

COMMITTEE ON FINANCE

BILL NO. 30-0049

Thirtieth Legislature of the Virgin Islands

April 5, 2013

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

PROPOSED BY: Senator Shawn-Michael Malone by Request of the Governor

1 ***Be it enacted by the Legislature of the Virgin Islands:***

2 **SECTION 1.** Title 22 is amended by adding Chapter 4 entitled the “Division of
3 Alternative Markets and International Reinsurance.”

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

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

7 There is established within the Office of the Lieutenant Governor, the Division of
8 Alternative Markets and International Reinsurance, which will be supervised by the
9 Superintendent of Alternative Markets (“the SAM”). The Commissioner of Insurance,
10 with the advice and consent of the Governor, shall appoint the SAM and determine the
11 SAM’s compensation. The SAM, with the consent of the Commissioner of Insurance,

1 may appoint such assistants as necessary to perform such duties as the SAM determines.
2 The SAM shall report to the Commissioner of Insurance.

3 **§71. Authority of the SAM**

- 4 (a) The SAM has authority to:
- 5 (1) Regulate the Alternative Market Insurer Business being conducted
6 in or from the Territory;
- 7 (2) Enforcement of the Virgin Islands Code Ann. and the Rules and
8 Regulations promulgated thereunder relating to the conduct of the Alternative
9 Market Insurer Business and International Support Businesses;
- 10 (3) Examine and prepare reports pursuant to Chapter 55 and Chapter
11 66 of this Title annually on all matters connected with Alternative Market Insurer
12 Businesses and International Support Businesses;
- 13 (4) Summon or subpoena persons to attend a hearing or to testify as a
14 witness;
- 15 (5) To enforce attendance through the Superior Court of the Virgin
16 Islands, and to compel production of books and evidence relevant to an inquiry
17 necessary or appropriate under this chapter;
- 18 (6) Require examination of witnesses under oath and to administer
19 oaths;
- 20 (7) At all reasonable times, have access to and take copies of all books,
21 securities, records, and documents of any Special Purpose Financial Captive
22 Insurance Company, Securitization Entity, insurer, insurance manager, agent,
23 adjuster, or broker that relate to the Alternative Insurance Market or International
24 Reinsurance Business and any officer, agent, or person in charge, possession,

1 custody, or control of any of those books, securities, records, or document and to
2 issue fines against any person or entity who refuses or neglects to afford such
3 access;

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

9 (9) Issue licenses and certificates of Exempt International Company
10 benefits and tax incentive benefits in accordance with Virgin Islands Code,
11 Chapter 55 and Chapter 66 of this Title and Title 13 Chapter 14;

12 (10) Enter into Memoranda of Understanding with other relevant US
13 Virgin Islands Government agencies, departments, and divisions for processing of
14 documents needed to complete the licensing process and to facilitate granting and
15 contracting for tax benefits provided to any International Insurance Company
16 and/or International Insurer Support Business as provided in Virgin Islands Code,
17 Chapters 55 and 66; and

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

22 (b) The SAM, or any of the SAM's employees, must not directly or indirectly
23 be:
24

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

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

10 §72. Registers

The SAM shall keep the following registers:

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

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

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

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

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

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

(b) A register of all licenses issued under this Title to International Insurance

1 Support Businesses in which must appear the names and addresses of the insurers and
2 reinsurers for whom they are authorized to act.

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

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

8 **§73. Revolving Fund Created**

9 (a) There is established in the Treasury of the Virgin Islands a special account
10 known as the “Alternative Market and International Reinsurance Revolving Fund” for the
11 purpose of providing the financial means for the SAM to administer Chapters 55 and 66
12 and for reasonable expenses incurred in promoting the captive insurance and asset
13 securitization and insurance securitization industries in the Territory.

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

19 (c) The SAM shall deposit into the fund:

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

22 (2) All administrative penalties and fines.

23 (d) All payments from the Fund for the hiring, training, maintenance of staff
24 and associated expenses, including contractual services as necessary, may be disbursed

1 from the Fund only upon requests issued by the SAM, after receipt of proper
2 documentation regarding services rendered and expenses incurred or to be incurred.

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

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

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

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

10 **§1400. Short title**

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

13 **§1401. Definitions**

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

16 (a) "Actuary" means a person qualified as an actuary by examination of the
17 Institute of Actuaries in England or the Faculty of Actuaries in Scotland, Casualty
18 Actuarial Society, or the Society of Actuaries in the United States of America or Canada
19 or other certifications of actuaries recognized by the SAM. Such Actuary need not be
20 licensed in the US Virgin Islands.

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

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

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

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

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

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

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

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

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

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

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

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

20 (l) "Exempt international insurer" means any International Insurance
21 Company or Branch Exempt International Insurer that makes an election under section
22 1415 of this Title.

23 (m) “Group” means a group of corporations, partnerships, other business
24 entities, or individuals, and includes clients of an insurance agency or brokerage, that

1 collectively or through a trust or corporation formed by or on behalf of the group or the
2 agency or brokerage:

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

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

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

11 (o) "Industrial Insured" means an insured:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 **§1402. Applicability of other laws**

22 (a) Any International Insurance Company and any International Insurer
23 Support Business licensed by the Commissioner under this chapter shall be exempt from

1 all other insurance laws of the Virgin Islands other than those contained in this Chapter or
2 contained in specific references contained in this Title.

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

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

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

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

17 **§1403. Licensing authority; residency requirements**

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

21 (1) no Single-parent International Insurance Company may insure
22 directly risks other than those of its parent(s) and affiliated companies that in the
23 aggregate comprise up to not more than 90% of the company's gross written
24 premium in any one fiscal year, exclusive of the reinsurance premiums;

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

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

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

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

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

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

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

12 (c) (1) Before receiving a license, an International Insurance Company
13 shall file with the SAM, appropriate documents for filing its articles of incorporation,
14 charter, registration statement, or trade name registration OR a certified copy of its
15 charter and bylaws, a statement under oath of its President and Secretary showing its
16 financial condition, and any other information, documents, or statements required by the
17 SAM.

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

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

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

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

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

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

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

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

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

23 (d) If the SAM is satisfied that the documents and statements that such
24 applicant International Insurance Company has filed is in compliance with the provisions

1 of this Chapter, the SAM shall grant a license authorizing it to conduct insurance
2 business as an International Insurance Company until December 31st of each year. Such
3 license shall be renewed annually within 30 days of the end of the calendar year upon
4 payment of the annual license fee, provided the International Insurance Company is in
5 good standing at such time.

6 **§1404. Application fee; annual license fee**

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

1 **§1405. Minimum capital; letter of credit**

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

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

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

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

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

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

20 **§1406. Minimum surplus; letter of credit**

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

23

24

1 (1) in the case of a Single-parent International Insurance Company, not less
2 than \$100,000;

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

5 (3) in the case of an Association International Insurance Company
6 incorporated as a stock insurer, not less than \$250,000;

7 (4) in the case of an Industrial Insured International Insurance Company
8 incorporated as a mutual insurer, not less than \$200,000;

9 (5) in the case of an Association International Insurance Company
10 incorporated as a mutual insurer, not less than \$325,000; or

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

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

19 **§1407. Permissible investments; valuation**

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

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

8 (c) The stock of a member organization that owns more than fifty percent
9 (50%) of the equity of an Association International Insurance Company shall be valued at
10 book value by using the equity method of accounting.

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

14 **§1408. Segregation of accounts**

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

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

1 (c) For the purposes of this section:

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

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

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

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

17 **§1409. Formation of International Insurance Companies in the Virgin Islands**

18 (a) A Single-parent International Insurance Company shall be incorporated as
19 a stock insurer with its capital divided into shares and held by the stockholders.

20 (b) An Association International Insurance Company or an Industrial Insured
21 International Insurance Company may be incorporated:

22 (1) as a stock insurer with its capital divided into shares and held by
23 the stockholders; or

(2) as a mutual insurer without capital stock, the governing body of which is elected by its member organizations or the members of its association.

3 (c) An International Insurance Company shall have not less than three
4 incorporators of whom not less than one shall have been a resident of the Virgin Islands
5 for a minimum of one year.

6 (d) Before the articles of incorporation are transmitted to the Office of the
7 Lieutenant Governor, the incorporators shall petition the SAM to issue a certificate
8 setting forth his finding that the establishment and maintenance of the proposed
9 International Insurance Company will promote the general good of the Virgin Islands. In
10 arriving at such finding the SAM shall consider:

14 (2) such other aspects as the SAM shall deem appropriate.

15 (e) The articles of incorporation, such certificate, and the organization fee
16 shall be presented to the SAM which shall thereupon file both the articles of
17 incorporation and the certificate with the Office of the Lieutenant Governor—Division of
18 Corporations and Trademarks.

19 (f) The capital stock of an International Insurance Company incorporated as a
20 stock insurer shall be issued at not less than par value, if so stated.

21 (g) At least one of the members of the board of directors of an International
22 Insurance Company incorporated in this Territory shall have been a resident of the Virgin
23 Islands for a minimum period of one year.

1 (h) Any International Insurance Company formed under the provisions of this
2 Chapter shall be organized in accordance with and shall have the privileges and be
3 subject to the provisions of the General Corporation Law, Title 13, Chapter 1, Virgin
4 Islands Code, as well as the applicable provisions contained in this Chapter. In the event
5 of conflict between the provisions of said General Corporation Law, Title 13, Chapter 1,
6 Virgin Islands Code, and the provisions of this Chapter, the provisions of this Chapter
7 shall govern. The provisions of Title 22 of the Virgin Islands Code pertaining to
8 dissolutions, mergers, consolidations, conversions, and mutualizations, shall apply in
9 determining the procedures to be followed by International Insurance Companies formed
10 under this Chapter in carrying out any of the transactions described therein, except that
11 the SAM may waive or modify the requirements for public notice and hearing in
12 accordance with rules which the SAM may adopt.

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

18 **§1409A Formation of Branch Captive Insurance Companies in the Virgin Islands**

19 (a) Any Alien Captive Insurance Company seeking to establish a Branch
20 Exempt International Insurer, as defined below, shall follow the criteria and procedures
21 set forth in this subdivision and Section 1415 hereof and any regulations promulgated
22 hereunder for qualifying to do business in the Territory as Branch Exempt International
23 Insurer.

1 As used in this subdivision, unless the context requires otherwise, the following
2 definitions shall be applicable to Branch Exempt International Insurers, in addition to the
3 definitions set forth in Section 1401 hereof.

4 (1) “Branch business” means any insurance business transacted by a
5 branch captive insurance company in this Territory.

6 (2) “Branch captive insurance company” means an Alien Captive
7 Insurance Company licensed by the SAM to transact the business of insurance in
8 this Territory through a business unit with a principal place of business in this
9 Territory.

10 (3) “Branch operations” means any business operations of a branch
11 captive insurance company in this Territory.

12 (4) “Foreign Insurer” means an insurer domiciled in a U.S. state or
13 territory other than the Territory of the Virgin Islands of the United States of
14 America.

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

17 (b) The purpose of this subdivision is to set forth the procedures for the
18 licensing of a Branch Exempt International Insurer that is organized as a captive
19 insurance company in a jurisdiction other than the Territory but qualifies to do business
20 in the Territory as a branch captive insurance company under this Chapter and the
21 General Corporation Law of the Territory. These procedures shall apply equally to an
22 Alien Captive Insurance Company or a Foreign Insurer.

23 (c) Branch Exempt International Insurers domiciled outside the Territory may
24 establish a branch captive insurance company in the Territory for purposes of insurance

1 or reinsurance of some or all of the employee benefit plan business of its Parent or
2 Affiliated Company, including, but not limited to, basic and supplemental life insurance
3 coverage as well as the risks set forth in Section 1403 (a)(6), and the kinds of insurance
4 authorized under Section 1417 hereof.

5 (d) An Alien Captive Insurance Company and Foreign Insurer shall be subject
6 to the licensing requirements established by the SAM for a Branch Exempt International
7 Insurer under this Chapter, including submitting a Petition for issuance of a Certificate of
8 General Good called for by Section 1409(d) hereof, and such entities shall also be subject
9 to the qualification requirements established by the Office of the Lieutenant Governor,
10 Division of Corporations and Trademarks under 13 Virgin Islands Code Section 401;
11 provided, however, that applicants for a license as a Branch Exempt International Insurer,
12 as existing entities domiciled in another jurisdiction, shall be exempt from the residency
13 requirements of Sections 1409(c) and (g) hereof and upon furnishing recorded minutes to
14 the SAM or other proof satisfactory to the SAM that the Branch Exempt International
15 Insurer has held its annual meeting of its Board of Directors in the jurisdiction in which it
16 is domiciled, such entities shall also be exempt from the requirement of Section
17 1403(b)(1) that the Board of Directors hold at least one meeting each year in the
18 Territory.

19 (e) The Alien Captive Insurance Company or Foreign Insurer may submit
20 their qualification papers to the Office of the Lieutenant Governor, Division of
21 Corporation and Trademarks upon receiving a Certificate of General Good from the
22 SAM. It is the objective of the SAM that licensure by the SAM and qualification by the
23 Office of the Lieutenant Governor shall be completed within forty-five (45) days of
24 issuance of the Certificate of General Good and applicants shall be notified by the SAM

1 or the Division of Corporations and Trademarks if the proposed 45-day timeframe will be
2 exceeded by either of those Offices.

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

14 (g) Notwithstanding any provision in this Chapter to the contrary, with respect
15 to the establishment of minimum capital and minimum surplus requirements for a Branch
16 Exempt International Insurer, upon written application by the prospective licensee and in
17 the discretion of the SAM, the SAM may take into account the amount of security posted
18 by the Alien Captive Insurance Company or Foreign Insurer in the jurisdiction in which
19 they are domiciled or elsewhere as capital and surplus before the SAM determines the
20 minimum capital and minimum surplus to be applicable to the Branch Exempt
21 International Insurer. In the absence of the SAM exercising its discretion, Sections 1405
22 and 1406 of this Chapter shall apply as to minimum capital and minimum surplus.

23

24

1 **§1410. Financial reporting**

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

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

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

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

1 **§1411. Examinations and investigations**

2 Other than a Single-Parent International Insurance Company, at least once every
3 five (5) years and whenever the SAM determines it to be necessary, prudent, or in the
4 best interests of the Territory, he or his designee shall inspect and examine the affairs of
5 an International Insurance Company to ascertain its financial condition, its ability to
6 fulfill its obligations and whether it complies with the rules and regulations established
7 with reference to this Chapter. The expenses and charges of the examination shall be
8 reimbursed by the International Insurance Company to the Territory. In the case of
9 Branch Exempt International Insurers, any such audit shall only be of the US Virgin
10 Islands entity and may utilize and incorporate findings of an audit of the parent company.

11 **§1412. Grounds and procedures for suspension or revocation of license**

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

14 (1) insolvency or impairment of capital or surplus;
15 (2) failure to meet the requirements of sections 1405 or 1406 of this
16 chapter or any rules and regulations promulgated hereunder;

17 (3) refusal or failure to submit an annual report, as required by section
18 1410 of this Title, or any other report or statement required by law, regulation, or
19 lawful order of the SAM;

20 (4) failure to comply with the provisions of its own charter or bylaws;
21 (5) failure to submit to an examination or any legal obligation relative
22 thereto, as required by section 1411 of this Title;

23 (6) refusal or failure to pay the cost of examination as required by
24 section 1411;

(7) use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public good or to its policyholders; or

(8) failure otherwise to comply with the laws of this Territory made applicable by this Chapter to International Insurance Companies.

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

§1413. Reinsurance

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

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

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

§1414. International insurer support business

(a) Any International Insurer Support Business, before commencing business, shall apply to the SAM for a license. The license application shall contain such

1 information, in addition to the information set forth below, as may be required by the
2 SAM pursuant to duly promulgated regulations.

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

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

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

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

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

1 **§1415. Tax Rates and Benefits Applicable to Any International Insurance Company**

2 (a) Each International Insurance Company may make an Exempt Company
3 Election under chapter 14 of Title 13 of this Code to be an exempt company subject to
4 the provisions of such Title and shall thereupon be granted a reduction in the income tax
5 liability shown on its income tax return for each taxable year by 100 percent for such
6 income that meets the requirements of sections 934 and 937(b) of the Internal Revenue
7 Code of 1986, as amended, and any successor provisions to that Code, and the Treasury
8 Regulations promulgated thereunder, as being from U.S. Virgin Islands sources or
9 effectively connected with the conduct of a trade or business within the U.S. Virgin
10 Islands.

11 (b)(1) Every person who receives a payment or allocation subject to the tax
12 imposed by Sections 704, 871(a)(1), 881, 884, or 1446 of the Internal Revenue Code as
13 applicable in the U.S. Virgin Islands from an International Insurance Company is exempt
14 from the payment of 100 percent of such tax.

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

19 (b) An International Insurance Company is exempt from any other taxes
20 imposed by the U.S. Virgin Islands, including without limitation real property used in the
21 business of the International Insurance Company, gross receipts taxes, excise taxes, and
22 premium tax.

23 (c) The Office of the Lieutenant Governor is authorized and directed to
24 provide any International Insurance Company, within sixty (60) days of a request by the

1 International Insurance Company to do so, a contract signed by the Lieutenant Governor,
2 on behalf o the Government of the U.S. Virgin Islands, stating that the benefits of this
3 section as they exist upon the date of the contract shall be and remain available to said
4 International Insurance Company, and shall not be reduced, until twenty (20) years have
5 elapsed, so long as the exempt company is:

- 6 (1) In compliance with all laws, rules and regulations of the U.S.
7 Virgin Islands; and
8 (2) Current in the payment of taxes and fees to the U.S. Virgin Islands.

9 The contract shall further state that the Government shall not adopt any legislation
10 impairing or limiting the obligation of such contract. The contract shall become
11 effective with regard to an International Insurance Company upon its acceptance
12 by the International Insurance Company. Such acceptance shall be indicated by
13 the signature of an officer or the registered agent of the International Insurance
14 Company on a copy of the contract, which copy shall be returned to the Office of
15 the Lieutenant Governor and shall remain on file in that office.

16 **§1416. Confidentiality**

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

- 22 (a) to any branch of the Virgin Islands Government in lawful furtherance of
23 the requirements of this Chapter;

1 (b) to the United States Internal Revenue Service or the Virgin Islands Bureau
2 of Internal Revenue pursuant to the laws of either jurisdiction; or
3 (c) to any person pursuant to a lawful order entered by a court of the Virgin
4 Islands of the United States, directing the SAM to disclose specified information to the
5 requesting party.

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

10 **§1417. Kinds of insurance authorized**

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

14 (1) "Life insurance" means every insurance upon the lives of human beings,
15 and every insurance pertaining thereto, including the granting of endowment benefits,
16 additional benefits in the event of death by accident, additional benefits to safeguard the
17 contract from lapse, or the providing of a special surrender value, upon total and
18 permanent disability of the insured, and optional modes of settlement of proceeds.

19 (2) "Annuities" means all agreements to make periodic payments for a period
20 certain or depending upon the continuance of human life or a combination of the two,
21 except payments made under the authority of paragraph one hereof.

22 (3) "Accidents and Health insurance" means (i) insurance against death or
23 personal injury by accident or by any specified kind or kinds of accident and insurance
24 against sickness, ailment or bodily injury, including insurance providing disability

1 benefits except as specified in item (ii) hereof; and (ii) non-cancelable disability
2 insurance, meaning insurance against disability resulting from sickness, ailment or bodily
3 injury (but excluding insurance solely against accidental injury) under any contract which
4 does not give the insurer the option to cancel or otherwise terminate the contract at or
5 after one year from its effective date or renewal date.

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

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

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

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

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

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

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

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

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

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

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

(6) "Water damage insurance" means insurance against loss or damage, by

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

(7) "Burglary and theft insurance" means:

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

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

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

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

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

13 (A) any boiler, heater, or other fired pressure vessel;
14 (B) any unfired pressure vessel;
15 (C) pipes or containers connected with any such boilers or vessels;
16 (D) any engine, turbine, compressor, pump, or wheel;
17 (E) any apparatus generating, transmitting or using electricity; and
18 (F) any other machinery or apparatus connected with, or operated by,
19 any such boilers, vessels, or machines; including the incidental power to make
20 inspections of, and issue certificates of inspection upon, any such boilers,
21 apparatus, and machinery, whether insured or otherwise.

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

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

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

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

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

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

4 (16) "Fidelity and surety insurance" means:

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

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

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

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

21 (E) Becoming surety on, or guaranteeing the performance of, any
22 lawful contract, not specifically provided for in this paragraph, except (i)
23 mortgage guaranty insurance as defined in paragraph (23) of this section, or (ii) a

1 contract that falls within the definition of financial guaranty insurance as defined
2 in paragraph (25) of this section; and

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

7 (17) "Credit insurance" means:

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

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

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

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

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

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

15 (A) Vessels, hulls, crafts, aircrafts, cars, automobiles, trailers, and
16 vehicles of every kind, and all goods, freights, cargoes, merchandise, effects,
17 disbursements, profits, moneys, bullion, precious stones, securities, choses in
18 action, evidences of debt, valuable papers, bottomry and respondentia interests
19 and all other kinds of property and interests therein, in respect to, appertaining to
20 or in connection with any and all risks or perils of navigation, transit, or
21 transportation, including war risks, on or under any seas or other waters, on land
22 or in the air, or while being assembled, packed, crated, baled, compressed, or
23 similarly prepared for reshipment or while awaiting the same or during any

1 delays, storage, transshipment, or reshipment incident thereto, including marine
2 builder's risks and all personal property floater risks;

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

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

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

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

22 (21) Marine protection and indemnity insurance" means insurance against, or
23 against legal liability of the insured for loss, damage, or expense arising out of or incident
24 to, the ownership, operation, chartering, maintenance, use, repair, or construction of any

1 vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of
2 the insured for personal injury, illness or death, or for loss of, or damage to, the property
3 of another person.

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

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

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

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

20 (A) failure of any obligor on any debt instrument or other monetary
21 obligation (including common or preferred stock guaranteed under a surety bond,
22 insurance policy or indemnity contract) to pay when due, principal, interest,
23 premium, dividend, or purchase price of or on, or other amounts due with respect
24 to such instrument or obligation when such failure is the result of a financial

1 default or insolvency, regardless of whether such obligation is incurred directly or
2 as guarantor by or on behalf of another obligor that has also defaulted;

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

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

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

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

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

15 **§1418. Rules and Regulations**

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

20 **§1419. Penalties**

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

23

24

1 **§1422. Preservation of Right**

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

7 Subchapter II. Protected Cell Exempt International Insurance Company\

8 **§1431. Purpose**

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

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

17 **§1432. Definitions**

18 As used in this Subchapter:

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

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

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

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

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

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

1 (j) “SAM” means the Superintendent of Alternative Markets of the Office of
2 the Commissioner of Insurance, Division of Alternative Markets and International
3 Reinsurance, or the SAM’s designee as established in VI Code Title 22 Chapter 4.

4 **§1433. Establishment of protected cells**

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

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

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

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

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

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

21 (e) Each Protected Cell shall pay to the Alternative Market and International
22 Reinsurance Revolving Fund a separate nonrefundable fee of not to exceed \$500 for
23 examining, investigating and processing its application for approval by the SAM; and the
24 SAM is authorized to retain legal, financial, actuarial and other services needed to review

1 the application, the reasonable cost of which may be charged against the applicant. Such
2 examination need not include an actuarial review if an independent actuary certification
3 has been presented with the application, unless the SAM has reasonable cause to require
4 further actuarial certification. In addition, the Protected Cell shall pay an annual license
5 fee commencing with the year of registration, such fee being first payable within 30 days
6 of the date on which approval is granted and on or before 30th January of each calendar
7 year for which such approval remains in effect, except that the first annual fee may be
8 reduced in proportion to the period remaining from the date on which approval is granted
9 to the end of that calendar year. The amount of such application and licensing fees shall
10 be set by the SAM and shall be set forth in regulations to be published by the SAM in
11 accordance with Virgin Islands Code, Title 3, Chapter 35. Such fees may be altered from
12 time to time in the discretion of the SAM.

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

21 (g) A Protected Cell that is formed as a corporation is a separate legal entity
22 that is bound by its own bylaws and by agreement with the International Insurance
23 Company that formed it. Each corporate Protected Cell shall have at least three directors,
24 one of whom shall be appointed by the International Insurance Company that

1 incorporated it. Each corporate protected cell shall be a taxable entity in its own right and
2 may make an Exempt Company Election under VI Code Title 13 Chapter 14 to be an
3 exempt company subject to the provisions of such Title and shall be entitled to the rights
4 and tax benefits provided in Section 1415 of this Chapter.

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

16 (i) Any International Insurance Company which is a Protected Cell Company
17 shall establish such administrative and accounting procedures as are necessary to
18 properly identify the one or more Protected Cells of the Company and the Protected Cell
19 Assets and Protected Cell Liabilities attributable thereto. It shall be the duty of the
20 Directors of a Protected Cell Company to: 1) keep Protected Cell Assets and Protected
21 Cell Liabilities separate and separately identifiable from the assets and liabilities of the
22 Company's General Account; and 2) to keep Protected Cell Assets and Protected Cell
23 Liabilities attributable to one Protected Cell separated and separately identifiable from
24 the Protected Cell Assets and Protected Cell Liabilities attributable to other Protected

1 Cells. Notwithstanding the foregoing, and subject to the provisions of this subchapter, the
2 remedy of tracing shall be applicable to Protected Cell Assets when commingled with
3 Protected Cell Assets of other Protected Cells or the assets of the Company's General
4 Account.

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

8 **§1434. Use and operation of protected cells**

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

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

19 (c) The income, gains and losses, realized or unrealized, from Protected Cell
20 Assets and Protected Cell Liabilities must be credited to or charged against the Protected
21 Cell without regard to other income, gains, or losses of the International Insurance
22 Company that formed it, including income, gains, or losses of other Protected Cells.
23 Amounts attributed to any Protected Cell and accumulations thereon may be invested and
24 reinvested at the discretion of the International Insurance Company that formed it and the

1 investments in any Protected Cell or Cells may not be taken into account in applying the
2 investment limitations otherwise applicable to the investments of the International
3 Insurance Company that formed it.

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

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

19 **§1435. Reach of creditors**

20 (a) Protected Cell Assets shall only be available to the creditors of the
21 Company who are the creditors in respect of that Protected Cell and shall thereby be
22 entitled, in conformity with the provisions of this Act, to have recourse to the Protected
23 Cell Assets attributable to that Protected Cell, and shall be absolutely protected from the
24 creditors of the Company who are not creditors in respect of that Protected Cell and, who

1 accordingly, shall not be entitled to have recourse to the Protected Cell Assets attributable
2 to that Protected Cell. Creditors of a Protected Cell shall not be entitled to have recourse
3 against the Protected Cell Assets of other Protected Cells or the assets of the Company's
4 General Account.

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

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

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

22 (e) In no event shall the establishment of one or more Protected Cells alone
23 constitute or be deemed to be a fraudulent conveyance, an intent by the Company to

1 defraud creditors or the carrying out of business by the Company under any other
2 fraudulent purpose.

3 **§1436. Conservation, rehabilitation or liquidation of protected cell companies**

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

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

17 **§1437. Authority to adopt regulations**

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

20 **SECTION 6.** Notwithstanding any provisions of law to the contrary, all Exempt
21 International Insurers and International Insurance Support Business formed under prior
22 existing statutory provisions, including the International Insurers Act of 1993 and other
23 Alternative Market Insurers formed under Act No. 7025 of 2008 shall continue to be
24 granted the same rights, benefits, privileges and obligations provided under such pre-

existing applicable laws and as may be granted in this Act provided such rights, benefits, privileges and obligations are not inconsistent with any contract of benefits granted to such entity. To the degree that the provisions of this Act are more beneficial to any such pre-existing entity, the entity may utilize the more beneficial provisions of this Act; such entities shall not be subject to any amended provisions enacted herewith that may adversely affect, impair or limit the benefits provided prior to the amendments enacted herewith.

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

BILL SUMMARY

11 The Bill amends Title 22 to add Chapter 4 creating the Division of Alternative
12 Markets and International Reinsurance within the Office of the Lieutenant Governor;
13 repeals Act No. 7025 which provided for the establishment, operation, and management
14 of Captive Insurance and Reinsurance Company, and amends Title 22 to add Chapter 55
15 to enact the “Virgin Islands International Insurers Act.”

16

17

18

19 **BR13-0383/March 14, 2013/**
20 **G30-0001**

21

22

23

24