under subsection (2), section 25H shall apply as though no nomination was made.

(4) Where a nominee, other than a nominee under section 25E, dies after the death of the policy owner but before any policy moneys has been paid to him as nominee, section 25C or 25H shall apply to the policy, as the case may be.

Trustee of policy moneys

25E. (1) A nomination by a policy owner, other than a Muslim policy owner, shall create a trust in favour of the nominee of the policy moneys payable upon the death of the policy owner, if

- (a) the nominee is his spouse or child; or
- (b) where there is no spouse or child living at the time of nomination, the nominee is his parent.

(2) A payment under subsection (1) shall not form part of the estate of the deceased policy owner or be subject to his debts.

(3) The policy owner, by the policy, or by a notice in writing to the offshore insurer, may appoint trustees of the policy moneys and where there is no trustee-

- (a) the nominee who is competent to contract; or
- (b) where the nominee is incompetent to contract, the parent of the incompetent nominee and where there is no surviving parent, the Public Trustee,

shall be the trustee of the policy moneys and the receipt of a trustee shall be a discharge to the offshore insurer for all liability in respect of the policy moneys paid to the trustee.

(4) A policy owner shall not deal with a policy to which subsection (1) applies by revoking a nomination under the policy, by varying or surrendering the policy, or by assigning, or pledging the policy as security, without the written consent of the trustee.

(5) Nothing in this section shall prejudice a creditor of a policy owner from applying to the court for a declaration that this section, wholly or partly, is inapplicable to any particular policy on the ground that the premiums under that policy were paid to defraud the creditor.

Nominee other than a nominee under subsection 25E(1)

25F. (1) A nominee, other than a nominee under subsection 25E(1), shall receive the policy moneys payable on the death of the policy owner as an executor and not solely as a beneficiary and any payment to the nominee shall form part of the estate of the deceased policy owner and be subject to his debts and the offshore insurer shall be discharged from liability in respect of the policy moneys paid.

(2) Subsection (1) applies to a nominee of a Muslim policy owner who, on receipt of the policy moneys, shall distribute the policy moneys in accordance with the Islamic Law.

Assigned or pledged policy moneys

25G. (1) Notwithstanding a nomination under section 25B or the creation of a trust under subsection 25E(1), where the policy moneys, wholly or partly, have been pledged as security or assigned to a person, the claim of the person entitled under the security or the assignee shall have priority over the claim of the nominee and, subject to the rights under the security or the assignment being preserved, the offshore insurer shall pay the balance of the policy moneys to the nominee.

(2) Where more than one person is entitled under the security or the assignment, the respective rights of the persons entitled under the security or the assignment shall be in the order of priority according to the priority of the date on which the security or the assignment was created, both security and assignment being treated as one class for this purpose.

Payment of policy moneys where there is no nomination

25H. (1) Where a policy owner of a policy dies without having made a nomination, subject to section 25G, the offshore insurer shall pay the policy moneys of the deceased policy owner to the applicant who produces the Grant of Probate or Letters of Administration or Distribution Order.

(2) Subject to subsection (1), the offshore insurer may pay to the policy owner's spouse, child or parent in that order of priority and where there is more than one spouse, child or parent, in equal shares to each person of that class and where there is no spouse, child or parent and-

(a) where the policy moneys do not exceed a hundred thousand ringgit or such greater amount as may be prescribed, the offshore insurer may pay all that policy moneys without requiring the Grant of Probate or Letters of Administration or Distribution Order-

(i) to a person who satisfies the offshore insurer to be entitled and likely to be given the Grant of Probate or Letters of Administration or Distribution Order; or

(ii) to a person who satisfies the offshore insurer to be beneficially entitled to the estate of the deceased policy owner; or

(b) where the policy moneys are more than one hundred thousand ringgit, or such greater amount as may be prescribed, the offshore insurer may pay to the person referred to in subparagraph (a) (i) or (ii) the amount referred to in that paragraph and subject to subsection (6), pay to that person the balance of the policy moneys upon production of the Grant of Probate or Letters of Administration or Distribution Order.

(3) In this section, a reference to policy moneys is a reference to the aggregate amount of policy moneys in respect of all policies of the policy owner with that offshore insurer where there is no nomination.

(4) The Grant of Probate or Letters of Administration or Distribution Order granted or having effect as if granted, in respect of the personal estate comprising the policy moneys, by a court in Malaysia or a competent authority outside Malaysia, or its certified copy shall be sufficient proof to the offshore insurer to pay the policy moneys to the person to whom the grant was made.

(5) The offshore insurer may accept the Grant of Probate or Letters of Administration or Distribution Order or any other document having the same effect, granted by a court in Malaysia or a competent authority outside Malaysia, as sufficient proof to pay the policy moneys of the deceased policy owner to the person to whom the grant was made, provided that such Grant of Probate or Letters of Administration or Distribution Order or other document having the same effect has been duly registered with the court in Malaysia and sealed in accordance with the Probate and Administration Act 1959 [Act 97].

(6) Where, upon the expiry of twelve months after a payment under paragraph (2)(b) has been made by an offshore insurer, a balance of the policy moneys still remains payable and no claim has been made by a person who holds a Grant of Probate or Letters of Administration or Distribution Order, the offshore insurer shall pay the balance of the policy moneys to the person who received the initial payment of the policy moneys.

(7) Policy moneys paid under this section shall be deemed to have been duly paid and the offshore insurer shall be discharged from liability in respect of the policy moneys so paid notwithstanding the absence or invalidity of, or any defect in, the Grant of Probate or Letters of Administration or Distribution Order or any other document having the same effect.

(8) A person to whom a payment may be made under this section shall give a receipt which shall be deemed to be a valid receipt.

Payment to person incompetent to contract

25I. Where a person has not attained the age of eighteen years, or is certified by a medical practitioner in the public service to be of unsound mind and no committee of his estate has been appointed, or to be incapable, by reason of infirmity of mind or body, of managing himself and his property and affairs, the offshore insurer-

- (a) in the case of a nominee under subsection 25E(1)-
 - (i) if the policy moneys are ten thousand ringgit or less or such other amount as may be prescribed, may pay to a person who satisfies the offshore insurer that he will apply the policy moneys for the maintenance and benefit of the nominee under subsection 25E(1), or a person to whom policy moneys are payable under subsection 25H(2) or (6), subject to the execution of an undertaking by that person that policy moneys will be applied solely for the maintenance and benefit of the nominee; and
 - (ii) if the policy moneys are more than the amount in subparagraph (a)(i), shall pay to the Public Trustee or a trust company nominated by the Public Trustee; or
- (b) in the case a person to whom policy moneys are payable under subsections 25H(2) or (6), shall pay to the Public Trustee or a trust company nominated by the Public Trustee.

Distribution of policy moneys in due course of administration

25J. A person to whom policy moneys may be paid under section 25H shall receive the policy moneys as an executor and not solely as a beneficiary and shall distribute the policy moneys in due course of administration of the estate of the deceased person in accordance with the terms of a will of the deceased person, and if there is no such will, in accordance with the law applicable to the administration, distribution and disposition of his estate upon his intestacy.

This Part to prevail over policy and any other written law

25K. (1) This Part shall have effect in relation to a policy which is in force on or after its operation, and in relation to a nomination made before, on or after its operation, notwithstanding anything contained in the policy, and nothing contained in a policy shall derogate from, or be construed as derogating in any manner or to any extent from, this Part.

(2) This Part shall have full force and effect notwithstanding anything inconsistent with or contrary to any other written law relating to probate, administration, distribution or disposition of the estates of deceased persons, or in any rule of law, practice or custom in relation to these matters.”

PART V

TRANSFER AND WINDING UP

Transfer of offshore insurance business

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

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

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

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

the transferee;

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

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

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

- (a) the transferor shall submit to the Bank a copy of the scheme together with copies of actuarial and other reports, if any, setting out the terms of the scheme;
- (b) the transferor shall submit to the Bank a report sufficient to indicate the opinion of the actuary on the likely effects of the scheme on policy owners of the parties to the scheme in respect of any transfer of life insurance business;
- (c) each of the parties to the scheme shall, not later than one month after a copy of the scheme is submitted to the Bank, cause to be published in not less than two daily newspapers approved by the Bank a notice, containing such particulars as may be prescribed, of the intention to make an application to the High Court for the confirmation of the scheme;
- (d) each of the parties to the scheme shall, for a period of fifteen days after the publication of the notice mentioned in paragraph (c), keep a copy of the scheme at its office in the Federal Territory of Labuan and such copy shall be open to inspection by all of its members and policy-owners who are affected by the scheme; and
- (e) each of the parties to the scheme shall furnish a copy of the scheme and the report mentioned in paragraph (b) to any person who asks for such copy at any time before the High Court confirms the scheme.

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

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

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

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

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

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

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

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

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

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

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

- (a) statements of the assets and liabilities of each of the parties to the scheme, as at the time immediately before the transfer, signed on behalf of such party;
- (b) a copy of the scheme as confirmed by the High Court and a sealed copy of the order of the High Court confirming the scheme; and
- (c) a declaration made by the chairman of the board of directors of the transferee, or by its chief executive officer in the Federal Territory of Labuan, fully setting out every payment made or to be made to any person on account of the transfer, and stating that, to the best of his belief, no other payment beyond those so set out has been, or is to be, made on account thereof by or with the knowledge of the parties to the scheme.

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

Winding up of offshore insurer

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

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

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

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

- (a) firstly, the costs and expenses of the winding up, including the costs of the liquidator or the receiver;
- (b) secondly, all wages or salary (whether or not earned wholly or in part by way of commission), including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of

employment, of any employee not exceeding one thousand five hundred ringgit or such other amount as may be prescribed from time to time in respect of services rendered by him to the offshore insurer within a period of four months before the commencement of the winding up;

- (c) thirdly, all amounts due in respect of workers' compensation, under any written law relating to workers' compensation, which accrued before the commencement of the winding up;
- (d) fourthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death to any other person in his right, which accrued in respect of any period before the commencement of the winding up;
- (e) fifthly, all amounts due in respect of contributions payable during the twelve months next before the commencement of the winding up by the offshore insurer as the employer of any person under any written law relating to employees' superannuation or provident funds or under any scheme of superannuation or retirement benefit which is an approved scheme under any federal law relating to income tax;
- (f) sixthly, the amount of all federal tax assessed under any written law before the date of the commencement of the winding up or assessed at any time before the time fixed for the proving of debts has expired;
- (g) seventhly, all the liabilities and expenses attributable to its offshore insurance business of the class for which the particular insurance fund is created; and
- (h) eighthly, after the liabilities and expenses attributable to the offshore insurance business of the class to which the particular insurance fund referred to in paragraph (g) is applicable have been fully met, the amounts required to make good any deficit in the other insurance funds.

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

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

PART VI

GENERAL

Further information or clarification may be required by the Bank

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

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

(3) Every director or officer of a licensee, and every licensed offshore insurance manager or licensed offshore underwriting manager acting on behalf of an offshore insurer, shall extend his co-operation

and assistance to the Bank to facilitate any inspection carried out under subsection (2).

Offences and penalties

29. Any person who -

(a) contravenes -

(i) any provision of this Act; or

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

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

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

Power of Bank to compound offences

30. (1) The Bank may, with the prior written consent of the Public Prosecutor, compound any offence committed by any person under section 29, by making a written offer to such person to compound the offence by paying to the Bank, within such time as may be specified in the offer, such sum of money as may be specified in the offer, which shall not exceed fifty per centum of the amount of the maximum fine (including the daily fine, if any, in the case of a continuing offence) to which that person would have been liable if he had been convicted of the offence.

(2) Any monies paid to the Bank pursuant to the provisions of subsection (1) shall be paid into and form part of the Fund established under section 29 of the Labuan Offshore Financial Services Authority Act 1996.

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

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

Power to grant exemption

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

Power to make regulations

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

(a) prescribing anything by this Act required to be prescribed;

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

Indemnity

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

(2) For the purposes of this section, “officers of the Government of Malaysia” includes the Minister and any public officer and “officers of the Bank” includes the Governor, the Director-General, and any member, officer or employee of the Bank.

Non-application of Insurance Act 1963 and Takaful Act 1984

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

Application of Offshore Companies Act 1990 and Companies Act 1965

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

(a) the Offshore Companies Act 1990 shall apply to a licensee which is an offshore company or a foreign offshore company; and

(b) the Companies Act 1965 shall apply to a licensee which is a branch of a Malaysian insurer.

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

Application of Exchange Control Act 1953

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

FIRST SCHEDULE

(Section 2(1))

Recognized professional associations in relation to the qualifications of actuaries

The Institute of Actuaries in England

The Faculty of Actuaries in Scotland

The Society of Actuaries in the United States of America

The Canadian Institute of Actuaries

The Australian Institute of Actuaries

OFFSHORE INSURANCE ACT 1990

**OFFSHORE INSURANCE (ANNUAL LICENCE FEES)
REGULATIONS 2001**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation and commencement
2. Annual licence fee

OFFSHORE INSURANCE ACT 1990

OFFSHORE INSURANCE (ANNUAL LICENCE FEES) REGULATIONS 2001

IN exercise of the powers conferred by section 32 of the Offshore Insurance Act 1990 [Act 444], the Minister makes the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the **Offshore Insurance (Annual Licence Fees) Regulations 2001**.

(2) These Regulations come into operation on 1 September 2001.

Annual licence fee

2. The annual fees to be paid by a licensee licensed under the Act shall be prescribed in the Schedule.

SCHEDULE

<i>Types of Licensee</i>	<i>Fees</i>
	<i>(RM)</i>
(a) Offshore insurer carrying on –	
(i) general insurance business	30,000
(ii) life insurance business	30,000
(iii) life and general insurance business	60,000
(iv) captive insurance business	10,000
(v) master rent-a-captive	13,000
(vi) subsidiary rent-a-captive	3,000
(b) Offshore insurance manager	10,000
(c) Offshore underwriting manager	10,000
(d) Offshore insurance broker	10,000

Made 16 August 2001

[S(8.02)248/24/1-29 (SJ.8;PN(PU2)492]