



## FINANCIAL SERVICES COMMISSION

The Commissioner  
Financial Services Commission  
Valley View  
Brades, Montserrat

**Tel. No.:** 1 664 491 6887/6888

**Fax No.:** 1 664 491 9888

**Email:** fsccomr@candw.ms

**10th July 2018**

Dear Sir/Madam

**Ref: Tender for Legal Drafter**

You are invited to submit a Tender for the above named project. The tender documents consist of the following;

1. Instruction to Tenderers
2. Invitation to Tender
3. Form of Tender
4. Agreement (Service contract)
5. Appendix A –Terms of Reference
6. Appendix B - Cost Schedule
7. Appendix C – Draft Bill for the International Insurance Act
8. Anti-Collusion Statement

The tender documents can be accessed on the Financial Services Commission's website from <http://www.fscmontserrat.org>

Mrs. Dulcie James, Commissioner, Financial Services Commission

P.O. Box 188, Valley View, Brades, Montserrat, MSR1110

Please return the completed tender documents of the priced and signed Form of Tender, Completed Document Check List, signed Anti-Collusion Statement, and a copy of your **Tax Compliance Certificate (if locally based)**. **These should be placed in a plain sealed inner envelope and addressed to:**

Mrs. Dulcie  
James  
Commissioner  
Financial Services Commission  
Box 188,  
Valley View,  
Brades,  
Montserrat, MSR1110

**Instructions for Submitting a Tender**

**You will need 2 plain envelopes for the Tender submission**

**You must follow these instructions, failure to do so may result in the bid being non-compliant and not considered any further.**

**Envelope 1.** 

1. Write the name of the project on the envelope as written below;

**“Tender for Legal Drafter**

2. Write the name of the bidder (Tenderer, Supplier) on this envelope and put the envelope into another plain envelope (Envelope 2.)

**Envelope 2.** 

Envelope 1 should now be inside this envelope (Envelope 2). Seal the envelope and then write the following, Project Title and address for Tender return:

**“Tender for Legal Drafter**

**Mrs. Dulcie James,**

**Commissioner Financial Services**

**Commission**

**P.O. Box 188, Valley View, Brades, Montserrat, MSR1110**

**NB: Envelope 2 must not have the Bidders name on it or any other markings.**

**Tenders are to be received no later than 2:00 p.m. on 3<sup>rd</sup> August 2018.**

Tenders are to be delivered to the address below:  
The tenderer will be given a receipt.

**Mrs. Dulcie James, Commissioner, Financial Services Commission,  
P.O. Box 188, Valley View, Brades, Montserrat, MSR1110**

Any queries clarifications relating to the tender should be made in writing to;

**Mrs. Dulcie James, Commissioner at the above address or by email  
to [fsccomr@candw.ms](mailto:fsccomr@candw.ms) or [fscmrat@candw.ms](mailto:fscmrat@candw.ms)**

no later than **20th July 2018.**

Yours sincerely



.....  
Mrs Dulcie James, Commissioner  
Financial Services Commission

## **INVITATION TO TENDER**

**Notice Type: Departmental Tender**

### **1. Contracting Authority's Details**

#### **Name and Address**

**Official Name:** Financial Services Commission

**Postal Address:**

P.O. Box 188, Valley View, Brades, Montserrat, MSR1110

**For the attention of:**

Mrs Dulcie James  
Commissioner

**Tel. No.:** 1 664 491 6887/6888

**Fax No:** 1 664 491 9888

**E-Mail:** fsccomr@candw.ms or fscmrat@candw.ms

**Address from where the Tender documentation can be obtained** on the following link below: <http://www.fscmontserrat.org>

Mrs Dulcie James Commissioner  
Financial Services Commission  
P.O. Box 188, Valley View, Brades, Montserrat, MSR1110

**1.3 Address to where Tenders must be sent**

For the Attention of;

Mrs Dulcie James

Commissioner

Financial Services Commission

P.O. Box 188, Valley View, Brades, Montserrat, MSR1110

**2. Contract Details**

**2.1 Title:**

Tender for Legal Drafter

**3. Tender Timetable**

The timetable may be subject to change and any changes will be notified to bidders as soon as it practicable.

<b>Action</b>	<b>Dates</b>
<b>Issue Invitation to Tender Notice</b>	<b>10th July 2018</b>
<b>Submissions of clarification Questions</b>	<b>20th July 2018</b>
<b>Submission of Tenders</b>	<b>3rd August 2018 by 2.00 p.m.</b>
<b>Contract Award</b>	<b>August 2018</b>

**NB: All questions/clarifications must be sent in writing or by email to;**

Mrs Dulcie James  
Commissioner  
Financial Services Commission  
P.O. Box 188, Valley View, Brades, Montserrat, MSR1110  
Email; [fsccomr@candw.ms](mailto:fsccomr@candw.ms) or [fscmrat@candw.ms](mailto:fscmrat@candw.ms)

**Please note that all questions and answers will be issued to all tenderers that register their interest.**

## 5. Evaluation Criteria

Evaluation Criteria	Scoring	Candidates Score	Comments
<b>Quality</b>			
<b>Please address each criterion</b> <b>Qualifications</b> <b>Please provide examples of similar works carried out previously</b>  <b>1a.</b> At least a bachelor's degree from an accredited university in law although a master's degree would be preferable. <b>5marks</b>  <b>1b</b> The Legal Drafter is expected to be competent to conduct the required research in the Laws of Montserrat and is aware of the constitutional status of Montserrat as an U.K. Overseas Territory.	15%		
<b>Please address each criterion</b>  <b>Experience, knowledge and skills</b>	25%		

<p>legislative drafter having particular experience in drafting insurance legislation; <b>5marks</b></p> <p><b>2b.</b>The Legal Drafter is expected to be competent to conduct the required research in the Laws of Montserrat and is aware of the constitutional status of Montserrat as an U.K. Overseas Territory. <b>5marks</b></p> <p><b>2c.</b> The Legal Drafter is expected to have sufficient knowledge of the International Association (IAIS) of Supervisors' (IAIS) Core Principles to promote effective and globally consistent in supervision of the insurance industry <b>5 marks</b></p> <p><b>2d.</b>Excellent Communication skills both verbal, written and IT. <b>5 marks</b></p> <p><b>2e.</b>Ability to work with a range of stakeholders <b>5marks</b></p>			
<p><b>Please address each criterion</b></p> <p><b>3.</b> Please provide 2 Satisfactory Independent Written References – including full contact details <b>10marks</b></p>	<b>10%</b>		
<b>Price/cost</b>	<b>50%</b>		
<b>Total scores available</b>	<b>100%</b>		



**6. Cost - Indicative Budget US\$13,260**

**Please note** that an appointment is not guaranteed to any of the respondents and any costs incurred are at the sole expense of the applicant.

**Please complete and return Appendix B**

**FORM OF TENDER**

**Tender for Legal Drafter**

The Commissioner  
Financial Services Commission  
Valley View  
Brades. Montserrat

Dear Madam,

**Re: Tender for Legal Drafter**

I/We the undersigned undertake to provide services in accordance with the  
Constructions management Agreement for the sum of:

EC\$.....

(words).....  
.....

If my/our tender is accepted, I/We undertake to commence the Works within  
\_\_\_\_\_ **week(s)** from the date of receipt by me/us of the official order and  
complete the works within \_\_\_\_\_ **working days** from the date of receipt  
by me/us of the official order.

I/We understand I/We shall not be reimbursed for any cost that may have  
been incurred in compiling this tender.

I/We confirm this tender shall remain valid for a period of 60 days from the  
date of submission of this tender.

Name:.....

Signed:.....

Address:.....

.....

Tel#:.....

Fax#:.....

Email Address.....

Date.....

## **Financial Services Commission – Tender Return Checklist**

**Project Title:** Tender for Legal Drafter

**Date Tender Advertised:** 10th July 2018

**Date for clarifications:** Friday, 20th July 2018

**Tender Deadline Date:** Friday 3rd August 2018

**Tender Deadline Time:** 2:00 p.m.

Below are the following documents that should be provided for a contractor's bid to be valid. Bidders are asked to supply and tick off the following information. Failure to provide any of the stated documents will result in the bid being considered non-compliant and rejected.

Signed Form of Tender

**(Including time for completion and notice period) Completed**

Details of Academic Qualifications

Details of Professional Qualifications

CV

Proof of Similar Works Undertaken in the last 5 years

Two (2) independent written references including full contact details

Cost and Scope of Service Proposal

Signed Anti - Collusion Certificate

Tax Compliance Certificate (if locally based)

Dated .....

Signed .....

## **Service Contract**

This Agreement (“the Agreement”) effective as of.....day of..... 2018 is by and between....., an entity having a mailing address of ..... (“ the Legal Drafter” or (“LD”), and the Financial Services Commission (“the Commission”), a Financial Services Regulator established as a statutory body in Montserrat having a mailing address of PO Box 188, Valley View, Brades, Montserrat.

### **RECITALS:**

WHEREAS, the Commission desires to retain the LD to provide certain legislative drafting services and to undertake the objectives set out in Schedule “A”, in the Project Description; and

WHEREAS, the LD desires to perform such services as described in this Agreement.

NOW, THEREFORE, the Commission and the LD hereby agree as follows:

## **1. SCOPE OF WORK**

### **Background**

Since 1988 Montserrat has incorporated International Companies under the International Business Companies Act, Cap.11.13. The jurisdiction currently has a residue of 10 companies, five of which carry on insurance business outside of the Eastern Caribbean Currency Union.

In 2013, in order to introduce a regulatory framework to supervise the international insurance business, a competent legal drafter was appointed to prepare a draft Bill for International Insurance Act. The draft Bill was completed and submitted to Cabinet in 2015 but due to reduced in-house capacity in the Legal Department it has not yet been reviewed by the Legal Department. With the passage of time the insurance regulatory environment has changed and there has been much enhancement to the international prudential standards for insurers.

The Bill for the Companies Act which will introduce the requirement for beneficial ownership information legal entities will shortly be introduced to the Legislative Assembly.. As a consequence, it is imperative that legislative provisions be introduced to regulate companies conducting international insurance businesses as they seek to register as “international companies” under the Companies Act.

The introductory legislation for regulatory framework for international companies will, at the same time provide opportunities for the jurisdiction to introduce an international/captive insurance product which is marketable and attractive to would-be investors who wish to insure their own products.

The Legal Drafter is expected to have sufficient knowledge of the regulatory requirements in the following industry standards:

- the International Association (IAIS) of Supervisors' (IAIS) Core Principles to promote effective and globally consistent in supervision of the insurance industry;
  - Promulgated by the OECD Global Forum to ensure that their provisions in the legislation for the authorities to obtain information from insurers to enable to the country to comply with standard for exchange of information and transparency in tax matters; and
  - Promulgated by the FATF 40 Recommendations to ensure that there is provisions in the legislation to provide for the authorities to require insurers to comply with the requirements in the AML-CFT legislation to enable to the jurisdiction to comply with the FATF 40 Recommendations obtain information.

### **Duration**

Seventeen (17) working days

### **Deliverables**

- Submission of the review report of the relevant provisions in the draft Bill for International Insurance Act;
- Identification of legal and regulatory issues that are inconsistent with international regulatory standards in the insurance industry;
- Identification of provisions that are inconsistent with the OECD Global Forum for exchange of information and transparency in tax matters;
- Identification of provisions that are inconsistent with legal and/or regulatory AML-CFT standards that would apply to regulated entities or would hinder the jurisdiction's implementation of any FATF 40 Recommendations for the prevention and detection of money laundering and the financing of terrorism and the proliferation of weapons of mass destruction;
- Submission of recommendations for amendments to the Bill to enable it to be approved by the Attorney General and recommended to Cabinet for the Legislative Assembly.



## **2. LEGAL DRAFTER'S REPRESENTATIONS**

The LD represents that it is fully experienced and properly qualified to perform the Services as provided under this Agreement as set out in Schedule "A" and that it is, and will remain for the duration of this Agreement, properly permitted, licensed, equipped, organized and financed to perform such Services.

## **3. INDEPENDENT CONTRACTOR**

Except as otherwise expressly provided in this Agreement or otherwise authorized in writing by the Commission, in performing the Services and incurring expenses under this Agreement, the LD shall operate as, and have the status of, an independent contractor and shall not act as agent or be an agent of the Commission. As an independent contractor, the LD shall be solely responsible for determining the means and methods of performing the Services and shall have complete charge and responsibility for the LD's personnel engaged in the performance of the Services.

## **4. ASSIGNMENT**

The LD shall not assign any of its rights, interests or obligations under this Agreement or subcontract any of the Services to be performed by it under this Agreement without the express written consent of the Commission. Any subcontract or Assignment shall be subject to all terms of this Agreement. The Commission shall have the right to assign this Agreement to a third party upon notice to the LD.

## **5. COMPENSATION AND PAYMENT**

For satisfactory performance of the Services, or as may be modified by mutual agreement, the Commission agrees to compensate the LD an amount not to exceed 10-17 working days inclusive of reimbursable expenses, as set forth in Schedule "B" attached hereto.

## **6. CONFIDENTIALITY**

**(a)** For purposes of this Clause:

(1) The term “Confidential Information” as used herein means all material and information, whether written or oral, received by the LD from or through the Commission or any other person connected with the Project, or developed or otherwise received or obtained by the LD in connection with the Project or the performance of Services under this Agreement.

Confidential Information shall include, but not be limited to, samples, substances and other materials, conversations, correspondence, records, notes, reports and other documents, in draft or final form, including any documentation or data relating to the results of investigations, testing, sampling in laboratory or other analysis, and all conclusions, interpretations, recommendations and/or comments relating thereto.

(2) The term “LD” as used herein includes all officers, directors, employees, agents, representatives and sub-consultants of the LD.

The LD shall mark all Confidential Information as “Privileged and Confidential” and keep all Confidential Information in a secure location within the LD’s offices. The Commission shall have the right, but not the obligation, to enter the LD’s offices in order to inspect the arrangements of the LD for keeping the Confidential Information secure. No inspection by the Commission shall relieve the LD of the responsibility for the performance of its obligations hereunder.

**(b)** The LD shall hold the Confidential Information in trust and confidence, shall not disclose the Confidential Information or any portion thereof to any third party without the prior written consent of the Commission, and shall not use the Confidential Information or any portion thereof for any purpose whatsoever except in connection with the performance of the Services under the Agreement.

**(c)** The LD shall notify the Commission immediately upon receipt by the LD of any request for Confidential Information. The LD is not prohibited by this Clause from disclosing portions of the Confidential Information if, and to the extent that, such portions have become generally available to the public other than by an act or omission of the LD or any of its subcontractors, or disclosure of such portions is required by subpoena,

warrant or court order; PROVIDED, however, that in the event that any third party, including but not limited to a governmental employee, officer or entity, requests all or a portion of the Confidential Information, the LD shall oppose such request and cooperate with the Commission in obtaining a protective order or other appropriate remedy unless and until the Commission in writing –

- (i) waives compliance with the provisions of this Clause; or
- (ii) determines that disclosure is legally required. In the event that such protective order or other remedy is not obtained, or the Commission waives compliance with this Clause or determines disclosure is legally required, the LD shall disclose only such portions of the Confidential Information that, in the opinion of the Commission, it is legally required to disclose, and the LD shall use its best efforts to obtain from the party to whom the Confidential Information is disclosed written assurance that confidential treatment will be accorded to such portions of the Confidential Information as are disclosed.

(d) To the extent the copies of documentary Confidential Information are authorized by the Commission to be retained by the LD, they shall be retained in a secure location in the LD's office for a period of seven (7) years after completion of the Services or termination of this Agreement, and thereafter, disposed of at the Commission's direction.

## **7. COMMISSION'S OWNERSHIP OF DOCUMENTS**

Notwithstanding any other provision herein to the contrary:

- (a) Without payment of additional compensation to the LD, any documents prepared by the LD for this Project shall become the Commission's property upon completion, cancellation, suspension or termination of the Services or this Agreement and upon payment of all sums due to the LD for work properly performed. Reproducible copies of the original documents shall be turned over to the Commission at that time in a format reasonably acceptable to the Commission.
- (b) Reuse of any of these documents by the Commission shall be at the Commission's risk.

The LD shall be permitted to retain copies, including reproducible copies, of any or all documents for such use as it may require, except that use of any

document without substantial modification shall be attributed to the Commission and shall have the Commission's prior written consent. Any such re-use by the LD shall be at its own risk.

To the extent that the Commission has paid for the LD's Services under this Agreement, the LD hereby grants to the Commission a non-exclusive, perpetual, royalty-free license to the intellectual property embodied in the documents prepared by the LD in connection with the Project. The Commission may make any changes, additions, and deletions thereto, all without further permission or consent of the LD, although the LD shall not be liable to the Commission or any third party as a result of any such changes, additions, or deletions. The Commission agrees to indemnify, defend and hold harmless the LD from and against any damages, losses, costs or expenses (including reasonable attorneys' fees) arising out of any such changes, additions or deletions by the Commission.

#### **8. INDEMNIFICATION**

The LD agrees to indemnify, defend and hold harmless the Commission, against any and all claims, losses, damages, liabilities, costs or expenses (including, without limitation, attorney's fees and costs of litigation and or settlement, whether incurred as a result of a claim by a third party or an indemnity hereunder) arising out of the Services performed pursuant to this Agreement, except to the extent arising out of the negligence or wilful misconduct of the Indemnified Party that is seeking to be indemnified.

#### **9. DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS OR DISCREPANCIES**

In the case of conflicts, discrepancies, errors or omissions among the various parts of this Agreement, the LD shall submit the matter immediately to the Commission for clarification. Any Services affected by such conflicts, discrepancies, errors or omissions which are performed by the LD prior to clarification by the Commission shall be at the LD's risk.

## **10. RESPONSIBILITY TO CORRECT DEFICIENCIES**

It shall be the LD's responsibility to correct, in a timely fashion and at the LD's sole expense, any deficiencies in its Services resulting from the LD's failure to act in accordance with the Standard of Care, provided such deficiencies are reported to LD within one hundred twenty (120) days after completion of the Services, i.e., on expiry of the Defects Liability Period.

### **1. TERMINATION**

The Commission may, by written notice to the LD effective upon receipt, terminate this Agreement in whole or in part at any time (subject to the provisions of Clause 16 of this Agreement), either for the Commission's convenience or for the default of the LD, provided, however, that such termination shall not relieve the Commission of its obligation to pay charges justly due to the LD for Services properly performed and expenses properly incurred prior to such termination. Upon termination, the LD shall deliver to the Commission all documents required to be delivered pursuant to Clauses 6 and 7.

### **2. FORCE MAJEURE**

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party, and which by that party's exercise of due diligence and foresight could not reasonably have been avoided. Upon removal of such cause, the party affected shall resume its performance as soon as reasonably possible. Neither the LD's financial inability to perform nor an event which could have been prevented had the LD acted in accordance with the Standard of Care shall be deemed to be an event of Force Majeure.

### **3. WAIVER**

The failure of the Commission to enforce, at any time, the provisions of this Agreement does not constitute a waiver of such provisions in any way or waive the right of the Commission at any time to avail itself of such remedies as it may have for any breach or breaches of such provisions. None of the conditions of this Agreement shall be considered waived by the Commission unless such waiver is explicitly given in writing by the Commission. No such waiver shall be a waiver of any past or future default, breach or modification of

any of the terms or conditions of this Agreement unless expressly stipulated in such waiver.

#### **4. GOVERNING LAW**

This Agreement shall be governed by the laws of Montserrat, without regard to its conflict of law's provisions.

#### **5. ENTIRE AGREEMENT AND SEVERABILITY**

The rights and obligations of the parties, and their respective agents, successors and assignees hereunder shall be subject to and governed by this Agreement, including Schedules "A", "B" and "C", which supersedes any other understandings or writings between the parties. No changes, amendments or modifications of any of the terms and conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. The invalidity of one provision, or invalid application thereof, of this Agreement shall not affect the validity of any other provision or any other application of any provision of the Agreement.

#### **6. DISPUTE RESOLUTION**

(a) Any controversy or claim arising out of or relating to this Agreement or the breach hereof, shall be subject to good faith negotiation and/or mediation as a condition precedent to binding dispute resolution. The Commission and the LD will attempt in good faith to promptly resolve any controversy or claim arising out of or relating to this Agreement or the breach thereof by negotiations between representatives of each party who have authority to settle the controversy. The disputing party shall give the other party written notice of the dispute, which notice shall include a general description of the dispute, and the name and title of the individual who will represent that party. The representatives shall meet at a mutually acceptable time and place within seven (7) calendar days after the date of the disputing party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.

(b) If good faith negotiations are not successful, the parties shall endeavour to resolve their disputes by mediation. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and

Filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 45 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If binding dispute resolution is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the mediators (s) and agree upon a schedule for later proceedings.

(c) If the dispute has not been settled within 45 calendar days after the date of the disputing party's notice under Clause 16 (a) above, any lawsuit or proceeding regarding or relating to an unresolved dispute between the parties, regardless of whether there are other parties to the dispute, shall be commenced and filed in Montserrat.

(d) The LD shall and shall cause its sub consultants, if any, to continue full performance under this Agreement pending the above claim resolution procedures and the ensuing litigation proceedings, if any, unless and until either Commissioner the LD terminates this Agreement or the Final Completion Date occurs.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the dates set forth below, to be deemed effective as of the date first written above.

LEGAL DRAFTER:

.....

BY:

\_\_\_\_\_

Printed Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Dated: \_\_\_\_\_, 201\_

COMMISSIONER:

FINANCIAL SERVICES  
COMMISSION

By:

\_\_\_\_\_

Printed Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Dated: \_\_\_\_\_, 201\_



## TERMS OF REFERENCE

### Review

### Of

## BILL FOR INTERNATIONAL INSURANCE ACT

### Legislative Drafter

Since 1988 Montserrat has incorporated International Companies under the International Business Companies Act, Cap.11.13. The jurisdiction currently has a residue of 10 companies five of which carry on insurance business outside of the Eastern Caribbean Currency Union.

In 2013, in order to introduce a regulatory framework to supervise the international insurance business, a competent legal drafter was appointed to prepare a draft Bill for International Insurance Act. The draft Bill was completed and submitted to Cabinet in 2015 but due to reduced in-house capacity in the Legal Department it has not yet been reviewed by the Legal Department. With the passage of time the insurance regulatory environment has changed and there has been much enhancement to the international prudential standards for insurers

The Bill for the Companies Act which will introduce the requirement for beneficial ownership information legal entities will shortly be introduced to the Legislative Assembly and when it comes into force will repeal the IBC Act. As a consequence it is imperative that legislative provisions be introduced to regulate companies conducting international insurance businesses as they seek to register as “international companies” under the Companies Act.

The introductory legislation for regulatory framework for international companies will, at the same time provide opportunities for the jurisdiction to introduce an international/captive insurance product which is marketable and attractive to would-be investors who wish to insure their own products

### Qualifications and Competencies

- At least a bachelor’s degree in Law from an accredited university although a master’s degree would be preferable;
- Over 5 years’ experience as a legislative drafter having particular experience in drafting insurance legislation
- The Legal Drafter is expected to

- be competent to conduct the required research in the Laws of Montserrat and is aware of the constitutional status of Montserrat as an U.K. Overseas Territory.
- have sufficient knowledge of the regulatory requirements in the following industry standards:
  - the International Association (IAIS) of Supervisors' (IAIS) Core Principles to promote effective and globally consistent supervision of the insurance industry
    - Promulgated by the OECD Global Forum to ensure that their provisions in the legislation for the authorities to obtain information from insurers to enable the country to comply with standard for exchange of information and transparency in tax matters
    - Promulgated by the FATF 40 Recommendations to ensure that there is provisions in the legislation to provide for the authorities to require insurers to comply with the requirements in the AML-CFT legislation to enable the jurisdiction to comply with the FATF 40 Recommendations obtain information;

### **Duration**

Seventeen (17) working days

### **Deliverables**

- Submission of the review report of the relevant provisions in the draft Bill for International Insurance Act;
- Identification of legal and regulatory issues that are inconsistent with international regulatory standards in the insurance industry;
- Identification of provisions that are inconsistent with the OECD Global Forum for exchange of information and transparency in tax matters;
- Identification of provisions that are inconsistent with legal and/or regulatory AML-CFT standards that would apply to regulated entities or would hinder the jurisdiction's implementation of any FATF 40 Recommendations for the prevention and detection of money laundering and the financing of terrorism and the proliferation of weapons of mass destruction;
- Submission of recommendations for amendments to the Bill to enable it to be approved by the Attorney General and recommended to Cabinet for the Legislative Assembly.

## Appendix B

**Please complete fully and return with Tender submission**

**Failure to provide the information in your tender submission may lead to  
you**

**tender being disqualified.**

**Please complete fully and return with Tender submission**

**Failure to provide the information in your tender submission may lead to  
you**

**tender being disqualified.**

**Cost and Scope of Services Proposal**

Insert/Delete rows as required

<b>Key Deliverables for this project</b>	<b>Day Rate</b>	<b>Number of days</b>	<b>Total cost</b>	<b>Elapsed time for completion</b>

**Duration**

**Period**

**Hours/Weeks**

**Rate per hour EC\$**

**Amount Not to Exceed:**

I ASSENT

Governor

DATE:

**M O N T S E R R A T**

**NO. OF 2012**

**A BILL FOR**

AN ACT TO.....

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council of Montserrat and by the Authority of the same as follows:—

PART 1

PRELIMINARY

**Short title and commencement**

*1.* This Act may be cited as the International Insurance Bill, 2012, and shall come into force on a day to be appointed by the Governor in Council by Order.

**Interpretation**

*2.* (1) In this Act—

“actuary” means a person qualified under the Code to act as an actuary;

“appointed actuary” means the actuary appointed in accordance with section **22**;

“approved form” means in the form approved by the Commission under section **80**;

“class” or “sub-class” of international insurance business means a class or sub-class of international insurance business specified in the Code;

“Code” means a Regulatory Code applying to licensed insurers or to licensed insurance managers, as the case may be, issued by the Commission under section 50 of the Financial Services Commission Act, 2008;

“commencement date” means the date when this Act comes into effect;

“Commission” means the Financial Services Commission established under the Financial Services Commission Act (Cap. 11.02) and preserved and continued under the Financial Services Commission Act, 2008;

“company” means a body corporate wherever incorporated, registered or formed, and includes a Montserrat company;

“connected person” has the meaning specified in the Code;

“Court” means the High Court;

“director” has the meaning specified in the Companies Act;

“domestic insurance business” means insurance business, excluding reinsurance business, the principal objective of which is to insure—

- (a) a person who is resident in Montserrat at the time the insurance contract is effected, against any kind of risks, except risks in relation to property; or
- (b) a person against risks of any kind in relation to—
  - (i) immovable property situated in the Montserrat; or
  - (ii) personal property that, at the time the insurance contract is effected, is held or based in Montserrat;

“financial statements” has the meaning specified in section 53;

“financial year” has the meaning stated in section 52;

“general business” means international insurance business of a class specified in the Code as general business;

“general insurer” means a licensed insurer that is authorised by its licence to carry on any class or classes of general business;

“group” has the meaning specified in the Code<sup>1</sup>;

“Insurance Act” means the Insurance Act [Cap 11.20];

“insurance business” means the business of undertaking liability as an insurer or reinsurer under insurance contracts, and includes the settlement of claims under insurance contracts;

“insurance contract” has the meaning specified in section 3;

“insurance manager” means a person who—

- (a) acts as, or holds himself out as, a manager in relation to one or more insurers of which he is not an employee, whether or not the persons functions go beyond the keeping of accounts and records for an the insurer; or

<sup>1</sup>Consider using definition in Companies Act when complete.

(b) carries out any function specified in the Regulations as an insurance management function;

“insurance manager’s licence” means a licence issued under section **38**;

“insurer” means a person that carries on insurance business, whether or not licensed under this Act or the Insurance Act;

“international insurance business” means insurance business that is not domestic insurance business;

“international insurer’s licence” means a licence issued under section **8**;

“investment-linked contract” means a contract that falls within the class or sub-class of long term insurance business specified as investment-linked long term business in the Code;

“licence” means an international insurer’s licence or an insurance manager’s licence;

“licensed insurance manager” means a person holding an insurance manager’s licence under section **38**;

“licensed insurer” means a person holding an international insurer’s licence;

“licensee” means a licensed insurer or a licensed insurance manager;

“long term business” means international insurance business of a class specified in the Code as long term business;

“long term insurer” means a licensed insurer that is authorised by its licence to carry on any class or classes of long term business;

“Montserrat company” means a company that is on the Register of Companies maintained under the Companies Act, 2012;

“open-market reinsurance business” means international reinsurance business where the reinsurer is not connected with the insurer;

“policyholder” includes, where the context permits, a person entitled, as beneficiary, to a payment under an insurance contract;

“registered insurance intermediary” means a person registered as an insurance intermediary under the Insurance Act;

“registered insurer” means a person registered as an insurer under the Insurance Act;

“Regulations” means the International Insurance Regulations made under section

“reinsurance business” means the business of undertaking liability as a reinsurer under reinsurance contracts;

“reinsurance contract” means an insurance contract under which one insurer (the reinsurer) indemnifies another insurer (the cedant) against losses on one or more contracts of insurance entered into by the cedant;

“resident in Montserrat”, for the purposes of the definition of “domestic insurance business” is to be construed in accordance with the Regulations;

“segregated portfolio company” has the meaning specified in the Companies Act;

“significant owner”, in relation to a company, means a person who exercise control over the company within the meaning of section **4**;

“solvency margin” has the meaning specified in the Code;



(2) Where the Commission is permitted or required by this Act to consider the “public interest”, the “public” includes—

- (a) the public inside and outside Montserrat; and
- (b) any persons who have a legitimate interest in the decision to be made by the Commission.

(3) If the Commission is satisfied that any part of a licensed insurer’s business ought to be treated as belonging to a different type or a different class of international insurance business than is provided for in the Code, it may direct that, in that insurer’s case, that part of its business will be so treated for the purposes of this Act.

### **Meaning of “insurance contract”**

3. (1) For the purposes of this Act, “insurance contract” means—

- (a) a contract under which one party, the insurer, in exchange for a premium, agrees with another party, the policyholder, to make a payment, or provide a benefit, to the policyholder or another person on the occurrence of a specified uncertain event which, if it occurs, will be adverse to the interests of the policyholder, or
- (b) an investment-linked contract,

and includes an annuity contract and a reinsurance contract.

(2) An uncertain event is an event, with respect to which, there is uncertainty as to whether or when the event will takeplace.

(3) The Regulations may specify types or descriptions of contracts that are considered not to be insurance contracts for the purposes of this Act.

### **Meaning of “control”**

4. (1) A person exercises control over a company if the person, whether alone or acting together with one or more associates—

- (a) holds, whether legally or equitably, 10% or more of the issued shares of the company, or its parent;
- (b) has the power, directly or indirectly, to exercise, or control the exercise of, 10% or more of the voting rights in the company, or its parent; or
- (c) has the power to appoint or remove one or more directors of the company or one or more members of a committee of directors.

(2) For the purposes of this section, an associate is a person who, in exercising voting or other rights in relation to the company—

- (a) acts in accordance with an explicit or implicit agreement with the other person; or
- (b) acts, or is accustomed to act, in accordance with the wishes of the other person.

(3) The Regulations may specify circumstances in which the holdings of a person are disregarded for the purposes of this section.

## PART 2

### LICENSING AND CHANGES IN OWNERSHIP AND MANAGEMENT

#### *Prohibitions*

##### **Prohibition against unlicensed international insurance business**

5. (1) Subject to subsection(3), a person shall not carry on, or purport to carry on, any type of international insurance business from within Montserrat unless the person holds an international insurer's licence that authorises the person to carry on that type of international insurance business.

(2) For the purposes of subsection (1), but without limiting that subsection—

(a) a Montserrat company that carries on, or purports to carry on, international insurance business outside Montserrat is deemed to carry on, or purport to carry on, international insurance business from within Montserrat; and

(b) a person purports to carry on insurance business if the person uses any name, style, designation, description, title or trade mark that represents or implies that the person is an insurer, whether licensed or not.

(3) This section does not apply to a registered insurer.

(4) A person who carries on, or purports to carry on, international insurance business contrary to subsection (1) or (2) is guilty of an offence and is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$50,000 or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000 or to both.

#### *Licensing*

##### **International insurer's licences**

6. (1) An international insurer's licence may be issued only to a Montserrat company and shall be issued in one of the Categories specified in Schedule 1.

(2) An international insurer's licence shall—

(a) be in writing and in the approved form; and

(b) state the Category of licence issued to the holder and the class or classes of business that the holder is authorised to carry on.

(3) An international insurer's licence—

(a) does not authorise the holder to carry on international insurance business—

(i) of any class that is not specified on the licence; or

(ii) of any type that is not permitted or the Category of licence held;  
and

(b) is subject to such conditions as may be imposed under section 72.

(4) The Commission shall not issue an international insurer's licence that authorises the holder to carry on both long-term and general business.

(5) The Governor in Council may by Order, on the advice of the Commission, amend Schedule 1 in such manner as it considers appropriate.

(6) An Order made under subsection (5) shall be published in the Gazette.

### **Application for international insurer's licence**

7. (1) Application for an international insurer's licence may be made only by a Montserrat company.

(2) An application under subsection (1) shall be in the approved form, shall include the information specified in the approved form and shall be accompanied by—

- (a) a business plan that complies with the Code; and
- (b) all other documents specified in the Code.

### **Issue of international insurer's licence**

8. (1) Subject to subsection (2), the Commission may issue an international insurer's licence to the applicant if it is satisfied that—

- (a) the applicant satisfies the requirements of this Act, the Regulations and the Code with respect to the application;
- (b) the applicant intends, if issued with the licence, to carry on international insurance business in the classes for which it will be authorised;
- (c) the applicant will, on the issue of the licence, be able to comply with—
  - (i) the prudential requirements specified in this Act and the Code;
  - (ii) its anti-money laundering and terrorist financing obligations;
- (d) the applicant's ownership, corporate and management structure, governance framework, procedures and controls (including its risk management procedures and controls), or proposed procedures and controls, financial resources and proposed reinsurance arrangements (if any) are appropriate having regard to the nature, scale and complexity of the applicant's business or proposed business;
- (e) the applicant intends, and has the ability, to carry on its business or proposed business in a prudent manner, in accordance with sound insurance principles and in compliance with applicable requirements of this Act, the Regulations and the Code;
- (f) the applicant has the ability to comply with any conditions the Commission intends to attach to the licence under section 72;
- (g) if the applicant is part of a group—
  - (i) the group of which the applicant is a member is, or will be, subject to adequate and appropriate group-wide supervision;
  - (ii) the Commission will be able to obtain adequate information concerning the parent company and other members of the group; and
  - (iii) the structure of the group will not hinder effective supervision, if the licence is granted;

- (h) the applicant's significant owners, directors, senior managers and key functionaries, individually and collectively, satisfy the Commission's fit and proper criteria; and
- (i) issuing the licence is not against the public interest.

(2) Without limiting the discretion given to the Commission under subsection (1), the Commission may refuse to issue a licence to an applicant if it has reasonable grounds for believing that any person having an interest in the applicant does not satisfy the Commission's fit and proper criteria.

### **Obligations in relation to commencement of business**

**9.** (1) A licensed insurer shall notify the Commission in writing within 14 days of commencing its licensed business.

(2) If a licensed insurer does not commence its licensed business within 6 months of the date of the licence, the insurer shall not commence the licensed business without the prior written consent of the Commission.

#### *Changes in Significant Owners and Control, Directors, Senior Managers and Key Functionaries*

### **Commission's approval required for changes in control and significant owners**

**10.** (1) A person shall not become a significant owner of a licensed insurer, except with the prior written approval of the Commission.

(2) A person who is a significant owner of a licensed insurer shall not, except with the prior written approval of the Commission—

- (a) increase or reduce the person's control over the licensed insurer; or
- (b) cease to be a significant owner of the licensed insurer.

(3) A licensed insurer shall not cause, permit or acquiesce in any dealing with its shares that would result in a person contravening subsection (1) or (2).

(4) The criteria for determining whether a person's control over a licensed insurer has increased or decreased shall be specified in the Code.

(5) A person who knowingly contravenes subsection (1) or (2) or a licensed insurer that knowingly contravenes subsection (3) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000.

### **Application for approval under section 10**

**11.** (1) An application to the Commission for approval under section **10**(1) or (2) shall be made by the licensed insurer on behalf of the person who is, or intends to become, a significant owner.

(2) In determining whether to grant approval under section **10**, the Commission may take into account any factors which it reasonably considers appropriate.

(3) Without limiting subsection (2), the Commission shall consider whether—

- (a) the person becoming a significant owner, or acquiring increased control, satisfies the Commission's fit and proper criteria;
- (b) following the change of significant ownership or control, the licensed insurer's ownership structure will be appropriate having regard to the

nature, scale and complexity of its insurance business; and

- (c) the change in significant owner or in control will, or is likely to—
  - (i) adversely affect the financial soundness of the licensed insurer or the ability of the Commission to supervise the insurer; or
  - (ii) be prejudicial to the policyholders of the licensed insurer.

### **Appointment of, and changes in, directors, senior managers and key functionaries**

**12.** (1) A licensed insurer shall not appoint a director, senior manager or key functionary except with the prior written approval of the Commission.

(2) The Commission shall not grant approval under subsection (1) unless it is satisfied that—

- (a) the person concerned satisfies the Commission's fit and proper criteria; and
- (b) following the appointment, the licensed insurer's management structure is appropriate having regard to the nature, scale and complexity of its insurance business.

(3) A licensed insurer shall provide written notice to the Commission within fourteen days after a director, senior manager or key functionary ceases to hold office with, be employed by or act for the insurer.

(4) The written notice provided under subsection (3) shall include a statement of the reasons for the director, senior manager or key functionary ceasing to hold office with, be employed by or act for the licensed insurer.

### **Matters affecting the suitability of significant owners, directors, senior managers and key functionaries**

**13.** If, whether before or after the Commission has approved the appointment of a director, senior manager or key functionary, or has approved a significant owner, a licensed insurer becomes aware of any information that is reasonably material to the Commission's fit and proper assessment of the person, it shall notify the Commission of the information as soon as reasonably practicable.

### **Power to require licensed insurer to remove directors, senior managers and key functionaries**

**14.** (1) If the Commission has reasonable grounds for believing that a person specified in subsection (2) does not satisfy its fit and proper criteria, it may, by written notice, require the licensed insurer to—

- (a) remove that person and, if it considers it appropriate, to replace the person with another person acceptable to the Commission;
- (b) ensure that the person ceases to undertake certain specified functions in relation to the licensed insurer; or
- (c) take such remedial action in relation to that person as the Commission specifies.

(2) The following persons are specified for the purposes of subsection(1)—

- (a) a director of a licensed insurer;
- (b) a senior manager of a licensed insurer;

- (c) a person acting as a key functionary in relation to a licensed insurer; and
  - (d) a person undertaking any function for a licensed insurer that may be specified by the Regulations for the purpose of this paragraph.
- (3) A notice issued under subsection (1)—
- (a) shall state whether the specified requirements have immediate effect or the time period within which they must be complied with;
  - (b) may include directions consequential upon, or ancillary to, the requirements specified in the notice; and
  - (c) may direct that, in the case of a person who it has required the licensed insurer to remove, the person may not be reappointed, or accept reappointment, to the same position, or to any specified position, with the licensed insurer—
    - (i) at any time;
    - (ii) for such period as may be specified by the Commission; or
    - (iii) until such conditions as may be specified by the Commission have been met.
- (4) This section has effect despite any agreement, contract of employment, law or rule of law or any provision in the licensed insurer’s memorandum or articles of association.
- (5) Where a notice issued under subsection (1) contains a direction under subsection (3)(c), any person to whom the direction relates who accepts an appointment contrary to the notice is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000.
- (6) A licensed insurer that fails to comply with a notice issued under subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000.

### PART 3

#### SUPERVISION OF LICENSED INSURERS

##### *Prudential Requirements*

#### **Maintenance of financially sound condition**

- 15.** (1) A licensed insurer shall, at all times—
- (a) maintain its business in a financially sound condition by
    - (i) having assets and capital resources adequate to support its insurance business, taking into account the nature, scale and complexity of that business and its risk profile; and
    - (ii) providing for its liabilities so as to be in a position, at all times, to meet those liabilities as they fall due; and
  - (b) conduct its insurance business in accordance with sound insurance principles.
- (2) This section does not limit the specific capital, solvency and other

prudential requirements specified in this Act, the Regulations or the Code.



### **Capital and solvency requirements**

**16.** (1) A licensed insurer shall at all times ensure that its capital is maintained in an amount that equals or exceeds—

- (a) the capital requirements specified in the Code; or
- (b) if the Commission issues a directive under section **17**, the amount specified in the directive.

(2) A licensed insurer shall at all times ensure that it maintains a solvency margin, calculated in accordance with the Code, that equals or exceeds—

- (a) The minimum solvency margin specified in the Code; or
- (b) if the Commission issues a directive under section **17**, the amount specified in the directive.

(3) A licensed insurer that is a segregated portfolio company shall, in respect of each segregated portfolio, maintain a solvency margin, calculated in accordance with the Code, that equals or exceeds—

- (a) the minimum solvency margin specified in the Code; or
- (b) if the Commission issues a directive under section **17**, the amount specified in the directive.

### **Commission may issue directives in relation to capital and solvency margin**

**17.** (1) If the Commission considers it appropriate, having regard to the nature, scale and complexity of the insurance business carried on, or proposed to be carried on, by a licensed insurer and the insurer's risk profile, the Commission may issue one or more of the following directives to the insurer—

- (a) a directive requiring the licensed insurer to increase its capital to an amount higher than the minimum specified in the Code; or
- (b) a directive increasing the solvency margin applicable to a licensed insurer to a higher sum than that specified in the Code.

(2) In the case of a licensed insurer that is a segregated portfolio company under Part 7 of the Companies Act, the Commission may issue a directive increasing the solvency margin applicable to one or more of its segregated portfolios.

(3) Unless the circumstances justify immediate compliance with a directive issued under subsection (1) or (2), a directive shall specify a reasonable period for compliance.

### **Long term insurer to establish and maintain segregated funds**

**18.** (1) A long term insurer shall establish and maintain such segregated funds as may be required by the Code.

(2) A licensed insurer that contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000.

### **Licensed insurer to notify Commission of likely failure to comply**

**19.** (1) A licensed insurer shall, as soon as reasonably practicable, notify the Commission in writing if it has reasonable grounds for believing that, at any time in the following three years, it is likely to fail to comply with a requirement imposed in any of the following sections—

- (a) section **15**(1); or
- (b) section **16**(1) or (2).

(2) A licensed insurer that contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000.

### **Shares to be fully paid for in cash**

**20.** (1) Every share in a licensed insurer issued on or after the commencement date shall be fully paid for in cash.

(2) The Commission may, on the application of an insurer, give its written approval for the issue of one or more shares for a consideration other than cash.

### **Distributions**

**21.** (1) A licensed insurer shall not make a distribution unless, immediately after the distribution, the insurer complies with—

- (a) the requirements specified in sections **15** and **16**;
- (b) section **18**; and
- (c) all other applicable prudential requirements in the Code.

(2) A “distribution”, in relation to a distribution by an insurer to a shareholder, means—

- (a) the direct or indirect transfer of an asset, other than the insurer’s own shares, to or for the benefit of the shareholder, or
- (b) the incurring of a debt to or for the benefit of a shareholder in relation to shares held by the shareholder and whether by means of the purchase of an asset, the purchase, redemption or other acquisition of shares, a transfer of indebtedness or otherwise,

and includes a dividend.

(3) A licensed insurer that contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000.

### *Actuary and Actuarial Investigations*

### **Licensed insurer to appoint an actuary**

**22.** (1) Subject to subsection (4), a licensed insurer shall appoint and at all times have an actuary if the insurer is—

- (a) a long term insurer; or
- (b) a general insurer required to appoint an actuary under subsection (2).

(2) The Commission may, by written notice, require a general insurer to appoint an actuary if, having regard to the nature, scale and complexity of the insurer’s business, it considers it appropriate to do so.

(3) A person shall not be appointed as actuary under subsection (1) unless—

- (a) the person is qualified to act as an actuary for the purposes of this Act; and
- (b) the Commission has given its prior written approval to the person’s appointment as the actuary of the insurer.

(4) The Commission shall not approve the appointment of a person as the actuary of a licensed insurer under subsection (1) unless it is satisfied that the person is qualified to act as actuary and has sufficient experience and competence to act as the actuary of the insurer.

(5) The requirements of subsection (1) do not apply or are modified with respect to a long term insurer—

(a) in such circumstances as may be specified in the Code<sup>2</sup>; or

(b) where, in the case of a particular licensed insurer, the Commission so determines on the application of that insurer.

(6) Where, for whatever reason, a person ceases to be the appointed actuary of a licensed insurer, the insurer is considered not to have contravened subsection (1) if it appoints another actuary in accordance with this section within two months of the date that the person who was previously appointed actuary ceases to hold that appointment.

(7) Subject to subsections (5) and (6), a long term insurer, or a general insurer required by the Commission to appoint an actuary under subsection (2), insurer is guilty of an offence if, at any time, it does not have an actuary or it appoints an actuary contrary to subsection (3) and is liable on summary conviction to a fine not exceeding \$50,000.

### **Licensed insurer's duties in relation to actuary**

**23.** A licensed insurer shall make such arrangements as are necessary to enable its appointed actuary to carry out his or her duties, including by—

(a) giving the actuary a right of access at all reasonable times to its financial records and to all other documents and records; and

(b) providing the actuary with the information and explanations that the actuary reasonably requires for the purposes of carrying out his or her duties.

### **Duties of actuary**

**24.** (1) The appointed actuary of a licensed insurer shall—

(a) Prepare and certify a financial condition report each year in accordance with the requirements of the Code and provide the financial condition report to the insurer; and

(b) carry out such other duties as may be specified in this Act or the Code.

(2) Subject to subsection (3), in the case of a licensed insurer that is a segregated portfolio company, the financial condition report shall include a report on the financial condition of each segregated portfolio.

(3) The Commission may, by written notice, grant an exemption from the requirements of subsection (2) in relation to one or more specified segregated portfolios if it considers that the nature, scale and complexity of the insurer justify the exemption.

(4) The actuary of a licensed insurer, whether or not appointed pursuant to section 22, shall, in the performance of his or her duties and the exercise of his or her powers, comply with the actuarial standards specified in the Code.

<sup>2</sup>Note that only long term insurers would be required to appoint an actuary.

### **Obligations of actuary**

25. (1) Despite anything to the contrary in any other law, the appointed actuary of a licensed insurer shall report immediately to the Commission any information relating to the affairs of the insurer that the person has obtained that, in that person's opinion, suggests that—

- (a) the business of the licensed insurer is not, or is likely to cease to be, in a financially sound condition;
- (b) the licensed insurer is
  - (i) in breach of the capital and solvency marginal requirements in section 16;
  - (ii) in material breach of any prudential requirements specified in the Code; or
  - (iii) likely to become unable to meet the requirements specified in subparagraphs (i) or (ii); or
- (c) the licensed insurer has exposures that jeopardise its long term financial viability or stability.

(2) Where the appointment of an appointed actuary is terminated, or the actuary resigns, the person who has ceased to be appointed as actuary shall—

- (a) forthwith inform the Commission of the termination of the appointment, or the resignation or the fact that the person has ceased to have responsibility for the actuarial function of the insurer, and shall disclose to the Commission the circumstances that gave rise to the termination, resignation or change of responsibilities; and
- (b) if, but for the termination of the appointment, the resignation or change in responsibilities the person would have reported information to the Commission under subsection (1), the person shall report the information concerned to the Commission, as if the appointment had not been terminated, the person had not resigned or the person had not ceased to have responsibility for the actuarial function.

(3) Where, in good faith, a person who is, or was, the appointed actuary of a licensed insurer provides any information to the Commission under subsection (1) or (2), the person is considered not to be in contravention of any enactment, rule of law, agreement, regulatory or administrative requirement or professional code of conduct to which the person is subject and no civil, criminal or disciplinary proceedings shall lie against him the person in respect thereof.

(4) The failure, in good faith, of an appointed actuary to provide a report or information to the Commission under subsection (1) or (2) does not confer upon any other person a right of action against the person which, but for that failure, the other person would not have had.

(5) A person who fails to comply with subsection (2) or (3) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000.

### **Powers of Commission with regard to appointed actuary**

26. (1) Where the Commission is satisfied that the appointed actuary of a licensed insurer has failed to fulfill his or her obligations under this Act or is otherwise not a fit and proper person to act as the actuary of the insurer, it may, by written notice to the

insurer, revoke the approval of the appointment of the actuary and the insurer shall appoint a new actuary in accordance with section 22.

(2) A notice revoking the appointment of an appointed actuary under subsection (1) shall be given to the actuary.

(3) If a licensed insurer fails to appoint an actuary, the Commission may appoint a qualified person to act as the actuary of the licensee.

(4) An actuary appointed under subsection (3) is considered, for the purposes of this Act, to have been appointed by the licensed insurer and the insurer shall be responsible for the actuary's costs and remuneration.

### **Commission may direct actuarial investigation**

27. (1) The Commission may at any time, by notice in writing, direct a licensed insurer to cause an actuary to investigate such aspects of its financial condition as the Commission may specify in the notice and to provide the Commission with a report prepared by the actuary.

(2) A report prepared under subsection (1) shall be at the cost of the insurer.

(3) The Commission may direct that the actuarial investigation is carried out by the appointed actuary, if any, or by such other actuary as the Commission shall specify.

### *Reinsurance*

#### **Reinsurance arrangements**

28. (1) Subject to the specific requirements of this section and the Code, a licensed insurer shall have such arrangements as it considers appropriate for the reinsurance of risks under insurance contracts that it has entered into in the course of its business as an insurer.

(2) A licensed insurer shall not enter into a reinsurance contract, as cedant, with another person, unless the other person—

- (a) satisfies the criteria specified in the Code for an approved reinsurer; or
- (b) the Commission, on the application of the licensed insurer, has given its prior written authorisation.

### *Governance and Management*

#### **Appointment of insurance manager**

29. (1) A licensed insurer shall appoint and at all times have an insurance manager.

(2) A licensed insurer shall not appoint a person under subsection (1) unless—

- (a) the person holds an insurance manager's licence; and
- (b) the Commission has given its prior written approval to the person's appointment.

(3) A licensed insurer shall not terminate the appointment of its insurance manager, and a licensed insurance manager shall not terminate its agreement to act as insurance manager for a licensed insurer, unless the insurer or the insurance manager, as the case may be, has given not less than thirty days' notice of its intention to do so to the Commission.

(4) The Commission may, on the application of the insurer or insurance manager, agree to accept a shorter period of notice than that specified in subsection(3).

(5) A licensed insurer shall, within fourteen days after—

(a) it appoints an insurance manager, or

(b) the appointment of its insurance manager is, for whatever reason, terminated,

provide written notice of that fact to the Commission.

(6) Where, for whatever reason, a person ceases to be the insurance manager of a licensed insurer, the insurer is not guilty of an offence under subsection (7) if it appoints another insurance manager in accordance with subsection (2) within fourteen days of the date that the previously appointed insurance manager ceases to hold that appointment.

(7) Subject to subsection(6), a licensed insurer that contravenes subsection(1), (2), (3)or (5) or an insurance manager that contravenes subsection (3), is guilty of an offence and is liable on summary conviction to a fine not exceeding\$50,000.

## **Directors**

**30.** (1) A licensed insurer shall at all times have at least two directors.

(2) A person shall not be appointed, or accept appointment, as the director of a licensed insurer unless that person is an individual.

(3) If, after being granted a licence, a licensed insurer has less than two directors contrary to subsection (1), it shall—

(a) immediately notify the Commission of that fact in writing;and

(b) within a period not exceeding twenty-one days from the date the insurer failed to comply with subsection (1), submit an application for the appointment of a replacement director under section**12**.

(4) The Code may provide for the duties and responsibilities of the directors of a licensed insurer.

(5) A licensed insurer that fails to comply with subsection (3) is guilty of an offence and is liable on summary conviction to a fine not exceeding\$50,000.

## **Governance framework**

**31.** (1) A licensed insurer shall—

(a) take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors, senior managers and key functionaries so that—

(i) it is clear who has which of those responsibilities;

(ii) there is appropriate separation of the oversight function from the management responsibilities; and

(iii) the business and affairs of the insurer can be adequately monitored and controlled by the directors and its relevant senior managers;

(b) establish and maintain such strategies, policies, procedures and controls, including internal controls, as are appropriate for the nature,

scale, complexity and diversity of its business and its riskprofile.



## *Transfers, Assignments and Amalgamations*

### **Restrictions on transfers, assignment and mergers**

- 32.** (1) Subject to section 7 of the Companies Act<sup>3</sup>, a licensed insurer shall not—
- (a) transfer its business or any part of its business to another person,
  - (b) merge its business, or any part of its business, with the business of any other person, or
  - (c) amalgamate with another company,

except under a scheme that complies with this Act, the Regulations and the Code and has the prior written approval of the Commission or the Court.

(2) A licensed insurer that contravenes subsection (1) (b) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$100,000.

### **Application for transfer, assignment or merger**

**33.** (1) Application to the Commission or the Court for the approval of a scheme shall be made jointly by or on behalf of the licensed insurer and all other persons who are parties to the scheme.

(2) An application under subsection (1) shall be in the approved form and contain the information and be accompanied with the documentation that may be specified in the Code.

(4) Before determining an application under this section, the Commission may—

- (a) at the cost of the insurer, undertake an investigation into the desirability or otherwise of the scheme; and
- (b) require the insurer and each party to the scheme to provide the Commission with the documents and information it requires.

(5) An investigation under subsection (4) may be carried out by the Commission or by one or more persons appointed by the Commission to act on its behalf.

(6) A transaction to which a licensed insurer is a party which has the effect of transferring a part of the business of the licensed insurer to another person or merging any part of the business of the insurer with the business of another person is void unless effected under a scheme approved by the Commission<sup>4</sup>.

### **Hearing of application for approval of scheme**

**34.** (1) The Commission may, where it considers it necessary, conduct a hearing of the application at which the insurer, each party to the scheme and any interested person who has made representations to the Commission concerning the scheme are entitled to attend and be heard either in person, or in the case of a company through an officer, or a legal representative.

(2) At a hearing conducted under subsection (1), the Commission may consider evidence that it considers appropriate.

<sup>3</sup> Complete after Companies Act drafted

<sup>4</sup>To be reviewed after completion of Companies Act

- (3) Where the Commission confirms the scheme,
  - (a) it is binding on the parties to it; and
  - (b) it has effect, despite anything to the contrary in the Regulations of the insurer or of any company that is a party to the scheme.
- (3) A copy of the confirmed scheme shall be filed with the Registrar of Companies.

## PART 4

### LICENSING AND SUPERVISION OF INSURANCE MANAGERS

#### **Prohibition against unlicensed insurance management business**

**35.** (1) Subject to subsection (3), a person shall not carry on, or purport to carry on, business as an insurance manager in or from within Montserrat unless the person holds an insurance manager's licence.

(2) For the purposes of subsection (1), but without limiting that subsection—

- (a) a Montserrat company that carries on, or purports to carry on, business as an insurance manager outside Montserrat is deemed to carry on business as an insurance manager from within Montserrat; and
- (b) a person purports to carry on business as an insurance manager if the person uses any name, style, designation, description, title or trade mark that represents or implies that the person is an insurance manager, whether licensed or not.

(3) The Regulations may exempt categories or descriptions of persons or activities from subsection (1).

(4) A person who carries on, or purports to carry on, business as an insurance manager contrary to subsection (1) or (2) is guilty of an offence and is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$50,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000 or to both.

#### *Licensing*

#### **Insurance manager's licences**

**36.** (1) An insurance manager's licence may be issued only to a Montserrat company.

(2) An international insurer's licence shall be in writing and in the approved form and is subject to such conditions as may be imposed under section 72.

#### **Application for insurance manager's licence**

**37.** (1) Application for an insurance manager's licence may be made only by a Montserrat company.

(2) An application under subsection (1) shall be in the approved form, shall include the information specified in the approved form and shall be accompanied by such documents as may be specified in the Code.

### **Issue of insurance manager's licence**

38. (1) Subject to subsection(2), the Commission may issue an insurance manager's licence to the applicant if it is satisfied that—

- (a) the applicant satisfies the requirements of this Act, the Regulations and the Code with respect to the application;
- (b) the applicant intends, if issued with the licence, to carry on business as an insurance manager;
- (c) the applicant has the ability to carry on its business in compliance with—
  - (i) applicable requirements of this Act, the Regulations and the Code;
  - (ii) any conditions the Commission intends to attach to the licence under section 72; and
  - (iii) its anti-money laundering and terrorist financing obligations;
- (d) the organisation, management and financial resources of the applicant are, or on the issuance of the licence will be, adequate for the carrying on of the relevant business;
- (e) the applicant's significant owners and directors, individually and collectively, satisfy the Commission's fit and proper criteria; and
- (f) issuing the licence is not against the public interest.

(2) Without limiting the discretion given to the Commission under subsection (1), the Commission may refuse to issue a licence to an applicant if it has reasonable grounds for believing that any person having an interest in the applicant does not satisfy the Commission's fit and proper criteria.

### *Changes in Significant Owners and Control and Directors*

#### **Commission's approval required for changes in control and significant owners**

39. (1) A person shall not become a significant owner of a licensed insurance manager, except with the prior written approval of the Commission.

(2) A person who is a significant owner of a licensed insurance manager shall not, except with the prior written approval of the Commission—

- (a) increase or reduce the person's control over the licensed insurance manager; or
- (b) cease to be a significant owner of the licensed insurance manager.

(3) A licensed insurance manager shall not cause, permit or acquiesce in any dealing with its shares that would result in a person contravening subsection (1) or (2).

(4) The criteria for determining whether a person's control over a licensed insurance manager has increased or decreased shall be specified in the Code.

(5) An application to the Commission for approval under subsection (1) or (2) shall be made by the licensed insurance manager on behalf of the person who is, or intends to become, a significant owner.

(6) In determining whether to grant approval under this section, the Commission may take into account any factors which it reasonably considers appropriate.

(7) A person who knowingly contravenes subsection (1) or (2) or a licensed insurance manager that knowingly contravenes subsection (3) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000.

#### **Appointment of, and changes in, directors and senior managers**

**40.** (1) A licensed insurance manager shall not appoint a director or senior manager except with the prior written approval of the Commission.

(2) The Commission shall not grant approval under subsection (1) unless it is satisfied that the person concerned satisfies the Commission's fit and proper criteria.

(3) A licensed insurance manager shall provide written notice to the Commission within fourteen days after a director or senior manager ceases to hold office with, be employed by or act for the insurer.

(4) The written notice provided under subsection (3) shall include a statement of the reasons for the director or senior manager ceasing to hold office with, be employed by or act for the licensed insurance manager.

#### **Matters affecting the suitability of significant owners, directors and senior managers**

**41.** If, whether before or after the Commission has approved the appointment of a director or senior manager, or has approved a significant owner, a licensed insurance manager becomes aware of any information that is reasonably material to the Commission's fit and proper assessment of the person, it shall notify the Commission of the information as soon as reasonably practicable.

#### **Power to require licensed insurance manager to remove directors and senior managers**

**42.** (1) If the Commission has reasonable grounds for believing that a director or senior manager of a licensed insurance manager does not satisfy its fit and proper criteria, it may, by written notice, require the licensed insurance manager to—

- (a) remove that person and, if it considers it appropriate, to replace the person with another person acceptable to the Commission;
- (b) ensure that the person ceases to undertake certain specified functions in relation to the licensed insurance manager; or
- (c) take such remedial action in relation to that person as the Commission specifies.

(2) A notice issued under subsection (1)—

- (a) shall state whether the specified requirements have immediate effect or the time period within which they must be complied with;
- (b) may include directions consequential upon, or ancillary to, the requirements specified in the notice; and
- (c) may direct that, in the case of a person who it has required the licensed insurance manager to remove, the person may not be reappointed, or accept reappointment, to the same position, or to any specified

position, with the licensed insurance manager—

- (i) at any time;
- (ii) for such period as may be specified by the Commission; or
- (iii) until such conditions as may be specified by the Commission have been met.

(3) This section has effect despite any agreement, contract of employment, law or rule of law or any provision in the licensed insurance manager's memorandum or articles of association.

(4) Where a notice issued under subsection (1) contains a direction under subsection(2)(c), any person to whom the direction relates who accepts an appointment contrary to the notice is guilty of an offence and is liable on summary conviction to a fine not exceeding\$50,000.

(6) A licensed insurance manager that fails to comply with a notice issued under subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000.

### *Prudential Requirements*

#### **Maintenance of financially sound condition**

**43.** (1) A licensed insurance manager shall, at all times maintain its business in a financially sound condition by—

- (a) Having assets and capital resources adequate to support its insurance management business; and
- (b) providing for its liabilities so as to be in a position, at all times, to meet those liabilities as they fall due.

(2) This section does not limit the specific capital resource and other prudential requirements specified in this Act, the Regulations or the Code.

#### **Capital resource requirements**

**44.** (1) A licensed insurance manager shall at all times ensure that its capital resources are maintained in an amount that equals or exceeds the amount specified in the Code or such greater amount as the Commission may specify under subsection (2).

(2) If the Commission considers it appropriate, having regard to the nature, scale and complexity of the business carried on, or proposed to be carried on, by a licensed insurance manager, the Commission may issue a directive to the insurance manager requiring it to increase its capital resources to an amount higher than the minimum specified in the Code.

(3) Unless the circumstances justify immediate compliance with a directive issued under subsection (2), a directive shall specify a reasonable period for compliance.

### *Obligations of Licensed Insurance Managers*

#### **Place of business in Montserrat**

**45.** A licensed insurance manager shall at all times maintain a place of business in Montserrat.

## **Professional indemnity and other insurance**

**46.** A licensed insurance manager shall at all times maintain such professional indemnity and other insurance as may be specified in the Code.

## **Obligation of insurance manager to report to Commission**

**47.** (1) Despite anything to the contrary in any other law, the insurance manager of a licensed insurer shall report immediately to the Commission—

- (a) any concerns that the insurance manager has concerning the fit and properness of the insurer;
- (b) any information relation to the licensed insurer or its business that the insurance manager has obtained in the course of acting as its insurance manager that, in the opinion of the insurance manager, suggests that—
  - (i) the insurer is insolvent or is likely to become insolvent;
  - (ii) a criminal offence has been, or is being, committed by the insurer in connection with its business, whether in or outside Montserrat;
  - (iii) the insurer is involved in any criminal proceedings, whether in or outside Montserrat;
  - (iv) the insurer is carrying on business in a manner that is materially different from its filed business plan;
  - (v) a serious breach of this Act, the Regulations or the Code or any laws, Guidelines or Codes relating to money laundering or the financing of terrorism has occurred in respect of the insurer or its business.

(2) Where the appointment of an insurance manager is terminated, the insurance manager shall—

- (a) forthwith inform the Commission of the termination of its appointment, and disclose to the Commission the circumstances that gave rise to such termination; and
- (b) if, but for the termination of its appointment, it would have reported information to the Commission under subsection (1), it shall report the information concerned to the Commission, as if its appointment had not been terminated.

(3) Where, in good faith, an insurance manager provides any information to the Commission under subsection (1) or (2), it is deemed not to be in contravention of any enactment, rule of law, agreement or professional code of conduct to which it is subject and no civil, criminal or disciplinary proceedings shall lie against it in respect thereof.

(4) The failure, in good faith, of an insurance manager to provide a report or any information to the Commission under subsection (1) or (2) does not confer upon any other person a right of action against the insurance manager which, but for that failure, he would not have had.



## PART 5

### PROVISIONS APPLYING TO LICENSED INSURERS AND INSURANCE MANAGERS

#### *Obligations of Licensees*

#### **Continuing obligations**

**48.** (1) A licensee shall not, without the prior written approval of the Commission—

- (a) open, maintain or carry on business through a branch, agency or a representative office outside Montserrat;
- (b) incorporate, form or acquire a subsidiary; or
- (c) change its name or the name under which it carries on business.

(2) A licensee shall not, without giving reasonable prior written notice to the Commission—

- (a) make any significant amendments to its business plan; or
- (b) change—
  - (i) the address of its principal office or place of business, whether in or outside Montserrat;
  - (ii) the address of its registered office; or
  - (iii) its registered agent.

#### **Commission may direct change of name**

**49.** The Commission may, by written notice, direct a licensee, to change the name under which it is incorporated or it carries on business if the Commission is of the opinion that the name—

- (a) Is identical to that of any other person, whether within or outside Montserrat, or which so nearly resembles that name as to be likely to deceive; or
- (b) Is otherwise misleading or undesirable.

#### **Business plan**

**50.** (1) For the purpose of this section, the “filed business plan” of a licensee is the business plan—

- (a) submitted to the Commission together with the application for a licence; or
- (b) if an amended or new business plan is submitted to the Commission under subsection (3), the most recent amended or new business plan submitted that has become effective in accordance with subsection(5).

(2) A licensee shall carry on its business substantially in accordance with its filed business plan<sup>5</sup>.

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<sup>5</sup>Note: The Code should require annual confirmation of insurer (with annual return) that filed

business plan is current. Consider also for insurance manager.

(3) A licensee may, at any time, submit a new or amended business plan to the Commission.

(4) The Commission may, within the period of 30 days following the submission of the new or amended business plan, provide the licensee with a written notice of objection.

(5) Unless the Commission serves a notice of objection under subsection (4), a new or amended business plan submitted under subsection (3) becomes effective on—

- (a) the 31st day following the submission of the plan; or
- (b) such earlier date as may be specified by the Commission in writing.

(6) The Commission may, at any time, require a licensee to submit a new or amended business plan to it under subsection (3).

(7) A licensee that contravenes subsection (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000.

#### *Records, Financial Statements and Audit*

### **Maintenance of records**

**51.** (1) A licensee shall keep records that are sufficient—

- (a) to show and explain its transactions;
- (b) at any time, to enable its financial position to be determined with reasonable accuracy;
- (c) to enable it to prepare such financial statements and make such returns as it is required to prepare and make under this Act, the Regulations and the Code; and
- (d) to enable its financial statements to be audited in accordance with this Act.

(2) The records specified in subsection (1) shall be kept—

- (a) in the case of a licensed insurer, at the Montserrat office of its insurance manager; and
- (b) in the case of a licensed insurance manager, at its Montserrat office.

(3) The Code may specify—

- (a) the form and manner in which the records specified in subsection (1) are to be kept; and
- (b) other records required to be kept by a licensee and the form, manner and place in which such records are to be kept.

(4) A licensee shall retain the records required to be kept under this section for a period of at least six years after the completion of the transaction to which they relate.

(5) Subsection (4) continues to apply to a person who held a licence, even if the licence has been suspended or revoked.

(6) A licensee that contravenes subsection (1) or subsection (4) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$100,000.

(7) A person whose licence has been cancelled that contravenes subsection

(4) is guilty of an offence on summary conviction to a fine not exceeding \$100,000.

### **Financial year of licensee**

**52.** (1) A licensee shall, no later than eleven months after the date that its licence is issued to it, provide the Commission with written notice of its financial yearend.

(2) Subject to subsection(5), for the purposes of this Act, the financial year of a licensee is—

(a) in the case of its first financial year, the period from the date of its incorporation to the last day of the month specified in the notice provided to the Commission under subsection (1); and

(b) in the case of subsequent financial years, the period of one year commencing on the day immediately after the end of its previous financial year.

(3) Subsection (1) applies whether or not financial statements have actually been prepared for the financial year in question.

(4) In the case of a licensed insurer that is a segregated portfolio company, the financial year of each segregated portfolio shall be the same as the financial year of the company.

(5) The Commission may, on the application of a licensee, in respect of any financial year, direct that the financial year shall be a period, not less than three months and not exceeding fifteen months, that is different to that determined in accordance with subsection(1).

### **Meaning of “financial statements”**

**53.** In this Act, “financial statements”, in relation to a licensee and to a financial year, means—

(a) a statement of the financial position of the licensee as at the last date of the financial year,

(b) a statement of the financial performance of the licensee in relation to the financial year,

(c) a statement of cash flows for the licensee in relation to the financial year,

(d) such statement relating to the prospects for the insurance business as may be specified in the Code or as may be required by the accounting standards in accordance with which the financial statements are prepared, and

(e) such other statements as may be specified in the Code,

together with any notes or other documents giving information relating to the matters specified in paragraphs (a), (b), (c), (d) or (e).

### **Preparation of financial statements**

**54.** (1) A licensee shall prepare financial statements for each financial year that comply with this Act, the Regulations and the Code and with the specified accounting standards.

(2) Subject to subsection (5), a licensed insurer that is a segregated portfolio company shall also prepare financial statements for each segregated portfolio and, for the purposes of this Act, the financial statements of the insurer include those prepared at a segregated portfolio level.

(3) If, in complying with the specified accounting standards, the financial statements do not give a true and fair view of the matters to which they relate, the notes to the financial statements shall contain such information and explanations as will give a true and fair view of those matters.

(3) The financial statements prepared under subsection (1) shall—

(a) be approved by the directors of the licensee; and

(b) following approval under paragraph (a), be signed by at least two directors on behalf of all the directors.

(4) The directors signing the financial statements shall state the date when the financial statements were approved by the directors and the date when each director signed the financial statements.

(5) The Commission may, by written notice, exempt a licensed insurer that is a segregated portfolio company from the requirement to prepare financial statements in relation to one or more segregated portfolios if it considers that the nature, scale and complexity of the insurer justify the exemption.

### **Submission of financial statements to the Commission**

55. (1) The financial statements of a licensee signed by two directors in accordance with section 54(3) shall be submitted to the Commission within the period specified in the Code, accompanied by—

(a) a directors' certificate in the approved form;

(b) an auditor's report;

(c) any report on the affairs of the licensee made to its members in respect of the financial year;

(d) in the case of a licensed insurer required to appoint an actuary, a financial condition report prepared and certified by the appointed actuary; and

(e) such other documents as may be specified in the Code which, in the case of specified types or description of insurers, may include a financial condition report.

(2) The financial statements of a licensee are considered not to have been submitted to the Commission unless they are accompanied by the certificates, reports and documents specified in subsection (1).

(3) A licensee that contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000.

### **Submission of periodic financial statements and return**

56. (1) A licensee shall, in respect of, and within, such periods as may be specified in the Code, submit to the Commission—

(a) periodic financial statements, that may be unaudited;

(b) a return in the approved form; and

(c) such other information and documentation as may be specified in the Code.

(2) In this section—

“financial statements” has the meaning specified in section 53 with the substitution of the period covered by the financial statement for “financial year”; and

“periodic” means such period or periods shorter than a financial year in respect of which financial statements are required by the Code to be submitted to the Commission.

(3) A licensee that contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000.

### **Extension of time**

57. (1) The Commission may, on the application of a licensee, extend the time for compliance with section 55 or section 56 for a period not exceeding two months or, where it grants more than one extension, for an aggregate period of no more than two months.

(2) An extension under subsection (1) may be granted subject to such conditions as the Commission considers appropriate.

### **Amendment of financial statements**

58. (1) If the Commission considers that any document submitted by a licensee under section 55 or section 56 is inaccurate or incomplete or is not prepared in accordance with this Act or the Code, it may by written notice require the licensee to amend the document or to submit a replacement document.

(2) If a licensee fails to comply with a notice under subsection (1), the Commission may reject the document, in which case the document is considered not to have been submitted.

### **Group accounts**

59. (1) Where a licensee is a member of a group, the Commission may require the licensee to submit group accounts.

(2) The Commission may require that the group accounts are audited by the auditor of the licensee or by another auditor approved by the Commission in writing.

(3) The Code may provide for the form and content of group accounts to be submitted under this section and specify requirements in relation to group accounts.

### **Licensee to appoint auditor**

60. (1) A licensee shall appoint and at all times have an auditor for the purposes of auditing its financial statements.

(2) A person shall not be appointed as auditor under subsection (1) unless—

(a) the person is qualified under the Code to act as the auditor of a licensee;

(b) the person has consented to act as auditor; and

(c) the Commission has given its prior written approval to the person’s appointment as auditor of the licensee.

(3) The Commission shall not approve the appointment of a person as auditor of a licensee unless it is satisfied that the person is qualified to act as auditor and has sufficient experience and competence to audit the financial statements of the licensee.

(4) The approval of the Commission is not required where the auditor appointed in respect of a financial year acted as the auditor of the licensee in the previous financial year and the Commission has not revoked its approval of the auditor under section 64(1).

(5) A licensee shall, within 14 days of the appointment of its auditor, submit a notice of appointment in the approved form to the Commission.

(6) Where, for whatever reason, a person ceases to be the auditor of a licensee, the licensee is deemed not to have contravened subsection (1) if it appoints another auditor in accordance with this section within two months of the date that the person who was previously appointed auditor ceases to hold that appointment.

(7) A licensee is guilty of an offence if—

- (a) subject to subsection (6), it does not have an auditor; or
- (b) it appoints an auditor contrary to subsection (2).

(8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding \$50,000.

#### **Licensee's duties in relation to audit**

**61.** A licensee shall make such arrangements as are necessary to enable its auditor to audit its financial statements in accordance with this Act, the Regulations and the Code, including by—

- (a) giving the auditor a right of access at all reasonable times to its financial records and to all other documents and records; and
- (b) providing the auditor with the information and explanations as the auditor reasonably requires for the purposes of the audit.

#### **Audit and audit report**

**62.** (1) An auditor shall carry out sufficient investigation to enable him or her to form an opinion on the financial statements, and prepare an audit report, in compliance with this Act and the Code.

(2) Upon completion of the audit of the financial statements of a licensee, the auditor shall provide an audit report to the licensee complying with the Code.

(3) The Commission may at any time, by notice in writing, direct a licensee to supply the Commission with a report, prepared by its auditor or such other person as may be nominated by the Commission, on such matters as the Commission may determine which may include an opinion on the adequacy of the accounting systems and controls of the licensee and on asset quality and the adequacy of its technical provisions.

(4) A report prepared under subsection (3) shall be at the cost of the licensee.

#### **Obligations of auditor to report to Commission**

**63.** (1) Despite anything to the contrary in any other law, the auditor of a licensee shall report immediately to the Commission any information relating to the affairs of the licensee that the auditor has obtained in the course of acting as its auditor that, in the opinion of the auditor, suggests that—

- (a) the business of the licensee is not, or is likely to cease to be, in a financially sound condition;



- (b) the licensee is—
    - (i) in breach of the capital and solvency marginal requirements in section 16;
    - (ii) in material breach of any prudential requirements specified in the Code; or
    - (iii) likely to become unable to meet the requirements specified in subparagraphs (i) or (ii);
  - (c) a criminal offence has been or is being committed by the licensee or in connection with its business;
  - (d) the licensee has significant weaknesses in its internal controls which render it vulnerable to significant risks or exposures that have the potential to jeopardise its financial viability; or
  - (e) a serious breach of this Act, the Regulations or the Code or any laws, Guidelines or Codes relating to money laundering or the financing of terrorism has occurred in respect of the licensee or its business.
- (2) Where the appointment of an auditor of a licensee is terminated, or the auditor resigns, the person who has ceased to be auditor shall—
- (a) forthwith inform the Commission of the termination of the appointment, or the resignation, and disclose to the Commission the circumstances that gave rise to the termination or resignation; and
  - (b) if, but for the termination of the appointment, or the resignation, the auditor would have reported information to the Commission under subsection (1), the auditor shall report the information concerned to the Commission, as if the appointment had not been terminated or the auditor had not resigned.
- (3) The Commission may require an auditor of a licensee to discuss any audit he or she has conducted or commenced, or provide additional information regarding the audit to, the Commission.
- (4) Where, in good faith, a person who is, or was, an auditor of a licensee provides any information to the Commission under subsection (1), (2) or (3), the person is considered not to be in contravention of any law, rule of law, agreement, regulatory or administrative requirement or professional code of conduct to which the person is subject and no civil, criminal or disciplinary proceedings shall lie against him the person in respect thereof.
- (5) The failure, in good faith, of a person who is, or was, an auditor of a licensee, to provide a report or information to the Commission under subsection (1), (2) or (3) does not confer upon any other person a right of action against the person which, but for that failure, the other person would not have had.
- (6) An auditor or former auditor who fails to comply with subsection (1) or (2) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000.

#### **Powers of Commission with regard to appointment of auditor**

**64.** (1) Where the Commission is satisfied that the auditor of a licensee has failed to fulfill his or her obligations under this Act or is otherwise not a fit and proper person to act as the auditor of the licensee, it may, by written notice to the licensee,

revoke the approval of the appointment of the auditor and the licensee shall appoint a new auditor in accordance with section 60.

(2) A notice revoking the appointment of an auditor under subsection (1) shall be given to the auditor.

(3) If a licensee fails to appoint an auditor, the Commission may appoint a qualified person to act as the auditor of the licensee.

(4) An auditor appointed under subsection (3) is considered, for the purposes of this Act, to have been appointed by the licensee and the licensee shall be responsible for the auditor's costs and remuneration.

### **Auditor may rely on actuarial valuations**

65. The auditor of a long-term insurer may accept, for the purposes of an audit under this Act, a valuation by the actuary appointed by the insurer of—

- (a) the policy liabilities of the insurer as at the end of a financial year of the insurer; or
- (b) a change, during a financial year, in the policy liabilities of the insurer in relation to a particular fund.

### **Returns and reports**

66. (1) A licensee shall submit to the Commission such reports and returns relating to the licensee's financial condition and its business as may be specified in this Act, the Regulations or the Codes, or as may otherwise be required by the Commission.

(2) If the Commission considers that any report or return submitted by a licensee under subsection (1) is inaccurate or incomplete or is not prepared in accordance with this Act, the Regulations or the Code or is not in the approved form, the Commission may, by written notice, require the licensee to amend the report or return or submit a replacement.

(3) A licensee that contravenes subsection (1) is liable to pay to the Commission the administrative penalty specified in the Regulations.

## *Control of Advertisements and Conduct of Business*

### **Advertisements**

67. (1) A licensee shall not, in relation to its licensed business—

- (a) issue, or cause or permit to be issued, any advertisement, brochure or other similar document or make, or cause or permit to be made, any statement or promise, which it knows, in a material particular, is false or misleading or contains an incorrect statement of fact;
- (b) issue or cause or permit to be issued, any advertisement, brochure or other similar document, or make, or cause or permit to be made, any statement or promise, being reckless as to whether the advertisement, brochure or other similar document, statement or promise, in a material particular, is false or misleading or contains an incorrect statement of fact; or

- (c) dishonestly conceal a material fact, whether in connection with an advertisement, brochure or other similar document, statement or promise, or otherwise.

(2) If the Commission is of the opinion that any advertisement, brochure or other similar document issued, or to be issued, or statement or promise made, or to be made, by or on behalf of a licensee contravenes subsection (1) or is contrary to the public interest, it may—

- (a) direct the licensee in writing not to issue the document, or not to make the statement or promise, or to withdraw it; or
- (b) grant written approval to the licensee to issue the document, or make the statement or promise, with such changes as the Commission may approve.

### **Code may provide for advertising**

68. The Code may—

- (a) prohibit the issue of advertisements, brochures or similar documents relating to insurance business and insurance management business of a particular type or description, whether as to the contents of the advertisement, brochure or other document or the persons for whom they are intended; and
- (b) provide for—
  - (i) the issue, form and content of advertisements, brochures or similar documents, and
  - (ii) the making of statements and promises,

relating to insurance business or insurance management business.

### **Business conduct**

69. A licensee shall take all reasonable steps to protect its customers and to ensure that its customers are treated fairly at all times.

(2) Without limiting subsection (1), the Code may specify market conduct rules to be followed by licensees or particular, categories or descriptions of licensees, including rules providing for the disclosure of information to customers and prospective customers.

## **PART 6**

### **MISCELLANEOUS AND GENERAL**

#### *Applications, Decisions and Conditions*

### **Applications under this Act**

70. (1) Every application made under this Act shall—

- (a) be in writing and, where appropriate, in the approved form; and
- (b) have included with it such documents or information as may be specified by this Act, the Regulations, the Code or in the approved

form.

- (2) The Commission may—
  - (a) require an applicant to provide it with such documents and information, in addition to those specified in subsection (1)(b), as it reasonably requires to determine the application;
  - (b) specify the form in which the documents and information are to be provided; and
  - (c) require any documents and information provided to be verified in such manner as it may specify.
- (3) If, before the determination by the Commission of an application—
  - (a) there is a material change in any information or documentation provided by or on behalf of the applicant to the Commission in connection with the application, or
  - (b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading,

the applicant shall forthwith give the Commission written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.

- (4) An applicant that fails to comply with subsection (3) is guilty of an offence and is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$25,000 or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$50,000 or to both.

### **Notification and publication of decisions**

- 71.** (1) The Commission shall, within fourteen days of determining an application, give written notice of its decision to the applicant.
- (2) If the Commission refuses to issue a licence to an applicant, or imposes conditions on the grant of a licence, the decision notice shall contain, or be accompanied by, a statement of the Commission’s reasons for the refusal or for the imposition of conditions.
- (3) The Commission shall, within fourteen days of giving written notice to the applicant, publish its decision notice in the manner specified in the Regulations.

### **Conditions**

- 72.** (1) In this section—
  - “approval” means an approval or permission granted under this Act, the Regulations or the Codes;
  - “condition” means a condition attached to a licence or to an approval or exemption and includes a condition as varied in accordance with this section; and
  - “exemption” means an exemption granted under this Act, the Regulations or the Codes.
- (2) A licence may be issued or an approval or exemption granted subject to such conditions as the Commission considers appropriate.
- (3) If a licence is issued, or an approval or exemption is granted, subject to one

or more conditions—

- (a) The Commission shall, together with the licence, approval or exemption, issue a written notice specifying the condition or conditions; and
  - (b) if, in respect of any conditions, it considers that it is in the public interest to do so, the Commission may state those conditions on the licence, approval or exemption.
- (4) The Commission may, upon giving reasonable written notice to a licensee, at any time—
- (a) vary or revoke any condition; or
  - (b) impose new conditions on the licence, approval or exemption.
- (5) A licensee may apply to the Commission in writing for a condition to be revoked or varied and, if the Commission is satisfied that the condition is no longer necessary or should be varied, it may revoke or vary the condition.
- (6) If the Commission revokes or varies a condition or imposes a new condition, the licensee shall, if requested to do so by the Commission, deliver its licence, approval or exemption to the Commission for re-issue.

### *Use of Names*

#### **Use of names**

- 73.** (1) Subject to subsection (1), no person shall, except with the prior written approval of the Commission or unless authorised by another law—
- (a) use, whether in the name under which he is registered, or in the name, description or title under which he carries on business in or from Montserrat, any word or phrase specified in the Regulations as a word or phrase that suggests international insurance business or insurance management business; or
  - (b) make any representation, whether in a document or in any other manner, that is likely to suggest that he is carrying on, or that he is licensed to carry on, international insurance business or insurance management business.
- (2) Subsection (1) does not apply to
- (a) A licensee under this Act, provided that the name under which it is registered or the name which it uses does not suggest that the licensee carries on any business required to be licensed under this Act other than the business that it is authorised by its licence to carry on; or
  - (b) a registered insurer or a registered insurance intermediary.
- (3) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000.

### *Administration*

#### **Registers**

- 74.** (1) The Commission shall maintain—

(a) a Register of licensed insurers,



- (b) a Register of licensed insurance managers, and
- (c) such other registers as the Commission considers appropriate,

in which shall be recorded the information that the Commission may determine.

(2) The registers and the information contained in any document filed with the Commission may be kept in any form the Commission considers appropriate including, either wholly or partly, by means of a device or facility—

- (a) that records or stores information in magnetic or electronic form, and
- (b) that permits the information to be inspected and reproduced in legible and useable form.

### **Inspection of registers and information held by Commission**

75. (1) Subject to subsection (2), a person may, on payment of the specified charge, during normal business hours—

- (a) inspect the registers and any records kept by the Commission that are designated in the Regulations as public records; and
- (b) request to be provided by the Commission with a copy or certified copy of, or extract from, any document that the person would be entitled to inspect under paragraph (a).

(2) In respect of documents filed or kept in electronic form, the rights granted under subsection (1) extend only to reproductions of those documents in useable written form produced in the manner that the Commission considers appropriate.

(3) A copy or reproduction of, or extract from, any document or record that is kept by the Commission and certified by it is admissible in evidence in legal proceedings to the same extent as the original document.

### **Electronic filing of documents**

76. (1) In this section, a document in electronic form is a document in a computer processable message format that is capable of being transmitted electronically.

(2) The Regulations may provide for a system enabling documents required or permitted to be filed with the Commission under this Act, the Regulations or the Code to be filed in electronic form.

(3) A system for the filing of documents, in electronic form shall provide for—

- (a) the criteria for authorising persons to file documents in electronic form; and
- (b) the security and authentication of the documents filed.

### **Fees, charges and penalties**

77. (1) The Regulations may—

- (a) specify fees, charges and contributions payable by licensees, including annual fees, and by applicants for licences; and
- (b) provide that application fees are not refundable, in whole or in part, even if the application is refused.

(2) The Commission may refuse to take any action required of it with respect to a licensee, or an applicant for a licence, for which a fee or charge is payable until

the fee or charge and any other fees, charges and penalties payable by, or in respect of, the licensee or applicant have been paid.

(3) Any fee, charge or contribution which is owed to the Commission under this Act may be recovered as a debt due to the Commission.

(4) If a license fails to pay a fee, charge or contribution in full on or before the date on which it is due, the licensee shall be liable to a late payment penalty, as specified in the Regulations.

## **Regulations**

**78.** (1) The Governor in Council may make such regulations as the Governor in Council considers appropriate—

- (a) Generally for giving effect to this Act and for its administration by the Commission; and
- (b) specifically in respect of anything required or permitted by this Act.

(2) Without limiting subsection (1), the Regulations may provide that engaging in an activity that would otherwise not be regarded as carrying on international insurance business or the business of an insurance manager is deemed for the purposes of this Act, or specified sections of this Act, to be carrying on such a business.

(3) The Regulations may—

- (a) be made for the purposes of this Act or for specified provisions of this Act;
- (b) make different provision in relation to different persons or classes or descriptions of persons, circumstances or cases; and
- (c) subject to subsection (4), provide for offences and penalties for any contravention of or failure to comply with specified requirements of the Regulations.

(4) A penalty provided for an offence under the Regulations shall not exceed,

- (a) in the case of a fine, the sum of \$50,000; and
- (b) in the case of a period of imprisonment, the term of one year.

## **Matters that shall and may be specified in Code**

**79.** (1) The Code shall specify—

- (a) the capital and solvency margin requirements applicable to licensed insurers; and
- (b) the capital resource requirements applicable to licensed insurance managers.

(2) Without limiting the Commission's powers under this Act or the Financial Services Commission Act, in relation to licensed insurers, the Code may—

- (a) specify requirements in relation to the valuation of the assets and liabilities of licensed insurers, including liabilities under insurance contracts and, for this purpose, may—
  - (i) specify assets that are admissible and that are inadmissible, whether in whole or in part;

- (ii) provide for the calculation of technical provisions and the evaluation of risks;
- (b) provide for different solvency control levels that establish the need for remedial action by the insurer, enforcement action by the Commission or both;
- (c) may specify requirements in relation to licensed insurers that are part of a group, with the objective of ensuring that—
  - (i) group risks and impact are taken into account; and
  - (ii) there is adequate prudential regulation of insurance groups;
- (d) include requirements in relation to—
  - (i) the maintenance, operation and restructuring of segregated funds; and
  - (ii) the allocation of profits and losses, and distributions, in relation to participating policies;
- (e) include requirements and restrictions relating to investments;
- (f) include such other prudential requirements as the Commission considers appropriate to—
  - (i) the maintenance by licensed insurers of a sound financial condition;
  - (ii) the assessment of the solvency and financial condition of licensed insurers; and
  - (iii) the protection of policyholders from financial loss and the protection of policyholder funds;
- (g) provide for the running off by an insurer of its business and the exit of insurers from the insurance market;
- (h) principles and rules with respect to the underwriting and rating policies and methodologies to be established by licensed insurers;
- (i) include provisions concerning the reinsurance arrangements of licensed insurers;
- (j) actuarial standards to be followed by actuaries appointed by licensed insurers;
- (k) notices to be given with respect to the advertisement of schemes of transfer and merger;
- (l) requirements in relation to schemes, and the information to be provided; and
- (m) the procedures for the determination by the Commission of applications for schemes of transfer and merger.

(3) Instead of specifying detailed requirements and methods in relation to any matter specified in subsection(2), the Code may require licensed insurers to comply with internationally recognised standards, practices or methodologies.

(4) The Code may specify or provide for, in relation to licensed insurers and licensed insurance managers—

- (a) systems and controls, including internal controls, to be maintained;

- (b) policies and procedures to be maintained with respect to the assessment and management of risk;
  - (c) principles and rules of corporate governance;
  - (d) The preparation by licensees of a business plan and the information to be included in, and the form of, a business plan;
  - (e) measures to be taken by licensees to prevent, detect and remedy fraud; and
  - (f) principles for business.
- (5) The Code may—
- (a) make provision in relation to different persons or class of persons, circumstances or cases; and
  - (b) contain such incidental, supplemental and transitional provisions as the Commission considers necessary or expedient.

### **Approved forms**

- 80.** (1) The Commission may approve forms for the purposes of this Act, the Regulations or the Code.
- (2) Without limiting subsection (1), a form may be approved in relation to—
- (a) any application, return or report or other document required or permitted to be submitted to the Commission by or on behalf of a licensee;
  - (b) any document required or to be submitted to the Commission, by or on behalf of a person carrying out any function in relation to licensee;
  - (b) any document required or permitted to be issued or published by or on behalf of a licensee, or a person carrying out any function in relation to a licensee, to customers or potential customers of a licensee, to creditors of the licensee or to the public or any part of the public.
- (3) Where the Commission has published an approved form with respect to a document, the document shall—
- (a) be in the form of, and contain the information specified in, the approved form; and
  - (b) have attached to it such documents as may be specified in the approved form.

### *Offence Provisions*

#### **False or misleading representations, statements, reports or returns**

- 81.** (1) Subject to subsection (2), no person shall make or assist in making a representation, statement, report or return, whether oral or written—
- (a) that is required or permitted by this Act to be made or, in the case of a document, to be submitted, to the Commission; and
  - (b) that—
    - (i) contains a false statement of a material fact; or

(ii) omits to state a material fact required to be provided to the Commission or necessary to avoid the representation, statement, report or return being materially misleading.

(2) A person does not contravene subsection (1) if he did not know and, with the exercise of reasonable diligence, could not have known that the representation, statement, report or return contained a false statement or omitted a material fact.

(3) A person who contravenes subsection (1) is guilty of an offence and is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$50,000 or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$200,000 or to both.

### **General offence provisions**

**82.** (1) Where an offence is committed by a company, a director and every senior manager of that company who knowingly authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on conviction to the same penalty prescribed for the company.

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

### *Insurance Act*

#### **Modification of Insurance Act in relation to licensees**

**83.** The Insurance Act is disapplied and modified with respect to licensees to the extent provided in Schedule 2.

## SCHEDULE 1

### CATEGORIES AND SUB—CATEGORIES OF INTERNATIONAL INSURANCE LICENCE

#### Category 1 International Insurer's Licence

A Category 1 licence may be issued to a company where the company—

- (a) is wholly owned by one person and intends to carry on international insurance business, excluding reinsurance business, consisting only of insuring the risks of that person; or
- (b) is a member of a group and intends to carry on international insurance business, excluding reinsurance business, consisting only of insuring the risks of any other member of the group or of its own shareholders.

#### Category 2 International Insurer's Licence

A Category 2 licence may be issued to a company where the company—

- (a) satisfies the criteria for a Category 1 licence, except for the fact that—
  - (i) not all of the international insurance business which it intends to carry on, but at least 80% of the net premiums written, will consist of the business described in paragraph (a) or (b) of the criteria for a Category 1 licence; or
  - (ii) it intends to carry on international insurance business, not less than 80% of the net premiums written in respect of which will arise out of the business or operations of the person by whom it is owned or any of the affiliates of that person; or
- (b) is wholly owned by two or more unrelated persons and intends to carry on international insurance business, excluding reinsurance business, not less than 80% of the net premiums written in respect of which, will be written for the purpose of—
  - (i) insuring the risks of any of those persons or of any affiliates of any of those persons; or
  - (ii) insuring risks which arise out of the business or operations of those persons or any affiliates of any of those persons.

### **Category 3 International Insurer's Licence**

A Category 3 licence may be issued to a company where the company—

- (a) satisfies the criteria for a Category 1 licence, except for the fact that—
  - (i) not all of the international insurance business which it intends to carry on, but at least 50% of the net premiums written, will consist of the business described in paragraph (a) or (b) of the criteria for a Category 1 licence; or
  - (ii) it intends to carry on international insurance business, not less than 50% of the net premiums written in respect of which will arise out of the business or operations of the person by whom it is owned or any of the affiliates of that person; or
- (b) is wholly owned by two or more unrelated persons and intends to carry on international insurance business, excluding reinsurance business, not less than 50% of the net premiums written in respect of which, will be written for the purpose of—
  - (i) insuring the risks of any of those persons or of any affiliates of any of those persons; or
  - (ii) insuring risks which arise out of the business or operations of those persons or any affiliates of any of those persons.

### **Category 4 International Insurer's Licence**

A Category 4 licence may be issued to a company for the carrying on of such international insurance business, excluding reinsurance, as may be approved by the Commission.

### **Category 5 Reinsurer's Licence**

A Category 4 licence may be issued to a company for the carrying on of international insurance business, which comprises solely of reinsurance business, including open market reinsurance business.

## **SCHEDULE 2**

### **MODIFICATION AND DISAPPLICATION OF THE INSURANCE ACT**

**Please confirm the full name of your organisation:**

**Please provide your business address:**

**Please provide the following contact details:**

**Contact Name:**

**E-mail address:**

**Telephone Number:**

**Postal Address:**



THE FINANCIAL SERVICES COMMISSION, MONTENDER SUBMISSION ANTI-COLLUSION CERTIFICATE

I/WE CERTIFY THAT THIS TENDER IS MADE IN GOOD FAITH, AND THAT WE HAVE NOT FIXED OR ADJUSTED THE AMOUNT OF THE TENDER BY OR UNDER OR IN ACCORDANCE WITH ANY AGREEMENT OR ARRANGEMENT WITH ANY OTHER PERSON. I/WE ALSO CERTIFY THAT WE HAVE NOT AND I/WE UNDERTAKE THAT WE WILL NOT BEFORE THE AWARD OF ANY CONTRACT FOR THE WORK:

DISCLOSE THE TENDER PRICE OR ANY OTHER FIGURES OR OTHER INFORMATION IN CONNECTION WITH THE TENDER TO ANY OTHER PARTY (INCLUDING ANY OTHER COMPANY OR PART OF A COMPANY FORMING PART OF A GROUP OF COMPANIES OF WHICH I AM/WE ARE A PART OF) NOR TO ANY SUB-CONTRACTOR (WHETHER NOMINATED OR DOMESTIC) NOR SUPPLIER (WHETHER NOMINATED OR DOMESTIC) OR ANY OTHER PERSON TO WHOM SUCH DISCLOSURE COULD HAVE THE EFFECT OF PREVENTING OR RESTRICTING FULL COMPETITION IN THIS TENDERING EXERCISE

ENTER INTO ANY AGREEMENT OR ARRANGEMENT WITH ANY PERSON THAT THEY SHALL REFRAIN FROM TENDERING, THAT THEY SHALL WITHDRAW ANY TENDER ONCE OFFERED OR VARY THE AMOUNT OF ANY TENDER TO BE SUBMITTED OR OTHERWISE COLLUDE WITH ANY PERSON WITH THE INTENT OF PREVENTING OR RESTRICTING FULL COMPETITION

PAY, GIVE OR OFFER PAY OR GIVE ANY SUM OF MONEY OR OTHER VALUABLE CONSIDERATION DIRECTLY OR INDIRECTLY TO ANY PERSON FOR DOING OR HAVING DONE OR CAUSING OR HAVING CAUSED TO BE DONE IN RELATION TO ANOTHER TENDER OR PROPOSED TENDER FOR THE WORK ANY ACT OR THING OF THE SORT DESCRIBED AT I), II) OR III) ABOVE.

I/WE FURTHER DECLARE THAT I/WE HAVE NO KNOWLEDGE EITHER OF ANY SUM QUOTED OR OF ANY OTHER PARTICULARS OF ANY OTHER TENDER FOR THIS CONTRACT BY ANY OTHER PARTY.

I/WE FURTHER CERTIFY THAT THE PRINCIPLES DESCRIBED ABOVE HAVE BEEN, OR WILL BE, BROUGHT TO THE ATTENTION OF ALL SUB-CONTRACTORS, SUPPLIERS AND ASSOCIATED COMPANIES PROVIDING SERVICES OR MATERIALS CONNECTED WITH THE TENDER AND ANY CONTRACT ENTERED INTO WITH SUCH SUB-CONTRACTORS, SUPPLIERS OR ASSOCIATED COMPANIES WILL BE MADE ON THE BASIS OF COMPLIANCE WITH THE ABOVE PRINCIPLES BY ALL PARTIES.

I/WE ACKNOWLEDGE THAT ANY BREACH OF THE FOREGOING PROVISIONS SHALL LEAD AUTOMATICALLY TO THIS TENDER BEING DISQUALIFIED AND MAY LEAD TO CRIMINAL OR CIVIL PROCEEDINGS. THE GOVERNMENT OF MONTserrat SHALL TREAT ANY TENDER RECEIVED IN CONFIDENCE BUT RESERVES THE RIGHT TO MAKE THE SAME AVAILABLE TO ANY OTHER FUNDING ORGANISATION OR STATUTORY REGULATORY AUTHORITY EITHER HAVING JURISDICTION OVER THE WORKS OR WHO MAY NOW OR AT ANY TIME IN THE FUTURE HAVE STATUTORY POWER TO REQUIRE DISCLOSURE OF THIS TENDER.

IN THIS CERTIFICATE, THE WORD 'PERSON' INCLUDES ANY PERSONS AND ANY BODY OR ASSOCIATION, INCORPORATED OR UNINCORPORATED; ANY AGREEMENT OR ARRANGEMENT INCLUDES ANY TRANSACTIONS, FORMAL OR INFORMAL AND WHETHER LEGALLY BINDING OR NOT; AND 'THE WORK' MEANS THE WORK IN RELATION TO WHICH THIS TENDER IS MADE.

SIGNATURE..... IN CAPACITY OF  
.....

DATE.....2018

DULY AUTHORISED TO SIGN TENDERS AND ACKNOWLEDGE THE CONTENTS OF THE ANTI-COLLUSION CERTIFICATE FOR AND ON BEHALF OF:

NAME OF

FIRM.....

FULL POSTAL ADDRESS.....

TELEPHONE NO..... FAX NO .....

