

THE INSURANCE COMMISSION OF THE BAHAMAS

CAPITAL REQUIREMENTS, DEPOSIT OF ASSETS, SOLVENCY AND RESERVES
REGULATIONS, 2005

In exercise of the powers conferred upon The Insurance Commission by section 233 of the Domestic Insurance Act, 2005, and in pursuance of sections 25, 43, 45, and 78, the following regulations are here made with the approval of the Minister -

PART I
PRELIMINARY

Citation. 1. These regulations may be cited as the Insurance Capital Requirements, Deposit of Assets, Solvency and Reserves Regulations, 2005.

Interpre- 2. (1) In these regulations -
tation. "the Act" means the Insurance Act, 2005;
"acquisition costs" means, with respect to -

(a) life insurance, costs incurred in the acquisition of new insurance policies and annuity contracts, including those costs that vary with and are primarily related to the acquisition of the policies and contracts, such as commissions, certain underwriting and policy issuing costs, and medical fees:

(b) general insurance, all expenses incurred in relation to the production of new and renewal business, including specifically identifiable and allocated expenses relating to commissions, bonuses, allowances and other compensation paid to agents and brokers.

"amortization date" means, in relation to the value of a mortgage loan payable to a registered insurer, the earliest of the following dates, namely -

(a) the earliest date, if any, when the rate of interest payable under the terms of the mortgage loan can be increased by the

lender;

- (b) the date when the mortgage loan is repaid in full if it is repaid in accordance with the loan agreement; and
- (c) where the purchase price of the mortgage loan is in excess of the principal amount outstanding under the loan on the date of its acquisition by the registered insurer, the earliest date, if any, before the end of the original term of the loan, when the loan can be repaid in full without the borrower incurring a penalty in excess of an amount equal to interest in respect of six months calculated on the principal amount outstanding under the loan on the date of repayment;

"amortized value" means, in relation to the value of redeemable security on any date after its acquisition, a value so determined that if the security were purchased at that date and at that value, the yield would be the same as the yield with reference to the purchase price;

"annual statement" means, in respect of a registered insurer, the annual return of the registered insurer prepared in accordance with Section 58 of the Act;

"catastrophe hazard" means a circumstance under which there is a significant deviation of the actual aggregate losses from the expected aggregate losses. For example, a hurricane is a hazard that is catastrophic in nature.

"debt security" means a redeemable security, a perpetual bond or a mortgage loan;

"equity asset" means any share of the capital stock of a corporation;

"indebtedness" includes indebtedness in respect of commercial paper, acceptances, lines of credit to the extent drawn on and margin loans made to a director or officer of a company;

"long-term mortgage loan" means, on any date, a mortgage loan the terms of which do not require the repayment in full of the principal amount thereof until after the expiration of five years from that date;

"long-term redeemable security" means, on any date, a redeemable security the terms of which do not require the repayment in full of the principal amount thereof until after the expiration of five years from that date;

"market deficiency" means, in respect of any class of assets of a registered insurer, on any date, the amount, if any, by which the aggregate of the book values on that date of the assets of the registered insurer in that class exceeds the aggregate of their market values on that date;

"market excess" means, in respect of any class of assets of a registered insurer, on any date, the amount, if any, by which the aggregate of the market values on that date of the assets of the registered insurer in that class exceeds the aggregate of their book values on that date;

"mortgage loan" means a loan made by or assigned to a registered insurer the repayment of which is secured by a mortgage on real property;

"non-admitted", in relation to an asset, means an asset or portion of an asset that is non-liquid, the value of which is uncertain, and that is not allowed by these regulations to be taken into account when assessing an insurance company's solvency margin;

"not in good standing", in respect of a loan, means a loan in respect of which

(a) any payment of principal or interest is 90 days or more overdue,

(b) interest is not being accrued on the books of the lender because it is doubtful whether (the principal or interest will be paid or recovered, or

(c) the rate of interest is reduced by the lender because the borrower is financially weak;"optical insurance" means coverage for health care of the eyes, including examinations and eyeglasses or contact lens prescriptions under an individual or group contract;

"perpetual bond" means a bond the terms of which do not require the repayment of the principal amount thereof at any fixed or determinable date, or otherwise than at the option of the borrower;

"redeemable security" means a security, other than an equity asset, that is issued for a fixed term and is

redeemable at the end of that term at a specified value;
"reinsurance ratio" means the inverse of the ratio of the total claims incurred by a registered insurer during the preceding twelve month period to the total of the amounts of the claims that the registered insurer has recovered and is entitled to recover from reinsurers, other than claims in respect of accident and sickness policies;

"short-term mortgage loan" means, on any date, a mortgage loan the terms of which require the repayment in full of the principal amount thereof not later than five years from that date;

"short-term redeemable security" means, on any date, a redeemable security the terms of which require repayment in full of the principal amount thereof not later than five years from the date;

"significant borrower", in respect of a company, means

(a) a natural person who has indebtedness for money borrowed from the company or from an affiliate of the company, other than a loan secured by a mortgage on the principal residence of that person, the total principal of which exceeds the greater of

(i) \$200,000, and

(ii) one fiftieth of one per cent of the regulatory capital of the company, or

(b) an entity that has indebtedness for money borrowed from the company or from an affiliate of the company the total principal of which exceeds the greatest of

(i) \$500,000,

(ii) one twentieth of one per cent of the regulatory capital of the company, and

(iii) twenty-five per cent of the value of the assets of the entity.

"third party administrator" means a person who or which performs managerial and clerical functions for an insurer or on behalf of a group of insured individuals;

"yield" means -

(a) in relation to a mortgage loan, the effective rate of interest that will be returned on the purchase price of the

loan if the payments on account of principal and interest specified in the loan agreement are made up to and including the amortization date and any principal amount outstanding under the loan is then repaid; and

- (b) in relation to a redeemable security, the effective rate of interest that will be returned on the purchase price of the security if the payments on account of

interest specified in the security are made up to and including the redemption date and the security is then redeemed at the specified value, the redemption date being, in the case of a security that is redeemable at more than one specified date, the specified date that gives the lowest effective rate of interest.

(2) A reference -

- (a) with respect to a registered foreign insurer, to an asset or to a class of assets of a registered insurer shall be construed as a reference to an asset, or to the assets, of that class, included in the assets in The Bahamas of the registered foreign insurer; and

- (b) to the date on which an asset was acquired or purchased by a registered insurer shall be construed as a reference to the most recent date on which the asset was deposited with the Commission or vested in trust under and for the purposes of the Act.

(3) For the purposes of these regulations, a natural person is affiliated with a company where the person:

- (a) is an officer or employee of the company or of an affiliate of the company;
- (b) has a significant interest in a class of shares of the company;

(c) has a substantial investment in an affiliate of the company;

(d) is a significant borrower in respect of the company;

(e) is an officer or employee of an entity that is a significant borrower in respect of the company;

(f) controls one or more entities of which the total indebtedness to the company or to an affiliate of the company would cause those entities, if treated as a single entity, to be a significant borrower of the company;

(g) provides goods or services to the company, or is a partner or an employee in a partnership that provides goods or services to the company or an officer or employee of, or a person who has a substantial investment in, a body corporate that provides goods or services to the company, if the total annual billings to the company in respect of the goods and services provided exceeds ten per cent of the total annual billings of the person, partnership or body corporate, as the case may be;

(h) has a loan that is not in good standing from the company or from an affiliate of the company or is a director, an officer or an employee of, or a person who controls, an entity that has a loan that is not in good standing from the company or from an affiliate of the company; or

(i) is the spouse of a person described in any of paragraphs (a) to (h).

PART II

SHARE CAPITAL

(Section 25 of the Act)

Required

Share capital

Required for

registration

3. (1) Subject to sub-paragraph (5), no company may be registered to carry on in The Bahamas -

(a) long-term insurance business unless it has a minimum paid-up and unencumbered

share capital of not less than three million dollars;

- (b) general insurance business unless it has a minimum paid-up and unencumbered share capital of not less than two million dollars;
- (c) industrial life insurance business only unless it has a minimum paid-up share capital of not less than one million dollars; and
- (d) any other insurance business, unless it has a minimum paid-up share capital of such amount as the Commission determines, or an equivalent sum in other currency approved by the Commission, the capital to be fully paid up in cash.

(2) In addition to the amounts specified in subparagraph (1) the company may be required to have additional funding in the form of contributed surplus so that start-up expenses will not impair the initial capital. The amount of such contributed surplus shall be determined by the Commission.

(3) No foreign company may be registered to carry on long-term or general insurance business in The Bahamas unless, in addition to complying with subparagraph (1), it has deposited with the Commission the deposits required under paragraph 5.

(4) Subject to subparagraph (5), subparagraph (1) shall not apply to an insurance company that is a mutual insurance company.

(5) No company shall be registered as a mutual insurance company unless it has minimum reserves of not less than those amounts required of companies with paid-up share capital.

(6) Subparagraph (1) shall not apply to a company registered pursuant to the repealed Insurance Act immediately prior to the coming into force of the Act, but shall apply in accordance with Section 235 of the Act, so long as the time limit for compliance does not exceed 3 years.

DEPOSIT OF ASSETS (Section 43 of Act)

4. An insurance company may be required under Sections 25 and 43 of the Act to deposit assets with the Commission or invest any monies standing to the credit of its funds in the assets or securities set out in paragraph 6, subject to the restrictions set out in paragraphs 23 and 24.

Initial deposit required to carry on insurance business.

5. The minimum assets required to be deposited with the Commission by a registered insurer from commencement of operations in or from within The Bahamas shall be -

- (a) in respect of an entity which proposes to carry on life and/or health insurance business, two million dollars;
- (b) in respect of an entity which proposes to carry on property and casualty insurance business, one million dollars; and
- (c) in respect of an entity which proposes not to write any new business, five hundred thousand dollars.

Deposits to be placed in trust

6. Pursuant to Section 43(2) of the Act, the deposits referred to in paragraph 5 above shall be placed in a trust to be held by a licenced Financial Institution in The Bahamas approved by the Commission.

Method of creating trust

7. (1) A trust referred to in paragraph 6 shall be created by a trust deed, the contents and the trustee(s) of which shall be approved by the Commission before the trust is created.

(2) A trustee may not deal with any assets held in trust by him under this section without the prior general or specific approval of the Commission.

Changes in amount of deposit

8. The Commission may require the deposit referred to in Sections 25 and 43 of the Act and paragraph 5 above to be increased, decreased, or otherwise changed, either before or after granting the licence, to such amount as it considers necessary, and for this purpose the Commission may require a re-insurer that reinsures all or part of the insurer's business to deposit balances owing to the insurer with the Commission.

Excess deposit.

9. An insurer may voluntarily make a deposit in excess of the amount prescribed, but no part of a voluntary deposit shall be withdrawn without the sanction of the Commission.

- Nature of assets to be deposited.
10. The assets which a registered insurer is required to deposit with the Commission shall consist of -
- (a) cash;
 - (b) unencumbered securities of, or guaranteed by, the Government;
 - (c) other securities, at an accepted value and on the conditions established by the Commission; or
 - (d) letters of credit provided by a recognized bank; and
 - (e) any combination of the above.
- Value at which securities received.
11. The value of such securities shall be estimated at their market value, not exceeding par, at the time they are deposited. For securities without a par value, the cost value to the company is to be used.

PART IV

ADMISSIBLE ASSETS AND SECURITIES

12. Of the value of the assets which an insurer carrying on general business must at any time have in order to maintain the minimum margin of solvency which that insurer is required by the Act to maintain in respect of general business, at least seventy-five percent shall be in the form of admissible assets.

13. Of the value of the assets which an insurer carrying on long term business must at any time have in order to maintain the minimum margin of solvency which that insurer is required by the Act to maintain in respect of long-term business, at least twenty-five percent shall be in the form of admissible assets.

- Admissible Assets.
14. For the purpose of these regulations admissible assets are, subject to paragraphs 23, 24 and 25 -
- (a) cash in hand and on deposit at a bank;
 - (b) bank certificates of deposits;
 - (c) government bonds;
 - (d) government guaranteed bonds or securities approved by the Commission;
 - (e) securities quoted on a recognized securities exchange and/or preferred shares issued by a company approved by

the Commission;

- (f) loans by way of mortgages on real estate;
- (g) net investment income due and accrued;
- (h) premiums receivable;
- (i) reinsurance balances receivable;
- (j) accounts receivable net of provisions for bad and doubtful debts;
- (k) land and buildings; and
- (l) irrevocable letters of credit provided by a recognized bank, for such amount and on such conditions as approved by the Commission.

15. An amount receivable or balance due from a person with whom an insurer is affiliated, is not an admissible asset of that insurer unless in any particular case the Commission consents in writing to its being regarded as such.

Discounted or reduced value assets. 16. For the purposes of this Part and for Solvency requirements, discounted assets and the reduced value assets assigned to them are -

- (a) Goodwill and other intangible assets (100% discount);
- (b) Deferred acquisition costs (100% discount);
- (c) Non-performing mortgage loans overdue for 90 days or more (0 - 20% discount);
- (d) Furniture and fixtures (0 - 85% discount);
- (e) Equipment (0 - 50% discount) of the net value;
- (f) Computer software (100% discount);
- (g) Ordinary shares of private, un-audited corporations (100% discount);
- (h) Agents debit balances (0 - 100% discount depending on provisions made in the balance sheet);
- (i) Bills receivable that are not properly secured by collateral (100% discount);
- (j) Other prepaid expenses (100% discount);
- (k) Unsecured cash advances to or in the hands of officers or agents (100% discount);

- (m) Outstanding premiums that are more than one modal past due (100% discount);
- (m) All NSF, Post Dated, Payment Stopped or otherwise non-bankable cheques (100% discount);
- (n) Non-arms-length transactions with affiliates (0 - 75% discount);
- (o) Accounts receivable (0 - 50% discount);
- (p) Investment assets (other than mortgages) representing more than 60% of total investments (5 - 25% discount); and
- (q) Mortgages representing more than 80% of total investments (5 - 25% discount).

17. Notwithstanding anything to the contrary contained in these Regulations, and after relevant consultations, the Commission may, upon giving at least six months notice, adjust, or otherwise change the nature and manner of determining the solvency margins required by this part.

PART V

VESTING OF ASSETS (Section 45 of Act)

18. (1) Pursuant to section 45 of the Act and Subject to paragraphs 19, 20 and 21, a registered insurer shall, in respect of the insuring of risks that fall within the classes of motor, property and long-term insurance business, vest assets in trust the total value of which when determined on the basis provided for in subparagraphs (4) and (5) of Section 45 of the Act or on the basis of the market value of those assets, is at least equal to the total of -

- (a) the amount of the reserve for actuarial and other policy liabilities of the registered insurer in respect of that class, determined on the same basis as the reserve included in the annual return of the registered insurer; or
- (b) the total amount of the other liabilities of the registered insurer in respect of that class.

(2) The assets required to be placed in Trust are to be held by a licenced financial institution in The Bahamas

that is approved by the Commission.

(3) Trustees are to be appointed by the registered company with the prior approval of the Commission.

Unearned
premiums.

19. For the purposes of the calculations in paragraph 18 -

- (a) where a registered insurer has issued policies on the premium note system, unearned assessments levied in respect of outstanding premium notes held by the registered insurer shall be considered to be unearned premiums; and
- (b) unearned premiums shall be calculated on a pro rata basis as at the date of the annual return, except that, where the risk insured and the amount of insurance are not substantially uniform over the term of the policy, the unearned premium shall be calculated in such a manner as the Commission may, by directive, determine.

Reduction
due to re-
insurance.

20. (1) Subject to subparagraph (2), where a registered insurer is reinsured in whole or in part against risks undertaken or claims payable in respect of a policy or group of policies, the aggregate of the amounts referred to in paragraph 18 may be reduced by subtracting therefrom an amount not exceeding 75% of the aggregate of the portions thereof that may reasonably be considered to apply to the portion of the risks or claims that is reinsured.

(2) Where a re-insurer is not authorised under the Act to insure risks and is incorporated elsewhere than in The Bahamas, a reduction under sub-paragraph (1) may be made only if-

- (a) the Commission has determined, by directive, that the financial condition of the re-insurer is satisfactory and that its operations are conducted in accordance with sound business and financial practices; and
- (b) security is maintained in The Bahamas, in respect of the potential liabilities of the re-insurer, in an amount, of a nature and under arrangements that are

determined by the Commission, by directive, to be satisfactory.

Additional
reductions.

21. The total value of assets required under paragraph 18 to be vested may be further reduced by -

- (a) any assets deposited with the Commission pursuant to Section 43 of the Act;
- (b) any reinsurance amount as presented in paragraph 20;
- (b) any amounts that are receivable from agents and policyholders of the registered insurer in respect of policies in force, as may be determined by the Commission by directive; and
- (d) in connection with risks insured outside The Bahamas, any assets required by an insurance supervisory authority in a foreign jurisdiction to be deposited, vested, pledged, or otherwise dedicated or encumbered in connection with any such business.

Letter of
credit in
lieu.

22. The Commission may, by directive, allow a registered insurer to reduce the total value of assets required to be vested pursuant to paragraph 18 by the amount of a letter of credit drawn on a bank, up to a maximum reduction of fifteen per cent of the total value.

Restrictions
on vesting.

23. A registered insurer shall not vest in trust-

- (a) interests in real property in excess of fifteen percent of the total assets vested in trust; or
- (b) equity interests in entities in excess of twenty-five percent of the total assets vested in trust.

Further
restric-
tions on
what may be
deposited
or vested.

24. A registered insurer may not deposit or vest in trust -

- (a) securities issued by or debt obligations of the insurer or of any of its affiliates;
- (b) real property, or ground rents or mortgages on real property situated outside The Bahamas;
- (c) any non-marketable shares or ownership interests or securities which may be held

in any other entity;

- (c) interests in real property or equity interests in entities which exceed such percentage of the total assets vested in trust as may be prescribed or by a directive of the Commission; or
- (e) such other assets as the Commission may direct pursuant to paragraph 25.

25. Notwithstanding anything to the contrary contained in these Regulations, the Commission may impose additional restriction on -

- (a) the types of assets which may be vested in trust;
- (b) the total accepted value of particular assets or classes of assets; and
- (c) the place of investments.

Application
to regis-
tered
foreign
insurers.

26. Paragraphs 12 to 25 inclusive, shall apply, mutatis mutandis, to the insurance business in The Bahamas of a registered foreign insurer.

PART VI

VALUATION OF ASSETS AND INVESTMENTS

Amortized
value of
mortgage
loans.

27. (1) Subject to subparagraph (3), for the purpose of these regulations the amortized value of a mortgage loan payable to a registered insurer, on any date after the date of its acquisition by the registered insurer and before its amortization date, shall, at the option of the registered insurer, be deemed to be -

- (a) the value so determined that if the loan were acquired on that date and at that value, the yield would be the same as the yield with reference to the purchase price of the loan; or
- (b) the value determined by adding -
 - (i) the principal amount outstanding under the loan on that date; and
 - (ii) the product of -
 - (A) an amount equal to the

purchase price of the loan less the principal amount outstanding under the loan on the date of its acquisition by the registered insurer; and

(B) the proportion that the period from that date to the amortization date of the loan bears to the

period from the date of acquisition of the loan by the registered insurer to its amortization date.

(2) For the purposes of these Regulations, the amortized value of a mortgage loan payable to a registered insurer, on any date on or after its amortization date, shall be deemed to be an amount equal to the principal amount outstanding under the loan on that date.

(3) A registered insurer shall deem the amortized value, on any subsequent date, of any mortgage loan payable to the registered insurer to be the value determined by the same method set out in subparagraph 1(a) or (b), unless it obtains the written approval of the Commission to use an alternative method.

Purchase price of asset.

28. (1) For the purposes of these Regulations, the purchase price of an asset of a registered insurer, where the market value of the asset on the date of its acquisition by the registered insurer is readily ascertainable, shall be deemed to be an amount equal to -

- (a) the amount advanced for the asset, in the case of an asset that is a mortgage loan payable to the registered insurer;
- (b) the cost of acquisition of the asset, in the case of any other asset of the registered insurer; or
- (c) The current quoted market value, in the case of marketable securities.

(2) For the purposes of these Regulations, the purchase price of an asset of a registered insurer where the amount advanced for, or the cost of acquisition of, the asset

does not differ materially from the market value of the asset on the date of its acquisition by the registered insurer, shall be deemed to be an amount equal to the sum of-

(a) the market value of the asset on the date of its acquisition by the registered insurer; and

(b) such expenses incurred in acquiring the asset as the Commission considers reasonable, where the amount advanced for, or the cost of acquisition of, the asset differs materially from the market value of the asset on the date of its acquisition by the registered insurer.

(3) For the purposes of these Regulations, the purchase price of an asset of a registered insurer, where the market value of the asset on the date of its acquisition by the registered insurer is not readily ascertainable, shall be deemed to be an amount, not exceeding the cost of acquisition of the asset -

(a) that the registered insurer considers to have been the fair value of the asset on the date of its acquisition by the registered insurer; and

(b) that is acceptable to the Commission.

(4) For the purposes of this paragraph, the market value of an asset on the date of its acquisition by a registered insurer is deemed to be readily ascertainable if it was quoted on a stock exchange on that date, or is obtainable by means of an independent professional appraisal.

Book value
of asset.

29. (1) For the purposes of Section 47(3), of the Act, the book value of an asset of a registered insurer, other than an equity asset of the registered insurer, as at a particular date, shall be determined -

(a) where the asset is a redeemable security maintained by the registered insurer that is not in default, at the option of the registered insurer -

(i) by ascertaining the amortized value of the security and by deeming the book value to be equal to the amortized value; or

(ii) by adding the purchase price of

the security and the product of-

(A) an amount equal to the redemption value of the security less its purchase price, and

(B) the quotient equal to the length of the period that has elapsed since the date of acquisition of the security by the registered insurer divided by the length of the period from the date of acquisition of the security by the registered insurer to its redemption date;

(b) in the case of a perpetual bond not in default, by ascertaining the purchase price of the bond and by deeming the book value to be equal to that purchase price;

(c) in the case of a redeemable security in default or a perpetual bond in default -

(i) where the market value, on that date, of the security or bond is quoted on a stock exchange, by ascertaining the market value, on that date, of the security or bond and by deeming the book value to be equal to that market value; or

(ii) where the market value, on that date, of the security or bond is not quoted on a stock exchange, by ascertaining the amount;

(A) that places a fair value, on that date, on the security or bond, and

(B) that is acceptable to the Commission;

and by deeming the book value to be equal to that amount;

- (d) in the case of a mortgage loan -
 - (i) where no instalment is in default for more than six months, by ascertaining the amortized value of the loan, on that date, and by deeming the book value to be equal to that amortized value, or
 - (ii) where any installment is in default for more than six months, by determining the market value of the loan, on that date, in accordance with paragraph 31(6) and by deeming the book value to be equal to that market value;
- (e) in the case of real property, by deeming the book value to be equal to -
 - (i) the amount determined by subtracting from the sum of the purchase price of the real property and the cost of improvements, if any, to the real property made since the date of acquisition of the real property by the registered insurer, the amount of an allowance for depreciation of the real property calculated on that date,
 - (ii) the appraised value of the property (providing the appraisal is carried out by a Government approved appraiser acceptable to the Commission, or
 - (iii) such other amount as is acceptable to the Commission on the basis of the information that the registered insurer

submits to it.

(2) Notwithstanding subparagraph (1)(a), where a registered insurer has, on any date, in respect of any redeemable security of the registered insurer referred to in subparagraph (1)(a), opted to determine the book value of the security for the purposes of Section 43(3) of the Act by the method set out in subparagraph (1)(a)(i) or (ii), the registered insurer, for the purposes of Section 47(4) of the Act -

- (a) shall determine the book value, on that date, of any other such redeemable security of the registered insurer by the same method; and
- (b) shall determine the book value, on any subsequent date, of any such redeemable security of the registered insurer by the same method, unless it obtains the written approval of the Commission to use the alternate method set out in subparagraph (1)(a).

30. the purposes of Section 47(3) of the Act, the total book value of the equity assets of a registered insurer, as at a particular date, shall be the aggregate of -

- (a) in respect of equity assets acquired -
 - (i) in the form of stock dividends
 - (ii) by the division of shares or
 - (iii) by the exercise of conversion privileges, options or rights attached to other equity assets of the registered insurerthe total costs of acquisition of the assets; and
- (b) in respect of equity assets not referred to in subparagraph (a), the total purchase price of the equity assets.

Market
value of
mortgage
loans.

31. (1) Subject to subparagraph (4), and for the purposes of Section 47(3) of the Act, the market value, on any date, of a mortgage loan payable to a registered insurer in respect of which no installment is in default for more than six months, shall be determined -

- (a) where the rate of interest payable under the terms of the mortgage loan is greater

than the average rate of interest payable in respect of all mortgage loans of the same category payable to that registered insurer, other than mortgage loans assigned to that registered insurer, that have been made during a period of three months immediately preceding that date -

- (i) by adding the principal amount outstanding under the mortgage loan on that date and an amount equal to such portion of that principal amount outstanding as is determined in accordance with subparagraph (2),
- (ii) by deeming the market value to be equal to the sum so obtained; and

- (b) where the rate of interest payable under the terms of the mortgage loan is equal to or less than the average rate of interest payable in respect of all mortgage loans of the same category payable to that registered insurer, other than mortgage loans assigned to that registered insurer, that have been made during a period of three months immediately preceding that date -

- (i) by subtracting from the principal amount outstanding under the mortgage loan on that date an amount equal to such portion of that principal amount outstanding as is determined in accordance with subparagraph (2), and

- (ii) by deeming the market value to be equal to the result so obtained.

(2) The portion of the principal amount outstanding, referred to in subparagraph (1), shall be determined -

- (a) in the case of a long-term mortgage loan, by multiplying by six the absolute value of the difference between -

- (i) the rate of interest payable under the terms of the mortgage loan, and
 - (ii) the average rate of interest payable in respect of all mortgage loans of the same category payable to the registered insurer, other than mortgage loans assigned to the registered insurer, that have been made during the period referred to in subparagraphs (1)(a) and (b); and
- (b) in the case of a short-term mortgage loan, by multiplying by 2.5 the absolute value of the difference between -
- (i) the rate of interest payable under the terms of the mortgage loan, and
 - (ii) the average rate of interest payable in respect of all mortgage loans of the same category payable to the registered insurer, other than mortgage loans assigned to the registered insurer, that have been made during the period referred to in subparagraphs (1)(a) and (b).
- (3) For the purpose of this regulation -
- (a) the mortgage loans payable to a registered insurer, other than mortgage loans assigned to the registered insurer, shall be classified in categories that are acceptable to the Commission;
 - (b) the average rate of interest payable in respect of all mortgage loans of the same category payable to a registered insurer, other than mortgage loans assigned to the registered insurer, that have been made during the period referred to in subparagraphs (1) (a) and (b), may be

determined by any method of approximation acceptable to the Commission; and

- (c) where the average rate of interest payable in respect of all mortgage loans of a particular category payable to a registered insurer, other than mortgage loans assigned to the registered insurer, that have been made during the period referred to in subparagraphs (1) (a) and (b), cannot be determined under paragraph (b) of this subsection because of the registered insurer has not made any or has made very few mortgage loans of that category during that period, the registered insurer may substitute for that average rate of interest an estimated average rate of interest that is acceptable to the Commission.

(4) Instead of determining the market value, on any date, of each mortgage loan referred to in subparagraph (1) separately in accordance with subparagraph (1), a registered insurer may determine the market value, on any date, of all mortgage loans referred to in subparagraph (1) that are in the same group, on a group basis in accordance with subparagraph (1), and for that purpose -

- (a) the mortgage loans referred to in subparagraph (1) shall be classified in groups in such a manner that each group is -
 - (i) part of a category of mortgage loans determined under subparagraph (3), and
 - (ii) acceptable to the Commission;
- (b) each such group of mortgage loans shall be deemed to be one mortgage loan for the purposes of subparagraphs (1) and (2);
- (c) the average rate of interest payable in respect of each such group of mortgage loans shall be determined by any method of approximation acceptable to the Superintendent, and for the purposes of subparagraphs (1) and (2), that average

rate of interest shall be deemed to be the rate of interest payable under the terms of one mortgage loan; and

- (d) the aggregate of the principal amounts outstanding, on any date, under all mortgage loans in a group shall be deemed to be the principal amount outstanding under one mortgage loan on that date.

(5) Notwithstanding subparagraphs (1) and (3), for the purposes of Section 47(2) of the Act -

- (a) the market value, on any date, determined separately in respect of a mortgage loan payable to a registered insurer -

- (i) in respect of which no instalment is in default for more than six months, and

- (ii) that the borrower is entitled to repay in full before the end of the original term of the loan without incurring a penalty in excess of an amount equal to interest in respect of six months calculated on the principal amount outstanding under the loan on the date of repayment, shall not exceed the principal amount outstanding under the loan on that date; and

- (b) the market value, on any date, determined on a group basis in respect of all mortgage loans in a group of mortgage loans payable to a registered insurer that includes loans referred to in paragraph (a), shall not exceed the aggregate of the principal amounts outstanding on that date under all loans in that group.

(6) For the purposes of Section 47(3) of the Act, the market value, on any date, of a mortgage loan payable to a registered insurer any installment of which is in default for more than six months, shall be determined by ascertaining the amount that places a fair value, on that date, on the

mortgage loan, and by deeming the market value to be equal to that amount.

(7) Notwithstanding subparagraphs (1) to (6), for the purposes of Section 47(3) of the Act, the market values, on any date, of mortgage loans payable to a registered insurer may be determined by using any method or methods that, in the opinion of the Commission, places values on the loans that in the aggregate are not significantly different from the values, in respect of that date, determined under subparagraphs (1) to (6).

Investment
valuation
reserve.

32. (1) Subject to subparagraph (2) and Paragraph 35, the amount of the investment valuation reserve, referred to in Section 47(3) of the Act, in respect of the assets maintained by a registered insurer, as at a particular date, shall be the aggregate of -

(a) the amount by which the total market deficiency in respect of long-term redeemable securities, long-term mortgage loans, perpetual bonds and real property of the registered insurer exceeds the market excess in respect of equity assets of the registered insurer,

(b) an amount equal to the lesser of -

(i) the amount by which the market deficiency in respect of equity assets of the registered insurer exceeds the total market excess in respect of debt securities and real property of the registered insurer, and

(ii) the sum of one half of the amount determined under subparagraph (i) as at that date and one half of the amount determined under that subparagraph as at the end of the calendar year preceding that date; and

(c) where the total of the book value of mortgage loans maintained by the

registered insurer as at that date exceeds twenty percent (20%) of the total of the book values of all the assets maintained by the registered insurer as at that date in respect of its insurance business, an amount equal to the market deficiency in respect of short-term mortgage loans of the registered insurer.

(2) The amount of the investment valuation reserve referred to in Section 47(3) of the Act, in respect of the assets maintained by a registered insurer, as at a particular date, shall not exceed the lesser of -

(a) an amount equal to the total market deficiency in respect of debt securities, equity assets and real property of the registered insurer, and

(b) the sum of -

(i) the total market deficiency in respect of long-term redeemable securities, long-term mortgage loans, perpetual bonds, equity assets and real property of the registered insurer, and

(ii) where the aggregate of the book values of mortgage loans maintained by the registered insurer exceeds 20 per cent of the aggregate of the book values of all the assets maintained by the registered insurer in respect of its insurance business, an amount equal to the greater of -

(A) zero, and

(B) the amount of the market deficiency in respect of short-term mortgage loans of the registered insurer less the amount of any market excess in respect of short-term redeemable

securities of the registered insurer.

33. (1) When the only class of insurance business transacted by a registered insurer is accident and sickness insurance business, the amount of the investment valuation reserve referred to in Section 47(3) of the Act relating to assets maintained by the registered insurer in respect of its accident and sickness insurance business, as at a particular date, shall be -

- (a) where the aggregate of the book values of the mortgage loans maintained by the registered insurer as at that date does not exceed 20 per cent (20%) of the aggregate of the book values of all assets maintained by the registered insurer as at that date in respect of its accident and sickness insurance business, the total market deficiency, in respect of redeemable securities, long-term mortgage loans, perpetual bonds, equity assets and real property of the registered insurer; and
- (b) in any other case, the aggregate of -
 - (i) the amount calculated under paragraph (a), and
 - (ii) the market deficiency in respect of short-term mortgage loans of the registered insurer.

(2) Where, in a particular calendar year, a registered insurer enters into transactions in respect of accident and sickness insurance business and one or more other classes of insurance business, that registered insurer shall, for the purposes of subparagraph (1), be considered not to have entered into transactions in respect of any class of insurance business other than accident and sickness insurance business, if the net accident and sickness insurance premium income of the registered insurer for that calendar year exceeds 90 per cent (90%) of the total net premium income of the registered insurer, in respect of all its insurance business in The Bahamas -

- (a) for the preceding calendar year; or

(b) where the registered insurer did not enter into any transactions in respect of accident and sickness insurance business in The Bahamas, in immediately preceding calendar year, for the expired portion of that calendar year.

Gain or loss from disposition of assets.

34. For the purposes of Section 47(3) of the Act, the gain or loss resulting from the sale or other disposition, during a calendar year, of the assets of a registered insurer shall be shown as a separate entry in the annual statement of the registered insurer for that calendar year.

Restrictions on borrowing.

35. (1) Unless the written consent of the Commission is first obtained, a registered insurer shall not exercise its borrowing powers if the aggregate of the un-discharged amount of monies borrowed or to be borrowed and secured or to be secured by the registered insurer would exceed -

(a) in the case of a registered insurer which engages only in life and health insurance business, twenty per cent (20%); and

(b) in the case of a registered insurer which engages only in property and casualty insurance business, five per cent (5%);

of the total assets of the registered insurer.

(2) Subparagraph (1) notwithstanding, in the event of a catastrophe hazard occurring, a registered insurer may borrow in excess of 5%, but not to exceed the potential recoveries from reinsurance.

PART VII

SOLVENCY

Required assets long-term insurer

36. In each year after registration, a company carrying on long-term insurance business must have assets in an amount equal to total liabilities plus the minimum amount of capital required to satisfy the solvency requirement as set out in Paragraph 40 of these Regulations.

Required Assets general insurer.

37. In each year after registration, a company carrying on general insurance business must have assets in an amount equal to total liabilities plus the minimum amount of capital required to satisfy the solvency requirement as set

out in Paragraph 41 of these regulations.

Separation
of assets
and lia-
bilities
attribu-
table to

long-term

business.

38. (1) Where a registered insurer carries on long-term business -

- (a) the insurer shall maintain an account in respect of that business; and
- (b) the receipts of that business shall be entered in the account maintained for that business and shall be carried to and shall form a separate insurance fund with an appropriate name.

(2) If any part of the long-term business of a registered insurer consists of contracts under which the benefits payable to the policyholders are determined by reference to the value of, or the income from, property of any description, the receipts of that part of that business shall be carried to and shall form a separate part of the fund maintained under subparagraph (1) and references in this regulation to any part of the long-term business of an insurer or to any part of the fund maintained under subparagraph (1) are references to such part of that business or to such a part of that fund, as the case may be, as is mentioned in this regulation.

(3) Subject to subparagraph (4), a registered insurer that carries on long-term business shall maintain such accounting and other records as are necessary for identifying-

- (a) the assets representing the fund maintained by the insurer under subparagraph (1) and each part of that fund; and
- (b) the liabilities attributable to that business and to each part of that business.

(4) A registered insurer that carries on long-term business and was carrying on that business immediately before the commencement of the Act -

- (a) shall make arrangements, to the satisfaction of the Commission, during the financial year of the insurer beginning next after the commencement of the Act, for identifying the assets and

liabilities of the insurer as on the last day of that financial year which are attributable to its long-term business and to each part of that business; and

- (b) shall not be subject to subparagraph (3) until the day after the end of that financial year.

Restriction
on transfer
of assets
of insurer
with long-
term
business.

39. (1) A registered insurer that carries on long-term business shall not transfer or otherwise apply assets representing the fund maintained by the insurer under Paragraph 40 otherwise than in respect of claims and expenses relating to that business, except out of any established surplus in that fund.

(2) In subparagraph (1) "established surplus" means any amount shown by an investigation to which Section 54 of the Act applies, to be an amount by which the assets representing the fund maintained by the insurer under paragraph 37, or, as the case may be, representing any part of that fund, exceed the liabilities of the insurer attributable to the long-term business carried on by the insurer or, as the case may be, attributable to any part of that business.

Solvency
Margin -
Long-Term
Business
(LIFE &
HEALTH)

40. (1) The margin of solvency of a registered long-term insurer (being the excess of the value of its admissible assets over the amount of its liabilities) shall be 20 percent of the net premium income in its last financial year or five hundred thousand dollars (\$500,000), whichever is the greater amount.

(2) Subject to subparagraph (3), the amount of any liabilities of an insurer shall be determined in accordance with generally accepted accounting concepts, basis and policies or other generally accepted methods appropriate for insurers and approved by the Commission.

(3) The liabilities of any long-term business carried on by an insurer shall be taken to be whichever is the greater of -

- (a) the amount which, in respect of that business, for the time being stands to the credit of the fund maintained by the insurer under subparagraph 38(1); or
- (b) the amount of those liabilities last ascertained by an investigation under Section 54 of the Act; or

(c) the amount of the result of the sum of (a) and (b).

(4) The value of any assets of the fund required to be maintained by a registered insurer under Paragraph 38(1) which are matched by long-term liabilities in respect of maturity dates and which fall within any of the descriptions of admissible assets in Paragraph 14(c) or (d) may be taken to be their maturity value if that value is assigned to them in the accounts last deposited under section 58 of the Act and considered appropriate by the auditor who audited those accounts under section 60 of the Act.

(5) If in any particular case the Commission so consents in writing, the assets and liabilities of an insurer to be taken into account for the purposes of this Regulation may be taken to include all those assets and liabilities disclosed by group accounts dealing with the state of affairs and the profit or loss of the insurer and any subsidiary of the insurer which is a Bahamian company not engaged in trading otherwise than by dealing in investments.

Solvency
Margin -
General
Business
(PROPERTY
AND
CASUALTY).

41. (1) The Margin of solvency for the purposes of this Regulation in the case of a registered general insurer is an amount of not less than the sum of -

- (a) 20 percent (20%) of that insurer's first \$10,000,000 of net premium income in respect of general business; and
- (b) 18 percent (18%) of the amount by which that insurer's net premium income in respect of general business exceeds \$10,000,000.

(2) For the purposes of this part an insurer's net premium income shall be taken to be -

- (a) during the financial year in which the insurer first carries on general business in The Bahamas, the amount stated in the insurer's application for registration in respect of that business as the maximum gross premium income which the insurer proposes to earn in respect of general business during that financial year reduced by the amount stated in that application as the total estimated rebates, refunds and reinsurance

commission which will, on the basis of that proposed maximum gross premium income, be payable by the insurer, and, subject to subparagraph (3), by the gross amount of any reinsurance which will, on that basis, be ceded by the insurer in respect of general business during that financial year;

(b) at any other time, the gross premium income earned in respect of general business during the insurers last preceding financial year reduced by any rebates, refunds and reinsurance commissions payable by the insurer, and, subject to subparagraph (3), by the gross amount of any reinsurance ceded by the insurer, during that preceding financial year: PROVIDED THAT in a registered insurer's first or preceding financial year, as the case may be, is not a period of 12 calendar months that insurer's net premium income in respect of general business shall be taken to be an amount calculated in accordance with this subparagraph divided by the number of days in that first or preceding financial year, as the case may be, and the resultant figure multiplied by 365.

(3) Reinsurance ceded by an insurer to a person with whom the insurer is associated shall not be taken into account for the purposes of this paragraph unless it is so ceded to a registered insurer or the Commission, in any particular case, consents in writing to its being so taken into account.

PART VIII

RESERVES FOR GENERAL INSURANCE BUSINESS

Computation of reserves

42. (1) Every company doing general insurance business shall, in respect of its outstanding unexpired policies, include among the liabilities provided in its annual statement

liability.

of account, reserves on the following basis -

- (a) eighty per cent of the unearned premiums computed *pro rata per mensem*, as at the date of the statement;
- (b) forty per cent of the annual premium for the year of accounting, as at the date of the statement; or
- (c) such amount as is calculated actuarially if the actuarial basis is approved by the Commission, whichever is higher.

(2) The Commission may, subject to such conditions and to such extent as it thinks fit, exempt any company from the provisions of this section.

(3) For the purpose of this section "premium" means in relation to a class of insurance business such premium as may be prescribed as being the net premium in relation to that class.

Additional reserves.

43. (1) In addition to the reserves required under Paragraph 42, every company carrying on general insurance business shall, in respect of all classes of that business -

- (a) provide reserves for meeting claims outstanding at the date of its annual statement of account; and
- (b) set aside reserves for meeting catastrophes in such manner as the Commission may prescribe by regulations.

(2) The reserves referred to in subparagraph (1), are, in relation to a class of insurance business, such reserves as may be prescribed as being the net reserves in relation to that class.

(3) The Commission may, subject to such conditions and to such extent as it thinks fit, exempt any company from the provisions of subparagraph (1).

(4) Every company shall furnish to the Commission details of the method used in calculating the reserves referred to in subparagraph (1).

(5) The Commission may disallow any method used for the calculation of reserves referred to in subparagraph (1), where it is satisfied that such a method does not result in the provision of adequate reserves.

(6) The Commission may prescribe that reserves under Paragraph 42 and under subparagraph (1) shall in respect

of any class of general insurance business be held in trust as a statutory fund.