# Proposals for Amendment of the Insurance Act

# Central Bank of Trinidad and Tobago

## Contents[1]



[1] Most of the proposals would require amendment of the Insurance Act. Those that would require amendment of the Central Bank Act or the Financial Institutions Act, in some cases in conjunction with an amendment of the Insurance Act, are marked with an asterisk (*) in the Contents and headings.

# A. Introduction

Given the dynamic nature of the financial system of Trinidad and Tobago and the constant changes occurring in the international arena as a result of globalization and liberalization, it became necessary to review the Insurance Act, Chap 84:01 (IA) to ensure that the legislation in place supported the dynamism of the financial sector.

This paper presents proposals for amending the IA whilst taking into consideration all of the following:-

- developments in the financial markets;
- the experience of both the former Supervisor of Insurance and the Central Bank in conducting supervision under the existing IA;
- international best practices;
- the need to harmonize certain areas of the IA with the recently enacted Financial Institutions Act 2008 to prevent regulatory arbitrage; and
- the peculiar nature of the insurance industry in Trinidad and Tobago; and
- the Government of Trinidad and Tobago's objectives for development of the financial sector.

Regarding the last bullet, the Government's White Paper[2] establishes the vision for Trinidad and Tobago to become the Pan Caribbean Financial Centre and clearly points to the need for a solid regulatory framework to support this vision. This need is reinforced by the International Monetary Fund (IMF) which called for the strengthening of international regulatory standards and better implementation of the existing standards.

In consideration of international best practices, the Insurance Core Principles (ICPs) developed by the International Association of Insurance Supervisors (IAIS) were examined as well as the manner in which various issues have been addressed in other countries' insurance legislation.

Under the IA, the Central Bank is also responsible for the supervision of pension plans. First among the White Paper's recommendations for the pension industry is "consolidate and modernize, where possible and practical, the various pieces of legislation and the fragmented regulations that govern the industry." Efforts are underway to implement this recommendation, which will result in a separate paper dealing with pension legislation. Accordingly, this paper makes no recommendations with respect to Part VI of the IA which deals with pension plans. However, some of the proposed amendments to other Parts of the IA will affect the supervision of pension plans, at least until new legislation is enacted to govern the industry.

In early 2005 the IMF and the World Bank reviewed the adequacy of the regulatory framework as part of their Financial Sector Assessment Program (FSAP) and identified

2 Ministry of Finance, 2004, "Reform of the Financial System of Trinidad and Tobago – A White Paper", (June) (Port-of-Spain).

additional areas that required strengthening. A further review was conducted by the IMF in 2010 and t he need to advance these proposals into legislation was again emphasized.

The IA is fundamentally unchanged since its enactment in 1980, although amendments were made as part of the Insurance (Amendment) Act, 2004, which transferred the responsibility for the supervision of insurance companies and pension plans to the Central Bank.

The substantive amendments to Section 205 of the IA strengthened the binding nature of a decision, direction, ruling, etc. of the supervisory authority. Prior to the amendment, the filing of an appeal by the insurance company automatically resulted in the suspension of the supervisory decision.

The proposals outlined in this paper strive to correct the weaknesses that have been identified in the current regulatory framework and to create a framework capable of supporting the longer-term vision for the financial system.

The paper is organized as follows:

- Part A is the introduction;
- Part B provides an executive summary of the proposed areas for reform; and
- Part C sets out the proposals for amending the IA and the rationale for the amendments.

# B. Executive Summary

**Urgent and Critical Amendments**

In February 2009 in order to urgently respond to more significant weaknesses identified in the IA as a consequence of developments in the insurance industry, certain proposals were fast tracked. These urgent and critical amendments which are now law –

- Enhance the provisions governing assets to be placed in the statutory fund by requiring insurance companies carrying on long term insurance business and or motor vehicle insurance business to have sufficient assets in their statutory fund to meet their policyholder liabilities as established in the quarterly returns.
- Strengthen the provisions to afford the Central Bank access to the premises of an insurance company
- Replace the intervention process which was time consuming and hindered the effectiveness of the regulatory process with a more flexible regime which allows the Central Bank to issue compliance directions.
- Replace the costly and time consuming process of judicial management with the suspension process which facilitates remedial regulatory action.
- Allow the Central Bank to share information with other regulators both within Trinidad and Tobago as well as other jurisdictions where insurance companies registered in Trinidad and Tobago also conduct business;

**The Proposed Reform**

In considering the framework necessary to effectively supervise the insurance sector, it was necessary to consider not only the provisions of the IA but also the effect of other legislation, such as the Central Bank Act, the Companies Act, the Securities Industry Act, the Financial Institutions Act and the Proceeds of Crime Act. The legislation of other countries was examined, both in the interest of contributing to regional harmonization and to identify best practices. The ICPs provided an essential point of reference for evaluating the adequacy and appropriateness of both the existing framework and potential changes that have been considered. Industry comments on these proposals have also been taken into consideration.

The proposals have been organized under five main categories: the supervisory system; the supervised entity; on-going supervision; prudential requirements; and markets and consumers. Highlights of the proposals within each category are summarized below.

Proposals related to **the supervisory system** would:
- More clearly establish the Central Bank's supervisory objectives and mandate;
- Strengthen the ability of the Inspector to operate without inappropriate interference;
- Facilitate the timely enactment of regulations and adoption of guidelines;

- Enable the Central Bank to share supervisory information with other supervisory agencies and the Financial Intelligence Unit; and
- Protect the Central Bank against lawsuits for actions taken in good faith.

Proposals related to **the supervised entity** would:
- Enhance the Central Bank's ability to deal with unauthorized activities;
- Increase the minimum share capital required of an insurer to a level commensurate with that needed to establish a viable operation;
- Enable foreign insurers to establish representative offices;
- Provide for more effective oversight of the establishment, acquisition and operation of subsidiaries, foreign branches and representative offices by insurers;
- Facilitate the oversight of ownership by introducing the concept of a significant shareholder—with 20 percent of the voting power—and raising the threshold for defining a controlling shareholder (from 33 1/3 percent of the voting power to 50 percent);
- Require insurers to provide the Central Bank with a list of persons with holdings of five percent or more of issued share capital, on a quarterly basis;
- More effectively protect insurers from group risk by requiring separation of the financial and non-financial activities of a group through the establishment of a financial holding company, where this is necessary in the opinion of the Central Bank;
- Limit the exposure of policyholders to risks related to other dissimilar classes of insurance by prohibiting the registration of additional insurers as composite companies;
- Strengthen the ability to ensure that key functionaries are fit and proper; and
- Promote better corporate governance by requiring audit committees and annual reporting by directors and senior management, and prescribing additional responsibilities for directors, auditors and actuaries.

Proposals related to **on-going supervision** would:
- Broaden the scope and enhance the quality of financial information regularly provided to the Central Bank and disclosed to the public;
- Enhance the Central Bank's ability to obtain additional information from insurers, affiliates, controlling and significant shareholders;
- Enable the Central Bank to conduct consolidated supervision, for example by broadening its powers to inspect subsidiaries and offshore operations of insurers;
- Provide the tools to restrict or limit connected party transactions;
- Extend the range of preventive and corrective measures available to the Central Bank and make it easier to apply such measures when necessary; and
- Provide for fairer and more orderly exit from the market, for example by clearly establishing a high priority for policyholders to the assets of an insurer that is winding-up.

Proposals related to **prudential requirements** would:
- Enable the Central Bank to impose risk-based capital adequacy requirements;

- Enable the Central Bank to establish prudential requirements on a group basis;
- Provide the Central Bank with more effective oversight of significant investments;
- Comprehensively define credit exposure and provide for more effective control and reporting of large exposures;
- Modify the definition of a connected party and restrict an insurer's exposures to such parties; and
- Under certain conditions, enable insurers to enter into credit exposures where the counterparty will be using the funds to acquire shares of the insurer.

Proposals related to **markets and consumers** would:
- Enhance the protection of consumers with respect to funds handled by intermediaries;
- Explicitly require insurers to follow fair claims settlement practices;
- Establish rules to govern the designation of beneficiaries and clearly define their rights; and
- Reinforce the ability of insurers to combat insurance fraud, money laundering and terrorist financing, for example, through exchanges of information.

**Constitutional Requirements**

Given the nature and number of amendments being proposed, some of which may impinge on constitutional rights relating to property and or a fair hearing, the intent is to approach Parliament with a new Insurance Bill and seek its passage by way of a special majority i.e. three fifths of the members of both Houses of Parliament.

**Consequential Amendments**

It is probable that some proposals in the policy document would also require related and consequential amendments to the Central Bank Act.

# C. Proposals for Amendment

In developing the proposals for amendment the following legislation is relevant:

- The Central Bank Act;
- The Companies Act, 1995;
- The Securities Industry Act, 1995;
- The Financial Institutions Act, 2008; and
- Proceeds of Crime Act, 2000.

The Companies Act, 1995 (Companies Act) requires of companies far more detailed disclosure of financial and other information than does the IA. It also imposes more stringent duties on directors and officers of a company and provides more civil remedies and wider powers of the Court to deal with protection of creditors and winding-up provisions. All insurers are required to take the form of a company and hence to comply with the requirements of the Companies Act[3]. This has been taken into account when developing the proposed amendments of the IA.

The Securities Industry Act, 1995 (SIA) established a Securities Exchange Commission and provides for the regulation of the securities market in Trinidad and Tobago. Some insurers are subject to the SIA since they are involved in some way in the securities market. SEC regulations pertain primarily to disclosure requirements.

The Financial Institutions Act, 2008 (FIA) governs the activities of banks and non-bank financial institutions (NFIs) and provides for their supervision by the Central Bank. The powers and responsibilities of the Central Bank under the FIA are to some extent similar in nature to those under the IA. Likewise, there are many commonalities in the types of requirements applicable to persons subject to the IA and those subject to the FIA which make a strong case for harmonization provisions to treat with like circumstances. Moreover, the existence of groups that include both insurance companies and banks or NFIs provides another compelling reason for harmonizing the provisions of the IA and the FIA where relevant. Consequently, an objective of these proposals is to achieve greater harmonization between the IA and the FIA where practicable.

A major part of the review exercise involved examining the insurance legislation of other countries. In the interest of contributing to regional harmonization, the legislation of Barbados, the Eastern Caribbean Countries and Jamaica was reviewed. To identify best practices, the focus was on the legislation of Australia, Canada, the United Kingdom and the United States, although the legislation of various other countries was also reviewed.

Proposals for a new IA should provide a good framework and incentive for insurers and intermediaries to meet global operating standards, which are designed to enhance

[3] Foreign insurance companies carrying on business in Trinidad and Tobago through a branch are not subject to the Companies Act. However, a branch of the foreign insurer would not be registered unless the foreign insurer is a company based in a jurisdiction where supervision is acceptable to the Central Bank.

governance and risk management. It should also provide adequate powers to the regulatory authority to deal with the changes taking place in an evolving financial system. The current IA falls short of these objectives.

# *1 The Supervisory System*

ICP 1 requires that a suitable legal framework exists.

It is proposed that a new section be included in IA which states that where the provisions of the IA are inconsistent with or conflict with any other law of Trinidad and Tobago, with the exception of the Central Bank Act, the provisions of the IA will prevail in relation to an insurer, intermediary or any other person subject to the IA, unless expressly provided to the contrary in the IA or such other law.

## 1.1 Objectives *

ICP 2 requires that the principal objectives of insurance supervision be clearly defined.

Currently, the fundamental supervisory mandate of the Central Bank is set out in the IA (section 4). The statement is very brief, giving the Central Bank the authority to administer the IA.

In order to more clearly describe the responsibilities and objectives, it is proposed that these references be expanded. The proposed wording strives to provide a broad, yet reasonably concise, description of possible objectives and mandate of the Inspection function of the Central Bank. It has been written as it might appear in section 5 of the IA.

The Central Bank shall be responsible for the general administration of this Act, the supervision of registrants, and shall have the powers and duties conferred on it by this Act and the Central Bank Act.

The primary objective of the Central Bank, in respect of registrants, shall be to maintain confidence in, and promote the soundness and stability of, the financial system in Trinidad and Tobago.

Other objectives of the Central Bank, in respect of registrants, are to:
(a) promote the existence of efficient and fair insurance markets;
(b) maintain an appropriate level of protection for policyholders and beneficiaries of insurers; and
(c) ensure compliance of insurers and intermediaries with legislation and Regulations to combat money laundering and terrorist financing.

It is proposed that the IA include a definition of consumer[4], as follows:

"Consumer" means a person who:
(a) uses or has used any of the services provided by a registrant carrying on activities regulated under the Insurance Act;
(b) has rights that are derived from, or are otherwise attributable to, the use of any such services by other persons; or
(c) has rights that may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them.

The Central Bank is required to report to the Minister on various matters, such as:
- the operations of the IA and registrants ;
- its financial statements ;
- the operations of the FIA and licensees ; and
- developments and activities that affect banking and financial businesses.

The Central Bank prepares such reports annually and after the Minister tables them in Parliament, they are published. Consistent with the above proposal and the transparency encouraged by the ICPs, it is proposed that the Act be appropriately amended to require the Central Bank to include in its reports information regarding its performance in meeting its objectives.

Section 7 of the IA requires the Central Bank to furnish its report within three months of the end of each calendar year. The report is to cover the working of the IA during the year and include summaries of certain documents lodged with the Central Bank during the year. This means that industry financial information contained in the report could be out of date, e.g., a report made in March 2007 would contain financial information relating to 2005.

In order to provide for more relevant official reporting of industry financial information by the Central Bank, it is proposed that the Central Bank be required to report annually, without specifying the date of the report. This would enable the Central Bank to report more promptly on industry financial information from the most recent year. For example, it might report by September 30 of each year, with the report including industry financial information related to the prior year. Paragraph 1.5.2 includes further proposals for enhancing the availability of information.

In addition, there are several references to days in the IA. In the interest of certainty, it is therefore proposed that the IA include a provision that any reference to "days" means working days, unless expressly stated otherwise.

[4] Similar to the definition of consumers in the UK Financial Services and Markets Act.

## 1.2 Operational Independence of the Inspector *

ICP 3 requires that supervisory agencies possess operational independence. Related criteria suggest that there be explicit procedures regarding the appointment and dismissal of the head of the agency and, if removed, the reasons must be publicly disclosed. The relevant provisions of the IA and CBA do not meet these criteria.

Section 3 of the IA defines the Inspector as "the Inspector of Financial Institutions appointed pursuant to section 7 of the Financial Institutions Act, 2008". In the FIA, subsection 7(1) states: "The President shall, upon the recommendation of the Governor, appoint a fit and proper person to be Inspector of Financial Institutions who shall be an officer of the Central Bank"; and subsection 7(2) states: "The Inspector shall be appointed to hold office for such period as the President may fix in the instrument of appointment, which term may be extended until his successor is appointed."

Section 7(3) of the CBA states: "the term of office of a Deputy Governor shall be for such a period as the President may fix in the instruments of appointment". The position of Inspector is comparable with that of a Deputy Governor.

Both the FIA and the IA refer variously to the "Central Bank", "Board", "Governor" and "Inspector". In some cases, it is intended that the Board or Governor play a role in confirming major supervisory decisions, such as the withdrawal of an insurer's registration. Therefore, it is proposed that similar to the FIA the responsibilities of the Central Bank, Board, Governor and Inspector be rationalized in the IA in the interest of ensuring operational independence and facilitating supervisory efficiency and effectiveness.

## 1.3 Power to Make Regulations and Guidelines

ICP 3 requires that supervisory agencies have adequate powers, while a related criterion refers specifically to the power to issue and enforce rules by administrative means.

In most jurisdictions, there are several levels of requirements that apply to regulated financial services. Although the categories and terminology differ somewhat, the main categories could be referred to as:

(a) Acts – primary legislation, enacted by elected political representatives;

(b) Regulations – subsidiary requirements having the force of law; often issued by a government ministry, but sometimes by a supervisory authority;

(c) Guidelines – statements of practices with which compliance is expected; non-compliance is not a legal offence, although it may constitute cause for supervisory intervention; issued by a supervisory authority.

Section 214 of the IA empowers the Minister to "make such Regulations as he considers necessary for the purpose of giving effect to this Act…", but does not state whether this power is subject to positive or negative resolution. Similar to the FIA, it is therefore proposed that Regulations made under the IA be subject to the negative resolution of Parliament. In addition, it is recommended that new proposals be included in the IA that explicitly provides the Central Bank with the power to issue guidelines.

Therefore, it is proposed that the IA provide:

(a) As is currently the case, the Minister on the recommendation of the Central Bank may make Regulations on any topic considered necessary to give effect to the Act, and repeal or amend existing Regulations.

(b) Regulations shall be subject to negative resolution of Parliament.

(c) A breach of any requirement would constitute an offence once established in either the Act or a Regulation.

(d) The Central Bank may make guidelines on any topic considered necessary to give effect to the Act, to enable the Central Bank to meet its objectives, to ensure compliance with legislation to prevent money laundering and to combat the financing of terrorism, and to regulate the market conduct of registrants.

(e) While non-compliance with a guideline would not constitute an offence, it could provide the basis for the Central Bank to take, or require persons subject to the Acts to take, preventive or corrective measures to deal with situations of financial weakness, inadequate controls or risk management or such other situations which may be considered ‘unsafe or unsound practice”.

The proposal would enable the Central Bank to issue guidelines on operational, prudential and market conduct matters, with which insurers and intermediaries would be expected to comply. Guidelines would normally be in accordance with internationally accepted insurance practice.

As is now customary, the Central Bank would consult with insurers and other persons likely to be affected when developing or amending Regulations and guidelines. However, where urgent action is required, the Minister may issue or amend a Regulation or the Central Bank may issue or amend a guideline or Regulation without formal consultation. The Central Bank will be required to subsequently consult with the registrants and other persons who may have been affected by the guideline or amendment. In the case of a Regulation, the Minister shall publish his reasons for doing so in the Gazette and at least two daily newspapers and also subsequently consult with the registrants and other persons who may have been affected by the Regulation or amendment.

The ability to make guidelines will provide flexibility in responding to the rapidly changing financial landscape. The ability to bypass consultation, with disclosure of the reasons for doing so, will enable the Central Bank to deal promptly with urgent matters.

## 1.4 Use of Supervisory Information

ICP 5 provides that the supervisory authority should cooperate and share information with other relevant supervisors subject to confidentiality requirements. Many of the ICPs refer to the need to share information in order to supervise effectively, such as ICP 17, which highlights its importance to group-wide supervision.

### 1.4.1 Sharing of Information *

Cross border supervision concerns the needs of authorities supervising one or more members of a regional or international group to get up-to-date information on the activities and performance of the entities in the group that are located in another country. Inability to carry out cross border onsite inspection by home supervisors is a serious handicap. The early sharing of information is recognised as necessary to prevent potential problems from becoming serious.

Most jurisdictions in the Caribbean have signed information-sharing agreements. The Central Bank has signed a multi-lateral Memorandum of Understanding (MOU) to facilitate information-sharing with other supervisors.

The issue of exchanges of information was addressed in the 2009 amendments of the IA. The amendments enable the Central Bank to share any information about an insurer which it deems necessary with other regulators, both local and foreign. The Central Bank can enter into a MOU with another regulatory authority with which it wishes to share or receive information. However, it would nevertheless be allowed to exchange information even without a MOU in place, if the Central Bank is satisfied that the information will be treated as confidential by the other party and used strictly for the purpose for which it is disclosed.

However, the IA amendments do not specifically authorize the Central Bank to exchange information with the Financial Intelligence Unit (FIU) for the purpose of combating money laundering and the financing of terrorism.[5] It has been proposed that the IA be further amended to do so.

It is proposed that the IA be amended to enable the Central Bank to consult and cooperate with other financial regulators both locally and abroad to minimize duplication of effort and maximize the protection of the public and the financial system, and to exchange information with the FIU for the purpose of combating money laundering and the financing of terrorism. The amendment will allow the Central Bank to share with other regulators, any information about a registrant that the Central Bank deems necessary.

[5] For example, section 24 of the Virgin Islands Banks and Trust Companies Act provides that disclosure may be made to a high ranking officer of a competent authority in an international organisation recognised by the Governor or a high ranking officer of the law enforcement authority in a country or jurisdiction approved by the Governor for the purpose of legal assistance in the investigation or any criminal activity, or for the purpose of enabling or assisting a foreign regulatory authority in a country or jurisdiction approved by the Governor in discharging duties or exercising powers corresponding to those under this Act or the regulations. The authority receiving the disclosure shall be required not to transmit any information, document, record, statement or thing disclosed to any other person except with the prior written consent of the Governor.

### 1.4.2 Public Disclosure of Supervisory Information *

In some circumstances, public disclosure by the Central Bank of information on an insurer or intermediary may be in the best interests of policyholders, creditors, shareholders or the financial system. For example, if there are widespread and adverse public rumors regarding the condition of an insurer, disclosure by the Central Bank of the actions being taken to address the situation may be necessary to preserve public confidence in the financial system.

Therefore, it has been proposed that the IA be amended to enable the Central Bank to disclose information on an insurer or intermediary (or a non-registrant / registrant who is contravening the IA) when it is of the opinion that such disclosure would be in the best interests of policyholders, other customers, creditors, shareholders or the financial system and that in such cases the Central Bank be granted immunity from action which may be taken for making the disclosure.

Routine disclosure of certain supervisory information on insurers can also be an effective means of promoting market discipline. For example, the supervisory authorities in many jurisdictions provide public access to all or portions of the information included in the regulatory returns via their websites. In Trinidad and Tobago, the supervisor's annual report on the insurance sector includes such information and section 198 of the IA allows any person to inspect and make a copy of the returns.

It has been proposed that the IA be amended to empower the Central Bank to publish appropriate information contained in the regulatory returns and statements or other documents required to be filed with the Central Bank, as well as the results of any industry-wide or sectoral survey conducted by the Central Bank in relation to an issue or circumstance that could have an impact on the financial condition of financial institutions generally or the financial system. The Central Bank intends to publish such information on a timely basis.

Communication between the supervisory authority and supervised entities must be kept confidential. The IA does not currently prohibit registrants from disclosing such information. It is proposed that the IA be amended to do so.

## 1.5 Protection Against Lawsuits *

ICP 3 requires that supervisory authorities have legal protection for actions taken in good faith while discharging their duties. The current legislation does not comply with this international standard. Such protection should also be extended to outside parties that have been retained to assist the Central Bank in its work.

Section 3(4) of the CBA confers on the Central Bank and its staff immunity from suit for liability in damages arising from anything done or omitted in the discharge or purported discharge of Central Bank functions under the CBA or FIA.

Therefore, it has been proposed that section 3(4) of the CBA be amended to include full protection to the Central Bank and its staff against lawsuits for actions taken while performing duties under the IA in good faith, and to indemnify the Central Bank, its staff and those working under its direction against costs of defending lawsuits brought as a result of performance of duties under those Acts.

# *2 The Supervised Entity*

## 2.1 Authorization to Carry On Business

ICP 6 provides that an insurer must be licensed before it can operate within a jurisdiction. Related criteria require that the legislation includes a definition of insurers and their permissible legal forms, prohibits unauthorized activities, and allocates the responsibility for issuing licences. The ICPs are generally applicable to reinsurers, unless specifically indicated, for example, regarding consumer protection. Under the IA, licensing is the sole responsibility of the Central Bank.

Section 3 of the IA defines "insurance business" and "carrying on insurance business", while section 11 provides that no person other than a company registered by the Central Bank may carry on insurance business in Trinidad and Tobago. Nevertheless, the Central Bank believes that the current provisions of the IA should be amended to strengthen its ability to deal with concerns such as "suitcase traders", marketing arrangements between registered and unregistered insurers, and the placement of coverage by brokers with unregistered insurers.

It is proposed that the IA explicitly state that the insurance business is a regulated activity and that no person shall carry on insurance business, whether as an insurer, broker, sales representative, adjuster or agent, other than as provided for under the Act. Such person registered under the IA shall only carry on the business of insurance and the establishment, distribution and sale of collective investment schemes as provided for in the Securities Industries Act, 1995 or any amendment thereof.

Furthermore, it is proposed that "carrying on insurance business" in Trinidad and Tobago be more explicitly defined, as follows:

(a) opening or maintaining a place of business or an office or appointing or using a representative in Trinidad and Tobago, whether or not such business is being arranged in or from Trinidad and Tobago;
(b) except with the approval of the Central Bank, a person other than an insurer, agent or broker shall not trade or carry on any business or undertaking under any name

or title of which the words, name or title or in any language "insurance", "assurance", "indemnity", "guarantee", "underwriting", "reinsurance", "surety", "casualty", or any of their derivatives, or any expression which connotes or is intended to connote insurance business or any variation of the word forms part;

(c) the making in Trinidad and Tobago of any representation in any document or in any other manner offering, directly of indirectly, to arrange contracts of insurance;

(d) subject to paragraph (e), any of the following activities effected in any manner by an unregistered insurer or any person acting with the actual or apparent authority of the insurer or on his behalf, shall be deemed to constitute the carrying on of insurance business in or from Trinidad and Tobago –
   - (i) making of or proposing to make, as an insurer, an insurance contract;
   - (ii) making of or proposing to make, as guarantor or surety, any contract of guaranty or surety-ship as a business and not merely incidental to any other of the guarantor's or surety's legitimate business or activity;
   - (iii) taking or receiving an application for insurance;
   - (iv) the collection or receipt of any premium or other consideration for insurance or any part thereof;
   - (v) issue or delivery in Trinidad and Tobago of contracts of insurance to persons resident in Trinidad and Tobago or authorized to do business in Trinidad and Tobago; or
   - (vi) solicitation, negotiation, procurement or effecting of insurance or renewals thereof;

(e) a person shall not be treated as carrying on insurance business in Trinidad and Tobago if the only reason for so treating the person is the fact that –
   - (i) the risk covered by a policy of insurance issued by that person is situated in Trinidad and Tobago;
   - (ii) the person makes, collects or receives in Trinidad and Tobago renewal premiums under a policy issued outside of Trinidad and Tobago to a person who is resident in Trinidad and Tobago but at the date of issue of the policy was resident outside of Trinidad and Tobago;
   - (iii) the person provides roadside assistance programmes; and
   - (iv) the person provides extended warranties on products purchased from a retailer.

The carrying on of business as a broker, sales representative, adjuster or agent is dealt with in Part III of the IA. Proposals for amendment of these provisions are set out in part 5 below.

### 2.1.1 Classes of Business

Insurers are registered in respect of particular classes of business, which are defined in the First Schedule. Therefore, it is important that such definitions are clear and unambiguous and that all forms of insurance that are or may be offered in the market be included within a defined class. A range of insurance classification taxonomies have been adopted by various jurisdictions in recent years. Since the definitions affect matters such as regulatory reporting, consistency with other jurisdictions in the region is desirable.

Sections 1 and 12 of the First Schedule split accident and sickness insurance between two classes of insurance business – ordinary long-term and personal accident – depending on the termination provisions of the particular insurance contract. It is proposed that this distinction be eliminated, with such insurance to be included in the new "accident and sickness" class.

The definition of "ordinary long-term insurance business" will be amended by deleting paragraph 1(b), which describes accident and disability insurance that cannot be terminated within five years of the date on which the contract was entered into.

A new class of insurance called "accident and sickness" will be introduced. The definition of such class will be as follows[6]:

"The business of effecting and carrying out contracts of insurance:

(a) in the case of accident (i) insurance against loss resulting from bodily injury to, or the death of, a person caused by an accident, or (ii) insurance whereby an insurer undertakes to pay a certain sum or sums of insurance money in the event of bodily injury to, or the death of, a person caused by an accident; and

(b) in the case of sickness (i) insurance against loss resulting from the sickness or disability of a person other than loss resulting from an accident or death, (ii) insurance whereby an insurer undertakes to pay a certain sum or sums of insurance money in the event of the sickness or disability of a person other than as a result of an accident, or (iii) insurance whereby an insurer undertakes to pay a certain sum or sums of insurance money to reimburse expenses incurred for the health care, including the preventive care, of a person other than as a result of an accident."

In accordance with the proposal described in paragraph 4.3.2, actuarial valuations will be required in cases where a general insurer writes disability income insurance within its accident and sickness insurance book of business. (Also, see 2.1.3 for proposals regarding composite companies.)

### 2.1.2 Registration Conditions

Among the essential criteria of ICP 6 are that the supervisory authority impose additional requirements, conditions or restrictions on a licence applicant where appropriate, and refuses to issue a licence where the applicant's resources may be insufficient, the group structure would hinder effective supervision, or the application does not meet the licensing criteria. The IA does not fully meet these criteria.

[6] Jamaica Insurance Act, 2001 First Schedule definitions of classes of insurance business were used for all classes other than accident and sickness, which was derived from the Canadian definition.

Therefore, in order to strengthen the IA and for consistency with the FIA, it is proposed that the following provisions be included in the IA:

(1) Registration to carry on insurance business as an insurer may be subject to such terms and conditions as the Central Bank considers necessary or appropriate.
(2) It shall be a condition of every registration that the insurer complies with such terms and conditions as may be specified in the registration.
(3) If the Central Bank refuses an application for registration or imposes terms and conditions on the registration, it shall inform the applicant in writing of its reasons for doing so.
(4) An applicant that objects to the Central Bank's decision shall have the right to appeal as specified in section 205.

To strengthen the IA and also to improve the consistency with the FIA, it is proposed that the time period specified in section 23 of the IA, which deals with notifying the Central Bank of any changes in particulars specified in the company's registration particulars, be shortened from thirty days to seven days, but that the notification requirement would be limited to changes in the directors or officers, including a principal representative.

**Minimum Share Capital**

Section 13 of the IA sets out the minimum share capital necessary for registration: three million dollars for companies carrying on long-term insurance business and one million dollars for other companies. These amounts are no longer reflective of the minimum financial resources that should be available to an insurance company. The minimum share capital required for licensing under the FIA is fifteen million dollars.

Therefore, it is proposed that the IA be amended to increase the minimum share capital required for registration to fifteen million dollars. In the case of a composite company, the minimum share capital will be increased to twenty two million, five hundred thousand dollars. For insurance companies that are already registered, the increased requirement would be transitioned during a five year period upon commencement of the new act. During that five year period, an insurance company that does not have share capital of at least fifteen million dollars will be required to submit to the Central Bank its plan for meeting the interim requirements (described in the table below) and the full requirement when it takes effect. Within the first year of the new IA, each insurer would be required to advise the Central Bank as to its intention to carrying on the business of insurance and to meet the required capital for that type of insurance business. If it fails to do so or, in the opinion of the Central Bank, the plan is unsatisfactory, the Central Bank may impose conditions on the company's registration.

| $ millions | Current | Year 1 | Year 2 | Year 3 | Year 4 | Years 5+ |
|---|---|---|---|---|---|---|
| Life | 3 | 5 | 8 | 11 | 13 | 15 |
| General | 1 | 3 | 6 | 9 | 12 | 15 |
| Composite | 3 | 6 | 10.5 | 15 | 19 | 22.5 |

It is proposed that the Central Bank have the power to require a higher amount of share capital if, in the opinion of the Central Bank, the risk profile of the institution is such that a higher amount would be necessary to adequately protect the interests of policyholders. It is further proposed that both local and foreign insurers would be required to maintain cash or approved securities on deposit with the Central Bank, in an amount equal to twenty percent of the minimum share capital i.e. three million dollars.

These proposals deal only with the minimum share capital required for registration; proposals regarding risk-based capital adequacy requirements are described in the Prudential Requirements part of this paper.

**Payment of Fees**

Section 9 of the FIA requires licensees to pay annual fees and section 89 of the IA requires that brokers, salesmen, adjusters and agents pay registration fees. However, the IA currently makes no provision for the payment of registration fees by insurers. It is inequitable that others are required to pay such fees, while insurers are not required to do so.

Therefore, it is proposed that section 16 of the IA should be amended to provide that a company's registration shall be subject to the annual payment of the prescribed fees and that fees be paid for representative offices of foreign insurers. The level of fees will be consistent with those applicable to licensees and representative offices that are subject to the FIA. It is further proposed that the Schedule of fees, and other Schedules, may be amended from time to time by the Minister, on the recommendation of the Central Bank, by Order published in the Gazette subject to the negative resolution of Parliament. Such fees are intended to help the Central Bank to recover the administrative costs associated with the registration of an insurer, but not the full costs of supervision.

### 2.1.3 Composite Companies

Essential criterion (g) of ICP 6 provides that an insurer must not be licensed to underwrite both life and non-life insurance, unless the supervisor is satisfied that the insurer has satisfactory processes requiring that risks be handled separately on both a going-concern and a winding-up basis. The primary concern is that the ability of an insurer to meet its long-term financial obligations under life insurance and annuity policies could be compromised due to unfavourable experience within the general insurance business. For example, catastrophic claims experience in the general business could make an insurer insolvent, putting life insurance policyholders at risk. Along similar lines, the risk characteristics and operational aspects of the long-term and general insurance businesses can be significantly different, so operating them within the same company may make it difficult for directors and officers to give both businesses adequate attention. Many jurisdictions ensure separation by prohibiting composite companies[7],

[7] Examples include Australia, Canada, Jamaica and Lebanon.

i.e., those that underwrite both life and non-life insurance, except that sometimes both life and non-life insurers are permitted to underwrite accident and sickness insurance.

The IA does not prohibit the registration of companies to carry on both long-term and general insurance business. The IA does make some provision for the separation of these classes of business, such as requiring separate statutory funds for long-term and motor insurance. However, the Central Bank is concerned that the current requirements are inadequate to properly protect policyholders, because problems in either the long-term or general insurance business could lead to the failure of the insurer and put the policyholders in all classes of business at risk. Additionally, the White Paper recommends that the feasibility of establishing a policyholder protection fund, similar to deposit insurance, be investigated. In light of the differences between long-term and general insurance regarding the nature of the risks, the types of insurance policies and the manner in which insolvencies are handled, separate policyholder protection funds are commonly established.

Five composite companies are currently writing business in Trinidad and Tobago i.e they write both long-term and general business. In most cases, these companies conduct primarily long-term business and have relatively little cross-over business except for personal accident. Most of the insurers are also members of groups that include companies concentrating on either long-term or general business, which would enable the portfolios to be realigned and eliminate the cross-over business. However, requiring existing composite companies to separate their business between two legal entities could involve both transition costs and additional ongoing costs.

Considering all of these factors, it is proposed that the IA be amended to provide that:

(a) Subject to (b), no company registered to carry on ordinary long-term insurance business may also be registered to carry on general insurance business unless such general insurance business consists exclusively of accident and sickness insurance business;

(b) A company which immediately before the commencement of the new IA is registered to carry on long-term insurance business and general insurance business other than accident and sickness insurance business may continue to operate on a composite basis; and

(c) The accident and sickness insurance business of a company shall be subject to the same requirements under the Act as those applicable to ordinary long-term insurance business.

### 2.1.4 Unregistered Reinsurers

Section 2(2) of the IA states that reinsurance shall be treated as insurance business and that all provisions of the IA apply to reinsurance, except for the deposit requirements of sections 29 and 189. Section 12(1)(a) provides that a local company shall not transact insurance business in Trinidad and Tobago with an unregistered insurer. Section 12(1)(c) provides that a local company shall not carry on insurance business outside of Trinidad and Tobago without the prior approval of the Central Bank, although section 12(2) excludes the ceding of insurance business to reinsurers outside of Trinidad and Tobago from this prohibition.

Based on the foregoing, reinsurance may be ceded to an unregistered insurer, without the prior approval of the Central Bank, as long as the assuming company is not carrying on insurance business in Trinidad and Tobago. (Currently, some unregistered reinsurers may be carrying on business in Trinidad and Tobago, even under the current definition.) Insurers are expected to exercise due diligence before ceding reinsurance, particularly in the case of an unregistered reinsurer. Nevertheless, to enable the Central Bank to adequately assess the risks to which policyholders are exposed, it is important that it be aware of which reinsurers are being used and have access to information about them.

Therefore, it is proposed that the IA be amended to require a local company, and a foreign company with respect to its business in Trinidad and Tobago, to inform the Central Bank upon ceding insurance business to an unregistered insurer and to provide the Central Bank with such information regarding the unregistered insurer at such frequency as the Central Bank may request. Non-compliance with this requirement would be an offence. An Association of Underwriters would be exempted from this requirement, as its Trinidad and Tobago business might not be placed separately on a facultative basis, but instead placed in combination with other similar business written within the region.

It is further proposed that section 11, which restricts those who may carry on insurance business, and section 12, which restricts local companies from transacting insurance business with unregistered insurers, be amended to facilitate the acceptance of reinsurance by unregistered insurers, unless they have been explicitly prohibited from doing so by the Central Bank. This could be implemented by amending the IA as follows:

(a) Insert a new subsection, which would state, in part: "Notwithstanding…, a company incorporated outside of Trinidad and Tobago which does not have an established place of business in Trinidad and Tobago may, without being registered under this Part, carry on insurance business in Trinidad and Tobago if its activities relate only to the acceptance of reinsurance ceded by a company registered under this Part…"

(b) Insert a new subsection, which would state: "The Central Bank may by written direction prohibit a company referred to in subsection (a) above] from carrying on insurance business in Trinidad and Tobago." The penalty provisions of section 11(6) would apply to a company which contravenes such a written prohibition.

The IA does not define the term "reinsurance". This holds the potential for ambiguity, e.g., some reinsurance is written by insurers that also write insurance directly, and the splitting of a direct general insurance risk among several insurance contracts is sometimes referred to as coinsurance, which is also a term used in referring to a form of life reinsurance.

Therefore, it is proposed that the Interpretation section be amended to include a definition of reinsurance, as "an arrangement under which one or more assuming insurance companies, for a consideration, agrees to indemnify the ceding insurance company against all or a part of the loss that the ceding company may sustain under the policy or policies that it has issued."

Additionally, the existing definition of "broker" is somewhat ambiguous with respect to brokers of reinsurance, as it refers to "policyholders". It is appropriate that any person engaging in the intermediation of insurance or reinsurance should be subject to the requirements of the IA. Therefore, it is proposed that the treatment of reinsurance brokers be clarified by amending the definition of broker to explicitly include brokers of reinsurance business.

### 2.1.5 Dealing with Unauthorized Activities

Section 11 provides that no person other than a company registered by the Central Bank may carry on insurance business in Trinidad and Tobago and section 11(6) sets out the penalties for carrying on business without authorization. However, there are shortcomings in these provisions that hamper the Central Bank in its efforts to deal with those operating without authorization.

Therefore, it is proposed that the Central Bank may require information from, inquire into, and examine the affairs of any person where it has reasonable grounds that the person is carrying on any aspect of insurance business without being registered and take any action that it sees fit including the ability to seek injunctive relief.to ensure that the person, whether an individual or an entity, discontinues the activity.

Although the IA does not permit the registration of individuals to carry on insurance business as insurers[8], some may nevertheless attempt to do so illegally. Therefore, it is further proposed that the penalty provisions, which currently contemplate that any unauthorized activities would be conducted by companies, be extended to apply to individuals who are operating without authorization.

Finally, it is proposed that the penalties be strengthened, by increasing the monetary penalties to meaningful amounts and by providing for the possibility of imprisonment.

To implement these proposals, the IA would be amended to provide for penalties where an individual or entity committed an offence. In the case of an entity, the directors and officers would also be liable.

[8] Only a company may be registered to "carry on insurance business", although individuals may be registered as brokers, salesmen, adjusters and agents.

### 2.1.6 Representative Offices

A representative office is one way in which an insurer may promote its business without actually carrying on insurance business. Currently, the IA does not explicitly address the subject of representative offices.[9]

Therefore, it is proposed that the IA be amended to:
(a) define the term "representative office" as an entity which will not carry on any other business, other than promoting the business of its principal and affiliates and acting as liaison between clients of the insurer and its affiliates that carry on activities of a financial group;
(b) require that a local insurer must have the prior approval of the Central Bank before establishing, acquiring or opening whether directly or indirectly, a representative office outside Trinidad and Tobago,
(c) require that a local insurer give at least seven days prior notice in writing to the Central Bank to establish, aquire or open a representative office in Trinidad and Tobago.
(d) require that a foreign insurance company must have the prior approval of the Central Bank to establish, acquire or open a representative office in Trinidad and Tobago; and
(e) require that a foreign insurance company must notify the Central Bank at least seven days prior to closing or relocating a representative office in Trinidad and Tobago.

### 2.1.7 Establishment of Branches of Foreign Companies in Trinidad and Tobago

Many countries, including Trinidad and Tobago, allow foreign insurance companies to carry on business through licensed branches, rather than requiring such institutions to establish local subsidiaries. As a registrant, a branch is generally subject to the same regulatory and supervisory requirements as is a local company. However, since a branch does not have the same legal, financial and governance characteristics as a separate company, it is common for jurisdictions that permit such branches to operate to impose some conditions on them. For example, section 11(1)(b) of the IA requires that such a company have an established place of business in Trinidad and Tobago; section 17(1)(e) requires that it appoint a person resident in Trinidad and Tobago to be its principal representative; and section 29(2) requires that it deposit $250,000 with the Central Bank if it intends to carry on long-term insurance business. Some strengthening of the current provisions of the IA would be appropriate in order to better protect the policyholders of

[9] Section 6(1) of the FIA provides for the establishment of a representative office by a licensee in Trinidad and Tobago and elsewhere. However, the present legislation does not define the term, impose any regulatory requirements with respect to a representative office, or provide for the possibility that a foreign institution may wish to establish a representative office in Trinidad and Tobago. Proposals have been made to remedy these deficiencies in the FIA.

insurers operating in Trinidad and Tobago through branches. The branch of the foreign insurer would be required to assign capital and maintain other specific assets in Trinidad and Tobago to support its liabilities in Trinidad and Tobago.

Therefore, it is proposed that the IA be amended to provide that a foreign company may be registered to operate in Trinidad and Tobago, subject to the following additional or modified conditions:

(a) The foreign insurance company is subject to regulation and supervision acceptable to the Central Bank;

(b) It must maintain cash or approved securities on deposit with the Central Bank, in an amount equal to twenty percent of the minimum share capital that would be required of a local company under section 13, regardless of the class or classes of business it intends to carry on (see part 2.1.1; the deposit requirement would therefore be three million dollars, subject to the same transitional provisions proposed therein), or such larger amounts as may be specified from time to time by the Central Bank; and

(c) It must maintain in a trust acceptable to the Central Bank, an amount equal to:
   (i) its liability and contingency reserves with respect to its insurance business in Trinidad and Tobago, net of any reinsurance acceptable to the Central Bank; plus
   (ii) the amount of risk-based capital that would be required with respect to such business; minus
   (iii) the amount deposited with the Central Bank with respect to such business.

Similar prior approval and notification requirements that apply for a representative office would apply when establishing, acquiring, opening or closing a branch in or outside of Trinidad and Tobago.

### 2.1.8 Foreign Branches and Significant Holdings of Local Companies

The establishment or acquisition of a significant holding or of foreign operations, such as a foreign branch, can have a significant impact on the risk profile of an insurer. This is recognized, to a certain extent, under the IA. For example, the Second Schedule provides that the assets of a statutory fund may include no more than 30 percent of the ordinary shares of any corporation, and prohibits an insurer from including in its life insurance statutory fund the shares of another local life insurer. However, there is no general requirement that the Central Bank must approve the establishment or acquisition of a subsidiary or a foreign branch, such as exists in the FIA. Section 12(1)(c) of the IA prohibits a local company from carrying on insurance business outside of Trinidad and Tobago without the prior approval of the Central Bank.

It is proposed that the IA be amended to prohibit an insurer from controlling twenty percent or more of a company or unincorporated body, other than a financial entity, unless such entity provides necessary services in support of the activities of the insurer or the group of which the insurer is a member. A holding of twenty percent or more of a company or an unincorporated body that provides support services would be permitted, subject to the prior approval of the Central Bank. Holdings in non-financial entities would also be subject to the large exposure limitations (see 4.4.2 below).

It is further proposed that an insurer be permitted to hold less than ten percent of another local or foreign insurance company without the approval of the Central Bank. A holding of ten percent or more would be permitted, subject to the prior approval of the Central Bank.

These proposals provide more flexibility to insurers than currently exists under the IA.

In applying for approval, the insurer would be required to provide information with respect to both the proposed entity and the effects of the proposal on the insurer pertaining to:

(a) capital resources and capital structure, including the identity of all direct and indirect controlling and significant shareholders;
(b) organisational, managerial and legal structures;
(c) composition of the board of directors;
(d) fitness and propriety of officers, directors and other controlling shareholders;
(e) audited financial statements for the past three years, if applicable;
(f) strategic and operational business plans;
(g) financial plans, including projections for the next three years;
(h) sources of funds for initial and ongoing costs; and
(i) any other information that the Central Bank may require.

The Central Bank will take into consideration the adequacy of the insurer's capital and other prudential requirements before granting approval.

The disposal or restructuring of a subsidiary or significant holding can also have a material impact on the risk profile of an insurer. Therefore, it is proposed that the IA be amended to require an insurer to obtain the prior approval of the Central Bank to:

(i) directly or indirectly establish or acquire a subsidiary in or outside of Trinidad and Tobago;
(ii) enter into an agreement for sale or other transfer of a subsidiary or a controlling or significant interest in a financial entity;
(iii) sell or transfer ten percent or more of the assets of the insurer, a subsidiary, or a company or unincorporated body in which the insurer has a controlling or significant interest; or
(iv) undertake any other restructuring that would result in a reduction in the capital of the insurer.

## 2.2 Control

ICP 8 requires that supervisors have the authority to approve or reject any proposals to transfer significant ownership or controlling interests in an insurer to other parties, and that they approve portfolio transfers or mergers of insurance business. For example, it is important that controlling shareholders be fit and proper persons and that they can contribute to the financial strength of an insurer, rather than detract from it.

Sections 84-87 deal with the transfer or amalgamation of insurance business under a scheme that does not involve a change of control of an insurer. These sections appear adequate and appropriate to protect the interests of the policyholders of both insurers involved in such a scheme.

Section 20 provides the primary basis for the supervision of controlling interests in an insurer. The various proposals below are designed to significantly enhance the Central Bank's ability to meet its responsibilities in this area.

### 2.2.1 Information Required on Shareholdings

In order to effectively supervise the industry, the Central Bank must have information regarding who holds a significant ownership position in the supervised entities. The IA currently has no requirement that significant ownership positions be reported, except for those of qualifying shareholders.

Accordingly, it is proposed that insurers and financial holding companies be required to provide the Inspector, at the end of every quarter and at any other time: a list of beneficial and nominee shareholders who hold directly or indirectly five percent or more of any class of their issued shares; and any voting trust agreements pursuant to which shares of the insurer or financial holding company are held. It is further proposed that the Central Bank be empowered to impose penalties for noncompliance with this reporting requirement.

### 2.2.2 Approval of Controlling Shareholders *

The Companies Act does not define the term "controlling shareholder". However, the term "substantial shareholder" in a public company is defined, inter alia, as one whom by himself or by his nominee holds shares in the company which entitle him to exercise at least ten percent of the unrestricted voting rights at any general meeting of the company. The legislation retains the provision that gives minority shareholders with not less than five percent of the issued voting shares of a company the right to requisition directors for a meeting of shareholders.

The SIA does not provide a definition of "controlling shareholder" but deals with the concept of control in respect of shareholding or voting power in section 3. The term "control" is defined therein as follows:

"control" in relation to an issuer means the power of a person, or persons acting in concert by virtue of an agreement, arrangement, commitment or understanding, to secure by means of --

(a) the holding of shares or the possession of voting power in or in relation to that issuer; or

(b) any other power conferred by the articles of incorporation or other document regulating the issuer, that the business and affairs of the issuer are conducted in accordance with the wishes of such person or persons.

The IA defines "controller" as "a director or a chief executive officer" of a company or any person who is entitled to control at least one-third of the voting power at any general meeting of the company; and a controller of a company which has an insurance company as a subsidiary shall be deemed a controller of an insurance company. A person intending to become a controller of an insurance company is required by section 20 of the IA to serve written notice of such intention on the Central Bank, which will grant registration if satisfied that the person is fit and proper to be a controller of the company. However, no criteria is set out in the IA to determine "fit and proper", nor is there any provision enabling the Central Bank to take action against a controller who is no longer fit and proper.

In the FIA "control" is defined as the power of a person, either alone or with an affiliate or relative or connected party or other person, or by an agreement or otherwise, to—

*(a)* exercise more than fifty per cent of the voting rights at any meeting of shareholders of a licensee, company or unincorporated body;

*(b)* elect a majority of the directors of a licensee, company or unincorporated body;

*(c)* secure that the business and affairs of a licensee, company or unincorporated body is conducted in accordance with his wishes; or

*(d)* exercise dominant influence over the conduct of the business and affairs of a licensee, company or unincorporated body, and the terms "controlling interest" and "controlling shareholder" shall be construed accordingly;

For consistency it is proposed that the definition of control in the IA be amended to harmonize with the FIA. This proposal would also involve amending the IA to define the following other terms in a manner consistent with the FIA:

(a) acquirer;

(b) affiliate;

(c) company (revise current IA definition);

(d) connected party;

(e) connected party group;

(f) financial entity;

(g) financial group;

(h) related group;

(i) relative;

(j) significant shareholder; and

(k) subsidiary.

It is also proposed that a Fit and Proper Schedule similar to the Second Schedule in the FIA be included in the IA.

Additionally, for the sake of clarity, it is proposed that the definition of "controller" be deleted from the IA. As a consequence of this proposal, the various references in the IA to "controller" would also require amendment.

Section 20 of the IA prohibits any person from becoming a controlling shareholder unless the Central Bank has been notified and fails to object. Failure by the Central Bank to issue a 'no objection' notice in the stipulated timeframe can result in person becoming a controller without adequately fulfilling the requirements of the Central Bank. As a consequence, its is proposed that the 'no objection' principle be replaced by an explicit approval requirement as obtains in the FIA. It also provides the Central Bank with more power to deal with situations of noncompliance.

Therefore, it is proposed that the current wording of section 20 of the IA be replaced by the similar wording to section 71 of the FIA, with the appropriate modifications such as replacing "licensee" with "insurer" as appropriate.

**Approval of Mergers and Acquisitions**

In 2008, the FIA was amended to make mergers and acquisitions of licensees by financial entity, such as a bank or an insurer, subject to the approval of the Central Bank and in some instances also the Minister after consultation with the Central Bank[10]. This proposal is directed at avoiding excessive concentration of economic power within the financial system. In order to more fully achieve this objective, the same requirement should apply with respect to the merger or acquisition of an insurer by another financial entity. Therefore, it is proposed that the IA be similarly amended.

## 2.3 Groups

ICP 17 requires that insurers be supervised on both a solo and a group-wide basis. A related criterion requires that what constitutes an insurance group and a financial conglomerate be clearly defined. The IA does not currently meet this criterion, nor does it adequately empower the Central Bank to deal with the risks posed to institutions as a result of their membership in a group. and the FIA addresses these issues and comparable proposals with respect to the IA are set out below.

[10] Most jurisdictions have restrictions on ownership of banks by non-bank entities and vice versa. The limits vary from country to country, e.g., from 5 percent to 50 percent without prior approval of the regulatory authority. Some countries, such as the UK, apply stricter criteria when dealing with higher thresholds of shareholdings (thresholds permitted with approval are 10 - 15 - 33 - 50 - 75 percent). Other countries examine shareholding applications in light of concerns such as national interest (Australia) or widely spread shareholding to avoid concentration (Canada) or contagion (Italy, Sweden).

### 2.3.1 Definition of Financial Group

It is proposed that the term "related group" be defined as:

(a) two or more companies with the same controlling shareholder or holding company[11];

(b) any company in which each of companies referred to in (a) has a significant shareholding;

(c) the direct and indirect subsidiaries of the companies referred to in (a);

(d) any company in which the companies referred to in (c) has a significant shareholding; and

(e) the controlling shareholder or holding company referred to in (a).

The term "financial group" would be defined as "a related group of companies whose activities are limited to one or more of the following:

(a) the business of banking;

(b) business of a financial nature;

(c) carrying on the business of insurance;

(d) the business of brokering and dealing in securities; and

(e) subject to the approval of the Central Bank, the provision of necessary services in support of the activities of the group

and includes a company whose activities are limited to administering its holdings as set out in paragraphs (a) through (e)."

A "financial holding company" would be defined as "a company required to be established pursuant to section [see 2.3.2 below] and whose activities are limited to the acquiring of financial entities and administering the holdings of a financial group or providing management, advisory, financing, accounting, information processing services to entities in the financial group as well as such other services as approved by the Central Bank."

A financial group may include both licensees under the FIA and insurers registered under the IA. Therefore, both the FIA and the IA should incorporate the same provisions regarding financial groups and financial holding companies. A financial holding company would be subject to either the FIA or the IA, but not to both. It is proposed that the Central Bank be empowered to prescribe which Act would apply, based on its review of the distribution of the group's business activities amongst the various types permitted and after consultation with senior management of the group.

### 2.3.2 Establishment of Financial Holding Companies

In the interest of protecting policyholders from group risks, it is important that an insurer be separated from the non-financial activities of a group as much as possible.

[11] To be defined consistently with the definition of controlling shareholder.

Where a local insurer is a member of a related group, in which there are two or more financial entities at least one of which is an insurer, a financial holding company may be established such that the insurer is directly controlled by the financial holding company and the other financial entities are either directly or indirectly controlled by the financial holding company or the insurer.
The Central Bank would not require a restructuring where an insurer is directly controlled by a foreign company that provides financial services that -

(a) is subject to Regulation acceptable to the Central Bank and there are no obstacles to obtaining information from the other regulatory authority; and
(b) does not directly or indirectly control an entity that engages in non financial activities.

A restructuring would not be required where the local insurer is a member of a related group which comprises only financial entities and all the insurers in the related group are controlled by a –

(a) holding company that only performs the activities of a financial holding company; or
(b) licensee registered under the FIA.

In situations where, at the at the time of the coming into force of the new Insurance Act, an insurer is a member of a related group and at least one member of that related group carries on any business other than an activity permitted of a financial group, the Central Bank may direct the insurer to undertake a restructuring such that ownership of the insurer is directly held by a financial holding company.

The restructuring shall be carried out within twelve months of the date directed by the Central Bank, although the period may be extended to a maximum of two years at the discretion of the Central Bank. An insurer that willfully refuses to comply with a direction shall be guilty of an offence.

It is further proposed that the Central Bank may direct an insurer in writing to undertake such other measures as may be necessary to identify, assess and manage:

(a) the relationship among the insurer and other members of the related group; and
(b) the risks resulting from such relationship.

### 2.3.3 Registration of Financial Holding Companies

Where a financial holding company is required by the Central Bank to be established, it must be registered. The Central Bank may proceed on its own authority to verify the existence of a financial group and may impose a penalty for failure to provide information to it of the existence of a group structure.[12]

[12] Under section 3 of the US Bank Holding Company Act, it is unlawful, save with the prior approval of the Board of Governors of the Federal Reserve System, for a person to take any action to become a bank holding company. A bank holding company is defined as a company that directly or indirectly owns,

In its application for registration a financial holding company must provide information pertaining to:

(a) capital resources and capital structure, including identity of its controlling shareholder and significant shareholders;
(b) organisational, managerial and legal structures;
(c) composition of the board of directors;
(d) the fitness and propriety of its officers, directors and controlling or significant shareholders;
(e) audited financial statements for the past three years, if applicable;
(f) strategic and operational business plans;
(g) financial plans, including projections for the next three years;
(h) sources of funds for initial and ongoing costs; and
(i) any other information that the Central Bank may require.

The Central Bank may attach conditions to its registration of a financial holding company, which conditions may be varied or removed at any time. Conditions may, for example, be imposed to ensure that:

(a) the capital available to the financial group is adequate and will not jeopardize the financial position of the insurer or insurers, and any licensee under the FIA, within the financial group;
(b) no double or multiple gearing or excessive leveraging of capital exists or will take place;
(c) the financial group is structured and managed in such a manner that it may be supervised by the Central Bank;
(d) each member of the financial group maintains adequate internal control mechanisms enabling it to provide any data or information relevant to its supervision; and
(e) activities or overseas locations of operation that may be injurious to the insurer or insurers that are members of the group are prevented.

## 2.4 Suitability of Persons *

ICP 7 provides that the significant owners, board members, senior management, auditors and actuaries of an insurer must be fit and proper to fulfill their roles. Related criteria require the supervisor to take appropriate action against those that do not meet fit and proper requirements, such as disqualifying their appointment or requiring that owners dispose of their interests.

Various sections of the IA deal with this subject: section 19 regarding chief executive officers; section 20 regarding controllers (currently defined to include directors and controlling shareholders); section 59 regarding auditors; and section 112 regarding actuaries. However, none of these sections describes the criteria that might be applied by

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controls or holds twenty-five percent or more of the voting shares of each of two or more banks or of a company that became a bank holding company by virtue of that Act.

insurers or the Central Bank to determine whether a person is fit and proper for a particular role, and sections 20 and 59 give the Central Bank the power to object to a person without explicitly stating that the person must be fit and proper. While the Second Schedule of the FIA deals with the fitness and propriety of directors, controlling shareholders and officers to hold such positions in licensees, the IA has no comparable schedule or Regulation. However, the Central Bank has issued a guideline on this subject to all supervised entities.

Therefore, it is proposed that these provisions of the IA be strengthened to enable the Central Bank to more effectively assess suitability and to take action to address situations of concern. The provisions of the IA should be comparable to the corresponding provisions of the FIA.

In instances where significant or controlling shareholders are no longer fit and proper, they would be required to take steps to reduce their share ownership or voting power so that their holdings would no longer be at the “significant” or “controlling” level. If the Central Bank obtains court approval to require a shareholder to dispose of shares, the proceeds of the sale will be distributed to the beneficial owner or to such person as the Court may direct.

The FIA defines the term “officer” and uses it in various contexts, including the identification of those who must be fit and proper. The IA defines “officer” to include the manager, secretary, treasurer, actuary or any other person designated as an officer of a company by its incorporation documents and bye laws or other rules.

Because the definition of officer in the FIA is more detailed it is proposed that the definition of officer as used in the FIA be adopted in the IA. The definition is as follows :

(a) in relation to a company or unincorporated body, a chief executive officer, chief operating officer, president, vice president, corporate secretary, treasurer, chief financial officer, chief accountant, chief auditor, chief actuary, chief claims officer, chief underwriting officer, chief investment officer, chief compliance officer, chief risk officer, principal representative and any other individual designated as an officer by its articles of incorporation or continuance, bye-laws or other constituent document or resolution of the directors or members; or

(b) any other individual who performs functions for the company or other unincorporated body similar to those performed by a person referred to in paragraph (a), whether or not the individual is formally designated as an officer and includes a principal representative.

It is proposed that the current wording of section 19 of the IA be replaced by the wording of the FIA, with appropriate modifications, such as replacing “licensee” with “insurer”; a version of the FIA’s Second Schedule would also be included in the IA. This proposal would extend fit and proper requirements to controlling shareholders, significant shareholders, directors, officers and others concerned in any way in the management of an insurer or who occupy such other positions as may be designated by the Central Bank.

It has been proposed that section 20 of the IA, which relates to the approval of controlling shareholders, be replaced by wording equivalent to the FIA, which contemplates an ongoing assessment of the fitness and propriety of controlling shareholders (and, with proposed amendments, extends such an assessment to significant shareholders) of a licensee or financial holding company. It is therefore necessary that the Central Bank be empowered to obtain relevant information directly from such shareholders to make such assessment on a continuous basis. This would tie in with the consolidated supervision provisions.

The criteria for evaluating the fitness and propriety of a person to be a controlling shareholder or a significant shareholder may differ from those used for evaluating directors and officers of an insurer. It is proposed that the following additional criteria be added to the IA:

(a) If the person is an individual, the discretion available to the Central Bank under A(3) of the FIA's Second Schedule.

(b) If the person is a company, the schedule should provide that the criteria would include, but not be limited to, the following:

  (i) the company has been found guilty of insider trading or fraud involving trading in securities by local or foreign authorities;

  (ii) the company has been convicted of an offence under this Act;

  (iii) in the opinion of the Central Bank the company has not carried on its business in a prudent manner. The definition of "carrying on business in a prudent manner" would be similar to that in section 78 of the Reserve Bank of New Zealand Act, 1989, which includes, for example, comparing its capital in relation to its size and nature of the business;

  (iv) in the opinion of the Central Bank the company is insolvent or is likely to become insolvent;

  (v) the company has suspended, or is about to suspend, payment or is unable to meet its obligations as they fall due;

  (vi) in the opinion of the Central Bank the affairs of the company or any associated person are being conducted in a manner prejudicial to the soundness of the insurer in question or the financial system of Trinidad and Tobago; and

  (vii) any other matter which the Central Bank may specify.

(c) The approval of the Central Bank will not be given in cases where a person has been convicted by a court for an offence involving fraud, dishonesty, a contravention of the Proceeds of Crime Act, 2000 or any Regulations made thereunder or such other statutory provision in relation to the prevention of money laundering and the combating of terrorist financing as may be in force from time to time; or was convicted of an offence under this Act. Therefore, the Central Bank will have no discretion to deem such individuals "fit and proper".

An individual's ability to serve effectively as a director of a company can be compromised if the individual is also a director of a competitor, or whose interests otherwise conflict with those of the company. Similar to the FIA, it has been proposed that the IA be amended to limit the potential for interlocking directorships, as follows:

"A director or officer of a local insurer-

(a) shall apply to the Central Bank for its prior approval, if he proposes to be appointed as a director or officer of another financial entity ; or

(b) may be appointed as a director or officer of another company within the financial group without obtaining the Central Bank's approval.

Section 59 enables the Central Bank to object to the appointment of an auditor within one month of being notified of the proposed appointment, but does not provide for the revocation of the appointment of an auditor who subsequently proves unsuitable. Neither does the IA specify the basis on which the Central Bank might object to an auditor's appointment.

Therefore, it is proposed that section 59 be amended to empower the Central Bank to oppose the appointment of an external auditor or require that the existing auditor be replaced, if it concludes that the auditor has inappropriate or inadequate expertise or lacks independence. Decisions will be based on criteria to be issued by the Central Bank as guidelines. It is proposed that the IA be strengthened as follows:

"An audit entity s qualified to be the auditor of an insurer or financial holding company if –

(a) each member or partner is independent (within the meaning of the subsection regarding independence), of the insurer, or the financial holding company; and

(b) at least one member or partner of the firm of accountants:
   (i) is a practicing member in good standing of the Institute of Chartered Accountants of Trinidad and Tobago (ICATT) or is the holder of a valid practising Certificate from such other professional association of accountants or auditors as the Central Bank may approve; and
   (ii) has knowledge and experience in the audits of insurers and other financial institutions satisfactory to the Central Bank."

It is proposed that the independence be judged in accordance with the ICATT Code of Ethics, which must be no less stringent than the Code of Ethics for Professional Accountants issued by the International Ethics Standards Board for Accountants.

Section 3(1) defines "actuary" as "a Fellow by examination of the Institute of Actuaries in England, of the Faculty of Actuaries in Scotland or of the Society of Actuaries in the United States of America or an actuary possessing such other qualifications as may from time to time be approved by the Central Bank". This definition may automatically include some persons that should not be included, for example, a foreign actuary with no experience in Trinidad and Tobago. It would also enable the Central Bank to allow persons who lack a recognized professional designation to serve as an actuary. While this may be necessary in jurisdictions where there are no persons having actuarial designations, it is not considered best practice.

Therefore, it is proposed that “actuary” be defined in a manner consistent with the definition in the Jamaica Insurance Act, as:

> “actuary” means a fellow of such professional organization of actuaries and possessing such other qualifications as may from time to time be specified by the Central Bank.

Section 112 provides that no person may carry out the functions of an actuary unless the Central Bank is satisfied that he is a fit and proper person and possess the necessary qualifications. This implies, but does not explicitly provide, that the prior approval of the Central Bank is required and that the Central Bank may require revocation of the appointment of an actuary who subsequently proves unsuitable. The IA provides no guidance on how the Central Bank might assess an actuary’s fitness and propriety or qualifications.

Therefore, it is proposed that section 112 be amended to empower the Central Bank to oppose or require the insurance company to revoke the appointment of an actuary if, in the opinion of the Central Bank, the person is not fit and proper, including cases where the person does not possess the necessary qualifications or experience to carry out the functions required of an actuary. Decisions will be based on criteria to be issued by the Central Bank as guidelines, which may be amended from time to time. It is also proposed that the IA be amended to explicitly prohibit an insurer from appointing its chief executive officer or chief financial officer as actuary. This prohibition will help to ensure the actuary is able to provide an objective assessment of an insurer’s liabilities.

## 2.5 Corporate Governance

ICPs 9 and 10 require that supervisors determine that insurers have in place adequate governance, control and audit mechanisms. In addition to the IA, the Companies Act and the Proceeds of Crime Act deal with some of these issues and their provisions were considered when formulating the proposals.

### 2.5.1 Audit Committee

Section 157 of the Companies Act provides that a public company shall, and any other company may, have an audit committee composed of not less than three directors of the company, a majority of whom are not officers or employees of the company or any of its affiliates. Insurers have a fiduciary relationship with their customers, which warrant the additional oversight that an audit committee can provide.

Therefore, it is proposed that all insurers establish an Audit Committee composed of at least three directors. In addition, a majority of the members of the Audit Committee must be independent directors and all members must satisfy the fit and proper criteria as outlined by the Central Bank. Further, the chair must be independent and at least one member of the committee must be a financial expert

An independent director should not have a significant contractual relationship with the insurer outside of their directorship or any interest or relationship that could, or reasonably could be perceived to, materially interfere with the director's ability to act in the best interest of the insurer.[13]

Therefore, it is proposed that the following definition of an independent director should be included in the IA:

An "independent director" is defined as one who:
(a) is not the holder of five per cent or more of the shares of the insurer or of a connected party of the insurer;
(b) is not a current officer of the insurer or of a connected party of the insurer;
(c) is not a relative of a current officer or director, or of a person who was an officer or director of the insurer or a connected party of the insurer within two years prior to his appointment;
(d) is not the auditor, nor has been employed by the auditor of the insurer nor the auditor of any of the connected parties of the insurer within three years prior to his appointment;
(e) has not been employed by the insurer or any of its connected parties within three years prior to his appointment;
(f) is not an incorporator of the insurer or of a connected party of the insurer;
(g) is not a professional adviser of the insurer or of a connected party of the insurer;
(h) is not a significant supplier to the insurer or of a connected party of the insurer; and
(i) is not indebted to the insurer or any of its affiliates, other than by virtue of: (a) a fully collateralized loan; or (b) an outstanding credit card balance not exceeding sixty thousand dollars.

It is proposed that "financial expert" for purposes of this section will be defined as a person who has the necessary financial education and substantive experience as:
(a) a qualified accountant;
(b) an auditor;
(c) a chief financial officer;
(d) a comptroller, or
(e) actuary

or who otherwise possesses a sound understanding of generally accepted accounting principles, financial statements, and the way in which financial statements are prepared and audited. For the purposes of this section, qualified accountant means "a person who

[13] In the US, section 301(3) of the Sarbanes Oxley Act, 2000 provides for each member of the audit committee to be a member of the board of directors and to otherwise be independent. To be considered independent, a member of an audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors or any other board committee, accepts any consulting, advisory or other compensatory fee or be an affiliated person of the institution or any subsidiary.

is a member of the Institute of Chartered Accountants of Trinidad and Tobago or such other professional association as may be approved by the Central Bank".

It is proposed that the duties of an audit committee include without limitation the following duties:
(a) the review of, and a report to the board of directors on, the annual financial statements and other returns prior to approval by the board;
(b) the review of such returns of the insurer as the Inspector may specify; and
(c) ensuring that an appropriate framework for internal control procedures is in place.

In addition to the audit committee, the directors of an insurer or financial holding company may appoint from their number such other committees as they deem necessary and delegate to those committees such powers of the directors, and assign to those committees such duties, as the directors consider appropriate. The corporate governance guideline issued by the Central Bank provides examples of such committees.

### 2.5.2 Responsibilities of Directors

The duties of directors and officers set out in the Companies Act apply to directors and officers of local insurers. However, as insurers have a fiduciary responsibility to their policyholders and other customers, their directors should be held to a higher standard of care. With the onus on greater transparency in business and more information being provided, it is appropriate that legislation stipulate the minimum duties and responsibilities of directors and management.[14]

Therefore, in addition to the requirements of the Companies Act, it is proposed that directors of an insurer or a financial holding company shall be required to notify the

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[14] Precedents concerning directors' responsibilities and liabilities exist both at common law and under statutory provisions in many countries. For example, in the US, both the Federal Reserve Board and the Office of the Comptroller of Currency have put out detailed requirements on the role and responsibilities of directors. The Bank Act of Canada 1991, sets out in detail the requirements, duties and obligations of bank directors. These include:
(a) duties and responsibilities to establish reliable procedures and act in accordance with performance standards;
(b) the number and qualification of directors;
(c) procedures pertaining to election and tenure;
(d) procedures pertaining to meetings of the Board;
(e) committees of the Board with special reference to the appointment and functioning of the Audit Committee and the Conduct Review Committee;
(f) directors' authority to cover the selection and appointment of a chief executive officer, the ability to designate an office and make appointments thereto and, to specify the duties of the officers and delegate their powers. However, restrictions are also placed on this power, which are designed to safeguard the institution and avoid any questions that improprieties may have occurred;
(g) indemnification clauses which serve to ensure that directors are liable for their non-performance of duties in supervising and managing the institution except in cases where a director acted in good faith, honestly and with a view to the best interest of the Bank.

Central Bank of any developments that pose material risks to the insurer or financial holding company[15].

A director who:
(a) resigns;
(b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office; or
(c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office upon his resignation or removal or because the term of office of the director has expired or is about to expire,

shall submit to the Inspector a written statement giving the reasons for his resignation or departure from office, or, where applicable, the reasons he opposes any proposed action or resolution and may submit a copy of such statement to the insurer or financial holding company.

Where, in the opinion of the Central Bank, it is necessary, the Central Bank may, by notice in writing, require an insurer or financial holding company to convene a meeting of its board of directors to consider the matters set out in the notice, and a representative of the Central Bank may attend and be heard at such meeting.

### 2.5.3 Reporting by Directors and Senior Management

Formal reporting by an insurer's and financial holding company's directors and senior management reinforces their responsibilities in the governance of the institution. It may also send an early warning signal if the insurer or financial holding company is not complying with the rules.

Therefore, it is proposed that each insurer and financial holding company must submit to the Inspector, annually and upon request, a report which contains:
(a) a statement, signed by its chief executive officer and chief financial officer and, in the case of a foreign insurer, its principal representative, which acknowledges management's responsibility for:
    (i) preparing financial statements;
    (ii) establishing and maintaining an adequate internal control structure and procedures for financial reporting; and
    (iii) complying with Regulations made by the Minister and guidelines issued by the Central Bank; and
(b) a statement, signed on behalf of its Board of Directors that is the Board has received the financial condition report of the actuary and that it is satisfied that the risk management systems and internal controls are adequate for managing its risks and are being properly applied.

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15 This is along the lines of the requirement, under section 23 of the IA, that a company must report subsequent changes in the information that supported its application for registration.

Any false or misleading information given will result in sanctions against the directors or the institution.

## 2.6 Responsibilities of Auditors

The Central Bank's main source of information relating to an insurer is the insurer itself. However, auditors have an important function and should be able to identify and report on unusual events. The usual reporting procedures, examinations and returns need to be augmented by compliance reports made by auditors. Therefore, the issues of reporting by auditors and communication between supervisors and auditors have been incorporated in the legislation of most countries.

Numerous references in the ICPs highlight the importance of the work of auditors to the effective functioning of a supervisor. For example, ICP 1 establishes the need for competent, experienced and independent auditors in order to ensure the accuracy and reliability of financial information. ICP 10 includes auditors as part of the internal control framework, which must test adherence to both internal controls and applicable laws and regulations. ICP 12 includes a requirement that, as a minimum, an audit opinion be provided annually.

Section 57(3) requires auditors to include in their report matters in respect of which they are unable to obtain information or are not completely satisfied with such information. This requirement, while important, is not adequate to ensure that timely action can be taken in response to issues that may come to an auditor's attention. Therefore, it is proposed that statutory reporting requirements should be imposed on auditors in certain other circumstances.[16] These provisions are in addition to the provisions of the Companies Act, which apply to auditors and with which insurers must comply.

It is proposed that an auditor be required to report in writing, to the chief executive officer and the board of directors of a local insurer or financial holding company, or to the principal representative of a foreign insurer, and to the Inspector any irregular transactions or conditions that have come to the attention of the auditor in the ordinary course of an audit which, in the opinion of the auditor, meet one or more of the following criteria:

(a) any change in the accounting policy or any presentation of or any failure to present, facts or figures which, in the opinion of the auditor, has the effect of misrepresenting the financial position of the insurer or financial holding company;

[16] Legal precedents for such reporting by auditors include Belize, Canada, Jamaica, New Zealand and UK. For example, in Belize, the Banks and Financial Institutions Act, 1995, section 30, outlines the duties of auditors when reviewing the insurer's records and accounts. Sub-section (4) creates a duty on auditors to report to the Central Bank such matters that may pose substantial risk to the financial condition of the insurer or where the insurer is in violation of the provisions of the Act or other laws. Section 96 of the Federal Bank of New Zealand Act permits auditors to inform the Reserve Bank of cases where they believe: (a) that the commercial bank is insolvent or likely to become insolvent; and (b) the disclosure of information is likely to assist, or be relevant to, the exercise of the Reserve Bank of its powers under the Act.

(b) transactions that have a significant or material impact on the financial position of the insurer or financial holding company;
(c) transactions or conditions giving rise to significant risks or large exposures that have the potential to jeopardize the financial viability of the insurer or financial holding company;
(d) transactions or conditions indicating that the insurer or financial holding company has significant weaknesses in internal controls which render it vulnerable to significant risks or exposures that have the potential to jeopardize its financial viability;
(e) transactions or conditions which contravene any provisions of this Act or any Regulations made hereunder relating to capital adequacy or liquidity requirements; and
(f) any other transactions or conditions which, in the opinion of the auditor, should be included in a report under this section.

If any irregular transactions or conditions come to the attention of the auditor in the course of conducting work after receiving a request in writing from the Inspector for an examination, the auditor shall report in writing to the Inspector, and the Inspector shall share those findings with the insurer or financial holding company at such time as he deems necessary.

It is proposed that an auditor’s failure to fulfill these responsibilities would constitute a general offence. It is further proposed that an auditor, in fulfilling such responsibilities, would have protection under the law. This proposal could be implemented by amending the IA to include similar provisions contained in the FIA, revised to more explicitly provide such legal protection.
Additionally, the regulator should also have the ability to report actuaries and auditors to their respective professional associations in instances where -
the Inspector or Central Bank has reasonable grounds to believe that the auditor or actuary of an insurer, financial holding company, agency or brokerage -
(a) has failed to perform his duties or to comply with the relevant provisions of the Act;
(b) has been a party to the preparation of or has approved a financial statement that does not fairly present the financial position of the insurer, financial holding company, agency or brokerage ;
(c) is incompetent or is guilty of professional misconduct
the Inspector or Central Bank shall deliver a written report to insurer, financial holding company, agency or brokerage and as appropriate the Institute of Chartered Accountants of Trinidad and Tobago or the Caribbean Actuarial Association.

Additionally, when an offence is committed and the offence is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, principal officer, or other officer or an actuary or auditor of the company, he as well as the company shall be deemed to be guilty of the offence.

Section 57(1) describes the issues that must be addressed in the annual report of auditors to the Central Bank. It is proposed that this provision be amended to require auditors to report on the adequacy of the internal control systems as they relate to the auditing function and on other matters specified by the Central Bank.

ICATT requires that audits be done in accordance with International Accounting Standards and International Standards on Auditing. However, there may be situations in which the performance of additional work by the auditor would be an effective way to help the Central Bank assess areas of concern.

Therefore, it is proposed that the Central Bank have the authority to prescribe additions to the scope or depth of coverage to be achieved in external audits of any insurer or financial holding company, on an individual basis, by administrative direction. The Central Bank should also be able to request information from auditors at the expense of the insurer or financial holding company. This would include access to the auditors' working papers.[17]

Auditors should also be required to give the Central Bank notice and reasons for not continuing as auditor of an insurer or financial holding company and insurers and financial holding companies should be required to give reasons to the Central Bank why the appointment of an auditor is revoked or an auditor is not recommended for re-appointment. This proposal could be implemented by amending the IA to include the provisions of the FIA, revised to include the provision of explanations in addition to written notification to the Central Bank.

It is further proposed that where an auditor resigns or the auditor's appointment is revoked, no person shall accept an appointment or consent to be appointed as auditor before requesting and receiving from the previous auditor the written statement that was submitted to the Central Bank. An appointment may be accepted if no reply is received within fifteen days after a request was made[18].

## 2.7 Responsibilities of Actuaries

The ICPs also note the importance of the work of actuaries to the effective functioning of an insurance supervisor. For example, ICP 1 recognizes the contribution of competent and experienced actuaries to the accuracy and reliability of financial information. ICP 10 includes actuaries as part of the internal control framework, requiring that they report to the board and management. ICP 20 requires that an insurer's liabilities be determined based on sound accounting and actuarial principles.

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[17] Legal precedent for this includes section 40(5) of Jamaica's Insurance Act, which provides that "The Commission may require the auditor of a registered insurer or registered insurance intermediary to-(d) supply to the Commission additional information relevant to an audit".

[18] Legal precedent for this includes the Companies Act and Canadian banking and insurance legislation.

Section 112 requires every company carrying on long-term insurance business to appoint an actuary. Sections 113-118 describe the role of the actuary in functions such as the valuation of liabilities, the allocation of assets of a statutory fund, the distribution of surplus, and the establishment of premium rates.

Proposals for amending these sections of the IA with respect to the more technical requirements on the actuary are set out in the Prudential Requirements part of this paper.

However, as noted, actuaries can also play an important role in the governance process. Therefore, it is proposed that the IA be amended to include provisions comparable to those proposed with respect to auditors, as follows:

(a) actuaries shall be required to include in their reports matters in respect of which they are unable to obtain information or are not completely satisfied with such information;

(b) actuaries shall be required to report in writing, to the chief executive officer the board of directors of a local insurer, or the principal representative of a foreign insurer, and to the Inspector any matters that, in the actuary's opinion, have material adverse effects on the financial condition of the company and that require rectification; and

(c) actuaries shall be required to notify the Inspector of any changes in valuation methodologies.

An actuary, in fulfilling such responsibilities, would have protection under the law. Failure by an actuary to fulfill these responsibilities would constitute an offence.

Consistent with the proposals with respect to auditors, actuaries would be required to give the Central Bank notice and reasons for not continuing as an actuary of an insurer and insurers shall be required to give reasons to the Central Bank why the appointment of an actuary is revoked or an actuary is not recommended for re-appointment. If an actuary resigns or the actuary's appointment is revoked, no person shall accept an appointment or consent to be appointed as actuary before requesting and receiving from the previous actuary the written statement that was submitted to the Central Bank. An appointment may be accepted if no reply is received within fifteen days after a request was made.

## 3 On-going Supervision

ICPs 11-17 deal with the information, processes and powers necessary to conduct effective on-going supervision, including both on-site inspection and off-site monitoring. The Central Bank has long performed both on-site and off-site inspections of institutions licensed under the FIA. As a result of its experience in doing so, some changes were made to the FIA to enhance the Bank's ability to inspect supervised institutions. In order for the Central Bank to fulfill its mandate under the IA, it is also essential that the IA provide comparable powers to supervise insurers.

As a general matter, the IA must also be amended to extend the scope of the Central Bank's powers to conduct supervision and take preventive or corrective action with respect to financial holding companies.

## 3.1 Information Requirements

ICPs 11 and 12 deal specifically with the information needed by a supervisor to assess both individual insurers and the market as a whole, the collection and validation of this information, and the policies and practices used by the institutions to prepare it.

### 3.1.1 Information to be Provided Regularly

Requirements regarding the information to be provided regularly to the Central Bank by insurers are described in several sections of the IA. Section 56 requires annual financial statements and, for those insurers carrying on long-term insurance business, an actuarial certificate. Section 60 deals with annual regulatory returns, while section 113 requires insurers carrying on long-term insurance business to submit an actuarial report at least once every three years.

International accounting and financial reporting standards exist and are revised from time to time to reflect changes in the financial environment and evolving best practices. These standards form an acceptable basis for public disclosure. It is also practical to generally align the required reporting to the Central Bank to these standards. However, the Central Bank must have the power to prescribe additional reporting requirements for regulatory purposes. The Central Bank must also have the ability to prescribe the regulatory returns to be used by persons registered under the IA and to require that such returns be audited, as it may deem necessary.[19]

Therefore, it is proposed that section 56 be amended to provide that every company shall prepare consolidated financial statements in accordance with International Financial Reporting Standards (IFRS). An actuarial certificate would continue to be required of a company that is carrying on long-term insurance business.

Section 58 prescribes the basis to be used in accounting for the appreciation or depreciation of assets. The prescribed basis is inconsistent with IFRS in some situations. Therefore, it is proposed that section 58 be deleted in its entirety.

[19] It should be noted that Regulation 33 of the Co-operative Societies Regulations set out in detail the financial information which each society is required to prepare and submit each year to the Commissioner for Co-operative Development. A provision similar to Regulation 33 is needed. In addition, the Regulators in Barbados are proposing that licensees should follow the reporting requirements of International Accounting Standard 30 (IAS 30). IAS 30 deals with disclosures which are to be made in financial statements of banks and financial institutions and, since the 1st January, 1992, has become the operative standard for the preparation and presentation of financial statements in this country.

It is important that financial information be available to the Central Bank on a timely basis. Both economic conditions and the financial situation of an insurer can change significantly over time, and the annual reporting and long filing timeframes specified in the IA are inadequate to meet the Central Bank's information needs. In many jurisdictions, insurers are required to report some information quarterly and to submit extensive annual returns much more quickly than the six months required under the IA[20]. The form of the annual returns is currently prescribed by the Insurance Companies Accounts and Forms Regulations. Although the IA enables the Central Bank to request information beyond that contained in the annual returns, it would be useful to clarify and strengthen its power to obtain information regularly.

Therefore, it is proposed that the IA provide that returns shall be prepared annually and at such other times as the Central Bank may require. The returns shall be in such form as may be specified by the Central Bank, rather than by Regulation. Accordingly, the Insurance Companies Accounts and Forms Regulations should be repealed.

In accordance with the proposed provisions of sections 56 and 60, the Central Bank may prescribe that financial statements and returns present information separately in respect of types of insurance business within any one class of insurance business. For example, it may require the breakdown of participating and non-participating business within the long-term insurance class. Section 54 provides for the equitable appointment of receipts and payments among various classes of insurance business. It is proposed that section 54 be amended to also require the equitable apportionment among various types of insurance business within any one class of insurance business, whenever the Central Bank requires the reporting of financial results by such types of business.

Section 55 requires that the auditors state in their reports that they are satisfied that any apportionments under sections 53 and 54 were made in an equitable manner. However, this requirement is not mentioned in section 57, which describes the matters on which auditors must offer an opinion. Therefore, in the interest of certainty, it is proposed that this section require auditors to offer an opinion on whether all such apportionments were made in an equitable manner.

In order to improve the timeliness of information, it is proposed that the IA require that the financial statements and annual returns required under sections 56 and 60, and the actuarial abstracts, statements and reports required under section 113, be filed within three months of the financial year. Any returns required at other times, e.g., quarterly, would be required to be filed within the period specified by the Central Bank. In February 2009, the IA was amended to require insurers to submit quarterly returns twenty working days after the end of the quarter. This amendment should be retained.

Sections 61(6) and 61(7) provide that the Central Bank may require a company to explain an apparent problem with its financial information and to reject or vary the financial statements if the explanation is unsatisfactory. It is proposed that these sections be

[20] For example, Australia and Jamaica require insurers to file annual returns within three months. Canada requires annual returns within 60 days and quarterly returns within 45 days.

amended by deleting from both the phrase “being not less than thirty days”, to enable such concerns to be dealt with more expeditiously.

Section 62 provides for fines on summary conviction of any company that does not submit required financial statements and returns within the time specified. To further enhance the timeliness and reliability of the returns, it is proposed that the Central Bank be empowered to impose civil money penalties in respect of late or erroneous returns; see 3.4.1 below.

It is proposed that insurers that are members of a financial group be required to submit financial returns and audited financial statements on a consolidated basis. The returns and financial statements shall include information on the following:

(a) the financial holding company of the insurer;
(b) all subsidiaries of the insurer or other entities that the insurer controls; and
(c) all foreign branches of the insurer.

An insurer or financial holding company must seek prior approval from the Central Bank for the exclusion of a subsidiary or significant entity from its consolidated financial statements.

The Central Bank would request financial statements, on an as-needed basis, of affiliates of the insurer and any entity over which the insurer exercises dominant or significant influence or control.

It is proposed that financial holding companies be required to submit such periodic financial and non-financial returns as may be specified by the Central Bank.

Section 50(3) empowers the Central Bank to examine an insurer in order to verify the accuracy of its statement of insurance business carried on in Trinidad and Tobago. It is proposed that this power be broadened to clearly provide that the Central Bank from time to time may verify with the auditor of an insurer or financial holding company the accuracy of information supplied to it, or it may itself inspect an insurer, financial holding company or any company within a financial group to perform such a verification with respect to the business carried on anywhere by a local company and the business carried on in Trinidad and Tobago by a foreign company.

### 3.1.2 Power to Require Additional Information

Section 51(1) states: “The Inspector may require any company registered under this Act or the director, manager, auditor, actuary or secretary thereof to furnish him within such time as he may specify, with such information as may be necessary to ascertain the ability of the company to meet its obligations under policies issued by it.” Section 64 provides that the Inspector may require companies to produce books and papers.

Insurers are now entering into financial transactions, products, and joint venture projects with other entities which they were not able to do in the past. It is necessary that the Central Bank be able to obtain information concerning all aspects of the business and operations of the insurer, in order to supervise effectively. Such information includes that required to make an assessment of the effect of transactions and relationships with group companies and other connected parties.

It is also important that the Central Bank have a clear picture of the financial position of insurers and their controlling shareholders, in order to make an accurate assessment of the closely related parties or interlocking relationships. Such information may include audited financial statements of the controlling shareholders[21].

It is proposed that section 51 be strengthened so that the Central Bank would be able to obtain information promptly from, among others, an insurer's controlling shareholders or its financial holding company concerning the activities within the group or in relation to any particular entity within the group to assist it in the administration of the IA[22]. Accordingly, it is proposed that sub-section 51(1) be replaced with the following: "The Inspector may call upon any director, officer, auditor or actuary of the insurer or financial holding company, or of any controlling shareholder, significant shareholder or affiliate of the insurer, or any person who has held any such position at any time within the last six years, to provide such information that is related to or may affect the financial condition of the insurer, financial holding company or other member of a financial group or any transaction between the insurer and its financial holding company or controlling shareholder and any member of its financial group.".

It is also proposed that the IA explicitly provide for access to the books and records of financial holding companies.

Subsection 4(2) of the IA provides: "The Central Bank may, whenever it is considered necessary, cause arrangements to be made for the services of an actuary or any other competent person to be made available for the purpose of advising the Bank on matters arising under this Act." In some jurisdictions, the supervisory authority has the power to appoint an independent actuary to make an investigation into a company's financial condition, with the costs incurred in carrying out the investigation being payable by the company. It is proposed that the IA be amended to provide this power.

### 3.1.3 Disclosure of Information by Insurers

ICP 26 provides that supervisors must require insurers to disclose relevant information on a timely basis in order to give stakeholders a clear view of their business activities and financial position and to facilitate the understanding of the risks to which they are

[21] Legal precedent can be found in section 93 of The Reserve Bank of New Zealand Act.
[22] Legal precedent can be found in section 61(2) of the Financial Intermediaries Regulatory Act of Barbados.

exposed. Such disclosure provides a basis for effective market discipline. International financial reporting standards require disclosure by publicly traded companies.

The IA does not currently require any public disclosure by insurers (although section 63 requires an insurer provide a copy of its financial statements to a shareholder upon request), nor does it enable the Central Bank to require such disclosure. However, section 198 provides that any person may inspect at the Central Bank and make copies of any document submitted under section 61(2), which includes audited financial statements, annual returns and actuarial reports. Some of this information is published by the Central Bank as part of its annual report to the Minister. Therefore, although some relevant information on insurers is available to the public, it is neither widely publicized nor conveniently accessible.

Similar to the FIA, it is proposed that the IA be amended to require that each insurer and financial holding company:

(a) Publish in a daily newspaper, audited individual and consolidated financial statements within three months after the close of its financial year;
(b) Keep a copy of its most recent audited financial statements at each of its offices and make it available for inspection by any person on request; and
(c) Disclose such other information for the protection of policyholders and other customers as the Central Bank shall stipulate from time to time.

Section 204 states: "*Where a document is required by this Act to be printed, the Central Bank may permit it to be typewritten or lithographed or to be reproduced by such mechanical means as the Bank may approve*." In order to accommodate evolving printing and electronic communication technologies, it is proposed that this section be amended to provide that "*…the Central Bank may permit it to be produced by such means as the Bank may approve.*"

## 3.2 On-site Inspection

ICP 13 requires supervisors to carry out on-site inspections to examine the business of an insurer and its compliance with legislation and supervisory requirements. Related criteria require that inspections may be full scale or focused, that they can be extended to outsourced service providers, and that supervisors follow up to ensure that required action has been taken.

Although section 50 provides for on-site inspection, its wording focuses on the examination of documents. This is consistent with a traditional, compliance-based approach to supervision, but not with a modern, risk-focused approach to supervision such as that employed by the Central Bank. It is essential that the Central Bank's power to conduct risk-focused on-site inspections, whether full scale or limited in scope, be set out clearly in the IA.

Therefore, it is proposed that the IA be amended to include a section similar to section 62 of the FIA, as follows:

The Inspector shall make or cause to be made such examination and inquiry into the affairs or business -

(a) of each insurer, financial holding company, direct or indirect subsidiary of an insurer in Trinidad and Tobago, and direct or indirect subsidiary and branch of a local insurer located outside Trinidad and Tobago as he considers necessary or expedient, for the purpose of satisfying himself that the provisions of this Act are being observed and that the insurer or financial holding company or subsidiary is in a sound financial condition;

(b) of any company that is a member of a financial group of which an insurer is a member, and any person to which an insurer has outsourced services material to the carrying on of its insurance business if, in the opinion of the Inspector, such examination and enquiry is necessary to assess any risk that such entity or person may pose to the insurer;

(c) of any branch or representative office of a foreign insurer located in Trinidad and Tobago, if in the opinion of the Inspector such examination and inquiry is necessary to verify that no business activity other than that authorized is being carried on.

The Inspector shall report to the Governor at the conclusion of each examination and inquiry.

The proposed mandate of the Central Bank (see 1.2) includes requiring insurers to take necessary measures to deal with situations of financial weakness, inadequate controls or risk management, or non-compliance with the relevant requirements. Such situations are often identified or confirmed as a result of an on-site inspection, and the need to deal with them is communicated to the insurer at the end of the inspection process. In most cases, the necessary measures would be taken on the basis of mutual agreement between the supervisory authority and the insurer. For example, section 67(2) provides that the Central Bank may request a company, within five years of its registration, to take corrective action whether or not the power to formally intervene is exercisable. However, where such "moral suasion" proves ineffective, more formal preventive and corrective measures would have to be taken by the Central Bank (see 3.4).

## 3.3 Supervision of Conglomerates

### 3.3.1 Consolidated Supervision

ICP 17 requires that insurers be supervised on a solo and a group-wide basis, in order to effectively assess and address the risks to which they are exposed. Where a financial institution forms part of a group or conglomerate, supervisors' concerns focus specifically on contagion, transparency and autonomy. The purpose of consolidated supervision is not to supervise all entities within a group to which a financial institution belongs, but to supervise the financial institution as part of the group.[23] Essential criterion (d) requires that, at a minimum, group-wide supervision of insurers must include—at a group level—adequate policies on and supervisory oversight of group structure and interrelationships, including ownership and management structure; capital adequacy; reinsurance and risk concentration; intra-group transactions and exposures; and internal control mechanisms and risk management processes. The IA provides limited powers at present to deal with these issues in a comprehensive manner.

The European Economic Community (EEC) framework has served as an important guide for many countries for the regulation of financial groups, particularly where insurance companies have been brought within the group.[24]

In Trinidad and Tobago, mixed-activity groups exist and it is recommended that the EEC framework be adopted in both the IA and the FIA.

The proposed amendments would give the Central Bank:

(a) authority to enforce reporting requirements on a commercial group to which an insurer belongs;
(b) authority to institute cross border supervision and sharing of information with other regulatory authorities;
(c) power to introduce measures to limit or restrict intra-group transactions between the insurer and connected parties;
(d) authority to require adequate capital and other prudential requirements to be applied on a consolidated basis.

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[23] Countries which have revised their legislation since the collapse of BCCI have incorporated detailed provisions regarding consolidated supervision in line with the recommendations of the Basel Committee (Tripartite Group). Those with such provisions include Canada, Italy, Jamaica, Norway, Sweden, Switzerland, UK, and US. For example, in the US, regulatory instructions describe the scope of what must be consolidated in "Consolidated Reports of Condition and Income" and the rules for consolidation, such as how capital adequacy requirements must be calculated on a consolidated basis and how subsidiaries must be integrated into a consolidated planning process by the parent banking organisation.

[24] In the EEC the term "financial group" or "conglomerate" refers to a group of two or more entities which are engaged mainly in financial activity or financial services activities and that are related by ownership or control. The parent may be a regulated or unregulated entity and ownership may be linked to commercial and industrial firms.

The EEC framework applicable to financial groups deals with the major issue of consolidation, which is the consolidated application of regulations related to capital adequacy, large exposures and connected lending. Full accounting consolidation is required of all financial institutions, securities or investment entities and, at a minimum, their financial subsidiaries (defined as holdings of twenty percent or more). All entities included in the scope of consolidated supervision must maintain adequate internal control mechanisms so as to enable them to provide any data or information relevant for the purpose of such supervision. In the case of a mixed-activity group, where a parent company which is not a financial services entity or a financial holding company owns a bank or investment firm, consolidated regulation is not extended to all entities within the group but only to the bank and investment entity in the group and to their subsidiaries; however, full accounting consolidation is required.

Jamaica has followed a similar approach, including provisions governing the formation and regulation of financial holding companies in its most recent revisions to its Banking Act of 2003.

It is proposed that a new section be inserted in the IA explicitly extending the powers of the Inspector of Financial Institutions and the Central Bank to the foreign operations of insurers and to their local and foreign direct and indirect subsidiaries.

It is further proposed that the Inspector have the power to examine any company within a group if, in the opinion of the Inspector, such examination is required to assess any risk that such company may pose to the insurer. For example, this could include securities firms regulated by the Trinidad and Tobago Securities Exchange Commission.

Consistent with the proposal above with respect to insurers (see 2.1.8), it is proposed that a financial holding company be required to obtain prior approval from the Central Bank for any changes in the composition or the organizational or capital structure of the financial group. In particular, it shall obtain prior approval for:
(a) the acquisition or disposal of entities, substantial holdings or assets of entities in the group; and
(b) any restructuring that would result in a reduction in capital of any insurer within the group.

Where the insurance company is a member of a financial group, it shall give notice of:
(a) the acquisition or disposal of entities, substantial holdings or assets of entities in the group; and
(b) any restructuring that would result in a reduction in capital of any insurer within the group.

The Central Bank may require details of such transactions. If the Central Bank considers it necessary to ensure the strength of the financial group, it may issue directions with respect to the transaction. It is further proposed that the Central Bank be empowered to prohibit any structure or relationship in a group which does not facilitate adequate supervision of the insurer or provide for the availability of clear information on other members of the group.

## 3.3.2 Connected Party Transactions

The prudent operation of an insurer requires that transactions between insurers and connected parties be conducted on an "arm's length" basis. For example, a criterion under ICP 17 states that supervisors must have in place adequate policies on and supervisory oversight of intra-group transactions and exposures, including intra-group risk guarantees and possible legal liabilities. The powers currently available to the Central Bank are inadequate to supervise connected party transactions. The changes proposed are consistent with the approaches described in Canadian and United States legislation[25].

[25] For example, sections 23A and 23B of the US Federal Reserve Act, 12 USC.

It is proposed that the board of directors of each insurer must ensure that policies and procedures are established for transactions with connected parties and periodically review compliance with them. The Central Bank should be provided with documentation of the policies and procedures and the results of the compliance reviews.

It is proposed that if, in the opinion of the Central Bank, a transaction between an insurer and a connected party or an insurer's exposure to other members of the group exposes the insurer to excessive risk or does not accord with ordinary business terms and principles, the Central Bank may set aside or direct that changes be made to any such transaction or require an insurer to limit or reduce its exposure. For example, an insurer may be required to limit its investments, loans, reinsurance and other risk-related activities with connected parties. Further proposals with respect to connected parties, which would explicitly define "connected" and deal specifically with credit exposures, are outlined in the prudential criteria part of this paper.

## 3.4 Preventive and Corrective Measures

ICP 14 requires that supervisors take preventive and corrective measures that are timely, suitable and necessary to achieve the objectives of insurance supervision. ICP 15 requires that supervisors enforce corrective action and, where needed, impose sanctions based on clear and objective criteria that are publicly disclosed. In extreme circumstances, this could include the revocation of an insurer's registration. At present, the IA provides the Central Bank with some intermediate enforcement powers, such as the power to intervene under sections 65-67. However, the constraints imposed on the use of these powers limit their usefulness.

For example, situations may arise where insurers are not financially strong, even though they are in compliance with legal requirements. In such situations, the Central Bank should have authority to require an insurer to take measures to improve its capital adequacy position, reduce liabilities through reinsurance, etc. It should also have authority to impose certain conditions on an insurer which fails to comply with the lawful instructions of the Central Bank, e.g., call for the removal of the officer responsible for the failure to comply.

It is therefore proposed that more extensive enforcement powers be introduced. This would provide the Central Bank with greater flexibility and the ability to impose more timely and effective sanctions.

### 3.4.1 Sanctions for Offences

Sections 206-208 and 212-213 of the IA contain general provisions regarding offences. It is proposed that these provisions be strengthened by revising them to provide as follows:

(a) Any person who, in purported compliance with any requirement under this Act or Regulations made thereunder, furnishes any information, provides any explanation or makes any statement which he knows or has reasonable cause to believe to be false or misleading in a material particular is guilty of an offence.

(b) Any person who contravenes any direction, Order or requirement given or made by the Central Bank, the Inspector or other person authorized by the Bank is guilty of an offence. Where the offence committed is as a result of a default in complying with any provision of this Act or of any Order or Regulation made thereunder or with any such direction, Order or requirement, the offence shall be deemed to be continued so long as the default continues.

(c) A person who fails to comply with this Act or Regulations made under this Act for which no penalty is expressly provided, commits an offence and is liable on summary conviction to a fine of $600,000 and to imprisonment for two years.

(d) In any proceedings for an offence under this Act it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by any person under his control.

(e) In any proceedings for an offence under this Act or Regulations made thereunder where it is proved that the person charged intended to deceive, defraud or profit significantly from the offence, the penalty shall be a fine of $5,000,000 and imprisonment for twenty years and this penalty shall be in addition to any other penalty under this Act.

(f) Where the Court is satisfied that as a result of the commission of an offence the convicted person acquired any monetary benefits or that monetary benefits accrued to the convicted person's spouse or other dependant, it may order the convicted person to pay restitution to the party deceived or defrauded, in an amount equal to the court's estimation of those monetary benefits. This restitution shall be in addition to any other penalty under this Act.

(g) Where an offence committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director or officer of the company, or any person who was purporting to act in any such capacity, he, as well as the company, commits an offence and is liable to be proceeded against and punished accordingly.

(h) Where a person is convicted of an offence under this Act, the Court may, in addition to any punishment it may impose, order that person to comply with any provision of this Act or any Regulation for the contravention of which he has been convicted.

## 3.4.2 Civil Money Penalties and Fines

The power to apply civil money penalties can provide an intermediate enforcement tool and an alternative to prosecuting through the Court system. Such power is currently held by the Comptroller of Customs.[26]

[26] Under the Trinidad and Tobago Customs Act No. 25 of 1989, sections 2(d) and 224(i) the Comptroller of Customs has the power to impose fines and penalties or forfeit goods, where a person commits an offense

It is proposed that the Central Bank be given the power to assess and apply civil money penalties on insurers for breaching certain sections of the Act, and the ability to establish rules for the administration of the penalties.[27] It is proposed that the Central Bank may offer to persons the opportunity to discharge any liability to conviction in respect of an offence by payment of a civil money penalty (administrative fine). The offer to pay a civil money penalty shall, for example, apply to the late and/or inaccurate submission of financial returns or information requested by the Central Bank. An insurer that refuses the offer to pay a civil money penalty should have the option to appeal to the High Court.

It is proposed that the IA includes a schedule that details specific contraventions for which administrative fines will be applied under the Act. This proposal would enable the amounts of penalties to be updated as conditions change, without requiring amendment of the main body of the Act.

Even with the ability to impose civil money penalties and enhanced ability to require that corrective action be taken, criminal prosecution must remain as an option among the Central Bank's enforcement powers.

### 3.4.3 Corrective Measures

Sections 65-67 of the IA describe the situations in which the Central Bank may intervene in the affairs of an insurer, the process that must be followed prior to intervening and the requirements that may be imposed on an insurer. Although formal supervisory intervention may be a precursor to judicial management and winding-up, such an outcome should be the exception rather than the rule. The objective of an active, risk-focused supervisory process is to identify issues of concern early enough so that timely and appropriate action can enable problems to be resolved.

Insurers may be more responsive if the Central Bank has the ability to require the company to convene a meeting of the board of directors and to effect the removal of a director or officer. [28] [29] It is proposed that the IA be further amended to provide that

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against the Customs Laws and has requested in writing that it may be dealt with by the Comptroller. The Comptroller under section 224(1) conducts hearings in private and not in open Court except where the alleged offender opts to have the matter determined by the Court. Matters brought before the Comptroller of Customs are usually determined expeditiously.

[27] US legislation has comprehensive provision for such powers which have proved to be effective, intermediate enforcement powers frequently used by the supervising agencies. Under US legislation Rule 308.64, Federal Deposit Insurance Corporation Rules and Regulation (FDIC), if in the opinion of the Board of Directors of the FDIC a violation has been committed, the appropriate civil money penalty may be assessed and collected. The regulation and procedure for assessing these fines are clearly prescribed within the legislation. Canada, Germany, New Zealand, UK legislation include similar provisions.

[28] Several countries have introduced such provisions. For example, section 36(2) of the German Banking Act gives the Federal Banking Supervisory Office the authority to request the dismissal of a manager if he has willfully or through extreme carelessness violated the provisions of the Act.

where an insurer fails to take measures required by the Central Bank pursuant to any section of the Act, the Central Bank may require the board of directors of an insurer or financial holding company to convene a special meeting of:

(a) the Board of Directors;

(b) the shareholders to report on the failure of the insurer or financial holding company to implement measures required to be taken by the Central Bank;

(c) impose conditions on the registration of the insurer.

and the Central Bank shall be invited to attend and be heard at such meeting.

### 3.4.4 Compliance Directions

The 2009 amendment to section 65 the IA replaced the lengthy intervention process under the IA with the power to issue compliance directions. It is proposed that sections 65 to 67 of the current IA as amended by the 2009 amendment be retained as it is an effective tool for bringing about compliance of financial institutions. Compliance directions may require an insurer, financial holding company, controlling shareholder, significant shareholder, director, officer, employer or agent of an insurer, principal representative of a foreign insurer or any other person to either "cease and desist" or "to perform" a particular action. Compliance directions allow the Central Bank some flexibility in determining the notice period, although the grounds for issuing compliance directions are similar to those currently required for intervention.

### 3.4.5 Injunctive Relief

The IA (Amendment) 2009 gave the Central Bank the ability to seek injunctive relief, either as a remedy in itself or as a complement to other enforcement actions available to the Central Bank, depending on the circumstances of each case. It is proposed that this amendment be retained because of some of the constraints experienced in the administering of the Acts, and will serve to guard against flight of assets, the destruction of documents and risks arising from non-compliance with compliance directives given by the Central Bank.

Injunctive relief involves an application to the Court in cases of urgency or where the risks described above can be substantiated, seeking an order to prevent persons from taking specified actions or to compel them to perform specified acts.

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[29] For example, section 31(7) of the Swedish Banking legislation empowers the supervisory authority to convene an extraordinary general meeting of shareholders if the board has not complied with a request by the Supervisory Authority to so convene a meeting.

### 3.4.6 Restriction or Revocation of Registration

ICP 15 requires that the supervisor takes action to withdraw the licence of an insurer where appropriate.

Section 25 describes the reasons for which the Board of Directors of the Central Bank may cancel an insurer's registration and the process that must be followed to do so. The reasons include some, but not all, of the reasons for which the Central Bank may intervene under section 65.[30] In its current form, section 25 does not clearly empower the Board to cancel an insurer's registration under all conditions where such action may be appropriate.

Therefore, it is proposed that the IA be amended to expand the list of reasons for which an insurer's registration may be revoked to the following (*existing reasons are shown in italics*):

(a) *the Central Bank is satisfied that the insurer obtained registration as a result of any misleading or false representation*;

(b) an application for registration would be refused if such an application were made at the time of the proposed cancellation;

(c) any of the criteria other than paragraph A specified in the (fit and proper) Schedule is not or has not been fulfilled or is unlikely to be or may not have been fulfilled in respect of the insurer;

(d) the insurer has failed to comply with any obligation imposed on it by or under this Act;

(e) the insurer has failed to comply with any obligation imposed on it by legislation or Regulations for the prevention of money laundering or terrorist financing, including the Proceeds of Crime Act, the Anti-terrorism Act, the Financial Intelligence Unit Act of Trinidad and Tobago and any Regulations made thereunder.

(f) *30 days has elapsed since the date before which the insurer was required under this Act to furnish information to the Bank and the insurer has, without reasonable excuse, failed to furnish the information or failed to do so in the manner specified in this Act*;

(g) the Central Bank has been provided with false, misleading or inaccurate information by or on behalf of the insurer or by or on behalf of a person who is or is to be a director or officer of the insurer;

(h) *the Central Bank is satisfied that* the policy and practice of the insurer in dealing with claims are unfair or that *there is unreasonable delay in the settlement of claims payable under policies issued by the insurer*;

(i) *the reinsurance arrangements of the insurer are not satisfactory*;

(j) in the opinion of the Central Bank, the interests of policyholders or potential policyholders of the insurer are in any way threatened including, where a company is carrying on long-term insurance business, consideration of its

[30] Section 10 of the FIA, which deals with the revocation of licences, contains a longer list of reasons that includes many of the issues addressed by section 65 of the IA but absent from section 25.

ability to fulfill the reasonable expectations of policyholders or potential policyholders, whether by the manner in which the insurer is conducting or proposes to conduct its affairs or for any other reason;

(k) *the insurer has not carried on insurance business within a year of its registration or for a period of more than one year*;
(l) a Receiver or Manager of the insurer has been appointed;
(m) the insurer fails to comply with a condition imposed under registration;
(n) the insurer fails to comply with a direction issued by the Central Bank, including a compliance direction;
(o) *the insurer is insolvent within the meaning of section 77*;
(p) the insurer's capital or liquidity is inadequate or insufficient to meet its liabilities;
(q) *a final judgment obtained against the insurer in any court and from which no appeal is pending remains unsatisfied for at least two months*;
(r) possession has been taken by or on behalf of the holder of any debenture secured by a charge on any property of the insurer comprised in or subject to the charge;
(s) the insurer has merged or been amalgamated with another company or institution and the registration is no longer required; or
(t) the business of the insurer is no longer the business for which it was registered.

It is further proposed that the IA be amended to enable the Central Bank to restrict an insurer's registration, under the same conditions that would permit revocation. For example, restriction may be appropriate if, in spite of significant concerns, there is a chance that the problems of the insurer can be resolved and that it can return to normal operation. This would provide more flexibility to the Central Bank in seeking to resolve difficulties with an insurer.

It is proposed that the Central Bank shall give to the insurer notice in writing of the intention of the Board to restrict or revoke its registration, specifying the grounds upon which the Board proposes to take such action and the date on which the proposed action is to take effect, and shall require the insurer to submit to the Central Bank within a specified period a written statement of any objections. The decision of the Central Bank could be appealed.

The FIA stipulates that when the Board of the Central Bank proposes to revoke a licence, it may direct the Inspector to take control of the books, records and assets of the licensee in order to safeguard the interests of depositors, creditors and shareholders. An amendment has been proposed to enable the Inspector to incur expenses when doing so, with such costs to be paid by the licensee. It is proposed that such provisions be added to the IA.

Section 23(13) of the FIA states: "Where in the case of an affiliate, wherever incorporated, of a licensee -
(a) a winding-up order has been made; or
(b) a resolution for its voluntary winding-up has been passed,

(c) an order for the appointment of a receiver has been made
the Board may restrict or revoke the licence of the licensee if it considers that the winding-up of the affiliate is likely to affect adversely the licensee or its depositors".

The IA currently makes no provision comparable to this section of the FIA. Therefore, it is proposed that the IA be amended to include such a provision.

## 3.5 Exit from the Market

### 3.5.1 Suspension of Operations

The IA (Amendment) Act of 2009 replaced sections 68 to 75 of the IA which enabled the Central Bank to apply to the court for an order that a company or any part of its business be placed under judicial management and set out the workings of the judicial management process with powers that enable the Central Bank to take control of a troubled company and suspend its business. Depending on the situation, this period of control could lead either to the resolution of difficulties and resumption of normal business activities or to a request by the Central Bank that the company be wound up. This is a similar process to what obtains in the FIA and should be retained in the new Insurance Act.

### 3.5.2 Winding-up Process

ICP 16 requires that the legal and regulatory framework defines a range of options for the orderly exit of insurers from the marketplace, defines insolvency and establishes the criteria and procedure for dealing with insolvency.

Notwithstanding that the IA contains certain provisions regarding winding-up, it states that the winding-up of insurance companies is governed by the winding-up provisions of the Companies Act. The winding-up of insurance companies and all other companies registered under the Companies Act is triggered by the circumstances set out in section 355 of that Act.[31]

Sections 76 and 77 of the IA contain some extensions and modifications to the Companies Act provisions on winding-up. Firstly, an insurance company may be ordered to be wound up on the petition of ten or more policyholders owning policies totaling not less than one hundred thousand dollars. Secondly, an insurance company may be wound up on the petition of the Central Bank. Thirdly, in determining whether a general insurance company is unable to pay its debts and thus liable to be wound up, regard shall be had to whether the assets of such a company fail to exceed its liabilities by the greater

[31] In the case of licensees under the FIA, there is an additional trigger, that is, where the Board of the Central Bank is of the opinion that the licensee is unlikely to meet the demands of its creditors and should be wound up.

of (a) two hundred and fifty thousand dollars or (b) twenty percent of the general premium income of the company computed as at the end of its last financial year.

The possibility that as few as ten policyholders could petition for the winding-up of an insurer poses the risk that the supervisory process, or the operations of an insurer, could be unreasonably disrupted and the interests of all policyholders jeopardized. A higher threshold limit of not less than twenty percent of the aggregate sum assured of the insurer is proposed.

Under the IA, a winding-up petition cannot be applied for ex parte. Further, according to section 76(2), a petition for winding-up may not be presented except with leave of the Court. Such leave will only be granted subject to a prima facie case being established and the payment of security for the costs of the application. Also, in view of sections 32(1), 76(3), 78(9) and 82, it does not appear that the IA contemplates that the Inspector of Financial Institutions could be appointed as liquidator of an insurance company.

It is procedurally easier for the Central Bank and the Inspector of Financial Institutions to apply for the winding-up of a licensee compared to an insurance company. The FIA gives the Central Bank the right to suspend the business of a licensee in anticipation of a winding-up, which is a power that is not explicitly provided under the IA. The FIA does not require any person seeking to wind-up a licensee to first apply for leave of the Court, or that such leave will not be granted unless the applicant is able to establish a prima facie case. The applicant is not required to pay in security for costs and the application may be heard ex parte. Further, the FIA provides that the liquidator can be the Inspector of Financial Institutions.

Therefore, in order to enhance the ability of the Central Bank to ensure the orderly exit of insurers from the marketplace it is proposed that the winding-up provisions of the IA be made more consistent with those of the FIA.

### 3.5.3 Priorities on Winding-up

ICP 16 requires that the legal framework gives priority to the protection of policyholders in the event an insurer is wound-up. It is important that priorities on winding-up recognize the fiduciary obligations of financial institutions to their customers. Giving the rights of policyholders and depositors a high priority also promotes confidence in the financial system.

Section 435 of the Companies Act sets out several types of payments, such as taxes, wages and severance benefits, which have priority over other debts in the winding-up of a company. Section 44N of the CBA provides that the Deposit Insurance Corporation is subrogated up to the insured limit to all the rights and interests of the depositor against a closed institution and that it has priority over other unsecured creditors in respect of these rights.

The winding-up provisions of the IA do not give the rights of policyholders priority over those of other creditors. The IA requires that insurers establish statutory funds for long-term insurance business and motor vehicle insurance business. The statutory funds provide some protection on winding-up to the policyholders in those classes of business, since section 80(1) requires that the assets of a particular statutory fund must first be used to satisfy the insurer's obligations to policyholders and claimants of that class of business. The statutory fund mechanism has some weaknesses, for example, it provides no protection to policyholders of other classes of business, and excess assets in one statutory fund provide no protection to policyholders of another class of business whose statutory fund may be in a deficit position on winding-up. For these and other reasons, such as the need to introduce risk-based capital adequacy requirements, it is proposed that the administrative mechanism for monitoring and managing the statutory fund be enhanced.

A statutory fund should generally contain sufficient high quality investments to cover the related policyholder liabilities in the event an insurer is wound-up. However, this may not be the case, if the liabilities have been underestimated or the book value of the assets cannot be fully realized. Therefore, it is proposed that the IA be amended to provide that in the event that the assets of a statutory fund are insufficient to meet the related liabilities, the rights of policyholders, beneficiaries and claimants to the other assets of an insurer rank below the preferential payments specified in section 435(1) of the Companies Act and below secured creditors, but have priority over other unsecured creditors.

Further, to protect policyholders from the possibility that payments to secured creditors could significantly deplete the assets of the insurer, it is further proposed that insurers be prohibited from pledging assets having a total value that exceeds their free surplus, i.e., the excess of assets over liabilities and required capital and reserves.

## *4 Prudential Requirements*

ICPs 18-23 deal with the practices expected of prudently-run insurers, the types of requirements that supervisors might establish in order to achieve the implementation of such practices, and the need for supervisory assessment of their implementation. ICP 18 states that supervisors must require insurers to recognize the range of risks that they face and to assess and manage them effectively. It has been proposed above that adequate risk management be required as a condition of registration.

ICP 23 on capital adequacy and solvency highlights the importance of having a comprehensive solvency regime, which addresses in a consistent manner:

- Valuation of liabilities;
- Quality, liquidity and valuation of assets;
- Matching of assets and liabilities;
- Suitable forms of capital; and
- Capital adequacy requirements.

The absence of, or weaknesses in one or more of these factors places policyholders at greater risk of undue loss.

## 4.1 Statutory Fund

The IA incorporates a statutory fund mechanism, which includes various requirements that seek to protect the interests of policyholders. It is proposed that this protection be strengthened by supplementing the statutory fund mechanism with other requirements that will help to deal more effectively with each of the issues the statutory fund seeks to address. The rationale for this proposal is outlined below.

### 4.1.1 Current Approach and Its Objectives

The IA requires that an insurer establish statutory funds in respect of its long-term and motor vehicle classes of business. The insurer must place into trust assets of an amount no less than its liabilities and contingency reserves that relate to its business in Trinidad and Tobago in the relevant class. Section 47 requires that at least eighty percent of the assets backing liabilities denominated in Trinidad and Tobago dollars be invested in local assets, although this requirement may be met in part (up to ten percent of assets) by Caricom investments approved by the Central Bank. The Second Schedule describes the assets that are acceptable for inclusion in a statutory fund, defining permitted asset classes, limitations on investments in the real estate and ordinary share classes, and limitations on particular investments in mortgages and ordinary shares. (The investments of a pension fund must meet these same requirements.) An insurer is constrained in its ability to use the assets of a statutory fund for purposes other than meeting its obligations to policyholders in the relevant class of business.

There are several ways in which the statutory fund approach seeks to protect the interests of policyholders, including:

- Requiring an insurer to have sufficient assets to meet its obligations to policyholders (asset sufficiency);
- Requiring an insurer to invest in assets whose values are likely to be realizable when needed to meet obligations to policyholders (asset quality);
- Preventing an insurer from diverting assets required to meet obligations to policyholders to other purposes (asset control); and
- Providing that an insurer's assets must first be used to meet obligations to policyholders in the event the insurer is wound-up (policyholder priority).

The asset sufficiency objective is addressed by the requirement that the amount of assets in a statutory fund must be no less than the liabilities and contingency reserves that relate to business in Trinidad and Tobago in the relevant class and the prohibition against an insurer or its parent company declaring a dividend at any time when the assets of any statutory fund are less than the relevant liabilities.

The asset quality objective is addressed by the requirement that the assets of a statutory fund must be invested in accordance with the limitations prescribed in the Second Schedule.

The asset control objective is addressed by the requirement that the assets of a statutory fund must be held in trust and the prohibition – in the case of long-term insurance business – against paying, applying, allocating or transferring such assets without the approval of the Central Bank and on the certificate of the insurer's actuary.

The policyholder priority objective is addressed by the requirement that, on winding-up, the assets of a particular statutory fund must first be used to satisfy the insurer's obligations to policyholders and claimants of that class of business.

### 4.1.2 Shortcomings of the Current Approach

The current approach is deficient in several respects in ensuring the adequacy of an insurer's assets to meet its obligations to policyholders. Firstly, the assessment of adequacy is neither continuous nor prospective in nature, but is made only at the end of an insurer's financial year. There is no requirement that assets be adequate on an ongoing basis. By the time the required amount of assets is calculated by the insurer and reviewed by the Central Bank, both assets and liabilities will have changed in value. Secondly, the contingency reserve buffer included in a statutory fund is not determined in a manner that reflects the risks inherent in an insurer's assets and liabilities. Thirdly, the existing protection does not extend to all policyholders, only to those in the long-term and motor vehicle classes.

The current approach is also deficient in meeting the asset quality objective. Most importantly, it does not assign overall responsibility for prudent investment policy and practices to the board of directors, nor does it address the risk management and control mechanisms that should be in place. Secondly, although asset quality and diversification requirements typically exist even under a prudent person approach, the existing provisions in the Second Schedule are out of date and inadequate. In some cases, this may inappropriately restrict the ability to make prudent investments, or result in the repackaging of investments simply to meet statutory requirements. In other cases, the requirements are inadequate to address the risks inherent in current investment vehicles. Thirdly, there is no requirement that the assets of a statutory fund be appropriate to the nature of its liabilities, for example, with respect to liquidity and duration. Fourthly, the scope of application of the asset quality requirements is limited, since the Second Schedule does not apply to all investments of an insurer, for example, those relating to foreign business, other classes of business, or capital and surplus. This may promote a narrow, mechanistic approach to investment, rather than a strategic, prudent approach consistent with the expectations outlined in the Central Bank's Guideline on the Prudent Person Approach to Investment and Lending.

The trust mechanism underlying the statutory fund is deficient in meeting the asset control objective. Firstly, although a trustee is prohibited from dealing with any assets held in trust without the prior general or specific approval of the Central Bank, compliance with this requirement can only be assessed retrospectively, since the Central Bank is not a party to the trust. Accordingly, there is a risk that assets might be moved out of the trust between reporting dates without the prior knowledge or approval of the Central Bank. Secondly, assets of a statutory fund may not always be clearly under the control of its trustee. Deposits with banks are not formally vested in the trust, but are deemed to be subject to it, and it is difficult in practice to make a meaningful assignment of certain types of assets, such as electronically-traded securities and individual mortgages. Accordingly, the existence of an ineffective trust mechanism may actually have created a false sense of security. Thirdly, the requirement that the Central Bank approve assets can hinder the timely and effective conduct of an insurer's investment operations and creates an administrative burden for both insurers and the Central Bank. The establishment and operation of a more effective trust mechanism could potentially be even more complex, resource-intensive and intrusive than is currently the case.

The current approach provides uneven protection of policyholders in the event of a winding-up. Firstly, the preferential position of policyholders does not extend to those in classes of business other than long-term or motor vehicle insurance. Secondly, even the protection of long-term and motor vehicle policyholders may be incomplete, should the assets of the statutory fund prove to be inadequate to meet the liabilities, for example, due to depreciation of the assets or adverse development of liabilities. There is no provision for the transfer of excess assets in one statutory fund to another statutory fund that is in a deficit position.

### 4.1.3 Proposed Approach

Some of the shortcomings of the current approach can be addressed by amending the specific requirements, for example, by updating the Second Schedule to reflect the types of assets currently available in the investment markets. However, some aspects of the current approach, such as the absence of risk-based capital adequacy requirements, are fundamentally non-compliant with the ICPs. Therefore, a new approach is proposed.

It is proposed that a clause that requires the establishment of risk-based capital adequacy requirements be included in the IA. Such a clause would be similar to the FIA, which provides that Regulations may be made with respect to prudential criteria. The statutory fund mechanism will be retained and will operate in conjunction with the risk-based capital adequacy requirements, which will be phased in.

Like the current approach, the proposed approach incorporates a range of requirements that are designed to meet the various policyholder protection objectives. However, the proposals have been formulated to address the current shortcomings and conform to international standards. The proposed requirements, which are described in detail in other parts of this paper, include:

- Requiring a margin of capital – to be determined with reference to an insurer's risks and maintained at all times, which will better ensure the adequacy of assets;
- Establishing adequate risk management as a condition of registration, updating the current investment limitations – including strengthening the large exposure provisions, which will better ensure the quality of all of an insurer's assets and their appropriateness to the nature of an insurer's liabilities;
- Strengthening both the prohibition against declaring shareholder dividends when an insurer is in a weak financial position and the controls on exposures to connected parties, which will better control the use of assets for purposes other than meeting obligations to policyholders;
- Providing that the rights of policyholders, beneficiaries and claimants rank immediately below the preferential payments specified in section 435(1) of the Companies Act and therefore have priority over other secured and unsecured creditors in the event of a winding-up;
- Requiring that all classes of business be supported by statutory funds–in addition to the current provision that there be a statutory fund for long-term insurance business, it is proposed that there be a statutory fund covering **all classes** of general insurance business, not just motor vehicle insurance;
- Imposing reporting and other requirements on trustees.

It is further proposed that the statutory fund provisions be strengthened by including clauses similar to those contained in Sections 31, 32 and 34, which relate to the statutory deposit.

It is proposed that a new section be inserted to provide that it shall be the responsibility of the company to ensure that the statutory fund is at all times adequate to support its liabilities to policyholders and that failure to do so would be an offence.

The White Paper on Financial Sector reform stated that the feasibility of establishing an Insurance Fund will be investigated. Such fund will be based on the principle of deposit insurance and is intended to protect policyholders in the event of insolvency of an insurer. Similar to the Deposit Insurance fund which currently is available for depositors of financial institutions, the insurance fund will be financed by the industry. It is anticipated that the statutory fund would be phased out when this fund commences.

## 4.2 New Products

ICP 19 states that supervisors must require insurers to evaluate and manage the risks that they underwrite, in particular through reinsurance, and to have the tools to establish an adequate level of premiums. Financial products and services can be very complex and expose an insurer to a range of risks, some of which may have potentially significant prudential implications. It is important that insurers adequately assess the risks inherent in any new product or service and adopt policies and procedures to adequately manage such risks. In order to properly assess an insurer's financial condition and risk profile, the Central Bank must be fully aware of the products and services offered by insurers.

Sections 117-119 deal with the role of the actuary in the establishment of adequate premiums for long-term insurance business, provide for the Central Bank's review of the actuary's report on the suitability of premiums, and require the Central Bank's approval of the standard forms of proposals and policies. Section 24 requires that an insurer provide copies of standard forms of policies, applications and endorsements at least one month prior to their use, for all classes of business. The Central Bank may prohibit their use if, in its opinion, they are fraudulent, unjust or not in the public interest.

While "not in the public interest" could be interpreted to cover the situation where a new product's design or premium rates are, in the opinion of the Central Bank, imprudent, it would be preferable to make this an explicit reason for prohibition.

Therefore, it is proposed that section 24(2) be amended by inserting the word "imprudent" after "unjust". In order to assess the prudence of a product, the Central Bank may require the insurer to provide information regarding the risk analysis it has performed and the assumptions on which the premium rates are based.

The requirement that the standard forms of proposals and policies for long-term insurance business be approved by the Central Bank prior to their use has the potential to inappropriately delay the introduction of new products to the market.

Therefore, it is proposed that unless the Central Bank informs an insurer otherwise, a standard form of proposal or policy would be deemed to be approved thirty and ninety days general and life insurance products respectively after it has been received by the Central Bank. The Central Bank intends to provide guidance about what information it would require from an insurer to facilitate its review. The Central Bank would inform the insurer that the proposal or policy would not be deemed approved if, for example, such information is not provided or if analysis of the information is necessary.

It is further proposed that where insurers issue performance bonds, the standard forms of such bonds must be approved by the Central Bank.

Section 173 provides that the Minister on recommendation of the Central Bank may prescribe minimum rates of premium in respect of motor vehicle insurance business. This provision has never been exercised. Considering this, along with the various proposals that would require adequate risk management by insurers and enhance the ability of the Central Bank to intervene with those who do not adequately manage their risks, it is proposed that section 173 be deleted.

## 4.3 Liabilities

ICP 20 states that supervisors must require insurers to comply with standards for establishing adequate technical provisions (i.e., insurance liabilities) and other liabilities, and for making allowance for reinsurance recoverables. The supervisor must also have both the authority and the ability to assess the adequacy of the technical provisions and to require that they be increased, if necessary.

### 4.3.1 Valuation of Liabilities

The IA does not explicitly set out the standards that must be used in determining an insurer's liabilities. Section 114 provides that the basis of valuation for long-term insurance business must be such as to place a proper value upon the liabilities. It does not specify how a "proper" actuarial basis would be determined, other than that the value of liabilities shall not be less than if it had been calculated on a Minimum Basis prescribed by Regulations; no Minimum Basis has been prescribed. Section 168 provides that the Minister on recommendation of the Central Bank may prescribe a basis for the valuation of general insurance liabilities. There is a general understanding that the twenty percent of liabilities established for known claims is a reasonable benchmark for the amount to be provided for incurred but not reported claims, although this understanding seems to be driven more by tax requirements than by prudential considerations.

In practice, insurers in Trinidad and Tobago have been applying a range of valuation bases, drawing upon both past and current actuarial standards of jurisdictions such as Canada, the United Kingdom and the United States. This lack of commonality makes the task of the Central Bank and market participants in assessing the adequacy of liabilities very difficult.

In some jurisdictions, insurance liabilities are valued in accordance with standards established by the local actuarial profession. This alternative is not yet available in Trinidad and Tobago, since the Caribbean Actuarial Association has not yet developed comprehensive and detailed standards of practice. The International Actuarial Association is actively engaged in standard setting, which has been given greater urgency by the intention of many jurisdictions to adopt the accounting standards being developed by the International Accounting Standards Board. International actuarial standards may eventually be adopted by or provide the basis for the local standards of the Caribbean Actuarial Association.

In other jurisdictions, liabilities are valued in accordance with rules established by the supervisor. This alternative requires that the supervisor have the necessary expertise and resources to develop and maintain a complex body of standards. An intermediate approach provides that the standards of a professional body, together with any specifications of the supervisor, are used for valuation.

It is proposed that the IA be amended to provide that insurance liabilities, with respect to long-term insurance business must be valued in accordance with the methodology prescribed in Regulation. In the case of general insurance, liabilities should be valued on a minimum basis prescribed in law acceptable to the Central Bank. This will enable the

Central Bank to recognize local or international actuarial standards as they emerge, while also enabling it to narrow the range of actuarial practices that currently exists. It will also facilitate the adoption of financial reporting by insurers in accordance with International Financial Reporting Standards (see 3.1.1).

Sections 115 and 116 require an actuarial certificate for the transfer or payment of assets from a statutory fund and establish limitations on the distribution to shareholders of surplus related to participating policies. It is proposed that the distribution of surplus related to participating policies continue to require an actuarial certificate and that the limitations on distributions of such surplus to shareholders be retained. It is further proposed that insurers be required to account separately for their participating business (see 3.1.1).

### 4.3.2 Adequacy of Liabilities

Section 56 requires that the accounts of an insurer that is carrying on long-term insurance business include an actuarial certificate regarding the adequacy of the liabilities. Section 113 requires such companies to have actuarial reports produced at least once every three years and section 114 provides that the value of liabilities included in such reports be no less than that under any specified Minimum Basis.

Section 57 requires the auditor to certify that general insurance reserves (liabilities for unexpired policies) have been calculated in accordance with section 168 and that claims provisions are adequate. Section 172 empowers the Central Bank to disallow methods that produce inadequate claims reserves.

Section 61(7) enables the Central Bank to direct that financial statements and returns be varied if they appear to be unsatisfactory. This provision could be used to deal with concerns regarding the inadequacy of liabilities.

In order to make an appropriate assessment of the adequacy of liabilities, it is essential that the Central Bank have timely, adequate and current information. It has been proposed that annual returns and actuarial reports be filed within three months of the relevant financial year end. However, an actuarial report is currently required only once every three years. Considering the potential for significant changes in the economic environment and an insurer's operations and financial position, this frequency does not meet the needs of the Central Bank. In many jurisdictions[32], actuarial reports are required annually.

Therefore, it is proposed that section 113(1) be amended to read as follows: "Every company carrying on long-term insurance business shall, each year…..".

[32] For example, Australia, Canada, Jamaica and the US.

None of the local general insurance companies has yet appointed an actuary and, in fact, there are no actuaries resident in Trinidad and Tobago who specialize in general insurance. Nevertheless, the assessment of general insurance liabilities by a qualified actuary can provide valuable information to both an insurer and its supervisor. General insurance actuarial expertise is available to local insurers through the use of foreign consultants.

As noted elsewhere in these proposals (see 2.1.1), an actuarial report would be required of any general insurance company that writes disability income insurance business. It is further proposed that the IA provide that:

> The Central Bank may require a company carrying on general insurance business to cause an actuary to make an investigation into its financial condition, including a valuation of its liabilities, and to furnish the Central Bank with a report of the result of the investigation.

In some circumstances, for example, if there are concerns that the assumptions or methods used by an actuary may be inappropriate considering the nature of a company's business, it may be useful to have the work of the actuary reviewed by an independent actuary or to have an independent actuary produce a new valuation of the liabilities. Some jurisdictions provide that the supervisor can require that such steps be taken, at the expense of the insurer. This power is particularly useful where the supervisor lacks significant actuarial resources.

Therefore, it is proposed that the IA provide that the Central Bank may require an independent actuary to review the work of an insurer's actuary or to make an investigation into the insurer's financial condition, and to report to the Central Bank on the results of such review or investigation. The insurer shall be required to pay the cost of such review or investigation. This can be accomplished through the adoption of the broader proposal described in 3.1.2 above.

### 4.3.3 Allowance for Reinsurance

Reinsurance is an important risk management tool for insurers, enabling them, for example, to limit their exposure to large insurance claims. However, reinsurance does not relieve an insurer from its obligation to pay claims on policies it has issued. If a reinsurer fails to meet its obligations to an insurer, the insurer may be left with a much larger exposure than it had expected. This reinsurance credit risk can be a significant concern if an insurer is heavily reliant upon a particular reinsurer, for example, under a fronting arrangement.

Therefore, while it is appropriate that an insurer recognize the impact of reinsurance when calculating its liabilities and assets, it is also appropriate that this recognition be subject to limitations. Although section 214 provides that Regulations may be made governing reinsurance business, this has never been done. Under section 61(7), the

Central Bank may require that changes be made in an insurer's financial statements, which could be done in the case that reinsurance is being inappropriately accounted for. However, this does not directly address a situation where the accounting is proper but an insurer is excessively exposed to risk of failure in the event that one or more of its reinsurers fail to meet their obligations.

Therefore, it is proposed that the IA be amended to include a new section, as follows:

The Central Bank may prohibit an insurer from recognizing in its financial statements or returns any asset or any reduction of liabilities, or require that the amounts thereof be varied, in respect of reinsurance, any arrangement having the effect of reinsurance, or any other arrangement with another insurance company if, in the opinion of the Central Bank-

(a) there is a significant possibility that the insurer's counterparty or counterparties under such reinsurance or other arrangement may default on their obligations thereunder; or

(b) the default of the insurer's counterparty or counterparties under such reinsurance or other arrangement would significantly increase the risk that the insurer is or is likely to be unable to meet its liabilities.

The Central Bank intends to provide guidance about the factors it would consider in this regard, which will likely include: whether or not a reinsurer is registered, the nature of supervision to which a foreign reinsurer is subject in its home jurisdiction, the ratings accorded a reinsurer by independent rating agencies, the extent to which a reinsurer has provided collateral in respect of its obligations, the proportion of an insurer's business that is subject to a particular reinsurance arrangement, and the proportion of risk that is retained by an insurer. It is not intended that all of these factors must be favourable in every situation; for example, reinsurance with an unrated reinsurer might be acceptable if the reinsurer is subject to strong home supervision and provides collateral in respect of its obligations, while reinsurance with a highly-rated reinsurer might be acceptable without collateral, particularly if the insurer is retaining a high proportion of the risk.

## 4.4 Assets

ICP 21 provides that a supervisor must require insurers to comply with standards on investment activities. These standards must include requirements on investment policy, asset mix, valuation, diversification, asset-liability matching, and risk management. ICP 22 sets out similar provisions with respect to the use of derivatives and similar commitments.

The IA currently deals explicitly with the issues of asset mix, valuation and diversification. It does not explicitly address the need for an investment policy, asset-liability matching or investment risk management, nor does it deal with the possible use of derivatives by insurers. The Central Bank has issued a guideline to insurers, pension funds and licensees under the FIA, setting out its expectations that they follow a prudent person approach to investment and lending. Nevertheless, the provisions of the IA regarding assets should be strengthened and various recommendations for doing so are set out below and in 2.1.8 (requiring the prior approval of the Central Bank in situations where an insurer would be a controlling shareholder of another company). The development of a separate Occupational Pension Act will facilitate the adoption of different limitations for the investment of pension funds than those applicable to insurers, in recognition of the differences in the nature of their obligations and legal and financial structures.

The Central Bank recognizes that some of the proposed limitations are more restrictive than those currently in effect, so that meeting the new limitations may require insurers to dispose of certain assets. Accordingly, it is proposed that the IA provide transition periods of five years with respect to the limitations described in 4.4.1 and three years with respect to the large exposure limitations described in 4.4.2, and grandfathering of existing connected party exposures discussed in 4.4.3.

## 4.4.1 Investment Limitations

Section 37 requires that statutory funds be established in respect of long-term insurance business and motor vehicle insurance business and section 46 requires that the assets of a statutory fund be invested in accordance with the Second Schedule. Section 46 also provides that the Minister on the recommendation of the Central Bank may by order amend the Second Schedule, and several amendments have been made since the IA was enacted.

The current approach has several shortcomings, for example:
(a) It does not deal with the investment of assets required to support an insurer's liabilities under classes of business other than long-term insurance or motor vehicles insurance;
(b) It does not deal with the investment of an insurer's surplus assets, i.e., the amount of assets in excess of its liabilities, even though at least some of that surplus should be available as a cushion against adverse fluctuations in the values of assets or liabilities (see 4.4);
(c) In spite of amendments made to the Second Schedule, it does not fully reflect the range of assets that might appropriately serve as investments of insurers;
(d) The requirements of the Second Schedule regarding the distribution of assets may be unduly restrictive; and
(e) Investment in accordance with the Second Schedule does not necessarily mean that assets will be appropriately matched to the nature of an insurer's liabilities, e.g., in terms of duration or liquidity.

Therefore, it is proposed that the IA be amended by replacing the Second Schedule with a Regulation to treat with assets limitations. Further the IA will be amended to provide that:
(a) The Board of Directors of each insurer shall adopt a policy and procedures that provide for the investment of the assets of the insurer in a manner expected of a

prudent person considering the nature of the insurer's liabilities, and in compliance with the requirements of the Act and Regulations thereunder;

(b) The limitations shall apply to all investments of an insurer, not just those in respect of long-term insurance business or motor vehicle insurance business;

(c) Insurers be able to use derivatives and similar commitments for hedging purposes; and

(d) The limitations be revised consistent with the summary below.[33]

| **Type of Investment** | **Limitation** |
|---|---|
| Significant holdings | See 2.1.8 above |
| All types – large exposure limitations (see 4.4.2 below) | 25% of capital base |
| Government Securities – T&T and other approved | No overall limit |
| Corporate Debt | No overall limit |
| Preferred Shares | No overall limit |
| Ordinary Shares – if listed on an approved exchange | 40% of assets (five-year transition from current limit of 50%) |
| Collective Investment Schemes | 10% of assets |
| | |
| Mortgage Loans – subject to maximum loan-to-value ratios | 50% of assets |
| Real Property, all categories combined | 30% of assets (two-year transition from current limit of 20%) |
| Deposits in qualifying financial institutions | No overall limit |
| Secured Loans | Based on the asset category of the security provided; subject to 80% maximum loan-to-value ratio |
| Policy Loans | No limit; not subject to large exposure limitations |
| Derivatives | Permitted for bona fide hedging purposes |
| Segregated Funds / Unit-linked Products | Subject to contractual agreements with clients, rather than the above limits; assets must be clearly separated from other investments |
| Basket Clause – any other types of assets, if not ineligible or prohibited | Lesser of 10% of assets or 50% of amount by which capital exceeds the minimum required |

For purposes of determining the amounts of each of the above limitations, assets, capital and required capital would be determined based on the most recent annual regulatory returns.

[33] The proposed investment limitations are largely consistent with those of Jamaica.

The Second Schedule prohibits the acquisition of more than thirty percent of the ordinary shares of any corporation. It has been proposed (see 2.1.8 and 2.2.2) that the IA be amended to impose the same limitations as those under the FIA.

Section 47 requires that companies invest in assets in Trinidad and Tobago an amount equal to at least eighty percent of the Trinidad and Tobago liabilities of each statutory fund. The definition of "assets in Trinidad and Tobago" does not contemplate Trinidad and Tobago government debt that is denominated in a foreign currency.

It is proposed that such assets be included in the definition, by amending section 47(4)(b) to read as follows: "(b) are denominated in Trinidad and Tobago dollars or, where denominated in a foreign currency, such assets are fully guaranteed by the Government of Trinidad and Tobago; and".

The FIA requires the prior approval of the Minister, after consultation with the Governor of the Central Bank, of any merger or acquisition of a licensee by a bank or financial entity. It is proposed (see 2.2.2) that the IA be similarly amended, which would, therefore, further constrain the investments of an insurer or financial holding company in some situations.

### 4.4.2 Large Exposures

An important aspect of investment risk management is diversification, which includes limiting the concentration of risk in large exposures. The large exposure limitations in the IA are incorporated in the Second Schedule; in the FIA, they are contained in section 42. It is proposed that the IA be similarly amended.

In order to provide an appropriate measure of concentrations, it is proposed that the terms "counterparty", "credit exposure" and "credit facilities" be defined consistent with the FIA.

"Credit exposure" will constitute the amount at risk arising through the extension of credit by an insurer and should represent the maximum loss an insurer might suffer if a counterparty fails or the loss that may be experienced due to the realisation of assets or off-balance sheet positions. Credit exposures would include exposures arising from reinsurance. The proposed definition follows:

"Credit exposure means the amount at risk arising through the extension of credit or funds and includes, without limitation:

(a) investments including equity, bond and other debt instruments, participations, guarantees and acceptances including bankers acceptances and credit facilities excluding policy loans,;

(b) other claims on a counterparty including actual and potential claims that would arise from the drawing down in full of undrawn advised facilities, whether revocable or irrevocable, conditional or unconditional, that the insurer has committed itself to purchase or underwrite;

(c) contingent liabilities arising in the normal course of business, and which would arise from the drawing down in full of undrawn advised facilities, whether revocable or irrevocable, conditional or unconditional, that the insurer has committed itself to provide;
(d) reinsurance placed with connected parties; and
(e) deposits placed with connected parties.

The Central Bank may publish generally or notify a specific insurer as to the principles which will determine the question of exposure to risk.

“Large exposures” are to be defined as the aggregate of all credit exposures to a person or a borrower group, the total of which amounts to twenty-five percent or more of the capital base of an insurer. “Borrower group” is to be defined to include two or more persons where the financial soundness of one of such persons may affect the financial soundness of any other such person; various relationships that (among others) will constitute borrower groups will be included in the definition.

Insurers will be required to maintain information systems which identify both individual credit exposures and total credit exposures to borrower groups.

An insurer may not incur a large exposure, other than a credit exposure that is:
(a) fully guaranteed by the Government of Trinidad and Tobago; or
(b) fully guaranteed by a sovereign state, other than the Government of Trinidad and Tobago, with an investment grade rating from a credit rating agency approved by the Central Bank, which said guarantee is explicit, unconditional, legally enforceable and irrevocable over the life of the credit exposure in question;
(c) extended directly to the Government of Trinidad and Tobago;
(d) fully secured at all times by cash in Trinidad and Tobago dollars or other currencies readily convertible to Trinidad and Tobago dollars, delivered to the insurer and placed with it in a special account secured by a charge in favour of the insurer; and
(e) for a period of less than one month and fully secured by investments that are investment grade, as rated by a credit rating agency approved by the Central Bank so however that the insurer shall give the Central Bank prior notice of such exposure being incurred.

It is proposed that a limit be introduced for the aggregate of all large exposures. The proposed limit is eight hundred percent of the insurer’s capital base, consistent with the limit proposed under the FIA and applicable in jurisdictions such as Europe and the Bahamas.[34]

[34] Under the German Banking Act, limitations are also placed on the aggregate value of all large exposures not merely those to a single borrower. The limitation on an individual large exposure to subsidiaries or parent entity is stricter than on an individual large exposure to some other entity, unless the credit institution and the subsidiary or parent belong to a group of credit institutions or financial holding company as defined by section 13A.

In applying the limits on credit exposures, the Central Bank may require insurers to include the credit exposures and assets of subsidiaries in their calculations, even though the subsidiaries may not be insurers.

The Inspector will monitor large exposures, and will include requiring insurers to report all credit exposures amounting to ten percent or more of its capital base quarterly.[35] [36],[37] This will enable the Central Bank to take steps to have the insurer reduce these exposures or have capital injected or adequate provisions made to support potential losses.

It is proposed that a new umbrella provision also be added to the IA, which would empower the Central Bank to require an insurer to reduce its credit exposure, to increase its capital, or make adequate provisions for potential losses. This power could be invoked either in response to breaches of the large exposure limits or if, in the opinion of the Central Bank, the nature of an insurer's credit risk exposure is not prudent.

Upon breach the Central Bank should have the power to issue directions or take such actions as it considers necessary. Civil money penalties (fines) for breaches may be imposed by the Central Bank or may be used in combination with other enforcement. The Central Bank should have the power to prescribe by notification or guidelines, directions on exposures which should be reported by insurers.

It is also proposed that an insurer should inform the Inspector within two working days where a contravention of the credit exposure limit has occurred, The possibility that information, as regards a contravention of these sections, required to be provided to the Central Bank would be consequently used against the insurer seems to offend the privilege against self-incrimination[38] and therefore to violate principles of fundamental justice.

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[35] Section 21 of the Barbados Financial Intermediaries Regulatory Act requires a licensee to disclose to the Central Bank amounts of credit to individual customers that are in excess of twenty percent of the stated capital and reserves of the licensee or are in such amount as the Central Bank prescribes.

[36] Legal precedent is provided by section 38 of the UK Banking Act, which describes situations considered to be of high risk and requires reports to be made. Further, it allows the supervisor to notify institutions when there is extended risk beyond those described. It provides general time limits within which the reports are to be made, but also enables the supervisor to specify alternative periods by notice in writing. Finally, penalties are provided for non-compliance.

[37] Under the German Banking Act, exposures to a single borrower which, in the aggregate, amount to a certain percentage of a credit institution's liable capital (large exposures) are reported to the Deutsche Bundesbank and the Federal Banking Supervisory Office. Such large exposures by credit institutions must first be unanimously approved by the managers. If the urgency of the transaction negates such prior approval it must be sought immediately after. The validity of such transactions is not prejudiced by failure to abide by these limitations.

[38] Self incrimination is the act of accusing oneself of a crime for which a person can then be prosecuted. It refers to acts or declarations either as testimony at trial or prior to trial by which one implicates himself in the crime. The 'privilege against self incrimination' is the constitutional right of a person to refuse to answer questions or otherwise give testimony against himself which would subject him to an incrimination.

The Trinidad and Tobago Constitution defends the right against self-incrimination. This is expressly stated under the 'Protection of Rights and Freedoms'.

Section 5 (2) (d) states that Parliament may not –

> *'authorise a court, tribunal, commission, board or other authority to compel a person to give evidence unless he is afforded protection against* ***self-incrimination*** *and, where necessary to ensure such protection, the right to legal representation'*

Although the constitution states at Section 2 that it is *'... the supreme law and any other law that is inconsistent with the Constitution is void to the extent of the inconsistency'*, it allows exceptions for certain legislation which are inconsistent with sections 4 and 5.

In order to encourage breach reporting with respect to credit exposures, insurers may however be afforded the 'use of immunity' which would effectively restrict the use of self-incriminating information and provide some protection against liability. These protections would certainly facilitate the flow of much needed information to the Bank.

Consequently, when an insurer informs the Inspector of a contravention, he shall require the insurer to reduce the credit exposure or take such other steps within a specified period as he determines appropriate, and the insurer shall not be liable to summary conviction for the breach. However, where an insurer fails to comply with any requirement of the Inspector, he may issue a compliance direction.

### 4.4.3 Connected Party Exposures

While the ICPs do not explicitly address the issue of exposures to connected parties, BCP 10 requires that supervisors have in place requirements that banks lend to connected parties and individuals on an arm's length basis, that such extensions of credit are effectively monitored and that other appropriate steps are taken to mitigate the risks. Such requirements are equally important with respect to insurers. Section 48(1)(b) of the IA and paragraph 7 of the Schedule to the Insurance (Admissible Assets and Valuation of Assets) Regulations set out prohibitions and limitations on exposures to connected parties. The connected party lending limitations in the FIA is contained in section 43.

Consistent with the proposal in 4.4.2, exposures to connected parties should be defined in terms of "credit exposures".

The current wordings of section 48(1)(b) and the Regulations do not capture all persons who may have a sufficiently close relationship with an insurer to pose a risk that credit exposures to them may be created on preferential terms and conditions. Therefore, it is proposed that the term "connected party" be defined in the IA, as follows: "For the purposes of this Act, a person is a connected party of an insurer where the person is:

(a) a financial holding company, holding company or controlling shareholder or significant shareholder of the insurer;

(b) a person who holds ten percent or more of any class of shares of the insurer or of a person referred to in paragraph (a);
(c) an affiliate of the insurer;
(d) an affiliate of a person referred to in paragraph (a);
(e) a director or officer of the insurer or of a person referred to in paragraph (a);
(f) a relative of a director or officer of the insurer; and
(g) an entity that is controlled by a person referred to in paragraphs (e) and (f).

The Inspector may determine that any other person is a connected party of an insurer or that any other group of persons is a connected party group of an insurer where, in the opinion of the Inspector, their relationship may create a conflict of interest or may pose regulatory risk."

It is proposed that the board of directors be required to establish and maintain policies and procedures for identification and monitoring of transactions between the insurer and connected parties. These policies should ensure that such exposures are only undertaken on an arm's length basis for the clear commercial advantage of the insurer. They should not be extended on concessionary terms, but on the same terms and conditions as for a non-connected party with respect to interest rates, fees and security. The policies should include reasonable materiality limits and require explicit approval by the board of directors of any credit exposure in excess of such limits.[39]

It is proposed that the total credit exposure to any connected party or connected party group must not exceed ten percent of the insurer's capital base, and the aggregate of credit exposures to all connected parties must not exceed twenty five percent of the capital base.

Insurers must establish and maintain information systems that identify individual as well as total credit exposures to connected parties. The Central Bank will prescribe reporting requirements for connected party exposures. In the event of failure to report, the Central Bank should have the power to issue such directions or take such action as it considers necessary and shall have the power to impose civil money penalties on an insurer.

It is proposed that Section 48(1)(a) of the IA be harmonized with the FIA which read as follows:

"A licensee shall not directly or indirectly acquire, deal, underwrite or grant credit exposures on the security of its own shares or the shares of a holding company, financial holding company, or subsidiary of the licensee".

[39] Under the German Banking Act, loans to certain persons and entities, such as managers of the credit institution, must be approved unanimously by all managers of the institution and the supervisory body. If such a loan exceeds a specified amount it must be reported to the Federal Banking Supervisory Officer and the Deutsche Bundesbank. In the case of non-compliance, the managers and the members of the supervisory body who have failed to do their duty are liable to the credit institution for any loss arising from the loan. The right to compensation may also be asserted by the institution's creditors insofar as they cannot obtain satisfaction from it.

"The restriction imposed under paragraph 2(d) shall not prevent a licensee from acting as trustee of a pension fund plan, or from investing the assets of the plan in shares of the licensee or in a financial holding company, holding company or subsidiary of the licensee up to a limit of 10 percent of the assets of the pension fund plan inclusive of revaluation gains on the shares.

The Minister may issue Regulations to ensure that any transaction referred to in this subsection will not materially affect the risk exposure of the insurer, agent or broker or constitute inappropriate market conduct".

### 4.4.4 Valuation and Admissibility of Assets

The Insurance (Admissible Assets and Valuation of Assets) Regulations, made under Section 214 of the IA, prescribes the bases for determining the value of assets of insurers. Various sections of the IA enable the Central Bank to require that assets be revalued if the values reported appear to be incorrect or inappropriate: section 42 relates specifically to assets of a statutory fund; section 52 relates to real property; and the broader powers under section 61 might also be invoked.

The valuation bases prescribed in the Regulations are inconsistent with those established by International Financial Reporting Standards for some types of assets, such as shares in and debts due from dependents, land, equipment, unlisted shares, and debts and other rights. The existence of such differences is contrary to the proposal that the regulatory reporting of insurers be based on International Financial Reporting Standards.

Therefore, it is proposed that the IA be amended to require that the assets of insurers be valued in accordance with International Financial Reporting Standards. Such values would be used in both the shareholder financial statements and the regulatory returns of insurers. However, the Central Bank would retain the right, as described in sections 42, 52 and 61, to require the revaluation of assets whose reported values appear to be misleading, inappropriate or otherwise fail to comply with the requirements of the Act.

It is proposed that all assets recognized under International Financial Reporting Standards be considered admissible in an insurer's financial statements, which are prepared on a going concern basis. However, since the values of some types of assets may be significantly depressed in the case of an insurer's insolvency, their admissibility will be limited when assessing the adequacy of an insurer's capital (see 4.4). Such limitations would be prescribed in the capital adequacy regulations and guidelines. Accordingly, it is proposed that the Insurance (Admissible Assets and Valuation of Assets) Regulations be repealed.

It is proposed that the following assets would be inadmissible for capital adequacy purposes:

(a) Amounts of credit exposures in excess of the large exposure limitations (see 4.3.2);

(b) Amounts of credit exposures in excess of the connected party limitations (see 4.3.3);
(c) Goodwill and intangible assets;
(d) Deferred tax assets;
(e) Computer hardware and software in excess of five percent of total assets; and
(f) Office machinery (other than computer hardware), motor vehicles and other equipment in excess of five percent of total assets.

## 4.5 Capital Adequacy

Review of capital adequacy is an essential element in the prudential supervision of insurers. ICP 23 on capital adequacy and solvency states: "The supervisory authority requires insurers to comply with the prescribed solvency regime. This regime includes capital adequacy requirements and requires suitable forms of capital that enable the insurer to absorb significant unforeseen losses."

The solvency regime for insurers in Trinidad and Tobago is largely prescribed by the IA. For example, section 13 sets out fixed-dollar minimum share capital required in order to be registered to carry on long-term insurance business or general insurance business; section 37 requires that the statutory fund for long-term business contain assets equal to the corresponding liabilities and contingency reserves with respect to its Trinidad and Tobago business; and section 77 requires that assets in respect of the general insurance business must be the greater of two hundred and fifty thousand dollar or twenty percent of the net premium income. Using annual and quarterly regulatory returns as its primary source of information, the Central Bank assesses insurers' compliance with these requirements and has the power to take action if these requirements are breached, for example, under section 170.

Part 2.1.2 describes the proposals for amending section 13 to increase the minimum share capital required for registration.

### 4.5.1 Risk-based Capital Adequacy Requirements

ICP 23 goes on to state, in essential criterion (d), that capital adequacy requirements should be "sensitive to the size, complexity and risks of an insurer's operations, as well as the accounting requirements that apply to the insurer." The solvency requirements in the IA do not meet this criterion.

Nevertheless, as part of its risk-based supervisory approach, the Central Bank must assess each insurer's ability to absorb significant unforeseen losses. The Central Bank has developed a simple risk-based capital adequacy test, which can be calculated using information contained in the annual returns, for interim use as an assessment tool. It is essential that risk-based capital adequacy requirements become a formal part of the solvency regime.

Therefore, it is proposed that the IA be amended[40] to provide that:

(a) An insurer or financial holding company shall, in relation to their operations, maintain on an individual and consolidated basis adequate capital and adequate and appropriate forms of liquidity and shall comply with any Regulations or guidelines in respect thereof;

(b) The Minister may make Regulations and the Central Bank may make guidelines respecting the maintenance of adequate capital and adequate and appropriate forms of liquidity;

(c) Notwithstanding that a company is complying with such Regulations or guidelines, the Central Bank may, by order, direct the company to increase its capital or to provide additional liquidity in any forms and amounts that the Central Bank may require; and

(d) A company shall comply with such an order within the time that the Central Bank specifies in the order. Failure to comply will constitute an offence.

It is further proposed that in developing the Regulations and Guidelines with respect to capital adequacy and liquidity, the Minister and the Central Bank will use the requirements of Jamaica as a point of reference. Jamaica's requirements were adopted recently and generally follow the Canadian model. This is consistent with advanced criterion (k) of ICP 23, which encourages supervisors to assess the structure of their solvency regime against structures of a peer group of jurisdictions and to work towards achieving consistency. During the development process, the Central Bank consulted with industry to ensure that the details of the requirements, such as the risk weights to be applied to various assets and liabilities, appropriately reflect the risks faced in the local and regional markets.

Risk-based capital adequacy requirements often describe a formula for calculating required capital and also specify the minimum ratio (such as 150 percent) that available capital must bear to the calculated amount. When a jurisdiction implements risk-based capital adequacy requirements, it is typical that some companies would not meet the minimum ratio at the date of adoption. It is appropriate that companies be permitted to realign their asset and liability portfolios and, if necessary, obtain additional capital in a timely, yet orderly manner. Consistent with the proposed phase-in of the increased minimum share capital requirements under section 13, it is proposed that the risk-based capital adequacy requirements would also be phased-in over a period of time which will be prescribed by Regulation.

**Catastrophe Reserve Fund**

Section 49A provides that a company that is carrying on property insurance business insuring against catastrophe risks may establish and maintain in respect of such risks a catastrophe reserve fund. Some companies have done so, and their reserves have helped

[40] Legal precedent for these provisions includes section 515 of Canada's Insurance Companies Act. Many other jurisdictions, including Australia, Jamaica and the US, also impose risk-based capital adequacy requirements.

to cushion the impact of hurricane losses. It is proposed that section 49A be amended to require that any company carrying on such business must establish and maintain a catastrophe reserve fund. To help protect against the correlation of economic and property risks in the event of a catastrophe, it is further proposed that the amount of such fund would be held only in assets that do not originate in Trinidad and Tobago and are not denominated in Trinidad and Tobago currency. The catastrophe reserve fund would be included in the company's available capital for the purpose of assessing capital adequacy.

### 4.5.2 Suitable Forms of Capital

ICP 23 requires that suitable forms of capital be defined. Currently, the IA does not explicitly define suitable forms of capital.

As mentioned above, it has been proposed that the Minister may make Regulations and the Central Bank may make guidelines respecting capital adequacy. Such Regulations and guidelines will include definition of suitable forms of capital. It is further proposed that capital be defined, to the extent possible, in a manner consistent with that applicable to licensees under the FIA.

### 4.5.3 Financial Holding Companies

The IA does not currently contemplate the existence of financial holding companies, nor does it fully support consolidated supervision. Changes are required to provide for the application of prudential requirements to financial holding companies on a consolidated basis, as a consequence of proposals described elsewhere in this document.

Therefore, it is proposed that the IA provide that capital adequacy could also be assessed on a consolidated basis, with the requirements established through Regulations and guidelines.

It is further proposed that the Central Bank be empowered to issue written instructions to a financial holding company, with regard to any entity in the financial group, pertaining to:
(a) capital adequacy requirements;
(b) limitation of risk of any type;
(c) permissible holdings; and
(d) administrative and accounting procedures.

Such instructions may, for example, direct a financial holding company to increase its capital and to provide additional liquidity in such forms and amounts as the Central Bank may require.

# *5 Markets and Consumers*

## 5.1 Intermediaries

ICP 24 provides that the supervisory authority must set requirements, directly or indirectly through the supervision of insurers, for the conduct of intermediaries. Part III of the IA (sections 88-111) sets out the legal requirements to which agents, brokers, salesmen and adjusters are subject, while Part VII (sections 188-194) governs associations of underwriters, such as Lloyds. While the provisions of the IA with respect to intermediaries are largely adequate and appropriate, some amendments are proposed to strengthen the protection of policyholders from inappropriate conduct by intermediaries.

In order to adopt more modern terminology, it is proposed that the IA be amended to replace "salesman" with "sales representative" and "salesmen" with "sales representatives". These proposed changes have been incorporated in the text below.

### 5.1.1 Registration

Currently, the definition of "salesman" includes individuals contracted by an insurer or an agent to solicit applications for insurance or to negotiate insurance. Individuals who are employed by a broker to perform such tasks are not included under this definition and, accordingly, are not subject to registration requirements. In order to ensure that all individuals who perform such tasks are qualified to do so, it is proposed that "sales representative" be defined more broadly, as follows:

> "sales representative" means any individual employed or contracted by an insurer, an agent or a broker to solicit applications for insurance or to negotiate insurance on behalf of that insurer or agent or on behalf of the consumer or broker, as the case may be."[41]

The IA provides that agents and brokers can be either companies or individuals. Consistent with common practice in Trinidad and Tobago—and to help clarify the responsibilities of various parties—it is proposed that agents and brokers must be companies. The companies would be referred to as either an agency or brokerage and would be required to have a fit and proper individual registered as a broker or agent. Accordingly the terms agent, broker, agency and brokerage will be defined as follows:

"agent" means an individual employed by an agency to solicit applications for insurance or negotiate insurance on behalf of the agency.
"agency" means any company appointed by an insurer and registered to carry on the business of an insurance agency;
"broker" means an individual employed by a brokerage to solicit, negotiate or procure in any manner insurance or the renewal or continuance thereof or the settlement of any

[41] This definition is consistent with the definition contained in the Jamaica Insurance Act.

claims on behalf of existing or prospective policyholders, or reinsurance on behalf of insurers.
"brokerage" means any company registered to carry on the business of an insurance broker;
"business of an insurance agent" means the solicitation of applications for insurance or negotiation of insurance business on behalf of an insurer and, where authorized to do so by the insurer, the effectuation and countersigning of insurance contracts;
"business of an insurance broker" means the business as an independent contractor of soliciting, negotiating or procuring in any manner insurance or the renewal or continuance thereof or the settlement of any claims on behalf of existing or prospective policyholders, or reinsurance on behalf of insurers;

Section 92 provides that intermediaries will be registered for one year, with registration renewable annually. It may be appropriate to issue an initial registration for a period of less than one year, for example, if an applicant is still in the process of completing professional training. Conversely, it may be appropriate to provide for the renewal of registration for periods of more than one year, in order to reduce the administrative burden on both the applicants and the Central Bank.

Therefore, it is proposed that section 92 be amended to provide that a registration certificate shall be valid for such period as stated in the certificate, not to exceed one year from the date of issue for applicants in the process of completing professional training, and shall be renewable for such periods as may be prescribed by Regulation. The Central Bank also proposes that the registrations of individuals (sales representatives and adjusters) be renewed for periods of three years and that the registrations of companies (agents and brokers) be renewed for periods of one year. All intermediaries will be required to satisfy fit and proper requirements on an ongoing basis, not just at the time of registration or renewal of registration.

It is important not only that intermediaries be technically qualified at the time they are first registered, but also that they keep their knowledge up to date through continuing education. Section 91(2)(f) provides for the passing of an examination prior to registration. However, the renewal of an intermediary's registration is not currently subject to continuing education requirements. It is proposed that the IA be amended to empower the Central Bank to establish continuing education requirements, which must be met by an intermediary as a condition for renewal of registration. The Central Bank will seek the input of industry in the development of such requirements.

### 5.1.2 Handling of Monies

Agents, brokers and sales representatives may collect monies from current and prospective policyholders, for example, initial and renewal premium payments. In some cases, these monies may not be remitted directly to the insurer, for example, brokers may remit monies monthly, net of the commissions that are due to them. These practices, although contemplated by section 111, may put policyholders at the risk of loss, if an insurer denies coverage because it had not received premiums on a timely basis or if the intermediary misappropriates the funds. Essential criterion (e) of ICP 24 states that supervisory authorities must require an intermediary who handles clients' money to have sufficient safeguards in place to protect these funds.

Therefore, it is proposed that the IA be amended to better protect policyholders, as follows:

**Consumer Account**

(1) An agency registered to carry on general insurance business or a brokerage shall establish and maintain a consumer account for the receipt and payment of consumer funds.

(2) An agency registered to carry on general insurance business or a brokerage shall deposit monies received from a consumer for the account of an insurer or from an insurer for the account of a consumer in the consumer account.

(3) An agency or a brokerage transacting general insurance business shall be permitted to deduct from the consumer account any commission and other deduction to which it may by agreement be entitled.

(4) A brokerage transacting long term insurance business shall not be permitted to deduct from the consumer account any commission and other deductions.

(5) An agency registered to carry on general insurance business or brokerage shall not commingle the monies to be deposited in the consumer account with any other monies of the agency or the brokerage.

(6) Each agency registered to carry on general insurance business and brokerage shall report to the Central Bank on such consumer account in accordance with the timing, form and content of such reports as the Central Bank may specify.

**Payment of Premium to Insurer**

(1) An agency or a brokerage that receives moneis from a consumer for the account of an insurer registered to carry on general insurance business or accident and sickness shall pay over such monies to the insurer within ten business days after the end of the month in which the money was received.

(2) An agency or a brokerage or a sales representative of an insurer that receives monies from a consumer for the account of an insurer registered to carry on long term insurance business shall pay over such monies to the insurer within three business days from the date on which it received such monies.

(3) Where an insurer at the request of a brokerage provides temporary cover in respect of general insurance on credit, the brokerage is liable to the insurer for the premium due in respect of such cover and such premium may be sued for and recovered from the brokerage as a civil debt.

**Payment to Consumer**

(1) An agency, brokerage or sales representative that receives a cheque in the name of a consumer from an insurer shall deliver or make reasonable efforts to deliver the cheque to the consumer within three business days from the date on which the cheque was received

(2) Notwithstanding subsection (1) where an agency, brokerage receives a cheque in the name of a consumer from an insurer in respect of an accident and sickness claim, the agency or brokerage shall deliver or make reasonable efforts to deliver the cheque to the consumer within ten business days from the date on which the cheque was received.

(3) (a) An agency or brokerage that receives a cheque in its name from an insurer for the account of a consumer shall deposit such cheque in its consumer account within three business days on which it was received.

(b) an agency or brokerage that makes a deposit in accordance with subsection (3)(a) shall pay over or make reasonable efforts to pay over the same to the consumer within seven business days from the date on which such deposit was made.

Additionally, it is proposed that the auditor will be required to certify that the operation of the consumer account is in accordance with the Act.

It is proposed that premiums received by a broker will be deemed to be received by the insurer; section 101 already makes such provision with respect to an agent or a sales representative. Accordingly, insurers would not be able to avoid liability on the basis that they have not received monies from an intermediary.

## 5.1.3 Brokers

Section 4(3) of the Insurance (Agents, Brokers, Salesmen and Adjusters) (Registration) Regulations requires that brokers maintain professional indemnity insurance and, in the case of brokers that are corporations or partnerships, minimum capital. These requirements exist for the protection of consumers, but the amounts specified in this section are no longer appropriate.

Therefore, it is proposed that he IA be amended to provide that:

(a) The minimum amount of professional indemnity insurance cover will be ten million dollars, rather than five million dollars;

(b) The maximum deductible will be fifty thousand dollars or 10 percent of capital, whichever is the greater, rather than fifteen thousand dollars; and

(c) The initial and on-going minimum amount of capital will be five hundred thousand dollars, rather than one hundred thousand dollars, to be held in cash and securities approved by the Central Bank. There will be a three year transition period.

During that three year period, a broker that does not have share capital of at least five hundred thousand dollars will be required to submit to the Central Bank its plan for meeting the interim requirements (described in the table below) and the full requirement when it takes effect. If it fails to do so or, in the opinion of the Central Bank, the plan is unsatisfactory, the Central Bank may impose conditions on the broker's registration.

| $Thousand | Current | Year 1 | Year 2 | Year 3+ |
|---|---|---|---|---|
| All | $100 | 200 | 350 | 500 |

Brokers place business with more than one insurer and consumers have the right to expect that brokers act in the consumers' interests when recommending where business will be placed. This expectation may be compromised if a broker has an arrangement with a particular insurer to place business with it on preferential commission terms, such as a binder or a contingent commission arrangement. Section 91(1)(e) establishes impartiality as a condition of registration and section 94(2)(i) empowers the Central Bank to cancel a broker's registration if this condition is breached.

Therefore, it is proposed that these requirements be strengthened by explicitly including "preferential terms of commission or other compensation" as an example of an agreement that would be prohibited, while still permitting brokers to bind an insurer to coverage under specified conditions. A broker would thus be prohibited from entering into any agreement relating to the preferential offer of insurance business and which is likely to impair the broker's impartiality in placing insurance business, such as an agreement for preferential terms of commission or other compensation, with any other person carrying on insurance business, except that a broker may enter into an agreement under which the broker can commit an insurer to provide coverage to a consumer in accordance with such criteria as may be established by the insurer. Where a broker has entered into such an agreement, it is proposed that the arrangement must be disclosed to the consumer in writing.

### 5.1.4 On-going Supervision

ICP 24 recognizes that intermediaries may be supervised either directly or, indirectly, through the supervision of insurers. An explanatory note states that where intermediaries are supervised directly, then the supervisory authority should be able to conduct on-site inspection when needed. The conduct of intermediaries in Trinidad and Tobago is supervised by the Central Bank both directly and indirectly.

Section 91(3) requires that a broker shall prepare and submit to the Central Bank at such intervals as may be prescribed balance sheets and profit and loss accounts as may be prescribed. Consistent with the changes proposed with respect to the reporting by insurers, it is proposed that section 91(3) be amended to provide that brokers shall prepare financial statements in accordance with International Financial Reporting Standards (IFRS), or in the form specified by the Central Bank. It is further proposed that the Central Bank may require that such financial statements be audited.

Section 99 provides that when either an agency or the contract of a sales representative has been terminated, both the insurance company and the person terminated must notify the Central Bank forthwith. In practice, such notifications have usually been provided by the insurance companies, but seldom by the intermediaries. It is proposed that section 99 be amended to make such reporting the sole responsibility of the insurer that terminates an agent, or the insurer, agent or broker that terminates a sales representative. It is further proposed that terminations must be reported within seven business days of their giving notice of termination with the failure to do so resulting in the imposition of civil money penalties.

While the right of the Central Bank to conduct on-site inspections of intermediaries may be inferred, it is not explicitly stated in the IA. Therefore, in the interest of certainty, it is proposed that section 100 of the IA be amended to explicitly empower the Central Bank to conduct on-site inspections of brokers, agents, sales representatives and adjusters. Intermediaries would be allowed only to carry on the business for which it is registered. It is further proposed that, as in the case of insurers, the failure of any intermediary to cooperate in an inspection will be an offence.

Section 108 requires that an agent act for only one insurer, subject to possible exceptions under 108(2) and 108(3). Section 108(2) provides that where an agent is unable to negotiate insurance on behalf of an applicant with the principal insurer, the agent may procure the insurance from another insurer if that insurer obtains the written consent of the principal insurer and files such consent with the Central Bank within seven days of its receipt. In order to reduce the administrative burden of insurers, it is proposed that section 108(2) be amended to delete the phrase "and files a copy of such consent with the Central Bank within seven days of its receipt". The Central Bank intends to monitor compliance with the consent requirement through its on-site inspections.

## 5.2 Associations of Underwriters

Sections 188-194 set out the requirements for registration of an association of underwriters, including its reporting to the Central Bank. It is appropriate that this part of the IA be amended to ensure that, to the extent relevant, the various changes being proposed with respect to other parts of the IA are also applied to such associations.

It is proposed that section 188 be amended to require the payment of a registration fee.

It is proposed that section 189(1) be amended to simplify the minimum required deposit to the greater of: (a) an amount equal to twenty percent of the minimum share capital that would required of a local company under section 13, regardless of the class or classes of business it intends to carry on (see part 2.1.1; the deposit requirement would therefore be three million dollars, subject to the same transitional provisions proposed therein) plus an amount equivalent to cover all policyholder liabilities, or (b) forty percent of the premium income of its members, with respect to Trinidad and Tobago insurance business during the financial year last preceding the date of the deposit.

It is proposed that section 191 be amended to explicitly empower the Central Bank to conduct on-site investigations, prescribe the form and frequency of reporting, request additional information and to require that an actuarial report be prepared. It is further proposed that the product approval process applicable to general insurance companies also apply to the association of underwriters with respect to new or amended products which are offered to policyholders or potential policyholders in Trinidad and Tobago

## 5.3 Consumer Protection

ICP 25 provides that supervisors must set minimum requirements for insurers and intermediaries in dealing with consumers. These requirements must include providing timely, complete and relevant information to consumers and acting with due skill, care and diligence.

Various provisions of the IA exist to help protect consumers from inappropriate market conduct by insurers and intermediaries. For example, section 24 empowers the Central Bank to prohibit an insurer from using forms or applications that are fraudulent, unjust or not in the public interest. However, as described below, some strengthening of the consumer protection provisions would be appropriate.

### 5.3.1 Fair Treatment of Consumers

There is no general requirement that insurers or intermediaries act with skill, care and diligence in their dealings with consumers. It is proposed that the IA be amended to include such a requirement. Regulations and guidelines may be made in this respect, for example, regarding the need for insurers and intermediaries to develop, implement and monitor compliance with policies for the fair treatment of consumers and the handling of consumers' complaints.

Section 17(1)(g) requires, as a condition of registration, "that the policy and practice of the company in dealing with claims are conducive to the efficient and speedy settlement thereof". Sections 25 and 65, respectively, establish unreasonable delay in the settlement of claims as justifications for cancellation of an insurer's registration or supervisory intervention. While the speedy settlement of bona fide claims is important, it is also essential that they be settled in a fair manner.

In September 2008, aA Claims Guideline was issued to the industry to provide best practices relating to the notification, processing and settlement of claims as well as reserving, internal controls and dispute resolution.
Section 110 makes it an offence to procure payment of premium by fraudulent representations or to cause a policyholder to discontinue a policy without reasonable

grounds. Currently, this section applies only to agents and sales representatives, but not to brokers. It would be appropriate to extend its application to brokers.

Sections 210-211 make it an offence to issue an insurance advertisement except in accordance with Regulations. However, the absence of such Regulations limits the ability of the Central Bank to protect consumers against misleading advertising. Section 24 of the FIA enables the Central Bank to take action with respect to licensees, even in the absence of Regulations.

Therefore, it is proposed that section 210 be amended to be more consistent with the FIA.

Section 8 provides that the Inspector may act as an arbitrator of disputes or differences between insurers and their policyholders. This provision has never been exercised and Trinidad and Tobago now has a Financial Services Ombudsman that assists policyholders in resolving such issues. Therefore, it is proposed that section 8 be deleted.

### 5.3.2 Long-term Insurance

Sections 117-166 include provisions governing the operation of long-term insurance policies, such as the determination of insurable interest and the rights of beneficiaries. Although most of these provisions are adequate, some amendments are proposed to deal with certain deficiencies and evolving practices.

Section 124 defines those who are deemed to have an insurable interest in a person. It is proposed that section 124 be amended to include a grandparent or legal guardian of a child who is under 18 years of age among those deemed to have an insurable interest in the life of such child.

Section 134 provides that cash surrender values must be available after a policy has been in force for three years. Although this period is appropriate for policies with periodic premiums, it is unduly long for single premium policies. Therefore, it is proposed that section 134 be amended to replace the phrase "which has been in force for at least three years" with the following: "(a) a policy in respect of which there is no contractual obligation on the owner to make any payments of premiums after the first year for which the policy is in force; or (b) a policy (other than a policy referred to in paragraph (a)) that has been in force for at least 3 years".

Section 139 provides for the payment of money to named beneficiaries, rather than the estate of the insured. The IA is silent with respect to beneficiary designations. It is important that rules governing the designation of beneficiaries be practical in nature and the rights of beneficiaries be clearly defined. The Jamaica IA deals extensively with these issues and it is proposed that the IA be amended to incorporate provisions equivalent to those set out in sections 97-106 of the Jamaica IA[42]. These provisions will

[42] These sections of the Jamaica IA deal with the following issues: 97. Designation of beneficiaries generally; 98. Irrevocable designation of beneficiaries; 99. Alteration or revocation of designation on

address the issues of revocable and irrevocable trusts and allow more flexibility in the naming of beneficiaries. For example, although the designation of a spouse as beneficiary may currently be deemed to create a trust for purposes of the Married Persons Act, the changes would enable the insured person, in the event of a divorce, to alter or revoke the trust without the consent of the named beneficiary.

Section 140 provides that an insurer can pay up to five thousand dollars to the legal personal representative of a deceased person, under certain conditions and subject to the retention of 10 per cent of the total sum due for payment to the Commissioner of Inland Revenue for the purposes of the Estate Duty and where applicable the Succession Duty due on the estate of the deceased. It is proposed that the monetary amount be increased to twenty-five thousand dollars and that the amount retained be expressed as "such percentage of the total sum due for payment as may be prescribed from time to time by the Commissioner of Inland Revenue for the purposes of such duties as may be due on the estate of the deceased". Consistent with the changes proposed with respect to the designation of beneficiaries, it is further proposed that subsection 140(3), which refers to the Married Persons Act, be deleted.

Section 142 provides that a declaration that certain requirements have been satisfied may be endorsed on a policy in certain cases. It is proposed that the monetary amounts specified in this section be increased from two thousand dollars to ten thousand dollars.

Section 144 deals with the disposition of unclaimed monies. Its provisions are similar to those of section 41 of the FIA, which deals with inactive accounts. However, the FIA requires that information on inactive accounts be published in the Gazette and a daily newspaper within sixty days of the financial year end, following which persons would have ninety days to make their claims known, before unclaimed monies are paid to the Central Bank and credited to the Consolidated Fund. It is proposed that section 144 be amended to incorporate such publication requirements. The definition of "unclaimed moneys" in section 144(9) will be expanded to include all unclaimed moneys and not be limited only to endowment insurance. The cost of advertising can be deducted from monies to be paid over to the Government. However, if and when the claimant shows up, the gross claim must be paid, without reduction for the cost of advertising.

### 5.3.3 Mutualisation and Demutualisation

Sections 154-160 deal with the conversion of a limited liability company into a mutual company. The IA is silent with respect to the conversion of a mutual company into a limited liability company. Although none of the local companies currently in existence are mutual companies, it is nevertheless appropriate that the IA deal with this situation.

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cessation of marriage; 100. Insured person entitled to dividends; 101. Circumstances in which insurance proceeds not part of insured person's estate, etc.; 102. Presumption of trust negatived; 103. Appointment of trustee; 104. Beneficiary predeceasing insured person; 105. Right to enforce payment of proceeds;

106. Power of group life insured to sue insurer. See Appendix II for the complete text of these sections.

It is proposed that the IA be amended to provide that the mutualisation requirements of sections 154-160 would likewise apply to demutualisation.

## 5.4 Fraud

ICP 27 provides that supervisors must require insurers and intermediaries to take the necessary measures to prevent, detect and remedy insurance fraud. The explanatory notes mention that fraud can be perpetrated by any party involved in insurance, for example, insurers, insurers' managers and staff, intermediaries, accountants, auditors, consultants, claims adjusters as well as policyholders. They also point out that fraud in insurance results in reputational as well financial damage and social and economic costs.

Various sections of the IA deal with fraud (or misleading statements that may or may not be fraudulent in intent). However, many of these provisions apply only to intermediaries and the IA says almost nothing about fraud perpetrated by policyholders. It is proposed that the IA be amended to significantly strengthen the ability of both the Central Bank and the insurance industry to deal with fraud.

Section 209 makes it an offence to induce a person to enter into an insurance contract by means of a false statement. This section is broadly applicable, in the sense that it covers both insurers and intermediaries. However, its scope is essentially limited to the sales process. Section 118 of the FIA deals with fraud against depositors in a more general manner. However, the IA makes no such general provision on fraud.

Therefore, it is proposed that the IA be amended to include a new section, similar to section 118 of the FIA which will apply to an insurer, financial holding company, agency and brokerage.

Section 122, which applies only to long-term insurance business, provides that a policy cannot be avoided by reason of an incorrect statement on the faith of which a policy was issued or reinstated unless the statement was (a) fraudulently untrue or (b) material in relation to the risk and made recently. There is nothing further in the IA regarding fraud perpetrated by consumers against insurance companies. Such fraud can have high costs to insurers[43], which must ultimately be passed along to their policyholders through higher premiums.

The first step in combating fraud by policyholders is the performance of customer due diligence by insurers and intermediaries. The Central Bank's Anti-Money Laundering Guideline provides information on some of the steps that insurers and intermediaries can take to ensure that they know their customers and deal only with reputable persons. Essential criterion (f) of ICP 27 calls upon supervisory authorities to promote the

[43] For example, the Canadian Coalition Against Insurance Fraud conducted an extensive research study in 1994, and repeated it in 1997, which established the cost of insurance fraud as Cdn $1.3 billion annually. Put another way, 10-15% percent of all insurance fraud claims were considered potentially fraudulent.

exchange of information between insurers with respect to fraud and those committing fraud including, as appropriate, through the use of databases. The IA neither explicitly provides for nor explicitly prohibits such exchanges of information by insurers. The Central Bank's draft Guideline on Security Systems for Safeguarding Customer Information points out the need to safeguard customer information from misuse.

In order to avoid any misunderstanding about the propriety of exchanges of policyholder information by insurers in order to combat fraud, it is proposed that the IA be amended to specifically authorize such exchanges. It is further proposed that such exchanges of information may be either directly between the insurers or through a database or organization acceptable to the Central Bank.

Insurance fraud may be prosecuted under both common law and statute, i.e., the Larceny Act Chap.11:12, sections 4 or 34. The Central Bank encourages insurers to seek such prosecutions and proposes to work with industry participants to identify and implement further measures to combat insurance fraud.

# Appendix I

# Jamaica Insurance Act, Sections 97-106

**Designation of Beneficiary or Legal Personal Representative**

97.-(1) For the purpose of this section and sections 98 to 105—

"beneficiary" means a person, other than the insured person or his legal personal representative (except where the legal personal representative is also a beneficiary) to whom or for whose benefit insurance money is made payable in a contract or by a declaration;

"declaration" means an instrument signed by the insured person and witnessed by a Justice of the Peace or Notary Public-

(a) with respect to which an endorsement is made on the insurance policy; or
(b) that identifies the contract of insurance; or
(c) that describes the insurance or insurance money or part thereof,

in which the insured person designates, alters or revokes the designation of his legal personal representative, trustee or a beneficiary as one to whom or for whose benefit insurance money is payable;

"insured person" means-

(a) the person who makes a contract of insurance with an insurer; or
(b) in relation to a group policy, an employee on whose behalf an employer effects a group policy;

"life insured" means, except in relation to a group policy, a person on whose life an insurance policy has been made.

(2) An insured person may designate his legal personal representative, trustee or beneficiary as the person to receive the proceeds of the insurance policy-

(a) at the time of making a contract of insurance; or
(b) by declaration at any time subsequent to the making of the contract.

(3) A designation made under subsection (2)-

(a) shall be in a form and effected in the manner specified in the contract of insurance;
(b) shall be deposited with the insurer at its principal office in Jamaica within the lifetime of the insured person and of the life insured;
(c) shall, subject to section 98 (2) (b), not affect the right of an insured person to assign, exercise rights under or in respect of, surrender or otherwise deal with, the contract of insurance as provided therein or as may be agreed upon with the insurer; and

(d) may, subject to section 98 (1) and (2) (a), be altered or revoked from time to time and such alteration or revocation shall be made by declaration which shall be deposited with the insurer at its principal office in Jamaica within the lifetime of the insured person and of the life insured.

(4) A designation made in favour of "the heirs", "next of kin" or "estate" of the insured person or the use of wards of like import in a designation, shall be deemed to be a designation of the legal personal representative of the insured person.

(5) For the avoidance of doubt, where a designation is made in favour of a legal personal representative or is deemed under subsection (4) to be so made, that legal personal representative shall receive the proceeds of the insurance policy on behalf of the beneficiaries of the insured person's estate.

(6) An insurer shall, in a contract of insurance, specify the requirements for the making of a valid deposit under subsection (3) (b) and (d).

98.-(1) An insured person may designate irrevocably a named beneficiary-

(a) at the time of the making of a contract of insurance; or
(b) by declaration at any time subsequent to the making of the contract.

(2) Where an insured person designates a beneficiary irrevocably, then so long as the designated beneficiary is alive-

(a) subject to section 99, the insured person may not alter or revoke the designation without the beneficiary's consent;
(b) the insured person may not assign, exercise rights under or in respect of, encash any units accruing to or surrender or otherwise deal with the insurance policy without the beneficiary's consent;
(c) the insured person or his creditors shall have no control over the proceeds of the insurance policy; and
(d) the proceeds of the policy shall not form part of the insured person's estate.

(3) The provisions of section 97(3) (a) and (b) shall apply to a designation made under subsection (1) of this section.

99. Where under section 98(1), in respect of a life policy, a named beneficiary is the insured person's spouse, then, if during the subsistence of the insurance policy, the named beneficiary ceases to be the insured person's spouse, otherwise than by death-

(a) the insured person may alter or revoke the irrevocable designation without the consent of the named beneficiary; and
(b) such alteration or revocation shall be made by declaration which shall be deposited with the insurer at its principal office in Jamaica within the lifetime of the insured person and of the life insured.

100.-(1) Notwithstanding the designation of a beneficiary irrevocably under section 98(1), an insured person is entitled, while living, to the dividends or bonuses declared on a contract of insurance, unless the contract otherwise provides.

(2) Unless the contract of insurance otherwise directs, an insurer may apply the dividends and bonuses declared on a contract of insurance to that contract for the purpose of keeping the contract in force.

101. Where the proceeds of an insurance policy are payable to a beneficiary, such proceeds shall not form part of the insured person's estate and shall not, as from the date that the proceeds of the insurance policy become payable, be subject to the claim of any of the insured person's creditors.

102. For the avoidance of doubt, it is hereby declared that on a construction of a contract of insurance there shall be no presumption of a trust except in cases where the insured person expressly provided for the creation of a trust.

103.-(1) An insured person may, in a contract of insurance or by declaration, appoint a trustee for a beneficiary and may alter or revoke that appointment by declaration,

(2) A payment made by an insurer to a trustee for a beneficiary discharges the insurer to the extent of the payment.

104. Where a beneficiary predeceases the insured person and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract of insurance or by a declaration, the deceased beneficiary's share of the policy proceeds shall be payable as follows-

(a) to the surviving beneficiary;
(b) if there is more than one surviving beneficiary, to the surviving beneficiaries in equal shares; or
(c) if there is no surviving beneficiary, to the insured person or his legal personal representative.

105.-(1) A beneficiary may, on the death of a life insured, enforce for his own benefit, and a trustee appointed pursuant to section 103 may enforce as trustee, the payment of the proceeds of an insurance policy made payable to him in the contract of insurance or by a declaration and in accordance with the provisions thereof.

(2) Notwithstanding subsection (1), the insurer concerned may set up any defence that he could have set up against the insured person or his legal personal representative.

106. A life insured under a group policy may, in his own name, enforce a right given him under a contract, subject to any defence available to the insurer against him or against the insured.