

ACT NO. 7569
BILL NO. 30-0049

THIRTIETH LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2013

An Act amending Title 22 to add Chapter 4 creating the Division of Alternative Markets and International Reinsurance within the Office of the Lieutenant Governor; repealing Act No. 7025; and by amending Title 22 to add Chapter 55 to enact the "Virgin Islands International Insurers Act."

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Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 22 is amended by adding Chapter 4 entitled the "Division of Alternative Markets and International Reinsurance."

SECTION 2. Title 22, Chapter 4 is amended by adding the following subsections:

§70. Creation of Division of Alternative Markets and International Reinsurance

There is established within the Office of the Lieutenant Governor, the Division of Alternative Markets and International Reinsurance, which will be supervised by the Superintendent of Alternative Markets ("the SAM"). The Commissioner of Insurance, with the advice and consent of the Governor, shall appoint the SAM and determine the SAM's compensation. The SAM, with the consent of the Commissioner of Insurance, may appoint such assistants as necessary to perform such duties as the SAM determines. The SAM shall report to the Commissioner of Insurance.

§71. Authority of the SAM

(a) The SAM has authority to:

(1) Regulate the Alternative Market Insurer Business being conducted in or from the Territory;

(2) Enforce the Virgin Islands Code Ann. and the Rules and Regulations promulgated thereunder relating to the conduct of the Alternative Market Insurer Business and International Support Businesses;

(3) Examine and prepare reports pursuant to Chapter 55 and Chapter 66 of this Title annually on all matters connected with Alternative Market Insurer Businesses and International Support Businesses;

(4) Summon or subpoena persons to attend a hearing or to testify as a witness;

(5) Enforce attendance through the Superior Court of the Virgin Islands, and to compel production of books and evidence relevant to an inquiry necessary or appropriate under this chapter;

(6) Require examination of witnesses under oath and to administer oaths;

(7) At all reasonable times, have access to and take copies of all books, securities, records, and documents of any Special Purpose Financial Captive Insurance Company, Securitization Entity, insurer, insurance manager, agent, adjuster, or broker that relate to the Alternative Insurance Market or International Reinsurance Business and any officer, agent, or person in charge, possession, custody, or control of any of those books, securities, records, or document and to issue fines against any person or entity who refuses or neglects to afford such access;

(8) Make an inquiry to any insurer, reinsurer or insurance manager relating to the conduct of its business or its financial affairs and to require such insurer, reinsurer, or insurance manager to submit prompt and explicit answers and to issue fines against any person who or entity that fails or refuses to provide such information and to suspend the license of the person or entity;

(9) Issue licenses and certificates of Exempt International Company benefits and tax incentive benefits in accordance with Virgin Islands Code, Chapter 55 and Chapter 66 of this title and chapter 14 of title 13, as it relates to exempt international insurer;

(10) Enter into Memoranda of Understanding with other relevant U.S. Virgin Islands Government agencies, departments, and divisions for processing of documents needed to complete the licensing process and to facilitate granting and contracting for tax benefits provided to any International Insurance Company as provided in Virgin Islands Code, Chapters 55 and 66; and

(11) Appoint with the consent of the Commissioner of Insurance, an advisory board to review issues that may arise in the Alternative Markets Insurer Business and to assist in evaluating the functioning of the program and to review applications for licenses which may be issued to Alternative Markets Insurers.

(b) The SAM, or any of the SAM's employees, must not directly or indirectly be:

(1) A shareholder, member, manager, or partner in any company or business entity that is licensed by the SAM as an Alternative Markets Insurer; or

(2) A shareholder, member, manager, or partner in a company or business entity that is authorized under this title to act as an International Insurer Support Business.

(c) The SAM or any of the SAM's employees who has a conflict of interest as defined in subsection (b) of this section, must recuse himself from addressing any such matter before the Office of the Insurance Commissioner, Division of Alternative Markets and International Reinsurance.

§72. Registers

The SAM shall keep the following registers:

(a) A register of all licenses issued to insurers and reinsurers and Securitization Entities under this Title, in which must appear:

(1) The name of the insurer or reinsurer or Securitization Entity;

(2) The address of the insurer or reinsurer's or Securitization Entity's principal office within the Territory;

(3) The address of the insurer or reinsurer's or Securitization Entity's principal office outside the Territory;

(4) The details of the insurance or reinsurance or Securitization Entity's business, including the classes of insurance and reinsurance for which the insurer or reinsurer or Securitization Entity is licensed; and

(5) Any other information the SAM may consider necessary or appropriate to keep for purposes of this Title.

(b) A register of all licenses issued under this title to International Insurance Support Businesses in which must appear the names and addresses of the insurers and reinsurers for whom they are authorized to act.

(c) A register of the names and addresses of all directors and officers of every insurer and reinsurer licensed under Chapter 55 and of every Securitized Entity licensed under Chapter 66.

(d) A register of all actuaries and auditors approved by the SAM to provide actuary or audit services under Chapter 55 and Chapter 66.

§73. Revolving Fund Created

(a) There is established in the Treasury of the Virgin Islands a special account known as "The Alternative Market and International Reinsurance Revolving Fund" for the purpose of

providing the financial means for the SAM to administer Chapters 55 and 66 and for reasonable expenses incurred in promoting the captive insurance and asset securitization and insurance securitization industries in the Territory.

(b) The fund consists of all fees, fines, and other sums collected by the SAM under this chapter and Chapter 55 and Chapter 66 as well as sums appropriated thereto from time to time from the Legislature. All funds deposited in the fund remain available until expended. The SAM, the Commissioner of Insurance, and the Commissioner's designee are the certifying officers for expenditures from the Fund.

(c) The SAM shall deposit into the fund:

(1) All application fees, license fees, renewal fees, and assessments collected by the SAM under this Chapter and related Chapters 55 and 66; and

(2) All administrative penalties and fines.

(d) All payments from the Fund for the hiring, training, maintenance of staff and associated expenses, including contractual services as necessary, may be disbursed from the Fund only upon requests issued by the SAM, after receipt of proper documentation regarding services rendered and expenses incurred or to be incurred.

(e) The interest on the monies on deposit in the Fund must also be deposited into the Fund.

SECTION 3. Act No. 7025, enacted on October 11, 2008, is hereby repealed in its entirety.

SECTION 4. Title 22 is amended by adding Chapter 55 entitled the "Virgin Islands International Insurers Act."

SECTION 5. Title 22, Chapter 55 is amended by adding the following:

§1400. Short title

This chapter shall be known and may be cited as the "Virgin Islands International Insurers Act".

§1401. Definitions

For purposes of this chapter, the following defined terms shall apply unless defined elsewhere and not otherwise inconsistent:

(a) "Actuary" means a person qualified as an actuary by examination of the Institute of Actuaries in England or the Faculty of Actuaries in Scotland, Casualty Actuarial Society, or

the Society of Actuaries in the United States of America or Canada or other certifications of actuaries recognized by the SAM. Such Actuary need not be licensed in the US Virgin Islands.

(b) "Advisory Board" means an ad hoc board of five members appointed by and with full discretion of the SAM, possessing knowledge of technical and complex issues that arise relating to International Insurers Businesses which the SAM may use to evaluate the functioning of the program and to review applications for licensing.

(c) "Affiliated Company" means any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

(d) "Affiliated Person" means an individual or an entity that is related to a parent or owner of an entity by virtue of being: a spouse, father, mother, child, brother or sister of such individual person; or the owner, parent or affiliated company, with respect to any such person which is an entity.

(e) "Alien Captive Insurance Company" means an insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction, a non-United States domicile, which imposes statutory or regulatory standards in a form acceptable to the SAM on companies transacting the business of insurance in such jurisdiction.

(f) "Alternative Market Insurer Business" means a company that may insure or reinsure the risks of parents, owners, affiliates, and related businesses, provided the insurance or reinsurance that it writes complies with the laws and regulations of the domicile for direct placement of risk, and may directly insure the members of an association which owns the Alternative Market Insurer. For purposes of this chapter, the term shall also include any "International Insurance Company" or "Branch Exempt International Insurer" as herein defined.

(g) "Association" means any legal association of individuals, corporations, partnerships, or associations that has been in continuous existence for at least one year, which collectively, or through a trust or corporation formed by or on behalf of the Association:

(1) owns, controls, or holds with power to vote 60% or more of the outstanding voting securities of an Association International Insurance Company incorporated as a stock insurer; or

(2) has complete voting control over an Association International Insurance Company incorporated as a mutual insurer.

(h) "Association International Insurance Company" means any International Insurance Company that insures risks of the member organizations of the Association and their affiliated companies or entities established by the Association.

(i) "Auditor" means an individual who sits and successfully passes a financial examination and is inducted into financial charters and societies and has earned the designation as a Certified Public Accountant or similarly recognized definition in various countries and possesses such qualifications in insurance accountancy as the SAM, by written order, approves and is in good standing with respect to such qualifications. Such auditors need not be licensed in the U.S. Virgin Islands.

(j) "Branch Exempt International Insurer" shall be a branch captive insurance company meeting the criteria set forth in Virgin Islands Code Title 13, Section 853a and Sections 1409A and 1415 of this Chapter, licensed by the SAM and qualifying to do business in the Virgin Islands as provided in this chapter.

(k) "Commissioner" means the Commissioner of Insurance.

(l) "Exempt international insurer" means any International Insurance Company or Branch Exempt International Insurer that makes an election under section 1415 of this title.

(m) "Group" means a group of corporations, partnerships, other business entities, or individuals, and includes clients of an insurance agency or brokerage, that collectively or through a trust or corporation formed by or on behalf of the group or the agency or brokerage:

(A) own, control, or hold with power to vote 60% or more to the outstanding voting securities of a Group International Insurance Company incorporated as a stock insurer; or

(B) have complete voting control over a Group International Insurance Company incorporated as a mutual insurer.

(n) "Group International Insurance Company" means an International Insurance Company that insures the risks of members of a Group and their affiliated companies.

(o) "Industrial Insured" means an insured:

(1) that procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer; and

(2) the aggregate annual premiums of which for insurance on all risks total at least \$25,000; and

(3) that has at least 25 full-time employees.

(p) "Industrial Insured International Insurance Company" means any International Insurance Company that insures risks of the international insureds that comprise the Industrial Insured Group and their affiliated companies.

(q) "Industrial Insured Group" means either of the following:

(1) the Industrial Insureds that collectively, or through a trust or corporation formed by or on behalf of the industrial insured group:

(A) own, control, or hold with power to vote 60% or more of the outstanding voting securities of an Industrial Insured International Insurance Company incorporated as a stock insurer; or

(B) have complete voting control over an Industrial Insured International Insurance Company incorporated as a mutual insurer.

(r) "Insurance Business" means the business of soliciting, effecting or carrying out contracts protecting persons against loss or liability for loss regarding a certain risk to which the object of the insurance may be exposed or to pay a sum of money or other thing of value upon the happening of a certain event, in return for a premium, and includes reinsurance business.

(s) "Internal Revenue Code" means the United States Internal Revenue Code, Title 26, United States Code as amended.

(t) "International Insurance Company" means any single-parent International Insurance Company, Association International Insurance Company, or Industrial Insured International Insurance Company or any Branch Exempt International Insurer thereof licensed under the provisions of this chapter to underwrite risks situated exclusively outside the Virgin Islands.

(u) "International Insurer Support Business" shall mean any person or company licensed under this Chapter to conduct any one or more functions for International Insurance Companies as an insurance manager, insurance agent, or insurance broker only with respect to risks situated exclusively outside the Virgin Islands.

(v) "Member Organization" means any individual, corporation, partnership, or association that belongs to an Association.

(w) "Mutual Insurer" means an International Insurance Company that does not issue shares of capital stock and the surplus of which equivalent to capital is owned by the policyholders.

(x) "Parent" means a corporation, partnership, or individual that directly or indirectly, through trusts, holding corporations, or otherwise, owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting securities of a single-parent International Insurance Company.

(y) "SAM" means the Superintendent of Alternative Markets of the Office of the Commissioner of Insurance, Division of Alternative Markets and International Reinsurance, or the SAM's designee, as established in VI Code Title 22 Chapter 4.

(z) "Single-parent International Insurance Company" means any International Insurance Company that insures the risk of its parent and affiliated companies.

(aa) "Stock Insurer" means any International Insurance Company the capital of which is divided into shares and held by stockholders.

(bb) "Tax Benefit Certificate", certificate issued to a licensed International Insurance Company by the SAM entitling the business to the tax benefits provided for in this Chapter.

(cc) "United States risks" constitute such risks situated within any State of the United States as such term is defined in *section 953 of the Internal Revenue Code* (as it applies to the Virgin Islands), or any regulation issued thereunder.

§1402. Applicability of other laws

(a) Any International Insurance Company and any International Insurer Support Business licensed by the Commissioner under this chapter shall be exempt from all other insurance laws of the Virgin Islands other than those contained in this chapter or contained in specific references contained in this Title.

(b) With respect to International Insurance Companies, such exemption includes but is not limited to the following:

(1) No International Insurance Company shall be required to join or otherwise contribute to or receive benefit from any pool, association, plan, guaranty or insolvency fund created or operating within this Territory.

(2) No International Insurance Company shall be required to join a rating organization or otherwise be subject to rating rules of this Territory with respect to any policy issued by such International Insurance Company.

(c) To the extent not otherwise provided for in this chapter and necessary for the implementation of its provisions and not otherwise inconsistent with the provisions herein, the general provisions of this title shall be applicable to all licensed International Insurance Companies and International Insurer Support Businesses. If a conflict arises between a provision of Title 22 and a provision of this chapter, the provisions of this chapter shall control.

§1403. Licensing authority; residency requirements

(a) An International Insurance Company, before commencing business, shall obtain a license from the SAM to do any and all insurance comprised in Section 1417 of this chapter; provided, however, that:

(1) no Single-parent International Insurance Company may insure directly risks other than those of its parent(s) and affiliated companies that in the aggregate

comprise up to not more than 90% of the company's gross written premium in any one fiscal year, exclusive of the reinsurance premiums;

(2) no Association International Insurance Company may insure directly risks other than those of the member organizations of its association and their affiliated companies that in the aggregate comprise more than 90% of the company's gross written premium in any one fiscal year, exclusive of reinsurance premiums;

(3) no Industrial Insured International Insurance Company may insure directly risks other than those of the Industrial Insured Group and their affiliated companies that in the aggregate comprise more than 90% of the company's gross written premium in any one fiscal year, exclusive of reinsurance premiums;

(4) no International Insurance Company may provide personal motor vehicle or homeowner's insurance coverage or any component thereof;

(5) no International Insurance Company may accept or cede reinsurance except as provided in section 1413 of this title; and

(6) any International Insurance Company may provide life, accident, health, disability, employer's liability, employee benefits, and worker's compensation insurance to its parent(s) and affiliated companies, its member organizations or industrial insureds, as applicable.

(b) Any International Insurance Company shall comply with the following:

(1) Unless limited by statutory or regulatory provision, an International Insurance Company may hold meetings within or without the US Virgin Islands and by telephonic, electronic or cyber conference mechanism, provided its Board of Directors shall hold at least one meeting each year in the Virgin Islands;

(2) It shall maintain its principal place of business in the Virgin Islands or shall authorize an International Insurer Support Business to conduct its insurance business within the Territory. Applicants shall designate a registered agent upon whom process may be served in all cases, and the name and business address of the agent shall be filed with the Commissioner of Insurance on behalf of any International Insurance Company, the business of which it is authorized to conduct. Whenever such registered office of the International Insurance Company or International Insurer Support Business cannot with reasonable diligence be ascertained, the Commissioner of Insurance shall be deemed to be the agent of such International Insurance Company or International Insurer Support Business upon whom any process, notice, or demand may be served.

(c) (1) Before receiving a license, an International Insurance Company shall file with the SAM, appropriate documents for filing its articles of incorporation, charter, registration statement, or trade name registration or a certified copy of its charter and bylaws, a statement

under oath of its President and Secretary showing its financial condition, and any other information, documents, or statements required by the SAM.

(2) In addition to the information required by subsection (c)(1) of this section, each applicant International Insurance Company shall file with the SAM evidence of the following:

(A) the amount and liquidity of its assets relative to the risks to be assumed;

(B) the adequacy of the expertise, experience, and character of the person or persons who will manage it;

(C) the overall soundness of its plan of operation certified by an independent Actuary;

(D) the adequacy of the loss prevention programs of its parent, member organizations, or industrial insureds as applicable; and

(E) such other factors deemed relevant by the SAM in ascertaining whether the proposed International Insurance Company will be able to meet its policy obligations.

(F) In addition to the information required by the provisions above, an applicant protected cell insurance company shall file with the SAM:

(i). a business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the SAM, and how it will report the experience to the SAM;

(ii). a statement acknowledging that all financial records of the protected cell insurance company, including records pertaining to any protected cells, must be made available for inspection or examination by the SAM;

(iii). all contracts or sample contracts between the protected cell insurance company and any participants; and

(iv). evidence that expenses will be allocated to each protected cell in an equitable manner.

(d) If the SAM is satisfied that the documents and statements that such applicant International Insurance Company has filed is in compliance with the provisions of this chapter, the SAM shall grant a license authorizing it to conduct insurance business as an International

Insurance Company until December 31st of each year. Such license shall be renewed annually within 30 days of the end of the calendar year upon payment of the annual license fee, provided the International Insurance Company is in good standing at such time.

§1404. Application fee; annual license fee

Each International Insurance Company shall pay to the SAM a nonrefundable application fee for examining, investigating, and processing its application for licensure, and the Commissioner is authorized to retain legal, financial, and examination services, the reasonable cost of which may be charged against the applicant. Such examination need not include an actuarial review if an independent actuary certification has been presented with the application, unless the SAM has reasonable cause to require further actuarial certification. In addition, the International Insurance Company shall pay an annual license fee commencing with the year of registration, such fee being first payable in full within thirty days of the date on which the license commences, and on or before January 30th of each calendar year that such license remains in effect. Upon request, *pro rata* annual license fees will be given consideration by the SAM for all applications for licenses issued during the last quarter of the calendar year. The nonrefundable application fee shall be a minimum of Five Thousand Dollars (\$5,000.00) and the annual license fee shall be a minimum of Five Thousand Dollars (\$5,000.00) and such annual fee shall be due upon issuance of the initial license and annually thereafter. Such fees may be altered or amended from time to time in the discretion of the SAM by regulations promulgated by the SAM.

§1405. Minimum capital; letter of credit

(a) No Single-parent International Insurance Company, Industrial Insured International Insurance Company incorporated as a stock insurer, or Association International Insurance Company incorporated as a stock insurer, shall be issued a license unless it shall possess and thereafter maintain unimpaired paid-in capital of:

(1) in the case of a Single-parent International Insurance Company, not less than \$75,000;

(2) in the case of an Industrial Insured International Insurance Company incorporated as a stock insurer, not less than \$100,000;

(3) in the case of an Association International Insurance Company incorporated as a stock insurer, not less than \$125,000; or

(4) such sums as may be reasonably determined necessary for the maintenance of the insurance business of the International Insurance Company by the SAM at the time of application or as may be reviewed from time to time.

(b) Such capital may be in the form of cash or an irrevocable letter of credit issued by a bank chartered by the Territory of the Virgin Islands, a local bank, a foreign bank, or a member bank of the United States Federal Reserve System properly qualified to do business in, and

having a branch situated in, the Territory or similar financial or accredited investment institution situated in the Territory.

§1406. Minimum surplus; letter of credit

No International Insurance Company shall be issued a license unless it shall possess and thereafter maintain free surplus of:

- (1) in the case of a Single-parent International Insurance Company, not less than \$100,000;
- (2) in the case of an Industrial Insured International Insurance Company incorporated as a stock insurer, not less than \$125,000;
- (3) in the case of an Association International Insurance Company incorporated as a stock insurer, not less than \$250,000;
- (4) in the case of an Industrial Insured International Insurance Company incorporated as a mutual insurer, not less than \$200,000;
- (5) in the case of an Association International Insurance Company incorporated as a mutual insurer, not less than \$325,000; or
- (6) such sums as may be reasonably determined necessary for the maintenance of the insurance business of the International Insurance Company by the SAM at the time of application or as may be reviewed from time to time.

Such surplus may be in the form of cash or an irrevocable letter of credit issued by a bank chartered by the Territory of the Virgin Islands, a local bank, a foreign bank, or a member bank of the United States Federal Reserve System, properly qualified to do business in, and having a branch situated in, the Territory or similar financial or accredited investment institution situated in the Territory.

§1407. Permissible investments; valuation

(a) No Single-parent International Insurance Company or Industrial Insured International Insurance Company shall be subject to any restrictions on allowable investments whatsoever; provided, however, that the SAM may prohibit or limit any investment that threatens the solvency or liquidity of any such company.

(b) The investments of an Association International Insurance Company shall not be subject to restriction except that the SAM may, in his discretion, deny or refuse the valuation of goodwill or other investments of any Association International Insurance Company which do not have a readily ascertainable fair market value. The SAM shall have authority to limit or prohibit any investment or investments of any Association International Insurance company which may

threaten the solvency or financial condition of such Association International Insurance Company.

(c) The stock of a member organization that owns more than fifty percent (50%) of the equity of an Association International Insurance Company shall be valued at book value by using the equity method of accounting.

(d) Bonds and other debt instruments held as investments by an Association International Insurance Company may be carried at cost or at amortized value when purchased at a discount.

§1408. Segregation of accounts

(a) An International Insurance Company that is domiciled or licensed to do business in any State of the United States, or that is otherwise subject to United States federal income taxation as if it were so domiciled or licensed, shall regularly employ in its books of accounts a detailed segregation of receipts, expenditures, assets, liabilities and net worth that clearly distinguishes the income derived from insuring United States risks from the income derived from insuring other foreign risks by first allocating such items which are specifically identifiable as pertaining exclusively to the United States risks.

(b) Investment income earned on reserves pertaining to United States risks shall constitute investment income pertaining to United States risks.

(c) For the purposes of this section:

(1) "segregated funds" means a separate and distinct fund with separate and distinct assets maintained pursuant to sub-section (2).

(2) Every insurer that issues policies covering life insurance or annuities as defined in Section 1417 shall maintain in respect of each class or category of life insurance or annuity business that it issues one or more segregated fund.

(3) A segregated fund shall consist of money or securities in which trustees may invest trust money.

(4) A segregated fund is available only to meet the liabilities arising under the life insurance or annuity policies in respect of which the segregated fund is maintained, except that money or securities in the segregated fund may, at the discretion of the insurer's directors but subject to actuarial certification, be withdrawn from the segregated fund and paid into the shareholders' fund, but the amount when so withdrawn shall not exceed in the aggregate the proportionate interest of the shareholders in the segregated fund.

§1409. Formation of International Insurance Companies in the Virgin Islands

- (a) A Single-parent International Insurance Company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.
- (b) An Association International Insurance Company or an Industrial Insured International Insurance Company may be incorporated:
- (1) as a stock insurer with its capital divided into shares and held by the stockholders; or
 - (2) as a mutual insurer without capital stock, the governing body of which is elected by its member organizations or the members of its association.
- (c) An International Insurance Company shall have not less than three incorporators, of whom not less than one shall have been a resident of the Virgin Islands for a minimum of one year.
- (d) Before the articles of incorporation are transmitted to the Office of the Lieutenant Governor, the incorporators shall petition the SAM to issue a certificate setting forth his finding that the establishment and maintenance of the proposed International Insurance Company will promote the general good of the Virgin Islands. In arriving at such finding the SAM shall consider:
- (1) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the company; and
 - (2) such other aspects as the SAM shall deem appropriate.
- (e) The articles of incorporation, such certificate, and the organization fee shall be presented to the SAM which shall thereupon file both the articles of incorporation and the certificate with the Office of the Lieutenant Governor—Division of Corporations and Trademarks.
- (f) The capital stock of an International Insurance Company incorporated as a stock insurer shall be issued at not less than par value, if so stated.
- (g) At least one of the members of the board of directors of an International Insurance Company incorporated in this Territory shall have been a resident of the Virgin Islands for a minimum period of one year.
- (h) Any International Insurance Company formed under the provisions of this chapter shall be organized in accordance with, and shall have the privileges and be subject to the provisions of the General Corporation Law, Title 13, Chapter 1, Virgin Islands Code, as well as the applicable provisions contained in this chapter. In the event of conflict between the provisions of said General Corporation Law, Title 13, Chapter 1, Virgin Islands Code, and the

provisions of this chapter, the provisions of this chapter shall govern. The provisions of Title 22 of the Virgin Islands Code pertaining to dissolutions, mergers, consolidations, conversions, and mutualizations shall apply in determining the procedures to be followed by International Insurance Companies formed under this chapter in carrying out any of the transactions described therein, except that the SAM may waive or modify the requirements for public notice and hearing in accordance with rules which the SAM may adopt.

(i) The SAM and the Office of the Lieutenant Governor, Division of Corporations and Trademarks, shall coordinate the various filings in their respective offices with the objective of finalizing the various applications for licenses and other requests for approvals so that the International Insurance Company or Branch Exempt International Insurer is formed as expeditiously as possible.

§1409A Formation of Branch Captive Insurance Companies in the Virgin Islands

(a) Any Alien Captive Insurance Company, or Foreign Insurer seeking to establish a Branch Exempt International Insurer, as defined in paragraph (2), shall follow the criteria and procedures set forth in this subsection and Section 1415 of the chapter and any regulations promulgated hereunder for qualifying to do business in the Territory as a Branch Exempt International Insurer.

As used in this subsection, unless the context requires otherwise, the following definitions shall be applicable to Branch Exempt International Insurers, in addition to the definitions set forth in Section 1401 of this chapter.

(1) “Branch business” means any insurance business transacted by a Branch Exempt International Insurer in this Territory.

(2) “Branch Exempt International Insurer” means an Alien Captive Insurance Company licensed by the SAM to transact the business of insurance in this Territory through a business unit with a principal place of business in this Territory.

(3) “Branch operation” means any business operation of a Branch Exempt International Insurer in this Territory.

(4) “Foreign Insurer” means an insurer domiciled in any state or territory other than the Territory of the Virgin Islands of the United States of America.

(5) “Territory” means the Territory of the Virgin Islands of the United States of America.

(b) The purpose of this section is to set forth the procedures for the licensing of a Branch Exempt International Insurer that is organized as a captive insurance company in a jurisdiction other than the Territory but that qualifies to do business in the Territory as a Branch Exempt International Insurer under this chapter and Corporation Law applicable to the Territory.

These procedures shall apply equally to an Alien Captive Insurance Company or a Foreign Insurer.

(c) Branch Exempt International Insurers domiciled outside the Territory may establish a Branch Exempt International Insurer in the Territory for purposes of insurance or reinsurance of the risks set forth in Section 1403 (a) (6) of this chapter, and the kinds of insurance authorized under Section 1417 hereof.

(d) An Alien Captive Insurance Company and a Foreign Insurer shall be subject to the formation and licensing requirements established by the SAM for a Branch Exempt International Insurer under this Chapter, including submitting a Petition for insurance of a Certificate of General Good called for by Section 1409 (d) of this chapter. The Alien Captive Insurance Company or Foreign Insurer may establish a Virgin Islands branch business entity for purposes of the Branch operations, and such entity shall be subject to the formation requirements set forth in Section 1409 hereof and the qualification requirements established by the Office of the Lieutenant Governor, Division of Corporations and Trademarks under title 13 Virgin Islands Code section 401, provided that applicants in another jurisdiction shall be exempt from the residency requirements of section 1409 (c) and (g) hereof; or may establish a branch operation through establishment of a Virgin Islands business entity according to qualification requirements set forth in Section 1409 hereof and as may be established by the Office of the Lieutenant Governor, Division of Corporations and Trademarks under title 13 Virgin Islands Code, Section 401. Each Branch Exempt International Insurer shall hold a meeting of the Board of Directors or other governing body of the Branch Exempt International Insurer in the Territory at least once every three (3) years.

(e) The Alien Captive Insurance Company or the Foreign Insurer may submit its qualification papers to the Office of the Lieutenant Governor, Division of Corporations and Trademarks upon receiving a Certificate of Good standing from the SAM. It is the objective of the SAM that licensure by the SAM and qualification by the Office of the Lieutenant Governor shall be completed within forty-five (45) days of issuance of a Certificate of Good, and applicants shall be notified by the SAM or the Division of Corporations and Trademarks, if the proposed 45-day timeframe will be exceeded by either of those Offices and the reasons for exceeding the timeframe.

(f) Each Branch Exempt International Insurer may authorize an International Insurer Support Business to conduct its branch business or other branch operations within the Territory in accordance with Section 1403 (b) (2) hereof. In addition, not less than once every three (3) years, in the discretion of the SAM, a representative of the Branch Exempt International Insurer as well as the International Insurer Support Business acting for the Branch Exempt International Insurer shall meet with the SAM in the Territory as to regulatory compliance issues. Notwithstanding this provision, the SAM retains the discretion to require representatives from the Branch Exempt International Insurer to attend meetings with the SAM in the Territory more frequently than once every three years if the SAM determines that such a meeting in the Territory is reasonably necessary for the SAM to monitor the entity's compliance with this chapter.

(g) Notwithstanding any provision in this chapter to the contrary, with respect to the establishment of minimum capital and minimum surplus requirements for a Branch Exempt International Insurer, upon written application by the prospective licensee and in the discretion of the SAM, the SAM may take into account the amount of security posted by the Alien Captive Insurance Company or the Foreign Insurer in the jurisdiction in which it is domiciled as capital and surplus before the SAM determines the minimum capital and minimum surplus to be applicable to the Branch Exempt International Insurer. In the absence of the SAM exercising its discretion, Section 1405 and 1406 of this chapter shall apply as to minimum capital and minimum surplus.

(h) Each Branch Exempt International Insurer so established shall be subject to the benefits, obligations and regulations provided herein.

§1410. Financial reporting

(a) Any International Insurance Company licensed under this Chapter shall be required to file within 180 days of the end of its financial year, a balance sheet, income statement, and statement clearly reflecting that adequate reserves are maintained and such other financial statements as the SAM may determine are necessary. Upon request of the Company and showing of good cause, the SAM may extend the due date for filing. All financial statements shall be audited by an independent Auditor who shall attach an audit report on the International Insurance Company's financial condition and solvency. The adequacy of the reserves shall be determined and certified by an Actuary. The statements must be certified as true and accurate under the sworn signature of at least two directors of the International Insurance Company, one of whom must be a resident of this Territory, or two nonresident directors and an officer of the International Insurance Company or the International Insurer Support Business representing the International Insurance Company who is resident within the Territory.

(b) If an Auditor has rendered other than an unqualified opinion on the financial condition of an International Insurance Company, the Auditor and the International Insurance Company shall both notify the SAM in writing within fifteen days of the issuance of such qualified opinion.

(c) Failure to comply with this section shall be punishable by a fine of in an amount established by regulations by the SAM for such noncompliance by the International Insurance Company or revocation of the International Insurance Company's license, or both.

(d) No other financial reporting by an International Insurance Company shall be necessary within this Territory, except as required by the Bureau of Internal Revenue.

§1411. Examinations and investigations

Other than a Single-Parent International Insurance Company, at least once every five (5) years and whenever the SAM determines it to be necessary, prudent, or in the best interests of the Territory, he or his designee shall inspect and examine the affairs of an International Insurance Company to ascertain its financial condition, its ability to fulfill its obligations and

whether it complies with the rules and regulations established with reference to this chapter. The expenses and charges of the examination shall be reimbursed by the International Insurance Company to the Territory. In the case of Branch Exempt International Insurers, any such audit shall only be of the U.S. Virgin Islands entity and may utilize and incorporate findings of an audit of the parent company.

§1412. Grounds and procedures for suspension or revocation of license

(a) The license issued to an International Insurance Company by this Territory may be suspended or revoked by the SAM for any of the following reasons:

- (1) insolvency or impairment of capital or surplus;
- (2) failure to meet the requirements of sections 1405 or 1406 of this chapter or any rules and regulations promulgated hereunder;
- (3) refusal or failure to submit an annual report, as required by section 1410 of this title, or any other report or statement required by law, regulation, or lawful order of the SAM;
- (4) failure to comply with the provisions of its own charter or bylaws;
- (5) failure to submit to an examination or any legal obligation relative thereto, as required by section 1411 of this title;
- (6) refusal or failure to pay the cost of examination as required by section 1411;
- (7) use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public good or to its policyholders; or
- (8) failure otherwise to comply with the laws of this Territory made applicable by this chapter to International Insurance Companies.

(b) If the SAM finds, upon examination, hearing, or other evidence, that any International Insurance Company has committed any of the acts specified in subsection (a) of this section, the SAM may suspend or revoke such license if the SAM deems it in the best interest of the public and the policy-holders of such International Insurance Company.

§1413. Reinsurance

(a) Any International Insurance Company may cede reinsurance to any insurer or reinsurer or reinsurance pool approved by the SAM for this purpose, and may provide reinsurance on risks ceded by any other insurer or reinsurer or reinsurance pool.

(b) Any International Insurance Company shall receive credit for reserves on risks or portions of risks ceded to approved reinsurers.

(c) Any International Insurance Company may take credit for reserves on risks or portions of risks ceded to a pool, exchange, or association acting as a reinsurer. The SAM may require any such documents, financial information or other evidence that such pool, exchange, or association will be able to provide adequate security for its financial obligations.

§1414. International insurer support business

(a) Any International Insurer Support Business, before commencing business, shall apply to the SAM for a license. The license application shall contain such information, in addition to the information set forth below, as may be required by the SAM pursuant to duly promulgated regulations.

(b) Any International Insurer Support Business applying for a license under this chapter shall file with the SAM the following documents, together with such other documents and information as the SAM may require pursuant to duly promulgated regulations:

(i.) in the case of an existing entity, a certified copy of its charter and bylaws, its most recent balance sheet and income statement;

(ii.) in the case of a newly-formed entity or a person, a business and financial plan demonstrating the expected financial performance for the following three years.

(c) Any International Insurer Support Business shall attach to its license application a nonrefundable application fee to cover the cost of examining, investigating and processing its application for license. The amount of such application fee shall be determined and set forth in duly promulgated regulations by the SAM. In addition, an International Insurer Support Business licensed under the provisions of this chapter shall pay a license fee for the year of registration and a renewal fee for each year thereafter in an amount determined and set forth in duly promulgated regulations by the SAM.

(d) An International Insurer Support Business formed in the Virgin Islands shall have the privileges and be subject to the provisions of the General Corporation Law of Title 13, Virgin Islands Code, as well as the applicable provisions contained in this chapter. The provisions of this chapter shall take precedence over the provisions of the General Corporation Law in the event of conflict.

§1415. Tax Rates and Benefits Applicable to Any International Insurance Company

(a) Each International Insurance Company may make an Exempt Company Election under chapter 14 of Title 13 of this Code to be an exempt company subject to the provisions of such title and shall thereupon be granted a reduction in the income tax liability shown on its income tax return for each taxable year by 100 percent if the company is licensed and established in the district of St. Croix, and by 80 percent if the company is licensed and established in the

district of St. Thomas and St. John, for such income that meets the requirements of sections 934 and 937(b) of the Internal Revenue Code of 1986, as amended, and any successor provisions to that Code, and the Treasury Regulations promulgated thereunder, as being from U.S. Virgin Islands sources or effectively connected with the conduct of a trade or business within the U.S. Virgin Islands.

(b)(1) Every person who receives a payment or allocation subject to the tax imposed by Sections 704, 871(a)(1), 881, 884, or 1446 of the Internal Revenue Code, as applicable in the U.S. Virgin Islands, from an International Insurance Company is exempt from the payment of 100 percent of such tax if the company is licensed and established in the district of St. Croix, and by 80 percent if the company is licensed and established in the district of St. Thomas and St. John.

(2) An International Insurance Company is exempt from the requirement to withhold tax pursuant to sections 1441, 1442, and 1446 of the Internal Revenue Code as applicable in the U.S. Virgin Islands to the extent that such payments are exempt from the tax described in paragraph (1).

(c) An International Insurance Company is exempt from any other taxes imposed by the U.S. Virgin Islands, including without limitation real property used in the business of the International Insurance Company, gross receipts taxes, excise taxes, and premium tax at a rate of 100 percent if the company is licensed and established in the district of St. Croix, and at a rate of 80 percent if the company is licensed and established in the district of St. Thomas and St. John.

(d) The Office of the Lieutenant Governor is authorized and directed to provide any International Insurance Company, within sixty (60) days of a request by the International Insurance Company to do so, a contract signed by the Lieutenant Governor, on behalf of the Government of the U.S. Virgin Islands, stating that the benefits of this section as they exist upon the date of the contract shall be and remain available to said International Insurance Company, and shall not be reduced, until twenty (20) years have elapsed, so long as the exempt company is:

(1) in compliance with all laws, rules and regulations of the U.S. Virgin Islands; and

(2) current in the payment of taxes and fees to the U.S. Virgin Islands. The contract shall further state that the Government shall not adopt any legislation impairing or limiting the obligation of such contract.

(e) The contract shall become effective with regard to an International Insurance Company upon its acceptance by the International Insurance Company. Such acceptance shall be indicated by the signature of an officer or the registered agent of the International Insurance Company on a copy of the contract, which copy shall be returned to the Office of the Lieutenant Governor and shall remain on file in that office.

§1416. Confidentiality

No proprietary information furnished to the SAM by any applicant or licensed International Insurance Company, any International Insurer Support Business, or any auditor, actuary, agent, broker, or other duly authorized representative acting on behalf of any applicant, licensed International Insurance Company, or International Insurer Support Business, shall be disclosed by the SAM to any party, except as follows:

- (a) to any branch of the Virgin Islands Government in lawful furtherance of the requirements of this Chapter;
- (b) to the United States Internal Revenue Service or the Virgin Islands Bureau of Internal Revenue pursuant to the laws of either jurisdiction; or
- (c) to any person pursuant to a lawful order entered by a court of the Virgin Islands or the United States, directing the SAM to disclose specified information to the requesting party.

Notwithstanding any of the foregoing, the SAM, in his discretion, shall be permitted to confirm to any party the existence, registered name, identities of registered owners and identities of registered managers, auditors, actuaries and legal counsel of any licensed International Insurance Company.

§1417. Kinds of insurance authorized

The following kinds or lines of insurance that may be underwritten by a licensed International Insurance Company subject to the provisions of this chapter shall be as follows:

- (1) "Life insurance" means every insurance upon the lives of human beings, and every insurance pertaining thereto, including the granting of endowment benefits, additional benefits in the event of death by accident, additional benefits to safeguard the contract from lapse, or the providing of a special surrender value, upon total and permanent disability of the insured, and optional modes of settlement of proceeds.
- (2) "Annuities" means all agreements to make periodic payments for a period certain or depending upon the continuance of human life or a combination of the two, except payments made under the authority of paragraph one hereof.
- (3) "Accidents and Health insurance" means (i) insurance against death or personal injury by accident or by any specified kind or kinds of accident and insurance against sickness, ailment or bodily injury, including insurance providing disability benefits except as specified in item (ii) hereof; and (ii) non-cancelable disability insurance, meaning insurance against disability resulting from sickness, ailment or bodily injury, but excluding insurance solely against accidental injury under any contract which does not give the insurer the option to cancel or otherwise terminate the contract at or after one year from its effective date or renewal date.

(4) "Fire insurance" means insurance against loss of, or damage to, any property resulting from fire, including loss or damage incident to the extinguishment of a fire or to the salvaging of property in connection therewith.

(5) "Miscellaneous property insurance" means insurance against loss of, or damage to, property resulting from:

(A) lightning, smoke or smudge, windstorm, tornado, cyclone, earthquake, volcanic eruption, rain, hail, frost and freeze, weather or climatic conditions, excess or deficiency of moisture, flood, the rising of the waters of the ocean or its tributaries;

(B) insects, or blights, or disease of such property except animals;

(C) electrical disturbance causing or concomitant with a fire or an explosion in public service or public utility property;

(D) bombardment, invasion, insurrection, riot, civil war, or commotion, military or usurped power, any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe, vandalism, or malicious mischief, strike or lockout, collapse from any cause, or explosion; but excluding any kind of insurance specified in paragraph nine hereof, except insurance against loss of, or damage to, property resulting from:

(i.) explosion of pressure vessels except steam boilers of more than fifteen pounds pressure) in buildings designed and used solely for residential purposes by not more than four families;

(ii.) explosion of any kind originating outside of the insured building or outside of the building containing the property insured;

(iii.) explosion of pressure vessels which do not contain steam or which are not operated with steam coils or steam jackets; or

(iv.) electrical disturbance causing or concomitant with an explosion in public service or public utility property;

(E) lateral or vertical subsidence of the earth caused by past or present mining operations.

(6) "Water damage insurance" means insurance against loss or damage, by water or other fluid or substance, to any property resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires or of water pipes or other conduits or containers, or resulting from casual water entering through leaks or openings in buildings or by seepage through building walls, but excluding loss or damage resulting from flood or the rising of the water of the ocean or its tributaries; and including insurance against accidental injury of such sprinklers, pumps, fire apparatus, conduits or containers.

(7) "Burglary and theft insurance" means:

(A) Insurance against loss of, or damage to, any property resulting from burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment by any person, or from any attempt thereof;

(B) Insurance against loss of, or damage to, moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers or documents, resulting from any cause, except while in the custody or possession of and being transported by any carrier for hire, or in the mail; and

(C) Insurance of individuals by means of an all-risk type of policy commonly known as the "Personal Property Floater" against any kind and all kinds of loss of, or damage to, or loss of use of, any personal property other than merchandise.

(8) "Glass insurance" means insurance against loss, of or damage to, glass and its appurtenances resulting from any cause.

(9) "Boiler and machinery insurance" means insurance against loss of, or damage to, any property of the insured, resulting from explosion of or injury to:

(A) any boiler, heater, or other fired pressure vessel;

(B) any unfired pressure vessel;

(C) pipes or containers connected with any such boilers or vessels;

(D) any engine, turbine, compressor, pump, or wheel;

(E) any apparatus generating, transmitting or using electricity; and

(F) any other machinery or apparatus connected with, or operated by, any such boilers, vessels, or machines; including the incidental power to make inspections of, and issue certificates of inspection upon, any such boilers, apparatus, and machinery, whether insured or otherwise.

(10) "Elevator insurance" means insurance against loss of, or damage to, any property of the insured, resulting from ownership, maintenance, or use of elevators, except loss or damage by fire.

(11) "Animal insurance" means insurance against loss of, or damage to, any domesticated or wild animal resulting from any cause.

(12) "Collision insurance" means insurance against loss of, or damage to, any property of the insured resulting from collision of any other object with such property, but excluding collision to or by elevators, or to or by vessels, craft, piers or other instrumentalities of ocean or inland navigation.

(13) "Personal injury liability insurance" means insurance against legal liability of the insured, and against loss, damage or expense incident to a claim of such liability including the insurer's obligation to pay medical, hospital, surgical, and disability benefits to injured persons, and funeral and death benefits to dependents, beneficiaries or personal representatives of persons who are killed, irrespective of legal liability of the insured, arising out of death or injury of any person, or arising out of injury to the economic interests of any person, as the result of negligence in rendering expert, fiduciary or professional service, but excluding any kind of insurance specified in paragraph (15) of this section, except insurance to protect an insured against liability for indemnification or contribution to a third party held responsible for injury to the insured's employee arising out of and in the course of employment when such insurance is written pursuant to this paragraph and not written pursuant to paragraph (15) of this section.

(14) "Property damage liability insurance" means insurance against legal liability of the insured, and against loss, damage or expense incident to a claim of such liability, arising out of the loss or destruction of, or damage to, the property of any other person, but not including any kind of insurance specified in paragraph (13) or (15) of this section.

(15) "Workers' compensation and employers' liability insurance" means insurance against the legal liability, under common law or statute or assumed by contract, or any employer for the death or disablement of, or injury to, his employee.

(16) "Fidelity and surety insurance" means:

(A) Guaranteeing the fidelity of persons holding positions of public or private trust; and indemnifying banks, thrifts, brokers and other financial institutions against loss of money, securities, negotiable instruments, other specified valuable papers and tangible items of personal property caused by larceny, misplacement, destruction or other stated perils including loss while being transported in an armored motor vehicle or by messenger; and insurance for loss caused by the forgery of signatures on, or alteration of, specified documents and valuable papers;

(B) Insurance against losses that financial institutions become legally obligated to pay by reason of loss of customers' property from safe deposit boxes;

(C) Any contract bond, including a bid, payment or maintenance bond or a performance bond where the bond is guaranteeing the execution of any contract other than a contract of indebtedness or other monetary obligation;

(D) An indemnity bond for the benefit of a public body, railroad, or charitable organization; a lost security or utility payment bond;

(E) Becoming surety on, or guaranteeing the performance of, any lawful contract, not specifically provided for in this paragraph, except (i) mortgage guaranty insurance as defined in paragraph (23) of this section, or (ii) a contract that falls within the definition of financial guaranty insurance as defined in paragraph (25) of this section; and

(F) Becoming surety on, or guaranteeing the performance of, bonds and undertakings required or permitted in all judicial proceedings or otherwise by law allowed, including surety bonds accepted by states and municipal authorities in lieu of deposits as security for the performance of insurance contracts.

(17) "Credit insurance" means:

(A) Indemnifying merchants or other persons extending credit against loss or damage resulting from nonpayment of debts owed to them for goods and services provided in the normal course of their business, including the incidental power to acquire and dispose of debts so insured, and to collect any debts owed to such insurer or to the insured, but no insurance may be written as credit insurance if it falls within the definition of financial guaranty insurance as defined in paragraph (25) of this section;

(B) Indemnifying any person for expenses disbursed or to be disbursed under a contract in connection with the cancellation of a catered affair; or

(C) Indemnifying any person for tuition expense disbursed or to be disbursed under a contract in connection with his dismissal or withdrawal from an educational institution; or indemnifying elementary or secondary schools, whether public, private, profit or nonprofit, providing education in consideration of a tuition charge or fee, against loss or damage in the event of nonpayment of the tuition charges or fees of a student or pupil dismissed, withdrawn, or leaving before the end of the school year for which the insurance is written.

(18) "Title insurance" means insuring owners of, and other persons lawfully interested in, real property and chattels real against loss by reason of defective titles and encumbrances, and insuring the correctness of searches for all instruments, liens, or charges affecting the title to such property, including power to procure and furnish information relative thereto, and such other incidental powers as are specifically granted in this chapter.

(19) "Motor vehicle and aircraft physical damage insurance" means insurance against loss of or damage to motor vehicles or aircraft and their equipment resulting from any cause; and insurance reimbursing a driver for costs including replacement car rental, commercial transportation and accommodations resulting from an automobile accident or mechanical breakdown occurring fifty miles or more from the driver's principal place of residence or garaging.

(20) "Marine and inland marine insurance" means insurance against any and all kinds of loss of, or damage to:

(A) Vessels, hulls, crafts, aircrafts, cars, automobiles, trailers, and vehicles of every kind, and all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit, or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed, or similarly prepared for reshipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks;

(B) Person or property in connection with or appertaining to marine, inland marine, transit or transportation insurance, including liability for loss of, or damage to either, arising out of, or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance, but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of ownership, maintenance or use of automobiles;

(C) Precious stones, jewels, gold, silver, and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise; and

(D) Bridges, tunnels and other instrumentalities of transportation and communication excluding buildings, their improvements and betterments, furniture and furnishings, fixed contents and supplies held in storage, including auxiliary facilities and equipment attendant thereto; piers; wharves, docks and slips; other aids to navigation and transportation, including dry docks and marine railways.

For purposes of this chapter, "inland marine" insurance shall not include insurance of vessels, craft, their cargoes, marine builders' risks, commonly insured only under ocean marine insurance policies.

(21) "Marine protection and indemnity insurance" means insurance against, or against legal liability of the insured for loss, damage, or expense arising out of or incident to, the ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death, or for loss of, or damage to, the property of another person.

(22) "Residual value insurance" means insurance issued in connection with a lease or contract which sets forth a specific termination value at the end of the term of the lease or contract for the property covered by such lease or contract, and which insures against loss of economic value of tangible personal property or improvements thereto except loss due to physical damage to property.

(23) "Mortgage guaranty insurance" means insurance against financial loss by reason of nonpayment of any sum required to be paid under the terms of any instrument of indebtedness secured by a lien on real estate.

(24) "Credit unemployment insurance" means insurance on a debtor in connection with a specified loan or other credit transaction outside this Territory to provide payments to a creditor in the event of unemployment of the debtor for the installments or other periodic payments becoming due while a debtor is unemployed.

(25) "Financial guaranty insurance" means a surety bond, insurance policy or indemnity contract, and any guaranty similar to the foregoing, under which loss is payable, upon proof of occurrence of financial loss, to an insured claimant, obligee or indemnitee as a result of any of the following events:

(A) failure of any obligor on any debt instrument or other monetary obligation including common or preferred stock guaranteed under a surety bond, insurance policy or indemnity contract to pay when due, principal, interest, premium, dividend, or purchase price of or on, or other amounts due with respect to such instrument or obligation when such failure is the result of a financial default or insolvency, regardless of whether such obligation is incurred directly or as guarantor by or on behalf of another obligor that has also defaulted;

(B) changes in the levels of interest rates, whether short or long term or the differential in interest rates between various markets or products;

(C) changes in the rate of exchange of currency;

(D) changes in the value of specific assets or commodities, financial, or commodity indices, or price levels in general; or

(E) other events which the Commissioner determines are substantially similar to any of the foregoing.

(26) "Other or Substantially similar kind of insurance" means such insurance as the Commissioner determines to be substantially similar to one of the foregoing kinds of insurance and which, upon such determination, shall be deemed to be included in that kind of insurance or such other lines of insurance as the Commissioner deems appropriate for licensing.

§1418. Rules and Regulations

The SAM may establish, and from time to time amend, such rules and regulations relating to International Insurance Companies and International Insurer Support Businesses as are necessary to enable the SAM to carry out the provisions of this chapter.

§1419. Penalties

Violation of any provision in this chapter shall be subject to the penalties provided for in chapter 1, section 7 of this Title.

§1422. Preservation of Right

Notwithstanding any provision to the contrary, any existing and licensed International Insurance Company and International Insurer Support Business on the effective date of this section shall not be subject to any amended provisions enacted herewith that may adversely affect, impair, or limit the benefits provided prior to the amendments enacted herewith.

Subchapter II. Protected Cell Exempt International Insurance Company**§1431. Purpose**

The purpose of this subchapter is to provide a basis for the creation of protected cells by an Exempt International Insurer for one or more of the following uses:

- (a) As one means of accessing alternative sources of capital and alternative vehicles for insurance programs;
- (b) For providing some or all of the benefits of an international insurance company for insureds for which the creation of a stand-alone international insurance company is not feasible or practical;
- (c) As one means of providing access to a program of insurance.

§1432. Definitions

As used in this Subchapter:

- (a) "Commissioner" means the Commissioner of Insurance.
- (b) "Company" means Protected Cell Company.
- (c) "General Account" means the assets and liabilities of a protected cell company other than Protected Cell Assets and Protected Cell Liabilities.
- (d) "International Insurance Company" means an insurance company established under the provisions of this chapter.

(e) "Protected Cell" means an entity created either by the allocation of one or more shares in an International Insurance Company, or as a separate corporation subject to an operating agreement with an International Insurance Company. A protected cell shall have attributed to it assets and liabilities that are segregated and insulated from the assets and liabilities of the International Insurance Company that formed it and of all of the other protected cells that have been or may be formed by that International Insurance Company pursuant to the provisions of this subchapter.

(f) "Protected Cell Account" means a specifically identified bank or custodial account established by a Protected Cell for the purpose of physically segregating the Protected Cell Assets of one Protected Cell from the Protected Cell Assets of other protected cells within the same company and from the assets of the International Insurance Company with which it is associated. A Protected Cell may hold assets, including but not limited to, real estate and shares in any other corporation, in which case the title to such assets will be held in the name of the Protected Cell and will form part of its Protected Cell Account.

(g) "Protected Cell Assets" means all assets identified with and attributable to a specific protected cell of a Protected Cell Company, including assets physically segregated in a Protected Cell Account.

(h) "Protected Cell Company" means an International Insurance Company which has one or more Protected Cells.

(i) "Protected Cell Liabilities" means all liabilities identified with and attributable to a specific Protected Cell Company.

(j) "SAM" means the Superintendent of Alternative Markets of the Office of the Commissioner of Insurance, Division of Alternative Markets and International Reinsurance, or the SAM's designee as established in VI Code Title 22 Chapter 4.

§1433. Establishment of protected cells

(a) An International Insurance Company may establish one or more protected cells with prior written approval of the SAM of a plan of operation for each protected cell and either:

(1) by the allocation of one or more shares in the International Insurance Company to the owners of the cell. Such shares may be, or be part of, a special series of shares and may be ordinary or preferred shares, with or without voting rights. There shall be a shareholders agreement that sets out the terms under which the cell operates and such agreement shall be approved by the SAM prior to its coming into effect; or

(2) by the incorporation of a separate corporation the sole purpose of which is to function as a cell of the International Insurance Company and which is bound by the terms of an operating agreement between the cell corporation and the International Insurance Company with which it is associated.

(b) Upon the written approval of the SAM the International Insurance Company may, in accordance with the approved plan and agreements allocate shares or incorporate a corporation to form one or more Protected Cells. Upon establishment of each cell the International Insurance Company may attribute to the Protected Cell both assets and insurance obligations to allow it to conduct its business in accordance with said plan and agreement.

(c) Each Protected Cell of a Protected Cell Company shall have its own distinct name or designation, which shall include the words: "Protected Cell." The Company shall transfer all physical assets attributable to each Protected Cell to one or more separately established and identified Protected Cell Accounts, bearing the name or designation of that Protected Cell. Protected Cell Assets shall be held in such Protected Cell Accounts for the purpose of satisfying the obligations of that Protected Cell.

(d) All sales, exchanges, transfers, or other attributions of assets or liabilities between a Protected Cell and the General Account or between other Protected Cells shall be in accordance with the plan of operation approved by the Commissioner or shall be otherwise approved by the Commissioner. Unless otherwise approved by the Commissioner, no sale, exchange, transfer, or other attribution of assets or liabilities may be made by a Company between any of its Protected Cells or between the Company's General Account and one or more of its Protected Cells unless, in the case of attribution to a Protected Cell, the attribution is made solely to establish the Protected Cell or, in the case of an attribution from a Protected Cell to the Company's General Account the attribution is made solely to support the Company's insurance obligations which are the subject of the business of the Protected Cell. Any sale, exchange, transfer, or other attribution of assets and liabilities between a General Account and a Protected Cell or between Protected Cells shall be in cash or readily marketable securities with established market values unless otherwise approved in advance in writing by the Commissioner.

(e) Each Protected Cell shall pay to the Alternative Market and International Reinsurance Revolving Fund a separate nonrefundable fee of not to exceed \$500 for examining, investigating and processing its application for approval by the SAM, and the SAM is authorized to retain legal, financial, actuarial and other services needed to review the application, the reasonable cost of which may be charged against the applicant. Such examination need not include an actuarial review if an independent actuary certification has been presented with the application, unless the SAM has reasonable cause to require further actuarial certification. In addition, the Protected Cell shall pay an annual license fee commencing with the year of registration, such fee being first payable within 30 days of the date on which approval is granted and on or before 30th January of each calendar year for which such approval remains in effect, except that the first annual fee may be reduced in proportion to the period remaining from the date on which approval is granted to the end of that calendar year. The amount of such application and licensing fees shall be set by the SAM and shall be set forth in regulations to be

published by the SAM in accordance with Virgin Islands Code, Title 3, Chapter 35. Such fees may be altered from time to time in the discretion of the SAM.

(f) The creation of a Protected Cell does not create, in respect of that Protected Cell, a legal person separate from the Company. Amounts attributed to a Protected Cell under this subchapter, including assets transferred to a Protected Cell Account, are owned by the Company and Company may not be, nor hold itself out to be, a trustee with respect to those Protected Cell Assets or that Protected Cell Account. Notwithstanding the foregoing, the Company may allow for a security interest to attach to Protected Cell Assets or a Protected Cell Account when in favor of a creditor of the Protected Cell and otherwise allowed under applicable law.

(g) A Protected Cell that is formed as a corporation is a separate legal entity that is bound by its own bylaws and by agreement with the International Insurance Company that formed it. Each corporate Protected Cell shall have at least three directors, one of whom shall be appointed by the International Insurance Company that incorporated it. Each corporate protected cell shall be a taxable entity in its own right and may make an Exempt Company Election under VI Code Title 13 Chapter 14 to be an exempt company subject to the provisions of such title and shall be entitled to the rights and tax benefits provided in Section 1415 of this chapter.

(h) Nothing in this subchapter shall be construed to prohibit the Company from contracting with or arranging for an investment advisor, commodity trading advisor, or other third party to manage the Protected Cell Assets of a Protected Cell, provided that all remuneration, expenses, and other compensation of the third party advisor or manager be payable from the Protected Cell Assets of that Protected Cell and not from the Protected Cell Assets of other Protected Cells or the assets of the Company's General Account. Any such contract shall clearly reference the Protected Cell or the cells for which the contract has been arranged and shall contain a nonrecourse provision in favor of the Company that prohibits the contracting party from seeking recourse against, or attaching, the assets of the General Account, or the assets of another Protected Cell, to satisfy the obligations of any one or more Protected Cells which are the subject of such contract.

(i) Any International Insurance Company which is a Protected Cell Company shall establish such administrative and accounting procedures as are necessary to properly identify the one or more Protected Cells of the Company and the Protected Cell Assets and Protected Cell Liabilities attributable thereto. It shall be the duty of the Directors of a Protected Cell Company to: 1) keep Protected Cell Assets and Protected Cell Liabilities separate and separately identifiable from the assets and liabilities of the Company's General Account; and 2) to keep Protected Cell Assets and Protected Cell Liabilities attributable to one Protected Cell separated and separately identifiable from the Protected Cell Assets and Protected Cell Liabilities attributable to other Protected Cells. Notwithstanding the foregoing, and subject to the provisions of this subchapter, the remedy of tracing shall be applicable to Protected Cell Assets when commingled with Protected Cell Assets of other Protected Cells or the assets of the Company's General Account.

(j) The Protected Cell Company shall, when establishing a Protected Cell, attribute to the Protected Cell assets with a value at least equal to the reserves and other insurance liabilities attributed to that Protected Cell.

§1434. Use and operation of protected cells

(a) The Protected Cell Assets of any Protected Cell may not be charged with liabilities arising out of any other business of the International Insurance Company that formed it or of any of the other Protected Cells that are or may be formed by that International Insurance Company. All contracts or other documentation reflecting obligations of a Protected Cell to the General Account shall clearly indicate that only the assets of the Protected Cell are available for the obligations of the Protected Cell.

(b) Unless otherwise approved by the SAM, assets attributed to a Protected Cell must be valued at their market value on the date of valuation, or if there is no readily available market, then as provided in the contract or the rules or other written agreement applicable to the Protected Cell.

(c) The income, gains and losses, realized or unrealized, from Protected Cell Assets and Protected Cell Liabilities must be credited to or charged against the Protected Cell without regard to other income, gains, or losses of the International Insurance Company that formed it, including income, gains, or losses of other Protected Cells. Amounts attributed to any Protected Cell and accumulations thereon may be invested and reinvested at the discretion of the International Insurance Company that formed it and the investments in any Protected Cell or Cells may not be taken into account in applying the investment limitations otherwise applicable to the investments of the International Insurance Company that formed it.

(d) In all cases where a Protected Cell engages in an insurance securitization or reinsurance transaction, the financial instrument or reinsurance agreement effecting such securitization or transaction shall contain provisions identifying the Protected Cell to which the securitization or transaction will be attributed. In addition, the financial instrument or reinsurance agreement shall clearly disclose that the assets of that Protected Cell are only available to pay obligations of that Protected Cell. Notwithstanding the foregoing, and subject to the provisions of this Act and any other applicable law, rule or regulation, the failure to include such language in the financial instrument or reinsurance agreement shall not be used as the sole basis by creditors, reinsurers, or other claimants to circumvent the provisions of this subchapter.

(e) At the cessation of business of a Protected Cell, and in the absence of any placement under administrative supervision or order of rehabilitation or liquidation attributable to that Protected Cell or the Protected Cell Company, the Protected Cell Company shall voluntarily wind up the Protected Cell in accordance with a plan approved by the SAM.

§1435. Reach of creditors

(a) Protected Cell Assets shall only be available to the creditors of the Company who are the creditors in respect of that Protected Cell and shall thereby be entitled, in conformity with the provisions of this subchapter, to have recourse to the Protected Cell Assets attributable to that Protected Cell, and shall be absolutely protected from the creditors of the Company who are not creditors in respect of that Protected Cell and, who accordingly, shall not be entitled to have recourse to the Protected Cell Assets attributable to that Protected Cell. Creditors of a Protected Cell shall not be entitled to have recourse against the Protected Cell Assets of other Protected Cells or the assets of the Company's General Account.

(b) Where an obligation of a Protected Cell Company to a person arises from a transaction, or is otherwise imposed, in respect of a particular Cell, (1) that obligation of the Company shall extend only to, and the person shall, in respect of that obligation, be entitled to have recourse only to the Protected Cell Assets attributable to that Protected Cell, and (2) that obligation of the Company shall not extend to, and that person shall not, in respect of that obligation, be entitled to have recourse to the Protected Cell Assets of any other Protected Cell or the assets of the Company's General Account.

(c) Where an obligation of a Protected Cell Company relates solely to the General Account, the obligation of the Company shall extend only to, and that creditor shall, in respect of that obligation, be entitled to have recourse only to the Company's General Account.

(d) A Protected Cell shall only be authorized to assume an insurance obligation directly from another Protected Cell or the Company's General Account and under no circumstances shall a Protected Cell be authorized to issue insurance policies or contracts directly to policyholders or have any obligation to the policyholders of the Company's General Account. Nothing in this section shall affect the activities or obligations of a Company's General Account.

(e) In no event shall the establishment of one or more Protected Cells alone constitute or be deemed to be a fraudulent conveyance, an intent by the Company to defraud creditors or the carrying out of business by the Company under any other fraudulent purpose.

§1436. Conservation, rehabilitation or liquidation of protected cell companies

(a) Notwithstanding any contrary provision of this title, the rules and regulations promulgated thereunder, or any other applicable law or regulation, upon any order of conservation, rehabilitation, or liquidation of a Protected Cell Company, the receiver shall be bound to deal with the Protected Cell Company's assets and liabilities, including Protected Cell Assets and Protected Cell Liabilities, in accordance with the requirements set forth in this subchapter.

(b) With respect to amounts recoverable under any insurance securitization or reinsurance transaction entered into or outstanding in any Protected Cell Company the amount recoverable by the receiver shall not be reduced or diminished as a result of the placement under an order of conservation, rehabilitation, or liquidation of a Protected Cell Company or any of its Protected Cells, notwithstanding any provisions to the contrary in the financial instrument governing such securitization, insurance or reinsurance transaction.

§1437. Authority to adopt regulations

The SAM may promulgate rules and regulations necessary to effectuate the purposes of this Act.”

SECTION 6. Notwithstanding any provisions of law to the contrary, all Exempt International Insurers and International Insurance Support Business formed under prior existing statutory provisions, including the International Insurers Act of 1993 and other Alternative Market Insurers formed under Act No. 7025 of 2008 shall continue to be granted the same rights, benefits, privileges and obligations provided under such pre-existing applicable laws and as may be granted in this Act, provided such rights, benefits, privileges and obligations are not inconsistent with any contract of benefits granted to such entity. To the degree that the provisions of this Act are more beneficial to any such pre-existing entity, the entity may utilize the more beneficial provisions of this Act; such entities shall not be subject to any amended provisions enacted herewith that may adversely affect, impair or limit the benefits provided prior to the amendments enacted herewith.

SECTION 7. The Virgin Islands International Insurers Act shall become effective thirty (30) days from enactment.

Thus passed by the Legislature of the Virgin Islands on November 19, 2013.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 22nd Day of November, A.D., 2013.



A handwritten signature in black ink, reading "Shawn-Michael Malone".

Shawn-Michael Malone
President

A handwritten signature in blue ink, reading "Janette Millin Young".

Janette Millin Young
Legislative Secretary

