A BILL

entitled

INCORPORATED SEGREGATED ACCOUNTS COMPANIES ACT 2019

TABLE OF CONTENTS

PART 1
PRELIMINARY

1 Citation
2 Interpretation

PART 2
NATURE AND REGISTRATION OF INCORPORATED SEGREGATED ACCOUNTS COMPANIES

3 Application for registration of an ISAC
4 Notice and documents to be filed for registration
5 Registration of ISAC
6 Objection to registration as an ISAC
7 Memorandum of ISAC

PART 3
NATURE AND REGISTRATION OF INCORPORATED SEGREGATED ACCOUNTS

8 Incorporated segregated accounts
9 Nature of incorporated segregated account
10 Registration of incorporated segregated accounts
11 Memorandum of incorporated segregated account

PART 4
REGISTER OF ISAC AND INCORPORATED SEGREGATED ACCOUNTS

Register

12 Register of ISAC and incorporated segregated accounts
13 Certificate of registration
14 Amendment of certificate of registration
15 Cancellation of certificate of registration

Removal from register

16 Removal from the register: general
17 Removal from register: material breach

PART 5
ASSETS AND LIABILITIES, TRANSACTIONS OF ISAC AND INCORPORATED SEGREGATED ACCOUNTS

18 Assets and liabilities of ISAC and incorporated segregated accounts
19 Transactions
20 Registration of charges by incorporated segregated account

PART 6
MANAGEMENT AND ADMINISTRATION

21 Informing persons they are dealing with an ISAC or incorporated segregated account
22 Duties and powers of incorporated segregated account representative
23 Records of account
24 Financial statements
25 Financial Statements; Auditors
26 Minutes etc.
27 Register of directors and officers
28 Register of members
29 Register of incorporated segregated account owners
30 Inspection of the minute books
31 Annual general meetings
32 Auditors where no annual general meeting held

PART 7
MATERIAL CHANGES TO ISAC OR INCORPORATED SEGREGATED ACCOUNT

33 Material changes and notification thereof
34 Alteration of memorandum or amendment of bye-laws of incorporated segregated account
35 Transfer of incorporated segregated account to another ISAC
36 Transfer of non-registered company into an ISAC
37 Amalgamation, merger, discontinuance
38 Registration of incorporated segregated account as company under Companies Act 1981
39 Notice of registration of incorporated segregated account as a company under Companies Act 1981
40 Effect of registration of incorporated segregated account as a company under Companies Act 1981
41 Objection to registration of incorporated segregated account as a company
42 Documents provided to Registrar
43 Registration or transfer; no default

PART 8
RECEIVERSHIP AND WINDING UP

Receivership

44 Receivership orders
45 Application for receivership orders

46 Functions and powers of receiver
47 Discharge and variation of receivership orders
48 Remuneration of receiver

Winding up

49 Winding up of ISAC
50 Application of assets
51 Winding up of ISAC not to prejudice its incorporated segregated accounts
52 Directors of incorporated segregated account during winding up of its ISAC
53 No dissolution of ISAC until position of incorporated segregated accounts resolved
54 Winding up of incorporated segregated accounts
55 Costs of winding up; remuneration of liquidator

PART 9
GENERAL APPLICATION OF COMPANIES ACT 1981 ETC.

56 General application of Companies Act 1981
57 Application of Economic Substance Act 2018
58 Application of Registrar of Companies (Compliance Measures) Act 2017

PART 10
MISCELLANEOUS

59 Application for directions
60 Remedy in case of oppressive or prejudicial conduct
61 Striking off incorporated segregated account
62 Offences
63 Offences by bodies corporate
64 Appeals
65 Effect on transaction and interests in an incorporated segregated account of infringement of this Act
66 Suits and actions against Registrar and Official Receiver
67 Registrar and Official Receiver to be indemnified in respect of foreign suits
68 Fees
69 Confidentiality
70 Application of Public Access to Information Act 2010
71 Application of Personal Information Protection Act 2016
72 Regulations
73 Rules
74 Consequential amendment of the Companies Act 1981
75 Consequential amendments of Government Fees Regulations 1976
76 Commencement

WHEREAS it is expedient to provide for the registration and regulation of incorporated segregated accounts companies and incorporated segregated accounts and connected matters;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART 1

PRELIMINARY

Citation

1 This Act may be cited as the Incorporated Segregated Accounts Companies Act 2019.

Interpretation

2 (1) In this Act, unless the context otherwise requires—

"account owner" in relation to an incorporated segregated account means any person who is—

(a) the registered holder of shares, rights or interests in the incorporated segregated account; or

(b) expressly designated in the records of the ISAC as being an account owner in respect of that incorporated segregated account,

or both (a) and (b);

"appointed newspaper" means the newspaper appointed by the Registrar under the powers contained in the Companies Act 1981;

"appointed jurisdiction" has the meaning given in section 2 of the Companies Act 1981;

"Authority" means the Bermuda Monetary Authority as defined in section 1 of the Bermuda Monetary Authority Act 1969;

"being a financial institution" in relation to—

(a) an ISAC, means an ISAC that has been registered under section 5 by a company that is a financial institution;

(b) an incorporated segregated account, means an incorporated segregated account which has been registered under section 10 by an ISAC registered by a company that is a financial institution;

"company" means a company to which the Companies Act 1981 applies, and includes a company incorporated by a private Act if the company is registered under the Companies Act 1981;

"contract" includes written agreements, instruments or other writings (including electronic records) which create or affect rights or obligations;

"counterparty" means any party to a transaction to which the ISAC or an incorporated segregated account is a party other than the ISAC or incorporated segregated account itself;

"Court" means the Supreme Court;

"creditor" means—

(a) in respect of an ISAC, any person to whom any liability is owed by the ISAC; and

(b) in respect of an incorporated segregated account, any person to whom any liability is owed by the incorporated segregated account other than a member in his capacity as account owner;

"default fine" has the meaning given in section 280 of the Companies Act 1981;

"financial institution" means a financial institution as set out in the Third Schedule to the Bermuda Monetary Authority Act 1969;

"general account" means an account comprising all of the assets and liabilities of an ISAC which are not the property of an incorporated segregated account kept in accordance with section 23(2);

"incorporated segregated account" means a separate and distinct account (comprising or including entries recording data, assets, rights, contributions, liabilities and obligations of such account) of an ISAC—

(a) registered under this Act; and

(b) pertaining to an identified or identifiable pool of assets and liabilities of such account;

"incorporated segregated accounts company" or "ISAC" means a company which is registered under section 5;

"incorporated segregated account representative" has the meaning given in section 22;

"insurance business" has the meaning given in section 1(1) of the Insurance Act 1978;

"investment fund" has the meaning given in section 2 of the Investment Funds Act 2006;

"manager" means any person who, by virtue of an instrument or otherwise with the consent of an ISAC and the account owners of any incorporated segregated account, exercises management of that incorporated segregated account;

"member" means a member of an ISAC or, where the context requires, a member of an incorporated segregated account;

"memorandum" has the meaning given in section 2 of the Companies Act 1981;

"Minister" means the Minister of Finance or such other Minister as may be appointed to administer this Act;

"non-registered company" means a company that is neither an ISAC nor an incorporated segregated account registered under this Act;

"officer" in relation to an ISAC or incorporated segregated account, includes a director and the secretary of the ISAC or incorporated segregated account;

"prescribed fee" means such fee as may be prescribed under the Companies Act 1981, or by regulations made under the Government Fees Act 1965, as the case may be;

"register" means the register to be kept pursuant to section 12;

"registered" means, unless the context otherwise requires, registered under this Act;

"Registrar" means the Registrar of Companies appointed under the Companies Act 1981;

"security" in relation to an ISAC or incorporated segregated account, means any share, interest, note, bond, debenture, evidence of indebtedness, certificate, unit, warrant, or right conferring an option to acquire shares or any other right issued by or pertaining to the ISAC or incorporated segregated account;

"special resolution" means a resolution that has been passed by at least 75% of the votes cast by members of an ISAC, or members or account owners in the case of incorporated segregated accounts, as the case may be, entitled to vote on the resolution;

"transaction" means any dealing of whatever nature, which shall be evidenced by a contract or other instrument in writing, including the issue of any security—

(a) by which assets or liabilities become assets or liabilities of an ISAC or an incorporated segregated account, as the case may be;

(b) by which the assets or liabilities of an ISAC or an incorporated segregated account, as the case may be, are otherwise affected; or

(c) in the case of assets associated with an ISAC or an incorporated segregated account, as the case may be, by which assets and liabilities are intended by the parties to be applied to a risk of any nature, any dealing which exposes such assets to liability or loss;

"transfer agreement" means a written agreement between two ISACs under section 35, or between a non-registered company and an ISAC under section 36(2) setting out the terms of the transfer.

(2) For the purposes of this Act, except section 49(1) —

(a) an ISAC shall be deemed to be solvent if the general account is able to pay its liabilities as they become due;

(b) an incorporated segregated account shall be deemed to be solvent if it is able to pay its liabilities (excluding obligations to account owners in that capacity) as they become due.

(3) An ISAC is not, by reason only of the operation of its incorporated segregated accounts, carrying on trust business in or from within Bermuda for the purposes of the Trusts (Regulation of Trust Business) Act 2001.

PART 2

NATURE AND REGISTRATION OF INCORPORATED SEGREGATED ACCOUNTS COMPANIES

Application for registration of an ISAC

3 (1) Any company to which the Companies Act 1981 applies if it is—

(a) engaged in insurance business;

(b) operates as an investment fund; or

(c) a company other than a company described in paragraph (a) or (b), with the approval of the Minister,

may, by filing a notice under section 4, apply to be registered as an ISAC under this Act.

(2) From the date of its registration under this Act, an ISAC—

(a) shall be bound by this Act and, where applicable in accordance with section 56, the Companies Act 1981; and

(b) may establish one or more incorporated segregated accounts to which this Act, and where applicable in accordance with section 56, the Companies Act 1981, shall apply.

Notice and documents to be filed for registration

4 (1) The notice filed by the company with the Registrar under this section shall be in such form as the Registrar may determine and shall contain the following information—

(a) a statement that the company intends to establish and operate incorporated segregated accounts, with the name of each account to include the letters “ISA”;

(b) the nature of the business of the company;

(c) the date of incorporation of the company;

(d) a copy of the memorandum of the company;

(e) a statement that the company has made provision to account for incorporated segregated accounts in the manner set out in sections 23 and 24;

(f) a declaration stating whether the company operates or has operated segregated accounts under the Segregated Accounts Companies Act 2000,

(g) the proposed name, and the proposed secondary name (if any), of the ISAC which shall include the letters "ISAC";

(h) the address of the proposed registered office of the ISAC;

(i) the name and address of the proposed incorporated segregated account representative;

(j) the nature of the business of the ISAC;

(k) the proposed date of registration of the ISAC;

(l) the names and addresses of the proposed directors of the ISAC and, where they or any of them is a corporate body, then the name and address of the registered office of the corporate body that is proposed to be a director must also be filed;

(m) a copy of the proposed memorandum of the ISAC and the proposed memorandum of each proposed incorporated segregated account; and

(n) such information required by paragraphs (a), (e) and (f) of section 13(2) and section 13(2A) of the Companies Act 1981 in relation to the bye-laws of the ISAC and each incorporated segregated account,

and such other documents or information as the Registrar may reasonably require in relation to the company or the proposed ISAC.

(2) Where a company has conducted business prior to its filing a notice under subsection (1), the company shall also file with the Registrar a statutory declaration made by at least two directors, or where the company has only one director, the sole director, as at the date of the notice—

(a) setting out a true and accurate statement or description of—

(i) the assets and liabilities of the company as at a date within three months prior to the date of the notice;

(ii) any transaction or event which, as of the date of the notice—

(A) has occurred, or is expected to occur, between the date of the statement or description of assets and liabilities prepared pursuant to subparagraph (i) and the date of registration of the company as an ISAC;

(B) which, if it had occurred before the date of that statement or description, would have caused material changes to the assets and liabilities disclosed therein; and

(iii) the incorporated segregated accounts that the company intends to establish and the assets and liabilities which the company proposes to contribute to each of those incorporated segregated accounts; and

(b) declaring that on registration as an ISAC, the ISAC and each incorporated segregated account will be solvent and—

(i) no known creditor of the company or person who would, on the registration of the ISAC, be an account owner of any incorporated segregated account of the ISAC will be prejudiced;

(ii) the known creditors of the company, or as the case may be, 75% in number of those persons who would, on the registration of the ISAC, be the account owners of the incorporated segregated accounts of the ISAC, have consented in writing to the company proceeding to register as an ISAC, together with evidence of such consent; or

(iii) adequate notice has been given in accordance with subsection (3) to all known creditors and to those persons who would, on the registration of the ISAC, be the account owners of the ISAC and no creditor or person as aforesaid objected, within 28 days from the date of such notice, or publication of such notice, as the case may be, to the registration otherwise than on grounds that are frivolous or vexatious.

(3) For the purposes of subsection (2)(b)(iii) adequate notice is given if—

(a) a notice in writing is sent to each known creditor having a claim against the company that exceeds $1,000 and to each person who would, on the registration of the ISAC, be the account owners of the incorporated segregated accounts of the ISAC; and

(b) notice is published in an appointed newspaper, in each case stating that—

(i) the company intends to register as an ISAC; and

(ii) a creditor of the company or any person who would, on the registration of the ISAC, be an account owner of that ISAC may object to the registration within 28 days from the date of such notice, or publication of such notice, as the case may be.

(4) If there is any material alteration of the particulars set out in subsection (2) between the date of the notice or statutory declaration filed pursuant to subsection (1) and the date of registration, then the company shall give further notice to the Registrar of such alteration of particulars.

Registration of ISAC

5 (1) Upon application and upon payment of the prescribed fee the Registrar, if satisfied—

(a) that all documents, consents and information as are required for registration have been delivered to the Registrar;

(b) that the ISAC is capable of complying with this Act; and

(c) in the case of an ISAC being a financial institution, that the Authority has no objection to the registration,

may register the company as an ISAC.

(2) The Registrar may impose such conditions or requirements on the registration of an ISAC as he may deem fit.

(3) The Registrar may revoke or vary any condition or requirement imposed by him under subsection (2) by giving notice thereof to the ISAC, and after giving the ISAC the opportunity to be heard.

(4) Where the Registrar refuses to register a company as an ISAC pursuant to subsection (1), he shall not be bound to assign any reason for his refusal.

Objection to registration as an ISAC

6 (1) Subject to subsection (2), a member, a creditor or any person who would, on the registration of the company as an ISAC, be a member of that ISAC or an account owner of that ISAC who objects to the registration of the ISAC may apply to the Court for the annulment of the registration of the ISAC.

(2) An application under subsection (1) may only be made by—

(a) not less than 20% in number of such persons who would, on the registration of the ISAC, be members or account owners;

(b) not less than 20% in number of such persons who would, on the registration of the ISAC, be creditors; or

(c) not less than 20% in number of such persons as are mentioned in paragraphs (a) and (b) combined who would be members of the ISAC, account owners or creditors on registration,

provided that an application shall not be made by any person who has voted in favour of the registration or has given to the company a statement in writing duly signed that he, having had notice, consents to the registration.

(3) An application under subsection (1) shall be made within 28 days from the date of registration or such longer period, not to exceed 90 days, as the Court may on application permit, and shall be made on behalf of the persons entitled to make the application ("dissentient persons") by one or more of their number as they may appoint in writing for the purpose.

(4) On an application under subsection (1), the Court may—

(a) make an order annulling or confirming the registration, either wholly or in part, and on such terms and conditions as it thinks fit;

(b) adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase or other disposition of the interests of dissentient persons; and

(c) give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement,

provided that no part of the capital or contributions of the company or of any incorporated segregated account shall be expended in the purchase or other disposition of the interests of dissentient persons.

Memorandum of ISAC

7 (1) The memorandum of an ISAC shall state that it is an ISAC failing which it will not be recognised as an ISAC.

(2) The memorandum shall include the letters "ISAC" in the name of the ISAC.

(3) The memorandum of an ISAC may be amended as provided in section 12 of the Companies Act 1981.

(4) Where there is a material change, as that term is defined in section 33, with respect to an ISAC, the memorandum of the ISAC shall be amended to reflect that material change.

PART 3

NATURE AND REGISTRATION OF INCORPORATED SEGREGATED ACCOUNTS

Incorporated segregated accounts

8 (1) An incorporated segregated account proposed under section 4(1)(a) or otherwise, may not be established unless—

(a) a board resolution has been adopted by the ISAC to establish or incorporate one or more incorporated segregated accounts;

(b) all documents, consents and information as are required for the registration of the memorandum have been filed with the Registrar; and

(c) such information required by paragraphs (a), (e) and (f) of section 13(2) and section 13(2A) of the Companies Act 1981 in relation to the bye-laws of the incorporated segregated account have been filed with the Registrar.

(2) The board resolution of the ISAC shall approve and—

(a) state the name, and secondary name (if any), of the proposed incorporated segregated account which shall include the letters "ISA";

(b) adopt the proposed memorandum and bye-laws for each proposed incorporated segregated account;

(c) appoint a board for each proposed incorporated segregated account; and

(d) allocate liabilities, and the amounts thereof, to each proposed incorporated segregated account which it is proposed will carry on an existing business.

Nature of incorporated segregated account

9 (1) An incorporated segregated account is a legal person.

(2) Notwithstanding the provisions of any other enactment, an incorporated segregated account is not a subsidiary of its ISAC by virtue only of the fact that it is an incorporated segregated account of its ISAC.

(3) An incorporated segregated account may not itself be an ISAC.

(4) An incorporated segregated account shall have the same registered office as its ISAC.

(5) Unless otherwise expressly provided therein, the memorandum, of an incorporated segregated account shall be deemed to include a provision that the incorporated segregated account—

(a) has the capacity, rights, powers and privileges of a natural person;

(b) may own shares, rights or interests in its own ISAC;

(c) may own shares, rights or interests in, or be the account owner of, any other incorporated segregated account of its own ISAC; and

(d) may enter into contracts with other incorporated segregated accounts of its ISAC and with the ISAC itself.

Registration of incorporated segregated accounts

10 (1) Upon payment of the prescribed fee by the ISAC, the Registrar, if satisfied—

(a) that a board resolution of the ISAC and the documents, consents and information as required, in accordance with section 8, has been provided with respect to each proposed incorporated segregated account and filed with the Registrar by the ISAC;

(b) that the incorporated segregated account to which each board resolution relates is capable of complying with this Act; and

(c) in the case of an incorporated segregated account being a financial institution, that the Authority has no objection to the registration of the proposed incorporated segregated account,

may register any one or more of the proposed incorporated segregated accounts of that ISAC.

(2) The Registrar may impose such conditions or requirements on the registration of an incorporated segregated account as he may deem fit.

(3) The Registrar may revoke or vary any condition or requirement imposed under subsection (2) by giving notice thereof to the ISAC or its incorporated segregated accounts, as the case may be, and after giving the ISAC or incorporated segregated account the opportunity to be heard.

(4) Where the Registrar refuses to register an incorporated segregated account pursuant to subsection (1), he shall not be bound to assign any reason for his refusal.

Memorandum of incorporated segregated account

11 (1) Each incorporated segregated account shall have a memorandum of incorporated segregated account, and its memorandum shall state that it is an incorporated segregated account, failing which it will not be recognised as an incorporated segregated account.

(2) The memorandum of an incorporated segregated account shall also state—

(a) the objects of the incorporated segregated account or otherwise that its objects are unrestricted, within the meaning of the Companies Act 1981;

(b) the amount of capital with which the incorporated segregated account proposes to be registered;

(c) the maximum liability of an account owner to contribute to the assets of the incorporated segregated account to which he is the account owner; and

(d) such other matters set forth in section 7 of the Companies Act 1981, as are applicable.

(3) Each incorporated segregated account shall have bye-laws in accordance with section 13 of the Companies Act 1981.

PART 4

REGISTER OF ISAC AND INCORPORATED SEGREGATED ACCOUNTS

Register

Register of ISAC and incorporated segregated accounts

12 (1) The Registrar shall maintain in such form and manner as he may determine a register of ISAC and its incorporated segregated accounts.

(2) The register kept pursuant to subsection (1) shall be available for inspection by members of the public.

Certificate of registration

13 (1) After registering a company as an ISAC under section 5, or registering an incorporated segregated account under section 10, the Registrar shall issue a certificate of registration showing the name of the ISAC and the name of each incorporated segregated account, and the date of registration of the ISAC or of each incorporated segregated account, as the case may be.

(2) The Registrar shall place a copy of the certificate of registration referred to herein on the public file maintained by him in respect of the ISAC or its incorporated segregated accounts, as the case may be.

Amendment of certificate of registration

14 (1) A certificate of registration may be amended by filing a certificate of amendment thereto with the Registrar.

(2) The certificate of amendment shall set forth—

(a) the name of the ISAC or incorporated segregated account and, if applicable, its secondary name; and

(b) the amendment to the certificate of registration.

(3) In the case of an ISAC or an incorporated segregated account being a financial institution, the ISAC or incorporated segregated account, as the case may be, shall serve on the Authority a notice in writing—

(a) stating that the ISAC or incorporated segregated account has filed a certificate of amendment with the Registrar for amendment of its certificate of registration;

(b) containing such information as the Authority may reasonably direct; and

(c) requesting the Authority to confirm within 30 days of receipt of the notice whether the Authority objects to the proposed amendment of the certificate of registration of the ISAC or incorporated segregated account.

(4) The Registrar—

(a) on receiving a certificate of amendment changing an ISAC or incorporated segregated account's name;

(b) in the case of an ISAC or incorporated segregated account adopting a secondary name or changing its secondary name, on receiving the certified translation and copy of the text referred to in section 10A of the Companies Act 1981;

(c) provided the new name has been reserved in such manner required by the Registrar in accordance with the Companies Act 1981; and

(d) provided in the case of an ISAC or incorporated segregated account being a financial institution, there is no objection from the Authority,

shall enter the new name and, if applicable, the new secondary name on the register in place of the former name or names of the ISAC or incorporated segregated account.

(5) Unless otherwise provided in this Act or unless a later effective date or time (which shall be a date or time certain) is provided for in the certificate of amendment, a certificate of amendment shall be effective at the time of its filing with the Registrar.

(6) The procedure for the alteration of a memorandum that is set forth in section 12 of the Companies Act 1981, shall apply with any necessary modifications for the purposes of this section.

Cancellation of certificate of registration

15 (1) A certificate of registration issued under section 13 to an ISAC shall be cancelled—

(a) upon the dissolution of the ISAC;

(b) on the effective date or time of the amalgamation of the ISAC;

(c) on the effective date or time of the merger of the ISAC; or

(d) on the effective date or time of the discontinuance of the ISAC.

(2) A certificate of registration issued under section 13 shall be cancelled with respect to an incorporated segregated account—

(a) upon the dissolution of the incorporated segregated account;

(b) on the effective date or time of the amalgamation of the incorporated segregated account;

(c) on the effective date or time of the merger of the incorporated segregated account; or

(d) on the effective date or time of the transfer of the incorporated segregated account into a company under the Companies Act 1981.

(3) In the case of an ISAC or an incorporated segregated account being a financial institution, the Registrar shall notify the Authority in such form as he may determine of his intention to cancel the ISAC or incorporated segregated account's certificate of registration.

Removal from register

Removal from the register: general

16 (1) The Registrar, on receipt of a request in writing by an ISAC attaching thereto evidence of the consent in writing of—

(a) 75% of the members of the ISAC; and

(b) 75% in number of any counterparties who are creditors,

shall remove the ISAC or its incorporated segregated account, as the case may be, from the register and subject to subsection (3), the provisions of this Act shall cease to apply to the ISAC or incorporated segregated account that has been removed from the register.

(2) Subject to this section, the Registrar, on receipt of a request in writing by an ISAC and of the relevant incorporated segregated account for the removal of the incorporated segregated account from the register, attaching thereto —

(a) evidence of the consent in writing of 75% of the members of the ISAC; or

(b) evidence of the consent in writing of 75% in number of the account owners of the relevant incorporated segregated account of the ISAC and of 75% in number of any counterparties who are creditors,

shall remove the incorporated segregated account from the register and subject to subsection (4), the provisions of this Act shall cease to apply to the ISAC or incorporated segregated account that has been removed from the register.

(3) In the case of an ISAC or an incorporated segregated account being a financial institution, the ISAC or incorporated segregated account shall serve on the Authority a notice in writing—

(a) stating that the ISAC or incorporated segregated account has submitted a request to the Registrar for its removal from the register;

(b) containing such information as the Authority may reasonably direct; and

(c) requesting the Authority to confirm within 30 days of receipt of the notice whether the Authority objects to the proposed removal of the ISAC or incorporated segregated account from the register.

(4) The rights and obligations of any member and of any creditor shall be unaffected by the removal, and the powers of the ISAC or incorporated segregated account shall continue in respect of such accrued rights and obligations but solely for the discharge thereof.

(5) A request under subsection (1) shall be in such form as the Registrar may determine, but shall include a statutory declaration made by at least two directors of the ISAC or incorporated segregated account to the effect that—

(a) no creditor of the ISAC or incorporated segregated account, as the case may be, will be prejudiced by; or

(b) the known creditors have consented in writing to,

the removal of the ISAC or incorporated segregated account from the register.

(6) There shall be attached to the statutory declaration a true and accurate statement of—

(a) the assets and liabilities of the ISAC or incorporated segregated account as at a date within the three months prior to the date of the request; and

(b) a description of any transaction or event which—

(i) as of the date of the request, is expected to occur between the date of the statement of assets and liabilities prepared pursuant to paragraph (a) and the date of the removal of the ISAC or incorporated segregated account;

(ii) if it had occurred before the date of the statement of assets and liabilities, would have caused significant changes to the assets and liabilities disclosed therein;

(c) in the case of an ISAC, the incorporated segregated accounts which the ISAC has operated and the assets and liabilities which were assets and liabilities of each of those incorporated segregated accounts.

(7) If there is any material alteration of the particulars set out in the statement under subsection (6) between the date of the request given pursuant to subsection (1) and the removal of the ISAC or incorporated segregated account from the register, the ISAC or incorporated segregated account shall give notice to the Registrar of such alteration in particulars.

(8) An ISAC or incorporated segregated account shall circulate contemporaneously with the request to the Registrar under subsection (1) notice of that request to all members of the ISAC, or account owners of the incorporated segregated account, as the case may be, and to all creditors of the ISAC or incorporated segregated account.

(9) A member of an ISAC or account owner of the incorporated segregated account, as the case may be, or any creditor who is aggrieved by a request made pursuant to subsection (1) may, within 21 days of receipt of notice of the request, apply to the Registrar to ask that he refuse to remove the ISAC or incorporated segregated account from the register or, if the removal has already occurred, to reinstate the ISAC or incorporated segregated account on the register.

(10) Where an application has been made under subsection (9) and the Registrar has made a decision on the application, any person who is aggrieved by that decision may, within 21 days of the decision, appeal to the Court and the Court may hear the matter and make such order as it thinks fit.

(11) The making of a request pursuant to subsection (1) shall not of itself effect the removal of an ISAC or incorporated segregated account, as the case may be, from the register and the Registrar in his absolute discretion shall determine whether to give effect to the removal of the ISAC or incorporated segregated account from the register and, in this regard, may require such information from the ISAC or incorporated segregated account as he considers necessary to render such decision.

Removal from register: material breach

17 (1) Without prejudice to the provisions of Part VIII of the Companies Act 1981 (which relates to the powers of the Minister to investigate the affairs of a company), the Registrar may, whether on his own initiative or on application by a member of an ISAC, or an account owner of an incorporated segregated account or a counterparty, remove the ISAC or incorporated segregated account, as the case may be, from the register where the ISAC or incorporated segregated account, as the case may be, has materially breached—

(a) the provisions of this Act or a condition or requirement imposed under section 5(2) or 10(2); or

(b) the terms of any direction given pursuant to section 59 or regulations made under section 72.

(2) The rights and obligations of any member and of any creditor shall be unaffected by the removal, and the powers of the ISAC or incorporated segregated account shall continue in respect of such accrued rights and obligations but solely for the discharge thereof.

(3) Where the Registrar intends to remove an ISAC or incorporated segregated account from the register pursuant to subsection (1), he shall give the ISAC or incorporated

segregated account notice of his intention and, before giving effect to the removal of the ISAC or incorporated segregated account from the register, he shall take into account any representations made by the ISAC or incorporated segregated account within such period as may be specified in the notice.

(4) In the case of an ISAC or an incorporated segregated account being a financial institution, the Registrar shall notify the Authority in such form as he may determine of his intention to remove the ISAC or incorporated segregated account from the register.

PART 5

ASSETS AND LIABILITIES, TRANSACTIONS OF ISAC AND INCORPORATED SEGREGATED ACCOUNTS

Assets and liabilities of ISAC and incorporated segregated accounts

18 (1) An ISAC and its incorporated segregated accounts shall—

(a) keep the assets and liabilities of the ISAC separate and separately identifiable from the assets and liabilities of any of its incorporated segregated accounts; and

(b) keep the assets and liabilities of each incorporated segregated account distinguished, separate and separately identifiable—

(i) from the assets and liabilities of the ISAC; and

(ii) from the assets and liabilities of any other incorporated segregated account.

(2) The duty imposed by subsection (1) is not breached by reason only that the directors cause or permit assets of the ISAC or any of its incorporated segregated accounts to be collectively invested, or collectively managed by an investment manager, provided that the assets remain separately identifiable in accordance with subsection (1).

(3) Notwithstanding any enactment or rule of law to the contrary, but subject to this Act, any liability relating to an incorporated segregated account shall be a liability only of that incorporated segregated account and not the liability of any other incorporated segregated account and the rights of creditors in respect of such liabilities shall be rights only in respect of the relevant incorporated segregated account and not of any other incorporated segregated account.

(4) Any asset of an incorporated segregated account—

(a) shall constitute a separate fund which is—

(i) not part of the general account of the ISAC or the assets of any other incorporated segregated account and shall be held exclusively for the benefit of the account owners of the relevant incorporated segregated account and any counterparty to a transaction associated with that incorporated segregated account; and

(ii) available only to meet liabilities to the account owners and creditors of that incorporated segregated account; and

(b) shall not be available or used to meet liabilities to, and shall be absolutely and for all purposes protected from, the members of the ISAC and from the creditors of the ISAC who are not creditors with claims related to that incorporated segregated account.

(5) For the purposes of this Act, the Companies Act 1981 and otherwise at law, the assets recorded in the general account shall be the only assets of an ISAC available to meet liabilities of the ISAC that are not related to its incorporated segregated accounts.

Transactions

19 (1) An ISAC does not have power, by virtue only of its position as an ISAC, to enter into transactions on behalf of its incorporated segregated accounts.

(2) An incorporated segregated account does not have power, by virtue of its position as an incorporated segregated account, to enter into transactions on behalf of its ISAC.

(3) The directors of an ISAC and of each of its incorporated segregated accounts shall ensure that, in respect of every transaction that the ISAC, or incorporated segregated account, enters into—

(a) it is stated whether the transaction is being entered into by the ISAC or by an incorporated segregated account; and

(b) if by an incorporated segregated account, it states which incorporated segregated account.

Registration of charges by incorporated segregated account

20 (1) An incorporated segregated account registered under this Act interested in a charge on the assets of a company may apply to have that charge registered.

(2) Part V of the Companies Act 1981 shall apply with any necessary modifications to an application to register a charge under subsection (1) as it applies to an application for registration of a charge under that Part of that Act.

PART 6

MANAGEMENT AND ADMINISTRATION

Informing persons they are dealing with an ISAC or incorporated segregated account

21 (1) An ISAC shall—

(a) include the letters “ISAC” in its name;

(b) inform any person with whom it enters into a transaction or otherwise does business with that it is an ISAC; and

(c) include reference to the fact that it is an ISAC registered under this Act on its letterhead and contracts.

(2) The affairs of an incorporated segregated account shall be managed in such manner as shall be provided for in the bye-laws of the incorporated segregated account.

(3) Where a transaction relates to an incorporated segregated account, for the purposes of that transaction, the incorporated segregated account shall be identified in the records relating to that transaction.

(4) An incorporated segregated account shall—

(a) include the letters "ISA" in its name;

(b) inform any person with whom it enters into a transaction or otherwise does business with that it is an incorporated segregated account; and

(c) include reference to the fact that it is an incorporated segregated account registered under this Act on its letterhead and contracts.

Duties and powers of incorporated segregated account representative

22 (1) An ISAC shall appoint and retain an incorporated segregated account representative in Bermuda who shall be a person approved by the Minister as the incorporated segregated account representative of the ISAC.

(2) The particulars of the incorporated segregated account representative of an ISAC shall be included in the register of directors and officers of the ISAC maintained pursuant to section 92A of the Companies Act 1981.

(3) It is the duty of the incorporated segregated account representative within 30 days of it coming to his knowledge or his having reason to believe that the ISAC (not being a financial institution) for which he acts or any incorporated segregated account thereof—

(a) has failed to comply with—

(i) any requirement or condition imposed under section 5 or 10;

(ii) any requirement imposed by sections 21 to 32;

(iii) any direction given under section 59;

(iv) any regulations made under section 72; or

(b) has become involved in any criminal proceedings in Bermuda or elsewhere,

to make a written report to the Registrar in such form as the Registrar may direct.

(4) In the case of an ISAC or incorporated segregated account being a financial institution, the incorporated segregated account representative shall forthwith notify the Authority, in such manner as the Authority may direct—

(a) on his reaching a view that there is a likelihood of an ISAC or incorporated segregated account for which he acts becoming insolvent; or

(b) on its coming to his knowledge, or his having reason to believe, that an ISAC or incorporated segregated account for which he acts has failed to comply with subsection (3)(a) or has become involved as described in subsection (3)(b).

(5) Within 14 days of such notification to the Authority, the incorporated segregated account representative shall furnish the Authority with a report in writing setting out all the particulars of the case that are available to him.

(6) For the purposes of the performance of the duties imposed on him under this section, the incorporated segregated account representative may by notice in writing to an ISAC or any incorporated segregated account—

(a) requiring the ISAC or incorporated segregated account to provide him, at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information;

(b) requiring such ISAC or incorporated segregated account to produce, within such time and at such place as may be specified in the notice, such document or documents of such description as may be so specified;

(c) requiring, on production of evidence of his authority, any such ISAC or any incorporated segregated account to provide him forthwith with such information, or to produce to him forthwith such documents, as he may specify,

being such information or documents as he may reasonably require for the performance of his functions under this Act relating to such ISAC or incorporated segregated account, and the ISAC or incorporated segregated account shall comply with such notice.

(7) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Bermuda.

Records of account

23 (1) An ISAC and an incorporated segregated account shall each maintain—

(a) records of account in accordance with generally accepted accounting principles used in the preparation of the financial statements; and

(b) a record of each transaction entered into by the ISAC and each incorporated segregated account.

(2) An ISAC shall maintain a general account which records in accordance with this Act all of the assets and liabilities of the ISAC which are not assets and liabilities of an incorporated segregated account and which discloses any assets intended by the parties to be applied to a risk of any nature, and which therefore exposes such assets to liability or loss.

(3) The records of account referred to in subsection (1) shall be kept in accordance with section 83 of the Companies Act 1981, provided that in the case of an ISAC being a

financial institution to which the Insurance Act 1978 applies, the records may be kept at the principal office.

(4) The records of account of an ISAC may be inspected by a member of that ISAC and the records of any incorporated segregated account may be inspected by an account owner of that incorporated segregated account.

(5) The records of account of an ISAC and the records of an incorporated segregated account shall be separately maintained.

(6) If the records maintained with respect to an ISAC or an incorporated segregated account are not made available for inspection by any member of the ISAC or account owner of that incorporated segregated account, the Court may, on application by the affected member or account owner, by order compel immediate production of the records.

Financial statements

24 (1) An ISAC shall prepare or cause to be prepared financial statements in relation to the ISAC and each of its incorporated segregated accounts.

(2) The provisions of sections 84, 88 and 90 of the Companies Act 1981 shall apply, with the necessary modifications, to the preparation of financial statements under this section, and any reference in those provisions to "member" shall be construed as a reference to the account owner of an incorporated segregated account.

(3) Subject to section 25, the account owner of an incorporated segregated account may, for the purposes of section 88(1) of the Companies Act 1981, agree in writing to waive his right to have laid before a general meeting financial statements or the auditor's report thereon for an indefinite period but such waiver shall be expressed to be revocable at the option of such account owner.

(4) Subject to subsections (1),(2) and (3)—

(a) a copy of the financial statements of an ISAC shall be made available to the members of the ISAC; and

(b) a copy of the financial statements of an incorporated segregated account shall be made available to the account owners of that incorporated segregated account,

at such intervals and for such periods as are agreed between the ISAC and the members of the ISAC, or between the account owners and that incorporated segregated account, as the case may be, but in any event shall be made available not less than once in each financial year.

(5) If the financial statements of an ISAC or any of its incorporated segregated accounts, are not made available for inspection by the members of the ISAC or any account owner of that incorporated segregated account, the Court may, on application by the affected member or account owner, by order compel immediate production of the financial statements.

Financial Statements; Auditors

25 (1) The requirements of sections 84 and 89 of the Companies Act 1981 in respect of the laying of financial statements and the appointment of auditors apply to an incorporated segregated account unless that incorporated segregated account has elected—

(a) in its memorandum or bye-laws; or

(b) by way of special resolution,

that those requirements shall not apply.

(2) Where an incorporated segregated account has made an election under subsection (1), those requirements apply to the directors of the ISAC .

Minutes etc.

26 (1) The duties imposed on a company by section 81 of the Companies Act 1981 shall, in the case of an incorporated segregated account, be performed by its ISAC.

(2) If an ISAC fails to comply with subsection (1), the ISAC and every officer of the ISAC who is in default shall be liable to a default fine.

Register of directors and officers

27 (1) Each incorporated segregated account shall appoint directors and officers for the incorporated segregated account in accordance with sections 91 and 92 of the Companies Act 1981.

(2) The duties imposed on a company by section 92A of the Companies Act 1981 shall, in the case of an incorporated segregated account, be performed by its ISAC.

(3) An ISAC shall, where applicable, in addition to keeping a register of its directors and officers, keep separate registers of the directors and officers of each of its incorporated segregated accounts.

(4) If an ISAC fails to comply with this section the ISAC and every officer of the ISAC who is in default shall be liable to a default fine.

Register of members

28 (1) Every ISAC shall keep a register of its members and each incorporated segregated account and enter therein in respect of every member becoming a member after the day when this section comes into operation the particulars set forth in section 65(1) of the Companies Act 1981.

(2) The register of members shall be prima facie evidence of any matters by this Act directed or authorised to be inserted therein.

(3) If an ISAC fails to comply with subsection (1), the ISAC and every officer of the ISAC who is in default shall be liable to a default fine.

Register of incorporated segregated account owners

29 (1) An ISAC shall maintain a register of account owners setting out their respective interests in any incorporated segregated account together with the particulars required in respect of members of the ISAC as set out in section 65(1) of the Companies Act 1981.

(2) The register of incorporated segregated account owners—

(a) shall not be open to public inspection; and

(b) in the case of an ISAC which is an investment fund, the register of account owners shall not be open to inspection by any person without the consent of the ISAC, provided that an account owner shall be entitled to receive a copy of the information in the register pertaining to his interest in the incorporated segregated account.

(3) If an ISAC fails to comply with subsection (1), the ISAC and every officer of the ISAC who is in default shall be liable to a default fine.

Inspection of the minute books

30 (1) The duties imposed on a company by section 82 of the Companies Act 1981 are, in the case of an incorporated segregated account, to be performed by its ISAC.

(2) The penalties which are contained in section 82(3) of the Companies Act 1981 apply to a contravention of subsection (1).

Annual general meetings

31 An incorporated segregated account is not required to hold an annual general meeting as provided in section 71 of the Companies Act 1981 unless it shall be required by—

(a) its memorandum or bye-laws;

(b) a special resolution; or

(c) the Court, under section 76 of the Companies Act 1981.

Auditors where no annual general meeting held

32 If, in accordance with this section, and subject to section 31, an incorporated segregated account does not hold an annual general meeting—

(a) the duties that would be performed by account holders at an annual general meeting to appoint auditors under section 89 of the Companies Act 1981 shall be carried out by the directors of the incorporated segregated account—

(i) first, within a period of 18 months beginning on the date on which the incorporated segregated account is entitled to commence business; and

(ii) thereafter, at least once in every calendar year, and not more than 15 months may elapse between successive appointments of auditors;

(b) the directors of the incorporated segregated account shall fix the remuneration of those auditors;

(c) the auditors report referred to in section 90 of the Companies Act 1981 shall be made by reference to the record of accounts referred to in section 23 and;

(d) the auditor's report is not to be read before the ISAC in general meeting in accordance with section 84(1)(b) of the Companies Act 1981, but the directors shall annex a copy of it to the incorporated segregated account's balance sheet set out in accordance with section 24.

PART 7

MATERIAL CHANGES TO ISAC OR INCORPORATED SEGREGATED ACCOUNT

Material changes and notification thereof

33 (1) This section applies where a material change is made, or proposed to be made, by or in relation to an ISAC or an incorporated segregated account.

(2) For the purposes of this Part, "material change" means any amendment, transfer or other change set forth in this Part in relation to an ISAC or an incorporated segregated account.

(3) An ISAC or incorporated segregated account, not being a financial institution, that makes a material change shall notify the Registrar (in such form as the Registrar may determine) of such material change made by it which is given effect, within 30 days of such material change taking effect, or as provided in section 35(4) or 36(5), as the case may be.

(4) In the case of an ISAC or an incorporated segregated account being a financial institution, the ISAC or incorporated segregated account shall serve on the Authority a notice in writing—

(a) stating that the ISAC or incorporated segregated account intends to effect a material change and specifying the proposed material change;

(b) containing such information as the Authority may reasonably direct; and

(c) requesting the Authority to confirm within 30 days of receipt of the notice whether the Authority objects to the proposed material change.

Alteration of memorandum or amendment of bye-laws of incorporated segregated account

34 (1) The memorandum of an incorporated segregated account may be altered or the bye-laws of an incorporated segregated account may be amended—

(a) in the manner set out in its memorandum or bye-laws; or

(b) in the absence of a provision in the memorandum or bye-laws, by special resolution of the incorporated segregated account and with the consent of

its ISAC, and in accordance with section 12 of the Companies Act 1981 and section 13(5) of the Companies Act 1981 in the case of the bye-laws.

(2) Where there is a material change, as that term is defined in section 33, with respect to an incorporated segregated account the memorandum of the incorporated segregated account shall be altered and the bye-laws shall be amended to reflect that material change.

Transfer of incorporated segregated account to another ISAC

35 (1) An incorporated segregated account may be transferred from one ISAC to another ISAC in accordance with this section.

(2) Each ISAC that is a party to the transfer shall enter into a written transfer agreement.

(3) A transfer of an incorporated segregated account is approved when—

(a) the directors of each ISAC have approved the transfer agreement;

(b) the transfer agreement is approved by a special resolution of—

(i) the ISAC to which the incorporated segregated account is being transferred; and

(ii) the incorporated segregated account which is being transferred.

(4) Within 21 days of the transfer agreement being approved, the ISAC to which the incorporated segregated account is being transferred shall deliver to the Registrar—

(a) a copy of the special resolution of the ISAC approving the transfer agreement;

(b) a copy of the special resolution of the incorporated segregated account approving the transfer agreement;

(c) a copy of the transfer agreement;

(d) if applicable, a copy of the amended memorandum of the incorporated segregated account being transferred;

(e) a declaration made in accordance with subsection (5), signed by each director of the ISAC transferring the incorporated segregated account; and

(f) the prescribed fee.

(5) The declaration referred to in subsection (4)(e) shall state that each director believes on reasonable grounds that—

(a) the incorporated segregated account being transferred is able to discharge its liabilities as they fall due;

(b) no creditors will be prejudiced by the proposed transfer;

(c) the transfer agreement has been approved in accordance with this section; and

(d) the requirements of this section have been fulfilled.

(6) Upon receipt of the documents and prescribed fee, the Registrar shall issue to the incorporated segregated account a certificate of transfer of an incorporated segregated account, and the certificate shall state the date upon which the transfer has effect.

(7) Where an incorporated segregated account is transferred under this section—

(a) it ceases to be an incorporated segregated account of the ISAC which transferred it;

(b) it becomes an incorporated segregated account of the ISAC to which it has been transferred;

(c) its memorandum and bye-laws are those provided for in the transfer agreement;

(d) all property and rights to which it was entitled immediately before its transfer remain its property and rights;

(e) all civil and criminal liabilities and all contracts, debts and other obligations to which it was subject immediately before its transfer remain its liabilities, contracts, debts and other obligations; and

(f) all actions and other legal proceedings which, immediately before its transfer were pending by or against it, may be continued by or against it.

Transfer of non-registered company into an ISAC

36 (1) A non-registered company may become an incorporated segregated account of an ISAC in accordance with this section.

(2) The non-registered company and the ISAC shall enter into a written transfer agreement.

(3) The non-registered company shall change its name to comply with section 21 of this Act.

(4) A transfer of a non-registered company is approved when—

(a) the directors of the non-registered company and the ISAC have approved the transfer agreement; and

(b) the transfer agreement is approved by a special resolution of the non-registered company and the ISAC.

(5) Within 21 days of the transfer agreement being approved, the ISAC shall deliver to the Registrar—

(a) a copy of the special resolution of the non-registered company approving the transfer agreement;

(b) a copy of the special resolution of the ISAC approving the transfer agreement;

(c) a copy of the transfer agreement;

(d) a copy of the amended memorandum and such information required by paragraphs (a), (e) and (f) of section 13(2) and section 13(2A) of the Companies Act 1981 in respect of the bye-laws of the non-registered company to be adopted as the memorandum and bye-laws of the incorporated segregated account;

(e) a declaration made in accordance with subsection (6), signed by each director of the non-registered company and the ISAC; and

(f) the prescribed fee.

(6) The declaration referred to in subsection 5(e) shall state that each director believes on reasonable grounds that—

(a) the non-registered company is able to discharge its liabilities as they fall due;

(b) no creditors will be prejudiced;

(c) the transfer agreement has been approved in accordance with this section; and

(d) the requirements of this section have been fulfilled.

(7) Upon receipt of the documents and prescribed fee, the Registrar shall issue to the non-registered company a certificate evidencing its registration as an incorporated segregated account, and the certificate shall state the date upon which the registration has effect.

(8) Where a non-registered company becomes an incorporated segregated account of an ISAC under this section—

(a) its memorandum and bye-laws are those provided for in the transfer agreement;

(b) all property and rights to which it was entitled immediately before its registration remain its property and rights;

(c) all civil and criminal liabilities and all contracts, debts and other obligations to which it was subject immediately before its registration remain its liabilities, contracts, debts and other obligations; and

(d) all actions and other legal proceedings which immediately before its registration, were pending by or against it may be continued by or against it.

Amalgamation, merger, discontinuance

37 (1) Unless otherwise provided in its bye-laws, an ISAC may file the necessary documents with the Registrar to amalgamate or merge with another ISAC, or to discontinue to an appointed jurisdiction.

(2) Unless otherwise provided in its bye-laws, an incorporated segregated account may file the necessary documents with the Registrar to amalgamate or merge with another incorporated segregated account of its ISAC.

(3) Each ISAC or incorporated segregated account proposing to amalgamate or merge as set forth in subsection (1) or (2), as the case may be, shall enter into an agreement setting out the terms and means of effecting the amalgamation or merger, and the amalgamation or merger is approved when—

(a) the directors of each ISAC have approved the amalgamation or merger agreement;

(b) the amalgamation or merger agreement is approved—

(i) in the case of the proposed amalgamation or merger of ISACs under subsection (1), by a special resolution of the members of both ISAC; and

(ii) in the case of the proposed amalgamation or merger of incorporated segregated accounts under subsection (2), by the account owners of both incorporated segregated accounts,

and the agreement, required resolutions, certificates, declaration, documents or information and prescribed fee are filed with the Registrar.

(4) Part VII of the Companies Act 1981 shall apply with the necessary modifications in respect of a proposed amalgamation or merger under subsection (1) or (2), as they apply to an amalgamation or merger of a company under that Act, and Part XA shall apply in relation to a discontinuation of an ISAC.

(5) Pursuant to an amalgamation or merger under this section, the amalgamating or surviving ISAC or surviving incorporated segregated account, as the case may be, will continue as an ISAC or incorporated segregated account, and shall comply with the applicable provisions of this Act, and the Companies Act 1981.

(6) On the filing with the Registrar of a certificate of amalgamation or on the future effective date or time (which shall be a date or time certain) specified in a certificate of amalgamation filed with the Registrar——

(a) the amalgamation of the amalgamating ISAC, or incorporated segregated accounts, and their continuance as one ISAC or incorporated segregated account shall become effective;

(b) any amendment to the bye-laws of the amalgamated ISAC or incorporated segregated account, in accordance with the amalgamation agreement, shall become effective;

(c) the property of each amalgamating ISAC or incorporated segregated account shall become the property of the amalgamated ISAC or incorporated segregated account;

(d) the amalgamated ISAC or incorporated segregated account shall continue to be liable for the obligations of each amalgamating incorporated segregated account;

(e) an existing cause of action, claim or liability to prosecution shall be unaffected;

(f) a civil, criminal or administrative action or proceeding pending by or against an amalgamating ISAC or incorporated segregated account may be continued to be prosecuted by or against the amalgamated ISAC or incorporated segregated account;

(g) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating ISAC or incorporated segregated account may be enforced by or against the amalgamated ISAC or incorporated segregated account; and

(h) the certificate of amalgamation shall be deemed to be the certificate of incorporation of the amalgamated ISAC or incorporated segregated account; however, the date of incorporation of an ISAC or incorporated segregated account is its original date of incorporation and its amalgamation with another ISAC or incorporated segregated account does not alter its original date of incorporation.

(7) On the filing with the Registrar of a certificate of merger or on the future effective date or time specified in a certificate of merger filed with the Registrar—

(a) the merger of the merging ISAC or incorporated segregated account and the vesting of their undertaking, property and liabilities in the surviving ISAC or incorporated segregated account shall become effective;

(b) any amendment to the bye-laws of the surviving ISAC or incorporated segregated account, in accordance with the merger agreement, shall become effective;

(c) the surviving ISAC or incorporated segregated account shall continue to be liable for the obligations of each merging ISAC or incorporated segregated account;

(d) an existing cause of action, claim or liability to prosecution shall be unaffected;

(e) a civil, criminal or administrative action or proceeding pending by or against a merging ISAC or incorporated segregated account may be continued to be prosecuted by or against the surviving ISAC or incorporated segregated account;

(f) a conviction against, or ruling, order or judgment in favour of or against, a merging ISAC or incorporated segregated account may be enforced by or against the surviving ISAC or incorporated segregated account;

(g) the certificate of merger shall be deemed to be the certificate of incorporation of the surviving ISAC or incorporated segregated account; however, the date of incorporation of an ISAC or incorporated segregated account is its original date of incorporation and its merger with another

ISAC or incorporated segregated account does not alter its original date of incorporation;

(h) the Registrar shall strike off the register each registered merging ISAC or incorporated segregated account that is not the surviving ISAC or incorporated segregated account; and

(i) the cessation of a merging ISAC or incorporated segregated account that is not the surviving ISAC or incorporated segregated account in a merger shall not be a winding up within Part XIII of the Companies Act 1981.

(9) The effective date of the discontinuance of an ISAC pursuant to subsection (1) shall be the date that the continuation of such ISAC in the foreign jurisdiction is effective pursuant to the laws of the foreign jurisdiction, and such discontinuance and continuance shall not be deemed to operate to—

(a) create a new legal entity; or

(b) prejudice or affect the continuity of the body corporate which was formerly the ISAC that was subject to this Act,

and on the effective date of the discontinuance of an ISAC pursuant to subsection (1), this Act shall cease to apply to such ISAC except as is required by the provisions hereof.

Registration of incorporated segregated account as company under Companies Act 1981

38 (1) An incorporated segregated account may, by filing a notice under section 39(1), apply to be registered as a company under the Companies Act 1981.

(2) From the date of its registration as a company under the Companies Act 1981, an incorporated segregated account shall no longer be bound by this Act.

(3) An incorporated segregated account may not be registered as a company under the Companies Act 1981 unless—

(a) a special resolution of the members of the incorporated segregated account has been passed approving its registration under the Companies Act 1981 and filed with the Registrar;

(b) a special resolution of the members of the ISAC has been passed approving the registration of the incorporated segregated account under the Companies Act 1981 and filed with the Registrar;

(c) all other documents, consents and information as are required for the registration of its amended memorandum have been delivered to the Registrar;

(d) such information required by paragraphs (a), (e) and (f) of section 13(2), and section 13(2A) of the Companies Act 1981, in relation to the bye-laws of the incorporated segregated account have been filed with the Registrar;

(e) the names and addresses of proposed directors of the proposed company and, where the proposed directors or any thereof is a corporate body, then

the name and address of the registered office of the corporate body proposed to be a director should also be filed;

(f) in the case of the incorporated segregated account being a financial institution, that the Authority has no objection to the registration.

(4) The incorporated segregated account resolution shall approve and—

(a) state the proposed name of the company to be registered under the Companies Act 1981;

(b) adopt its memorandum and bye-laws.

Notice of registration of incorporated segregated account as a company under Companies Act 1981

39 (1) The notice to be filed under this section shall be in such form as the Registrar may determine but shall contain the following information—

(a) the name of the proposed company, which shall not include the expression "ISAC";

(b) a statement that the incorporated segregated account no longer intends to operate as an incorporated segregated account under this Act and that it wishes to register as a company under the Companies Act 1981;

(c) the address of the registered office of the proposed company;

(d) the nature of the business of the proposed company;

(e) the date of registration of the incorporated segregated account under this Act;

(f) a copy of the memorandum of the proposed company prepared in accordance with the requirements of the Companies Act 1981; and

(g) a statement that provision has been made to ensure that, as of the date of its registration as a company under the Companies Act 1981, the proposed company will meet all the requirements of, and otherwise operate in accordance with, the Companies Act 1981.

(2) Where the incorporated segregated account has conducted business prior to its registration, the company, in filing a notice under subsection (1), shall file with the Registrar a statutory declaration made by at least two directors of the incorporated segregated account as at the date of the notice—

(a) setting out a true and accurate statement or description of—

(i) the assets and liabilities of the incorporated segregated account as at a date within three months prior to the date of the notice; and

(ii) any transaction or event which—

(A) as of the date of the notice, has occurred, or is expected to occur, between the date of the statement of assets and liabilities prepared

pursuant to subparagraph (i) and the date of registration of the incorporated segregated account as a company;

(B) if it had occurred before the date of that statement, would have caused material changes to the assets and liabilities disclosed therein; and

(b) declaring that on registration, the incorporated segregated account and the proposed company will be solvent and—

(i) no known creditor of the incorporated segregated account will be prejudiced; and

(ii) the known creditors of the incorporated segregated account have consented in writing to the incorporated segregated account proceeding to register; or

(iii) adequate notice has been given in accordance with subsection (3) to all known creditors of the incorporated segregated account and no creditor objects to the registration otherwise than on grounds that are frivolous or vexatious.

(3) For the purposes of subsection (2)(b)(iii), adequate notice is given if—

(a) a notice in writing is sent to each known creditor having a claim against the incorporated segregated account that exceeds $1,000; and

(b) notice is published in an appointed newspaper,

in each case stating that the incorporated segregated account intends to register as a company and that a creditor of the incorporated segregated account may object to such registration within 28 days from the date of such notice, or publication of such notice, as the case may be.

(4) Where an incorporated segregated account—

(a) has conducted business prior to filing a notice under subsection (1); and

(b) has filed such notice,

it shall cause a copy of the notice to be contemporaneously given to all persons who, on the registration of the incorporated segregated account as a company, would be owners of the company and to its known creditors.

(5) If there is any material alteration of the particulars set out in subsection (2) between the date of the notice filed pursuant to subsection (1) and the date of registration, then the incorporated segregated account shall give further notice to the Registrar of such alteration of particulars.

Effect of registration of incorporated segregated account as a company under Companies Act 1981

40 (1) If the Registrar is satisfied that the proposed company will be in compliance with the Companies Act 1981, he shall register the memorandum whereupon it will become effective and—

(a) the Registrar shall issue a certificate of deposit of the memorandum in such form as the Minister may determine;

(b) the incorporated segregated account shall become a company to which the Companies Act 1981 and any other laws of Bermuda apply as if it had been incorporated under the Companies Act 1981 on the date of its registration;

(c) the memorandum shall be deemed to be the memorandum of association of the company in lieu of its original memorandum under this Act;

(d) the Registrar shall issue a certificate of registration in such form as the Minister may determine; and

(e) the Registrar shall forward a copy of the certificate of registration to the ISAC of which the company was previously an incorporated segregated account.

(2) The company registered pursuant to sections 38 and 39 hereof shall within one month after the date of registration of the memorandum pay the appropriate fee payable in respect of the company according to the Fifth Schedule to the Companies Act 1981.

(3) Upon the registration of an incorporated segregated account as a company under the Companies Act 1981—

(a) the property of the incorporated segregated account continues to be the property of the company;

(b) the company continues to be liable for the obligations of the incorporated segregated account;

(c) any existing cause of action, claim or liability to prosecution in respect of the incorporated segregated account is unaffected;

(d) any civil, criminal or administrative action or proceeding pending by or against the incorporated segregated account may be continued by or against the company; and

(e) any conviction against, or any ruling, order or judgment in favour of or against the incorporated segregated account may be enforced by or against the company.

(4) The registration of an incorporated segregated account as a company under the Companies Act 1981 shall not be deemed to create a new entity or prejudice or affect the continuity of the body corporate which was formerly an incorporated segregated account.

(5) The Courts shall apply the laws of evidence and the rules of procedure with the intent that no claimant against a company registered pursuant to sections 38 and 39 shall

be prejudiced in pursuing in or under the laws of Bermuda a bona fide claim that existed prior to the date of its registration as a company and which could have been pursued under this Act and any other laws then governing the incorporated segregated account.

Objection to registration of incorporated segregated account as a company

41 (1) Subject to subsection (2), a member of the ISAC or an account owner of the incorporated segregated account or creditor who objects to the registration of the incorporated segregated account as a company under the Companies Act 1981 may apply to the Court for the annulment of the registration of the incorporated segregated account as a company.

(2) An application to the Court under subsection (1) may only be made by—

(a) not less than 20% in number of such persons who are members of the ISAC;

(b) not less than 20% in number of such persons who would, on the registration of the incorporated segregated account as a company, be owners of the company;

(c) not less than 20% in number of such persons who would, on the registration of the incorporated segregated account as a company, be creditors of the company; or

(d) not less than 20% in number of such persons as are mentioned in paragraphs (b) and (c) combined who would be owners or creditors of the company on its registration,

provided that an application shall not be made by any person who has voted in favour of the registration or has been given to the incorporated segregated account a statement in writing duly signed that he, having had notice, consents to the registration.

(3) An application under subsection (1) shall be made within 45 days from the date of registration, and may be made on behalf of the persons entitled to make the application by one or more of their number as they may appoint in writing for the purpose.

(4) On an application under subsection (1), the Court may—

(a) make an order annulling or confirming the registration, either wholly or in part, and on such terms and conditions as it thinks fit;

(b) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase or other disposition of the interests of dissentient persons; and

(c) give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement,

provided that no part of the capital of the incorporated segregated account shall be expended in the purchase or other disposition of the interests of dissentient persons.

Documents provided to Registrar

42 (1) The Registrar, when performing functions under this Part, may rely upon the documents provided to him under this Part in all respects.

(2) The Registrar is not bound to enquire further as to whether the provisions of this Act have been complied with.

Registration or transfer; no default

43 The operation of sections 35, 36 and 38 is not to be regarded—

(a) as a breach of contract or confidence or otherwise as a civil wrong;

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or

(c) as—

(i) giving rise to any remedy in favour of a party to a contract or other instrument;

(ii) an event of default under any contract or other instrument; or

(iii) causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.

PART 8

RECEIVERSHIP AND WINDING UP

Receivership

Receivership orders

44 (1) Subject to the provisions of this section, if the Court is satisfied that—

(a) an ISAC is not solvent, a liquidation has been commenced in relation to the ISAC, or for other good reason it appears to the Court just and equitable that a receiver should be appointed; and

(b) the making of a receivership order under this section would achieve the purposes set out in subsection (3),

the Court may make a receivership order in respect of the general account of the ISAC.

(2) Subject to the provisions of this section, if the Court is satisfied that—

(a) an incorporated segregated account is not solvent, a liquidation has been commenced in relation to the incorporated segregated account, or for other good reason it appears to the Court just and equitable that a receiver should be appointed; and

(b) the making of a receivership order under this section would achieve the purposes set out in subsection (3),

the Court may make a receivership order in respect of the incorporated segregated account.

(3) A receivership order shall direct that the business and assets and liabilities of an ISAC or an incorporated segregated account shall be managed by a receiver specified in the order for the purpose of—

(a) the orderly management, sale, rehabilitation, run-off or termination of the business of, or attributable to, the ISAC or the incorporated segregated account; or

(b) the distribution of the assets and the payment of the liabilities of the ISAC or incorporated segregated account to those entitled thereto.

(4) No resolution for the winding up of an ISAC of which any incorporated segregated account is subject to a receivership order, shall be effective without leave of the Court.

(5) Part XIV of the Companies Act 1981 shall apply with the necessary modifications to receivership under this Act as it applies in respect of receivership of a company under that Act.

Application for receivership orders

45 (1) An application for a receivership order may be made—

(a) in the case of an ISAC, by—

(i) the directors of the ISAC;

(ii) any creditor of the ISAC in respect of that ISAC;

(iii) the Registrar; and

(iv) the Authority in the case of an ISAC being a financial institution.

(b) in the case of an incorporated segregated account, by—

(i) the directors of the ISAC;

(ii) the directors of the incorporated segregated account;

(iii) any creditor of the incorporated segregated account in respect of that incorporated segregated account;

(iv) any account owner of that incorporated segregated account;

(v) the Registrar; and

(vi) the Authority in the case of an incorporated segregated account being a financial institution.

(2) The Court, on hearing an application—

(a) for a receivership order; or

(b) for leave, pursuant to section 44(4), for a resolution for winding up,

may dismiss it, make an interim order, adjourn the hearing conditionally or unconditionally or make any other order that the Court thinks fit.

(3) Notice of an application to the Court for a receivership order in respect of an ISAC shall be served upon—

(a) the incorporated segregated account representative;

(b) each of its incorporated segregated accounts;

(c) the Registrar;

(d) the Authority, in respect of the ISAC being a financial institution; and

(e) such other persons (if any) as the Court may direct,

each of whom may be given an opportunity to make representations at the hearing date set by the Court, before the order is made.

(4) Notice of an application to the Court for a receivership order in respect of an incorporated segregated account shall be served upon—

(a) the ISAC;

(b) the incorporated segregated account;

(c) the Registrar;

(d) the Authority, the incorporated segregated account being a financial institution; and

(e) such other persons (if any) as the Court may direct,

each of whom shall be given an opportunity to make representations to the Court at the hearing date set by the Court, before the order is made.

Functions and powers of receiver

46 (1) The receiver—

(a) may do all such things as may be necessary for the purposes set out in section 44(3); and

(b) shall have all the functions and powers of the directors and managers of the ISAC—

(i) in respect of the business and assets and liabilities of the ISAC; and

(ii) in respect of the business and assets and liabilities of the incorporated segregated account.

(2) The receiver may at any time apply to the Court for—

(a) directions as to the extent or exercise of any function or power; or

(b) the receivership order to be discharged or varied.

(3) In exercising his functions or powers the receiver is deemed to act as the agent in respect of the ISAC or the incorporated segregated account, and does not incur personal liability except to the extent that his conduct amounts to misfeasance.

(4) During the currency of a receivership order the functions and powers of the directors and managers cease, and the functions and powers of any liquidator of the ISAC are stayed, in respect of the business and assets of the incorporated segregated account in respect of which the receivership order was made.

(5) At any time after the appointment of a receiver in respect of an incorporated segregated account, the ISAC or any account owner, or creditor of that incorporated segregated account may, where an action or proceeding against the incorporated segregated account in respect of that incorporated segregated account is pending, apply to the court for a stay of those proceedings, and, on such an application being made, the court may stay the proceedings accordingly on such terms as it thinks fit, or make any other order that it thinks fit.

Discharge and variation of receivership orders

47 (1) The Court may discharge a receivership order in any manner it sees fit including in circumstances where it appears to the Court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

(2) The Court, on hearing an application for the discharge or variation of a receivership order, may make any interim order it thinks fit or adjourn the hearing, conditionally or unconditionally.

(3) When making an order discharging the receiver, the Court may release the receiver from liability save in respect of misfeasance.

Remuneration of receiver

48 The remuneration of a receiver and any expenses properly incurred by him in the course of any receivership shall be payable in priority to all other claims from the assets of the ISAC or the incorporated segregated account, as the case may be, but not from assets of other incorporated segregated accounts not subject to the receivership order.

Winding up

Winding up of ISAC

49 (1) An ISAC shall be wound up in accordance with the provisions of this Act, the Companies Act 1981, the Companies (Winding-Up) Rules 1982 and any other Act or rules which apply to the winding up of a company, save that in the event of any conflict, the provisions of this Act shall prevail.

(2) For the purposes of determining whether an ISAC may be wound up on the ground of insolvency—

(a) a test of insolvency which applies under section 162 of the Companies Act 1981 and (in the case of an insurance company) section 33 of the Insurance Act 1978 shall apply; and

(b) assets and liabilities of its incorporated segregated accounts shall not be taken into account.

(3) Where—

(a) a petition for the winding up of an ISAC is presented pursuant to Part XIII of the Companies Act 1981 (which relates to winding up); and

(b) the ISAC is solvent as provided in section 2(2),

the Court may not proceed on the petition on any ground provided for in paragraph (a), (b), (c), (ca) or (d) of section 161 of the Companies Act 1981 and may not proceed unless the Court is satisfied that to proceed would be just and equitable in all the circumstances.

(4) An ISAC shall not be voluntarily wound up without the consent of the Registrar.

Application of assets

50 Notwithstanding any statutory provision or rule of law to the contrary, with respect to the winding up of an ISAC the liquidator shall—

(a) deal with the assets and liabilities of each incorporated segregated account only in accordance with this Act;

(b) ensure that the assets of one incorporated segregated account are not applied to the liabilities of any other incorporated segregated account or to the general account,

unless an asset or liability belongs to more than one incorporated segregated account, in which case the liquidator shall deal with the assets or liability in accordance with the terms of any relevant instrument or contract, and if there is no such instrument or contract, the liquidator shall deal with the assets and liabilities in such manner as the court shall direct.

Winding up of ISAC not to prejudice its incorporated segregated accounts

51 (1) In so far as is possible the winding up of an ISAC shall be carried out in such a way so as not to prejudice the affairs, business and property of any of its incorporated segregated accounts.

(2) During the winding up, the ISAC may continue to carry on business to the extent necessary for the continuance of the business of its incorporated segregated accounts.

Directors of incorporated segregated account during winding up of its ISAC

52 (1) The appointment of a liquidator in respect of an ISAC does not affect the position of the directors of its incorporated segregated accounts subject to any contrary direction by—

(a) the liquidator;

(b) the incorporated segregated accounts members in general meeting;

(c) the Registrar; or

(d) the Court,

in the course of a winding up.

(2) The Registrar may make an application to the Court for the Court to give a direction under subsection (1).

No dissolution of ISAC until position of incorporated segregated accounts resolved

53 An ISAC that is being wound up shall not be dissolved unless each of its incorporated segregated accounts is either—

(a) removed from the register under section 16, to become a non-registered company;

(b) transferred to another ISAC under section 35;

(c) amalgamated or merged under section 37 in accordance with the powers contained in the Companies Act 1981;

(d) registered under section 38 to become a company under the Companies Act 1981;

(e) continued as a body corporate under the law of another jurisdiction under the powers contained in the Companies Act 1981; or

(f) wound up,

and the Court may stay the dissolution on such terms as it thinks fit.

Winding up of incorporated segregated accounts

54 (1) Without prejudice to the generality of section 56(1), an incorporated segregated account shall be wound up in accordance with the provisions of this Act, the Companies Act 1981 and any other Act which applies to the winding up of a company, save that in the event of any conflict, the provisions of this Act shall prevail.

(2) Notwithstanding section 201 of the Companies Act 1981, an incorporated segregated account shall be wound up voluntarily in such manner as shall be provided for in the bye-laws of the incorporated segregated account.

(3) In the case of an incorporated segregated account being a financial institution, the incorporated segregated account shall serve on the Authority a notice in writing—

(a) stating that the incorporated segregated account has resolved to wind up voluntarily;

(b) containing such information as the Authority may reasonably direct; and

(c) requesting the Authority to confirm within 30 days of receipt of the notice whether the Authority objects to the proposed winding up of the incorporated segregated account from the register.

Costs of winding up; remuneration of liquidator

55 (1) All costs, charges and expenses properly incurred in the winding up, including the remuneration of a liquidator and any costs, charges and expenses properly incurred by him in the winding up shall be payable in priority to all other claims from the assets of the ISAC or the incorporated segregated account, as the case may be, but not from the assets of other incorporated segregated accounts not subject to the winding up order.

(2) The remuneration to be paid to the liquidator shall be apportioned by the liquidator to each incorporated segregated account in such amounts as would best reflect the duties performed by the liquidator and approved by the Court.

PART 9

GENERAL APPLICATION OF COMPANIES ACT 1981 ETC.

General application of Companies Act 1981

56 (1) Subject to this Act and any other enactment, the Companies Act 1981 applies with respect to an ISAC, and with respect to an incorporated segregated account, as if a reference in the Companies Act 1981—

(a) to a company, is a reference to an ISAC or incorporated segregated account;

(b) to the directors of a company, is a reference to the directors of the ISAC or incorporated segregated account;

(c) to the bye-laws of a company, is a reference to the bye-laws of the ISAC or incorporated segregated account;

(d) to the members of a company, is a reference to the members of an ISAC, or account owners of an incorporated segregated account;

(e) to shares, rights or interests in a company, is a reference to shares, rights or interests in the ISAC or incorporated segregated account;

(f) to the assets and liabilities of a company, is a reference to the assets and liabilities of the ISAC or incorporated segregated account;

(g) to the share capital of, or contributions of, a company, is a reference to the share capital or contributions of the ISAC or incorporated segregated account,

and an ISAC and incorporated segregated account shall comply with the provisions of that Act.

(2) An ISAC and an incorporated segregated account shall comply with the provisions of Part VIA of the Companies Act 1981 which relate to beneficial ownership.

(3) To the extent possible, the provisions of this Act shall be construed consistently with the provisions of the Companies Act 1981.

(4) In the event of an irreconcilable conflict between this Act and the Companies Act 1981, the provisions of this Act shall prevail.

Application of Economic Substance Act 2018

57 The provisions of the Economic Substance Act 2018 and the Regulations made thereunder shall apply to an ISAC and each incorporated segregated account as they apply in relation to entities under that Act.

Application of Registrar of Companies (Compliance Measures) Act 2017

58 The Registrar of Companies (Compliance Measures) Act 2017 applies for the purposes of this Act.

PART 10

MISCELLANEOUS

Application for directions

59 (1) A director of an ISAC or a director of an incorporated segregated account, as the case may be, may apply to the Court for directions as to how the director should or might act in any of the affairs of the ISAC or any incorporated segregated account, and upon such an application the Court may make such order as it thinks fit.

(2) An application under subsection (1) may be made ex parte.

(3) The Court hearing an application under this section may direct that the whole or any part of the application be heard in camera, and an application for a direction under this subsection is to be heard in camera unless the Court directs otherwise.

Remedy in case of oppressive or prejudicial conduct

60 An account owner of an incorporated segregated account may apply to the Court under section 111 of the Companies Act 1981 in respect of the incorporated segregated account or its ISAC, and section 111 applies to the application as if the applicant were a member of its ISAC.

Striking off incorporated segregated account

61 (1) Notwithstanding the powers contained in the Companies Act 1981 with respect to companies being struck off the register, an ISAC shall not be struck off the register unless each of its incorporated segregated accounts has been—

(a) removed from the register under section 16, to become a non-registered company;

(b) transferred to another ISAC under section 35;

(c) registered under section 38 to become a company under the Companies Act 1981;

(d) continued as a body corporate under the law of another jurisdiction under section 132G of the Companies Act 1981; or

(e) wound up.

(2) The Registrar shall notify the Authority in circumstances where he intends to strike an ISAC or incorporated segregated account, being a financial institution, off the register.

Offences

62 (1) Any person who—

(a) for any purpose under this Act makes a statement or declaration or provides a document that he knows or has reasonable grounds to believe to be false or misleading in a material particular;

(b) fails to comply with a condition or requirement under section 5 or section 10; or

(c) being an incorporated segregated account representative, fails to perform his duties under section 22,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of $5,000 or imprisonment for 12 months, or both such fine or term of imprisonment.

Offences by bodies corporate

63 (1) Where an offence under this Act is committed by a body corporate and it is proved that an officer of the body authorised, permitted, participated in, or failed to take all reasonable steps to prevent the commission of the offence, the officer, as well as the body corporate, commits the offence.

(2) In this section "officer" includes—

(a) a director or the secretary;

(b) a person purporting to act as a director or the secretary;

(c) if the affairs of the body corporate are managed by its members, the members.

Appeals

64 (1) An ISAC aggrieved by a decision of the Registrar to—

(a) add to or otherwise vary any condition or requirement on its registration under section 5 or the registration of any of its registered incorporated segregated account established by it under section 10; or

(b) refuse to approve a material change proposed by it under Part 7,

may appeal to the Court within 21 days or such longer period as the Court may allow after receipt of notification of any condition or requirement.

(2) An incorporated segregated account aggrieved by a decision of the Registrar to—

(a) add to or otherwise vary any condition or requirement imposed on its registration under section 10(2); or

(b) refuse to approve a material change proposed by it under Part 7,

may appeal to the Court within 21 days or such longer period as the Court may allow after receipt of notification of any condition or requirement or refusal.

(3) On appeal under this section, the Court may confirm, reverse, or modify the decision of the Registrar or remit the matter to him with the opinion of the Court thereon.

Effect on transaction and interests in an incorporated segregated account of infringement of this Act

65 No transaction or interest in an incorporated segregated account shall be void or voidable by reason only that at the relevant time the ISAC fails to comply with, or is in breach of, any provision of this Act.

Suits and actions against Registrar and Official Receiver

66 (1) No suit or action shall lie against the Registrar or Official Receiver or any person acting on their behalf in respect of anything done or omitted to be done in their official capacity in good faith without negligence.

(2) Nothing in subsection (1) shall be deemed to interfere with applications or references to the Court under Part XIII of the Companies Act 1981 (which relates to winding up).

Registrar and Official Receiver to be indemnified in respect of foreign suits

67 Neither the Registrar nor the Official Receiver shall be required to prosecute, defend or take part in any proceedings outside the jurisdiction of the Court unless he is indemnified by or on behalf of the person who wishes him to act against any judgment, order or costs that may be awarded against that person by deed, guarantee or deposit, as he may require.

Fees

68 (1) The prescribed fees shall be payable in respect of matters as provided under this Act.

(2) Subject to subsection (3)—

(a) the company seeking to form an ISAC shall at the time of filing of the notice for registration; and

(b) thereafter on or before 31 January in each year,

pay to the Registrar the fee referred to in subsection (1).

(3) Where a notice for renewal of registration of an ISAC or an incorporated segregated account is filed after 31 August in any year, the fee payable at the time of such filing shall be one half the amount referred to in subsection (1).

(4) Where no fee is prescribed under the Government Fees Regulations 1976 for a function performed by the Registrar under this Act, the fee to be imposed by the Registrar

shall be the applicable fee prescribed for that function under the Government Fees Regulations in relation to the Companies Act 1981.

Confidentiality

69 (1) Except in so far as may be necessary for the due performance of his functions under this Act or any other Act, the Registrar and any officers or other persons who are acting as an officer, a servant, an agent or an adviser of the Registrar shall preserve and aid in preserving confidentiality with regard to all matters relating to information or documents that may come to his knowledge in the course of the performance of his duties under this Act.

(2) Compliance by a person with any requirement under this Act to disclose or provide information is an absolute defence to any claim brought against that person in respect of any act done or any omission made by him in good faith in compliance with this Part.

(3) Nothing in this section shall preclude the disclosure of information for the purpose of enabling the Minister to exercise any functions conferred upon him by this Act or any other Act.

Application of Public Access to Information Act 2010

70 (1) Notwithstanding any provision of the Public Access to Information Act 2010, this section shall have effect.

(2) For the purposes of this Part, no person who—

(a) obtains information relating to any application, registration or other matter under this Act;

(b) obtains information pursuant to this Act; or

(c) receives a request under the Public Access to Information Act 2010 relating to information,

shall disclose the request or such information so requested.

Application of Personal Information Protection Act 2016

71 Nothing in this Act authorises a disclosure in contravention of any provision of the Personal Information Protection Act 2016 of personal information (as defined by that Act).

Regulations

72 (1) The Minister may make regulations for the purposes of this Act.

(2) Regulations may provide for their contravention to be an offence, for penalties not exceeding the maximum penalty imposed under this Act, appeals and savings and transitional matters.

(3) Regulations made under this section shall be subject to the negative resolution procedure.

Rules

73 (1) The Minister may make rules for the purposes of this Act.

(2) Rules made under this section shall be subject to the negative resolution procedure.

Consequential amendment of the Companies Act 1981

74 (1) The Companies Act 1981 is amended by inserting after section 132Q the following—

"Registration of an incorporated segregated account as a company

132R (1) Upon satisfaction of the requirements for transfer that are set out in sections 38 and 39 of the Incorporated Segregated Accounts Companies Act 2019, any incorporated segregated account may be registered as a company under this Act.

(2) With effect from the date indicated on the certificate of incorporation and the memorandum filed with the Registrar under section 39 of the Incorporated Segregated Accounts Companies Act 2019, the incorporated segregated account shall be governed as a company in accordance with this Act. ".

(2) The Companies Act 1981 is amended in the Fifth Schedule by adding the following—

" D INCORPORATED SEGREGATED ACCOUNTS COMPANIES

In addition to the annual fee otherwise payable under this Schedule an incorporated segregated accounts company registered under the Incorporated Segregated Accounts Companies Act 2019 shall pay an annual fee of $295 in respect of each incorporated segregated account operated by the company, subject to a maximum annual fee of $1,180 in the aggregate. "

Consequential amendments of Government Fees Regulations 1976

75 The Schedule to the Government Fees Regulations 1976 is amended by inserting after Head 36 the following—

“

Head 36A		
Incorporated Segregated Accounts Companies Act 2019		
(1)	Applying to register an incorporated segregated accounts company under section 5	$250.00
(2)	Applying to register an incorporated segregated account under section 10	$280.00
(3)	Issuing certificate of registration of an ISAC under section 13	$ 95.00
(4)	Amendment of certificate of registration under section 14	$180.00
(5)	Cancellation of registration of an ISAC or an incorporated segregated account under section 15	$190.00
(6)	Removal of ISAC or incorporated segregated account from Register under section 16	$320.00
(7)	Change of incorporated segregated account representative	$ 95.00
(8)	Registering a transfer agreement for transfer of incorporated segregated account between ISAC under section 35	$425.00
(9)	Registering the transfer agreement of a non-registered company to incorporated segregated accounts company under section 36	$425.00
(10)	Amalgamation or merger of two ISAC or two incorporated segregated accounts pursuant to section 37	$190.00
(11)	Registering each additional company or additional incorporated segregated account	$ 85.00
(12)	Registration of incorporated segregated account as a company under the Companies Act 1981	$425.00
(13)	Applying for the Registrar's consent to wind up an ISAC or an incorporated segregated account under section 49(4)	$ 95.00

”.

Commencement

76 This Act comes into operation on such day as the Minister may appoint by notice published in the Gazette.

INCORPORATED SEGREGATED ACCOUNTS COMPANIES BILL 2019

EXPLANATORY MEMORANDUM

The primary purpose of this Bill is to introduce a regime for the registration of incorporated segregated accounts companies (“hereinafter called “ISAC”) and governs the establishment of incorporated segregated accounts by ISAC. The ISAC is intended to be a hybrid of the existing segregated accounts company provided for by the Segregated Accounts Companies Act 2000 and the conventional company with limited liability.

Clause 1 provides a title for this Bill.

Clause 2 provides for the interpretation of the terms used in this Bill. This clause also confirms that an ISAC registered under this Bill is not, by reason only of the registration and operation of incorporated segregated accounts, to be taken as carrying on trust business under the Trust Companies Act 1991.

Clause 3 provides for a company to which the Companies Act 1981 applies to apply to be registered as an ISAC under this Bill. A company carrying on insurance or investment fund business may apply for registration as an ISAC, but all other companies must first obtain the approval of the Minister. Clause 3 also provides that both ISAC, as well as the incorporated segregated accounts established by an ISAC, will be bound by this Act. Where applicable, the Companies Act 1981 shall also apply as provided in clause 56.

Clause 4 provides for a notice to be filed in such form as the Registrar may determine for an application for registration as an ISAC. If a company applying to register an ISAC was in operation prior to its application, the said company is also required to file a statutory declaration. This Clause enables specified persons to object to the proposed registration of a company as an ISAC.

Clause 5 provides for determination of applications for registration of an ISAC. Registration may be granted subject to conditions.

Clause 6 provides for objections to be made to the Court with respect to the registration of an ISAC, and sets forth the prerequisites.

Clause 7 requires that the memorandum of association of an ISAC states that it is an ISAC. If it does not, the company registered under this Act will not be recognised as an ISAC.

Clause 8 provides the conditions under which an incorporated segregated account may be established.

Clause 9 provides for the legal personality of incorporated segregated accounts established under this Bill. As a legal person, an incorporated segregated account registered under this Bill will have the capacity to enter into transactions relating to the incorporated segregated account in its own right. But, an incorporated segregated account may not itself be an ISAC.

Clause 10 provides the requirements for registration of an incorporated segregated account. The Registrar may impose conditions on the registration of an incorporated segregated account .

Clause 11 specifies the information to be included in the memorandum of association of an incorporated segregated account.

Clause 12 requires the Registrar of Companies to maintain a register of ISAC and incorporated segregated accounts registered under this Bill.

Clause 13 requires the Registrar of Companies to issue a certificate of registration to ISACs and incorporated segregated accounts registered under this Bill.

Clause 14 makes provision for the amendment of the certificate of registration.

Clause 15 makes provision for cancellation of a certificate of registration.

Clause 16 authorises the Registrar of Companies to remove an ISAC or an incorporated segregated account from the register and sets forth the circumstances in which such removal could occur.

Clause 17 authorises the Registrar of Companies to remove an ISAC or an incorporated segregated account from the register if the Registrar is satisfied that either there has been a material breach of the provisions of this Bill, or directions given or regulations made hereunder.

Clause 18 requires that the assets and liabilities of an ISAC be kept separate from each incorporated segregated account. This clause also provides that assets and liabilities of each incorporated segregated account be kept separate and separately identifiable from the assets and liabilities of any other incorporated segregated account. Liabilities with respect to one incorporated segregated account shall be the liability of that incorporated segregated account solely.

Clause 19 prohibits an incorporated segregated account from entering into a transaction on behalf of an ISAC, and vice versa. The directors shall ensure that transactions being entered into clearly state whether the transaction involves a specified incorporated segregated account or the ISAC.

Clause 20 provides for registration of charges by an incorporated segregated account.

Clause 21 requires that an ISAC include in its name the letters “ISAC” and that it informs all those it does business with that it is an ISAC.

Clause 22 requires each ISAC to appoint an incorporated segregated account representative in Bermuda. This clause also provides for the duties of the incorporated segregated account representative, and confers powers to enable him to perform his duties. Where an ISAC or incorporated segregated account is a financial institution, the incorporated segregated account representative must submit a report to the Bermuda Monetary Authority (“BMA”) in certain circumstances.

Clause 23 requires an ISAC to keep records of account.

Clause 24 requires an ISAC to prepare or cause to be prepared financial statements for the ISAC and each incorporated segregated account.

Clause 25 requires an incorporated segregated account to lay financial statements and appoint an auditor.

Clause 26 requires an ISAC to comply with the duties imposed by section 81 of the Companies Act 1981 with respect to each of its incorporated segregated accounts. Section 81 of the Companies Act 1981 relates to the minutes of meetings.

Clause 27 requires an ISAC to maintain a register of directors and officers for itself and each of its incorporated segregated accounts, in accordance with section 92A of the Companies Act 1981.

Clause 28 requires an ISACs and an incorporated segregated account to maintain a register of its members.

Clause 29 requires an ISAC to maintain a register of account owners, which will not be open to public inspection.

Clause 30 provides for the duties imposed by section 82 of the Companies Act 1981 to be performed by the ISAC in relation to each of its incorporated segregated accounts.

Clause 31 provides that an incorporated segregated account is not required to hold an annual general meeting (pursuant to section 71 of the Companies Act 1981) unless required by its memorandum of association, bye-laws, special resolution or the Court.

Clause 32 provides how incorporated segregated accounts are to appoint auditors and fix their remuneration, in the event that they do not hold an annual general meeting.

Clause 33 specifies that which would amount to a material change to an ISAC or incorporated segregated account for the purposes of this Bill and sets forth notification requirements. This clause provides that an ISAC or incorporated segregated account must notify the Registrar of any material change within 30 days after the change takes effect. But, an ISAC or incorporated segregated account that has been established by a company that is a financial institution, and the incorporated segregated accounts of such ISAC, must notify the Authority of material changes that it intends to be made. The BMA may object to such material change.

Clause 34 provides the manner in which the memorandum or bye-laws of an incorporated segregated account may be amended.

Clause 35 provides for an incorporated segregated account to be transferred from one ISAC, to another ISAC.

Clause 36 sets forth the requirements for a non-registered company to become an ISAC.

Clause 37 provides for amalgamation or merger of ISAC and incorporated segregated accounts.

Clause 38 provides for registration of an incorporated segregated account as a company under the Companies Act 1981, and specifies the requirements.

Clause 39 specifies the details to be included in the notice that an incorporated segregated account files when it seeks to register as a company under the Companies Act 1981.

Clause 40 provides the mechanism for registration of an incorporated segregated account as a company under the Companies Act 1981, and the effect of such registration.

Clause 41 makes provision for persons to object to the registration of an incorporated segregated account as a company under the Companies Act 1981.

Clause 42 allows the Registrar to rely on documents provided to him under this Bill.

Clause 43 deals with the operation of clauses 34, 35 and 36.

Clause 44 provides for the making of a receivership order.

Clause 45 provides for applications for a receivership order.

Clause 46 provides the functions and powers of a receiver.

Clause 47 provides the ways in which a Court may discharge or vary a receivership order.

Clause 48 provides for the remuneration of a receiver.

Clause 49 provides how an ISAC shall be wound up and the test for insolvency. An ISAC cannot be wound up without the consent of the Registrar of Companies.

Clause 50 provides for the remuneration of a liquidator.

Clause 51 provides that the winding up of an ISAC must not prejudice the affairs of its incorporated segregated accounts.

Clause 52 provides for the position of the directors during the winding up process.

Clause 53 provides that an ISAC that is being wound up shall not be dissolved unless the incorporated segregated accounts of the ISAC have been removed from the register, transferred to another ISAC, registered to be an incorporated accounts company themselves or continued as a body corporate.

Clause 54 provides for winding up of an incorporated segregated account.

Clause 55 provides for the application of assets.

Clause 56 provides how the Companies Act 1981 applies in relation to the affairs of an ISAC and an incorporated segregated account. This includes the provisions in the Companies Act relating to beneficial ownership.

Clause 57 provides for the application of the provisions of the Economic Substance Act 2018.

Clause 58 confirms the application of section 9 of the Registrar of Companies (Compliance Measures) Act 2017.

Clause 59 provides directors with the power to apply to the Court for directions.

Clause 60 provides for an application to the Court where it appears that the affairs of the account or company are being handled in an oppressive or prejudicial manner.

Clause 61 provides for strike-off.

Clause 62 provides for offences where there is a contravention of specified provisions of this Bill.

Clause 63 provides for circumstances where an offence is committed by a body corporate.

Clause 64 provides for appeals.

Clause 65 makes provision in relation to transactions or interest in an incorporated segregated accounts.

Clause 66 prohibits suits or actions being brought against the Registrar of Companies or the Official Receiver or any person acting on their behalf for things done or omitted to be done in their official capacity.

Clause 67 provides protection to the Registrar and the Official Receiver with respect to involvement in foreign suits.

Clause 68 provides for fees to be prescribed under the Government Fees Act 1965 for the purposes of this Bill.

Clause 69 requires the Registrar of Companies, and his officers and agents to preserve and aid in preserving confidentiality.

Clause 70 makes provision regarding the application of the Public Access to Information Act 2010.

Clause 71 makes provision regarding the application of the Personal Information and Protection Act 2016.

Clause 72 provides for the Minister to make regulations subject to the negative resolution procedure for the purposes of this Bill.

Clause 73 provides for the Minister to make rules subject to the negative resolution procedure for the purposes of this Bill.

Clause 74 provides for consequential amendments to the Fifth Schedule to the Companies Act 1981 to prescribe an annual fee for ISAC and incorporated segregated accounts.

Clause 75 provides for consequential amendments to the Government Fees Regulations 1976 to prescribe fees.

Clause 76 provides for the commencement of this Bill.