

# ACT NO. 8003

**BILL NO. 32-0042**

## **THIRTY-SECOND LEGISLATURE OF THE VIRGIN ISLANDS**

### **Regular Session**

**2017**

An Act repealing title 22 Virgin Islands Code section 1251(a) and adding chapter 14 entitled "The Virgin Islands Insurance Holding Company System Regulatory Act" to meet the accreditation standards established by the National Association of Insurance Commissioners and update the insurance laws of the Territory placing them on par with other United States jurisdictions, and providing greater and more effective protection to the policyholders of the Territory

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**WHEREAS**, the laws governing the insurance industry in the Territory are outdated as many of the laws were enacted in 1968 and have not been updated; and

**WHEREAS**, the laws governing the insurance industry in the Territory do not grant the Commissioner of Insurance of the Virgin Islands all of the necessary authority to effectively regulate the solvency of the multi-state domestic insurance industry in the Territory; and

**WHEREAS**, all other United States jurisdictions have periodically updated their insurance laws commensurate with the ever evolving insurance industry; and

**WHEREAS**, the National Association of Insurance Commissions (NAIC) has established core accreditation standards and a comprehensive set of laws known as the model laws and regulations, in order to assist United States jurisdictions in their regulation of the solvency of their multi-state domestic insurance industry, affording greater protection to the policyholders in the United States; and

**WHEREAS**, all of the 50 United States and the Commonwealth of Puerto have adopted the NAIC model laws and regulations and the accreditation requirements and are now in substantial compliance with the NAIC accreditation standards; and

**WHEREAS**, the Territory has not adopted most of the NAIC model laws and regulations that are necessary to obtain substantial compliance with the NAIC accreditation standards and is therefore not in compliance with the NAIC accreditation standards; and

**WHEREAS**, the enactment of the Virgin Islands Insurance Holding Company System Regulatory Act will place the Territory on par with other United States jurisdictions and will satisfy one of the NAIC requirements for bringing the Territory into compliance with the NAIC accreditation standards; Now, Therefore,

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

**SECTION 1.** Title 22 Virgin Islands Code section 1251, "Merger or consolidation" is repealed.

**SECTION 2.** Title 22 Virgin Islands Code is amended by adding chapter 14 to read as follows:

**"Chapter 14 Virgin Islands Insurance Holding Company System Regulation**

**§ 320 Short Title.** This chapter may be cited as "The Virgin Islands Insurance Holding Company System Regulatory Act".

**§ 321 Definitions.** As used in this chapter:

(a) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) "Commissioner" means the Commissioner of Insurance of the Virgin Islands.

(c) "Control" "controlling," "controlled by" and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by section 325(k) of this chapter. The Commissioner may determine, after furnishing all persons in interest with notice and opportunity to be heard and making specific findings of fact to support the determination that control exists in fact, notwithstanding the absence of a presumption to that effect.

(d) "Enterprise Risk" means any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, anything that would cause the insurer's Risk-Based Capital to fall into company action level as set forth in section 473 of chapter 20 of this title or

would cause the insurer to be in hazardous financial condition as set forth in section 519 of chapter 21 of this title.

(e) "Group-wide supervisor" means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the Commissioner under section 329 to have sufficient significant contacts with the internationally active insurance group.

(f) "Insurance Holding Company System" means insurance holding company system consisting of two or more affiliated persons, one or more of which is an insurer.

(g) "Insurer" has the meaning set forth in chapter 1, section 4 of this title. The term as used in this chapter does not include insurers regulated under title 22 virgin Islands Code, chapter 55 and 66, unless specifically provided otherwise in this chapter and it also does not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(h) "Internationally active insurance group" means an insurance holding company system that includes an insurer registered under section 325 and meets the following criteria:

- (1) Premiums are written in at least three countries;
- (2) The percentage of gross premiums written outside the United States is at least ten percent of the insurance holding company system's total gross written premiums; and
- (3) Based on a three-year rolling average, the total assets of the insurance holding company system are at least \$50,000,000,000 or the total gross written premiums of the insurance holding company system are at least \$10,000,000,000.

(i) "Merger" means combining two or more companies, generally by offering the stockholders of one company securities in the acquiring company in exchange for the surrender of their stock.

(j) "NAIC" means National Association of Insurance Commissioners.

(k) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but does not include any joint venture partnership exclusively engaged in owning, managing, leasing or developing real or tangible personal property.

(l) "SEC" means the Security Exchange Commission.

(m) "Security holder" means a specified person who owns any security of such person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

(n) "Subsidiary" means an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(o) "Voting Security" includes any security convertible into or evidencing a right to acquire a voting security.

### **§ 322 Subsidiaries of insurers.**

(a) Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

(1) any kind of insurance business authorized by the jurisdiction in which it is incorporated;

(2) acting as an insurance broker or as an insurance agent for its parent or for any of its parent's insurer subsidiaries;

(3) investing, reinvesting or trading in securities for its own account, that of its parent, a subsidiary of its parent, or an affiliate or subsidiary;

(4) management of an investment company subject to or registered pursuant to the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1- 80a-64, as amended, including related sales and services;

(5) acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, as amended;

(6) rendering investment advice to governments, government agencies, corporations or other organizations or groups;

(7) rendering other services related to the operations of an insurance business, such as actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services;

(8) ownership and management of assets that the parent corporation could itself own or manage;

(9) acting as administrative agent for a governmental instrumentality that is performing an insurance function;

(10) financing of insurance premiums, agents and other forms of consumer financing;

(11) any other business activity determined by the Commissioner to be reasonably ancillary to an insurance business; and

(12) owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.

(b) The aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this subsection must not exceed the limitations applicable to such investments by the insurer.

(c) In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under all other sections of this title, a domestic insurer may also:

(1) invest in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of 10 percent of the insurer's assets or 50 percent of the insurer's surplus as regards policyholders, if after these investments, the insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs. In calculating the amount of those investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations are excluded, and included are:

(A) total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and

(B) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities; and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;

(2) invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer if each subsidiary agrees to limit its investments in any asset so that such investments may not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph (1) of this subsection or in chapter 23 of this title applicable to the insurer. For the purpose of this subsection, "the total investment of the insurer" includes:

(A) any direct investment by the insurer in an asset, and

(B) the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, that are calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary;



(3) With the approval of the Commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; if after the investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(d) Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection (c) may not be subject to any of the otherwise applicable restrictions or prohibitions contained in this title applicable to such investments of insurers.

(e) Whether any investment made pursuant to subsection (c) meets the applicable requirements of that subsection is determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

(f) If an insurer ceases to control a subsidiary, it shall dispose of any investment made pursuant to this section within three years after the cessation of control or within such further time as the Commissioner may prescribe, unless at any time after the investment is made, the investment meets the requirements for investment under any other section of this chapter, and the insurer has so notified the Commissioner.

### **§ 323 Acquisition of control of or merger with domestic insurer.**

(a) (1) No person other than the issuer may make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly or by conversion or by exercise of any right to acquires, be in control of the insurer, and no person may enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time the offer, request or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, such person has filed with the Commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement or acquisition has been approved by the Commissioner in the manner prescribed in this chapter.

(2) For purposes of this section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the Commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. The Commissioner shall determine those instances in which the party seeking to divest or to acquire a controlling interest in an insurer, is required to file for and obtain approval of the transaction. The information remains confidential until the conclusion of the transaction unless the Commissioner, in the Commissioner's discretion determines that confidential treatment

will interfere with enforcement of this section. If the statement referred to in paragraph (1) is otherwise filed, this paragraph does not apply.

(3) With respect to a transaction subject to this section, the acquiring person must also file a pre-acquisition notification with the Commissioner, which must contain the information set forth in section 324(c)(1). A failure to file the notification subjects the person to penalties specified in section 324(e) (3) of this chapter.

(4) For purposes of this section, a domestic insurer includes any person controlling a domestic insurer unless the person, as determined by the Commissioner, is either directly or through its affiliates primarily engaged in business other than the business of insurance. For the purposes of this section, "person" does not include any securities broker holding, in the usual and customary broker's function, less than 20 percent of the voting securities of an insurance company or of any person which controls an insurance company.

(b) The statement to be filed with the Commissioner must be made under oath or affirmation and must contain the following:

(1) the name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to subsection (a) is effected hereinafter called the "acquiring party", and

(A) if the person is an individual, the principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past 10 years;

(B) if the person is not an individual, a report of the nature of its business operations during the past five years or for the lesser period as the person and any predecessors are in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are directors or executive officers or who are selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to such positions. The list must include for each individual the information required by subsection (b)(1)(A);

(2) the source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction where funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing consideration; where a source of consideration is a loan made in the lender's ordinary course of business, the identity of the lender remains confidential, if the person filing the statement so requests;

(3) fully audited financial information regarding the earnings and financial condition of each acquiring party for the preceding five fiscal years of each acquiring party

or for such lesser period as the acquiring party and any predecessors are in existence, and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement;

(4) any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(5) the number of shares of any security referred to in subsection (a) which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in subsection (a), and a statement as to the method by which the fairness of the proposal was arrived at;

(6) the amount of each class of any security referred to in subsection (a) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) a full description of any contracts, arrangements or understandings with respect to any security referred to in subsection (a) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description must identify the persons with whom the contracts, arrangements or understandings have been entered into;

(8) a description of the purchase of any security referred to in subsection (a) during the 12 calendar months before the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid;

(9) a description of any recommendations to purchase any security referred to in subsection (a) made during the 12 calendar months preceding the filing of the statement by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party;

(10) copies of all tender offers for, requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a), and, if distributed, of additional soliciting material relating to them;

(11) the term of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection (a) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

(12) an agreement by the person required to file the statement referred to in subsection (a) that it will provide the annual report, specified in section 325(*l*), for so long



as control exists. The insurer may alternatively file the most recently filed parent corporation reports that have been filed with the Security Exchange Commission, if appropriate;

(13) an acknowledgement by the person required to file the statement referred to in subsection (a) that the person and all subsidiaries within its control in the insurance holding company system will provide information to the Commissioner upon request as necessary to evaluate enterprise risk to the insurer. The insurer may alternatively file most recently filed parent corporation reports that have been filed with the SEC, if appropriate; and

(14) such additional information as the Commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.

(c) If the person required to file the statement referred to in subsection (a) is a partnership, limited partnership, syndicate or other group, the Commissioner may require that the information required under subsection (b), paragraphs (1) through (14) be provided for each partner of the partnership or limited partnership, each member of the syndicate or group, and each person who controls the partner or member. If any partner, member or person is a corporation or the person required to file the statement referred to in subsection (a) is a corporation, the Commissioner may require that the information required under subsection (b), paragraphs (1) through (14) be provided with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of the corporation.

(d) If there are any material changes to the facts set forth in the statement filed with the Commissioner and sent to the insurer pursuant to this section, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, must be filed with the Commissioner and sent to the insurer within two business days after the person learns of the change.

(e) If any offer, request, invitation, agreement or acquisition referred to in subsection (a) is proposed to be made by means of a registration statement under the Securities Act of 1933, 15 U.S.C. § 77a *et seq.*, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq.*, as amended, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (a) may use the documents in furnishing the information called for by that statement.

(f) (1) The Commissioner shall approve any merger or other acquisition of control referred to in subsection (a) unless, after a public hearing, the Commissioner finds that:

(A) After the change of control, the domestic insurer referred to in subsection (a) may not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(B) The effect of the merger or other acquisition of control would substantially lessen competition in insurance in this Territory or tend to create a monopoly. In applying the competitive standard in this subparagraph:

(i) The informational requirements of section 324(c)(1) and the standards of section 324(d)(2) apply;

(ii) The merger or other acquisition may not be disapproved if the Commissioner finds that any of the situations meeting the criteria provided by section 324(d)(3) exist; and

(iii) The Commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;

(C) The financial condition of any acquiring party is such as may jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders;

(D) The plans or proposals that the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(E) The competence, experience and integrity of those persons who controls the operation of the insurer are such that it is not in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(F) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

(2) The public hearing referred to in subsection (f)(1) must be held not later than 30 days after the statement required by subsection (a) is filed, and at least 20 days' notice must be given by the Commissioner to the person filing the statement. Not less than seven days' notice of the public hearing must be given by the person filing the statement to the insurer and to such other persons as may be designated by the Commissioner. The Commissioner shall make a determination within the 60-day period preceding the effective date of the proposed transaction. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, or any other person whose interest may be affected, has the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection with the hearing, is entitled to conduct discovery proceedings in the same manner as is presently allowed in the appropriate court of the Virgin Islands. All discovery proceedings must be concluded not later than three days prior to the commencement of the public hearing.

(3) If the proposed acquisition of control will require the approval of more than one Commissioner, the public hearing referred to in subsection (f) may be held on a consolidated basis upon request of the person filing the statement referred to in subsection (a). The person shall file the statement referred to in subsection (a) with the NAIC within five days of making the request for a public hearing. A Commissioner may opt out of a consolidated hearing, and shall provide notice to the applicant of the opt-out within 10 days of the receipt of the statement referred to in subsection (a). A hearing conducted on a consolidated basis must be public and must be held within the United States before the commissioners of the states in which the insurers are domiciled. The Commissioners shall hear and receive evidence. A commissioner may attend such hearing, in person or by telecommunication.

(4) In connection with a change of control of a domestic insurer, any determination by the Commissioner that the person acquiring control of the insurer is required to maintain or restore the capital of the insurer to the level required by the laws and regulations of the Virgin Islands must be made not later than 60 days after the date of notification of the change in control submitted pursuant to subsection (a)(1).

(5) The Commissioner may hire at the acquiring person's expense any attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed acquisition of control.

(g) The provisions of this section do not apply to any offer, request, invitation, agreement or acquisition that the Commissioner by order exempts as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or as otherwise not comprehended within the purposes of this section.

(h) The following are violations of this section:

(1) the failure to file any statement, amendment or other material required to be filed pursuant to subsection (a) or (b); or

(2) the effectuation or any attempt to effectuate an acquisition of, control of, divestiture of, or merger with, a domestic insurer unless the Commissioner has given approval.

(i) The courts of this Territory are vested with jurisdiction over every person not resident, domiciled or authorized to do business in the Virgin Islands who files a statement with the Commissioner under this section, and overall actions arising out of violations of this section, and each person is considered to have performed acts equivalent to and constituting an appointment by the person of the Commissioner to be the person's true and lawful attorney in fact upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all lawful process must be served on the Commissioner and

transmitted by registered or certified mail by the Commissioner to the person at his last known address.

**§ 324 Acquisitions involving insurers not otherwise covered.**

(a) The following definitions apply for the purposes of this section only:

(1) "Acquisition" means any agreement, arrangement or activity the consummation of which results in a person's acquiring directly or indirectly the control of another person, and includes but is not limited to the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.

(2) An "involved insurer" includes an insurer that either acquires or is acquired, is affiliated with an acquirer or an acquired insurer, or is the result of a merger.

(b) (1) Except as exempted in paragraph (2) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in the Territory.

(2) This section does not apply to the following:

(A) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in the Territory. If a purchase of securities results in a presumption of control under section 321(c), it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the Commissioner.

(B) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the Commissioner in accordance with subsection (c)(1) 30 days before to the proposed effective date of the acquisition. However, such pre-acquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of paragraph (2);

(C) The acquisition of already affiliated persons:

(D) An acquisition if, as an immediate result of the acquisition:

(i) In no market would the combined market share of the involved insurers exceed five percent of the total market.

(ii) There would be no increase in any market share, or



(iii) In no market would:

(I) The combined market share of the involved insurers exceed 12 percent of the total market, and

(II) The market share increases by more than two percent of the total market. For the purpose of paragraph (2)(D), a market means direct written insurance premium in the Territory for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in the Territory;

(E) An acquisition for which a pre-acquisition notification is required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business;

(F) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and the findings are communicated by the domiciliary commissioner to the Commissioner.

(c) An acquisition covered by subsection (b) may be subject to an order pursuant to subsection (e) unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The Commissioner shall give confidential treatment to information submitted under this section in the same manner as provided in section 330.

(1) The pre-acquisition notification must be in the form and contain information as prescribed by the NAIC relating to those markets which, under subsection (b)(2)(D), cause the acquisition not to be exempted from the provisions of this section. The Commissioner may require such additional material and information as considered necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (d). The required information may include an opinion of an economist as to the competitive impact of the acquisition in the Virgin Islands accompanied by a summary of the education and experience of the person indicating the person's ability to render an informed opinion.

(2) The waiting period required begins on the date of receipt by the Commissioner of a pre-acquisition notification and ends on the earlier of the thirtieth day after the date of receipt, or termination of the waiting period by the Commissioner. Before the end of the waiting period, the Commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, if the waiting period ends on the earlier of the thirtieth day after receipt of the additional information by the Commissioner or termination of the waiting period by the Commissioner.

(d) (1) The Commissioner may enter an order under subsection (e) (1) with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in the territory or tend to create a monopoly or if the insurer fails to file adequate information in compliance with subsection (c).

(2) In determining whether a proposed acquisition would violate the competitive standard of paragraph (d)(1), the Commissioner shall consider the following:

(A) Any acquisition covered under subsection (b) involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standards.

(i) If the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% more

(ii) Or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more

(iii) A highly concentrated market is one in which the share of the four largest insurers is 75 percent or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two insurers are involved, exceeding the total of the two columns in the table is prima facie evidence of violation of the competitive standard in paragraph (1) of this subsection. For the purpose of this item, the insurer with the largest share of the market is deemed to be Insurer A.

(B) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two largest to the eight largest, has increased by seven percent or more of the market over a period of time extending from any base year five to ten years before to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection (b) involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in paragraph (1) if:

(i) There is a significant trend toward increased concentration in the market;

(ii) One of the insurers involved is one of the insurers in a grouping of large insurers showing the requisite increase in the market share; and

(iii) Another involved insurer's market is two percent or more.

(C) For the purposes of paragraph (2) of this subsection:

(i) The term "insurer" includes any company or group of companies under common management, ownership or control;

(ii) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the Commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the NAIC and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in the Territory, and the relevant geographical market is assumed to be the Territory.

(iii) The burden of showing prima facie evidence of violation of the competitive standard rests upon the Commissioner.

(D) Even though an acquisition is not prima facie violative of the competitive standard under subparagraph (A) and (B), the Commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under subparagraph (A) and (B), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this section include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(3) An order may not be entered under subsection (e) (1) if:

(A) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from such economies exceed the public benefits which would arise from not lessening competition; or

(B) The acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits which would arise from not lessening competition.

(e) (1) (A) If an acquisition violates the standards of this section, the Commissioner may enter an order:

(i) requiring an involved insurer to cease and desist from doing business in the Territory with respect to the line or lines of insurance involved in the violation; or

(ii) imposing a reasonable monetary penalty, including any fees, costs and expenses associated with the hearing as allowed pursuant to this chapter; or

(iii) denying the application of an acquired or acquiring insurer for a license to do business in the Territory.

(B) The order may not be entered unless:

(i) there is a hearing;

(ii) notice of the hearing is issued before the end of the waiting period and not less than 15 days before the hearing; and

(iii) the hearing is concluded and the order is issued no later than 60 days after the date of the filing of the pre-acquisition notification with the Commissioner.

(C) Every order must be accompanied by a written decision of the Commissioner setting forth findings of fact and conclusions of law.

(D) An order pursuant to this subsection may not apply if the acquisition is not consummated.

(2) Any person who violates a cease and desist order of the Commissioner issued under paragraph (1) and while the order is in effect may, after notice and hearing and upon order of the Commissioner, be subject at the discretion of the Commissioner to one or more of the following:

(A) a monetary penalty of at least \$1,000 for every day of violation; or

(B) suspension or revocation of the person's license.



(3) Any insurer or other person who fails to make any filing required by this section and who also fails to demonstrate a good faith effort to comply with any filing requirement, is subject to a fine of not less than \$25,000.

(f) Sections 335(b), 335(c), and 337 do not apply to acquisitions covered under subsection (b) of this section.

### **§ 325 Registration of insurers.**

(a) Every insurer authorized to do business in the Territory and is a member of an insurance holding company system shall register with the Commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:

- (1) this section;
- (2) sections 326(a) (1), 326(b), 326(d); and
- (3) either section 326(a)(2) or a provision such as the following:

(A) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions not more than 15 days after the end of the month in which it learns of each change or addition.

(B) Any insurer subject to registration under this section shall register no later than 90 days after the effective date of this chapter or 15 days after it becomes subject to registration, whichever is later, and annually thereafter by March 15th of each year for the previous calendar year ending December 31st, unless the Commissioner for good cause shown extends the time for registration, and then within the extended time.

(C) The Commissioner may require any insurer authorized to do business in the state which is a member of an insurance holding company system, and which is not subject to registration under this section, to furnish a copy of the registration statement, the summary specified in subsection (c) or other information filed by the insurance company with the insurance regulatory authority of its domiciliary jurisdiction.

(b) Every insurer subject to registration shall file the registration statement with the Commissioner on a form and in a format prescribed by the NAIC and must contain the following current information:

- (1) the capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(2) the identity and relationship of every member of the insurance holding company system;

(3) the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the insurer and its affiliates:

(A) loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) purchases, sales or exchange of assets;

(C) transactions not in the ordinary course of business;

(D) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(E) all management agreements, service contracts and all cost-sharing arrangements;

(F) reinsurance agreements;

(G) dividends and other distributions to shareholders; and

(H) consolidated tax allocation agreements;

(4) any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(5) if requested by the Commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include but are not limited to annual audited financial statements filed with the SEC pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the Commissioner with the most recently filed parent corporation financial statements filed with the SEC;

(6) other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the Commissioner;

(7) statements that the insurer's board of directors is responsible for and oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

(8) any other information required by the Commissioner by regulations.

(c) All registration statements must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) No information need be disclosed on the registration statement filed pursuant to subsection (b) if the information is not material for the purposes of this section. Unless the Commissioner by rule, regulation or order provides otherwise sales, purchases, exchanges, loans or extensions of credit, investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of the 31st day of December next preceding are not material for purposes of this section.

(e) Subject to section 326(b), each registered insurer shall report to the Commissioner all dividends and other distributions to shareholders within 15 business days following the declaration of dividends.

(f) Any person within an insurance holding company system subject to registration is required to provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.

(g) The Commissioner shall terminate the registration of any insurer that demonstrates that it no longer is a member of an insurance holding company system.

(h) The Commissioner may require or allow two or more affiliated insurers subject to registration to file a consolidated registration statement.

(i) The Commissioner may allow an insurer that is authorized to do business in the Territory and is part of an insurance holding company system to register on behalf of any affiliated insurer is required to register under subsection (a) and to file all information and material required to be filed under this section.

(j) The provisions of this section are not applicable to any insurer, information or transaction if and to the extent that the Commissioner by rule, regulation or order exempts the same from the provisions of this section.

(k) Any person may file with the Commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming the affiliation. A disclaimer of affiliation is deemed to have been granted unless the Commissioner, within 30 days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. If there is a disallowance, the disclaiming party may request an administrative hearing, which must be granted. The disclaiming party must be relieved of its duty to register under this section if approval of the disclaimer has been granted by the Commissioner, or if the disclaimer is considered to have been approved.

(l) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report must, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report must be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the NAIC.

(m) Failure to file a registration statement or any summary of the registration statement or enterprise risk filing required by this section within the time specified for filing is a violation of this section.

**§ 326 Standards and management of an insurer within an insurance holding company System.**

(a) (1) Transactions within an insurance holding company system to which an insurer subject to registration is a party are subject to the following standards:

- (A) The terms must be fair and reasonable;
- (B) Agreements for cost sharing services and management must include provisions as required by rule issued by the Commissioner;
- (C) Charges or fees for services performed must be reasonable;
- (D) Expenses incurred and payment received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
- (E) The books, accounts and records of each party to all the transactions must be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties; and
- (F) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs.

(2) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to any materiality standards contained in subparagraphs (A) through (F), may not be entered into unless the insurer has notified the Commissioner in writing of its intention to enter into the transaction not less than 30 days prior thereto, or such shorter period as the Commissioner may permit, and the Commissioner has not disapproved it within that period. The notice for amendments or modifications must include the reasons for the change and the financial



impact on the domestic insurer. Informal notice must be reported, within 30 days after a termination of a previously filed agreement, to the Commissioner for determination of the type of filing required, if any.

(A) Sales, purchases, exchanges, loans, extensions of credit, or investments, provided the transactions are equal to or exceed:

(i) with regarding nonlife insurers, the lesser of three percent of the insurer's admitted assets or 25 percent of surplus as regards policyholders as of the 31st day of December next preceding;

(ii) with regarding to life insurers, three percent of the insurer's admitted assets as of the 31st day of December next preceding;

(B) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit provided the transactions are equal to or exceed:

(i) regarding nonlife insurers, the lesser of three percent of the insurer's admitted assets or 25 percent of surplus as regards policyholders as of the 31st day of December next preceding;

(ii) regarding life insurers, three percent of the insurer's admitted assets as of the 31st day of December next preceding;

(C) Reinsurance agreements or modifications thereto, including:

(i) all reinsurance pooling agreements; and

(ii) agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five percent of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a non-affiliate, if an agreement or understanding exists between the insurer and non-affiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(D) All management agreements, service contracts, tax allocation agreements, guarantees and all cost-sharing arrangements;

(E) Guarantees made by a domestic insurer, but a guarantee that is quantifiable as to amount is not subject to the notice requirements of this subparagraph unless it exceeds the lesser of one-half of one percent of the insurer's admitted assets or ten percent of surplus as regards policyholders as of the 31st day of December next preceding. Further, all guarantees that are not quantifiable as to the amount are subject to the notice requirements of this subparagraph;

(F) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to section 322, or authorized under any other section of this title, or in non-subsidiary insurance affiliates that are subject to the provisions of this chapter, are exempt from this requirement. When reviewing the notification required to be submitted pursuant to this section, the Commissioner shall examine prior and existing investments of this type to establish that the investments separately or together with other transactions, are not being made to contravene the dividend limitations set forth in subsection (b). However, an investment in a controlling person or in an affiliate may not be considered a dividend or distribution to shareholders when applying subsection (b); and

(G) Any material transactions, specified by regulation, that the Commissioner determines may adversely affect the interests of the insurer's policyholders.

(H) Nothing in this subparagraph authorizes or permits any transactions which, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

(3) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the Commissioner determines that separate transactions were entered into over any 12-month period for that purpose, the Commissioner may exercise the Commissioner's authority under section 333.

(4) The Commissioner, in reviewing transactions subject to paragraph (2), shall consider whether the transactions comply with the standards set forth in paragraph (1) and whether they may adversely affect the interests of policyholders.

(5) The Commissioner must be notified no later than 30 days after any investment of a domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds 10 percent of the corporation's voting securities.

(b) Dividends and other Distributions

(1) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the Commissioner has received notice of the declaration thereof and has not within that period disapproved the payment, or until the Commissioner has approved the payment not later than the thirty-day period. An emergency situation shall be considered on a cases-by-case basis at the discretion of the Commissioner. If an emergency situation occurs, the Commissioner may, at his discretion on a case-by-case basis, give due consideration to a request for an expedited review of the proposed transaction.

(2) For purposes of this subsection, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value, together with that of other dividends or distributions, made within the period of 12 consecutive months ending on the date on which the proposed dividend is scheduled for payment or distribution exceeds the greater of:

(A) 10% of the insurer's surplus as regards policyholders as of the 31<sup>st</sup> day of December next preceding; or

(B) The net income of the insurer for the 12-month period ending the 31<sup>st</sup> day of December next preceding, but does not include pro rata distributions of any class of the insurer's own securities.

(3) For the purposes of this subsection, the following requirements also apply:

(A) All dividends must be reasonable in relation to policyholder surplus, in accordance with rules promulgated by the Commissioner;

(B) The insurer is required to provide prior notice to the Commissioner five days after the declaration of the dividend and 10 days prior to the payment of the dividend; and

(C) There is an earned surplus restriction on all dividends. In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carry-forward must be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the Commissioner's approval, and the declaration confers no rights upon shareholders until the Commissioner has approved the payment of the dividend or distribution or the Commissioner has not disapproved payment within the thirty-day period referred to in paragraph (1).

(c) (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer may not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer must be managed so as to assure its separate operating identity consistent with this chapter.

(2) Nothing in this section may preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of subsection (a)(1).

(3) Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer must be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.

(4) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees have the responsibility of nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers considered principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.

(5) The provisions of paragraphs (3) and (4) do not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees that meet the requirements of paragraphs (3) and (4) with respect to such controlling entity.

(6) An insurer may make application to the Commissioner for a waiver from the requirements of this subsection, if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than \$300,000,000. An insurer may also make application to the Commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The Commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.

(d) For purposes of this chapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs, the following factors, among others, must be considered:



- (1) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;
- (2) the extent to which the insurer's business is diversified among several lines of insurance;
- (3) the number and size of risks insured in each line of business;
- (4) the extent of the geographical dispersion of the insurer's insured risks;
- (5) the nature and extent of the insurer's reinsurance program;
- (6) the quality, diversification and liquidity of the insurer's investment portfolio;
- (7) the recent past and projected future trend in the size of the insurer's investment portfolio;
- (8) the surplus as regards policyholders maintained by other comparable insurers;
- (9) the adequacy of the insurer's reserves; and
- (10) the quality and liquidity of investments in affiliates, which the Commissioner may treat as a disallowed asset whenever in the judgment of the Commissioner the investment so warrants.

### **§ 327 Examination.**

(a) Subject to the limitation contained in this section and in addition to the powers which the Commissioner has under chapters 3 and 5 of this title relating to the examination of insurers, the Commissioner has the power to examine any insurer registered under section 325 and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(b) (1) The Commissioner may order any insurer registered under section 325 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with this chapter.

(2) To determine compliance with this chapter, the Commissioner may order any insurer registered under section 325 to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or other method. If the insurer cannot obtain the information requested by the Commissioner, the insurer shall provide the Commissioner a

detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the Commissioner that the detailed explanation is without merit, the Commissioner may require, after notice and hearing, the insurer to pay a maximum penalty of \$5,000, or may suspend or revoke the insurer's license.

(c) The Commissioner may hire at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the Commissioner's staff as are reasonably necessary to assist in the conduct of the examination under subsection (a). Any persons so retained is under the direction and control of the Commissioner and shall act in a purely advisory capacity.

(d) Each registered insurer producing for examination records, books and papers pursuant to subsections (a) and (b) are liable for and shall pay the expense of examination in accordance with chapter 5, section 106 of this title.

(e) If the insurer fails to comply with an order, the Commissioner may examine the affiliates to obtain the information. The Commissioner also may issue subpoenas, to administer oaths, and to examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the Commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court. Every person is obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the Territory. A person is entitled to the same fees and mileage, if claimed, as a witness in any court of competent jurisdiction in the Territory, and fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony must be itemized and charged against, and be paid by, the company being examined.

### **§ 328 Supervisory colleges.**

(a) With respect to any insurer registered under section 325, and in accordance with subsection (c), the Commissioner may participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this chapter. The powers of the Commissioner with respect to supervisory colleges include, but are not limited to, the following:

- (1) initiating the establishment of a supervisory college;
- (2) clarifying the membership and participation of other supervisors in the supervisory college;
- (3) clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;

(4) coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and

(5) establishing a crisis management plan.

(b) Each registered insurer subject to this section is liable for and shall pay the reasonable expenses of the Commissioner's participation in a supervisory college in accordance with section 328(c), including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates, and the Commissioner may establish a regular assessment to the insurer for the payment of these expenses.

(c) In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with section 327, the Commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The Commissioner may enter into agreements in accordance with section 330(c) providing the basis for cooperation between the Commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section delegates to the supervisory college the authority of the Commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

### **§ 329 Group-wide supervision of internationally active insurance groups.**

(a) The Commissioner may act as the group-wide supervisor for any internationally active insurance group in accordance with the provisions of this section. However, the Commissioner may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

(1) does not have substantial insurance operations in the United States;

(2) has substantial insurance operations in the United States, but not in the Virgin Islands;

(3) has substantial insurance operations in the United States and the Virgin Islands, but the Commissioner has determined pursuant to the factors set forth in subsections (b) and (f) that the other regulatory official is the appropriate group-wide supervisor; or

(4) an insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the Commissioner make a determination or acknowledgment as to a group-wide supervisor pursuant to this section.

(b) In cooperation with other state, federal and international regulatory agencies, the Commissioner shall identify a single group-wide supervisor for an internationally active insurance

group. The Commissioner may determine that the Commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in the Territory. However, the Commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The Commissioner shall consider the following factors when making a determination or acknowledgment under this subsection:

(1) the place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group's written premiums, assets or liabilities;

(2) the place of domicile of the top-tiered insurers in the insurance holding company system of the internationally active insurance group;

(3) the location of the executive offices or largest operational offices of the internationally active insurance group;

(4) whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the Commissioner determines to be:

(A) substantially similar to the system of regulation provided under the laws of the Virgin Islands, or

(B) otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

(5) whether another regulatory official acting or seeking to act as the group-wide supervisor provides the Commissioner with reasonably reciprocal recognition and cooperation.

(6) However, a commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor must be made after consideration of the factors listed in paragraph (1) through (5), and must be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

(c) Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the Commissioner shall acknowledge that regulatory official as the group-wide supervisor. However, if a material change in the internationally active insurance group results in the internationally active insurance group's insurers domiciled in the Virgin Islands holding the largest share of the group's premiums, assets or liabilities, or the Virgin Islands being the place of domicile of the top-tiered insurers in the insurance holding company system of the internationally active insurance group, the



Commissioner shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such an internationally active insurance group pursuant to subsection (b).

(d) Pursuant to section 327, the Commissioner may collect from any insurer registered pursuant to section 325 all information necessary to determine whether the Commissioner may act as the group-wide supervisor of an internationally active insurance group or if the Commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Before issuing a determination that an internationally active insurance group is subject to group-wide supervision by the Commissioner, the Commissioner shall notify the insurer registered pursuant to section 325 and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group has not less than 30 days to provide the Commissioner with additional information pertinent to the pending determination. The Commissioner shall publish on its internet website the identity of internationally active insurance groups that the Commissioner has determined are subject to group-wide supervision by the Commissioner.

(e) If the Commissioner is the group-wide supervisor for an internationally active insurance group, the Commissioner may engage in any of the following group-wide supervision activities:

(1) assess the enterprise risks within the internationally active insurance group to ensure that:

(A) the material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management, and

(B) reasonable and effective mitigation measures are in place;

(2) request, from any member of an internationally active insurance group subject to the Commissioner's supervision, information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the internationally active insurance group regarding:

(A) governance, risk assessment and management.

(B) capital adequacy, and

(C) material intercompany transactions;

(3) coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance;

(4) communicate with other state, federal and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of section 330, through supervisory colleges as set forth in section 328 or otherwise;

(5) enter into agreements with or obtain documentation from any insurer registered under section 325, any member of the internationally active insurance group, and any other state, federal and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the Commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation may not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in the Virgin Islands is doing business in the Virgin Islands or is otherwise subject to jurisdiction of the Virgin Islands; and

(6) other group-wide supervision activities, consistent with the authorities and purposes enumerated above, as considered necessary by the Commissioner.

(f) If the Commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the NAIC is the group-wide supervisor, the Commissioner may reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, if:

(1) The Commissioner's cooperation is in compliance with the laws of the Virgin Islands; and

(2) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the Commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation is not reasonably reciprocal, the Commissioner may refuse recognition and cooperation.

(g) The Commissioner may enter into agreements with or obtain documentation from any insurer registered under section 325, any affiliate of the insurer, and other state, federal and international regulatory agencies for members of the internationally active insurance group that provide the basis for or otherwise clarify a regulatory official's role as group-wide supervisor.

(h) The Commissioner may promulgate regulations necessary for the administration of this section.

(i) A registered insurer subject to this section is liable for and shall pay the reasonable expenses of the Commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.

#### **§ 330 Confidential Treatment.**

(a) Documents, materials or other information in the possession or control of the Division of Banking, Insurance and Financial Regulations that are obtained by or disclosed to the Commissioner or any other person in the course of an examination or investigation made pursuant to section 327 and all information reported or provided to the Division Banking, Insurance and Financial Regulation pursuant to section 323(b)(12) and (13), section 325, section 326 and section 329 are confidential by law and privileged, are not subject to examination by the public, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action. However, the Commissioner may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties. The Commissioner may not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the Commissioner, after giving the insurer and its affiliates who are affected thereby notice and opportunity to be heard, determines that the interest of policyholders shareholders or the public is served by the publication thereof, in which event the Commissioner may publish all or any part in such manner as may be considered appropriate.

(b) Neither the Commissioner nor any person who received documents, materials or other information while acting under the authority of the Commissioner or with whom the documents, materials or other information are shared, are permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (a).

(c) In order to assist in the performance of the Commissioner's duties:

(1) The Commissioner may share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subsection (a), with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with local, state, federal, and international law enforcement authorities, including members of any supervisory college described in section 328, if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality.

(2) Notwithstanding paragraph (1), the Commissioner may share confidential and privileged documents, material, or information reported pursuant to section 325(l) only with commissioners of states having statutes or regulations substantially similar to subsection (a) and who have agreed in writing not to disclose such information.

(3) The Commissioner may receive documents, materials or information, including otherwise confidential and privileged documents, materials or information from the NAIC and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(4) The Commissioner shall enter into written agreements with the NAIC governing sharing and use of information provided pursuant to this chapter consistent with this subsection that must:

(A) specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC and its affiliates and subsidiaries, including procedures and protocols for sharing by the NAIC with other state, federal or international regulators;

(B) specify that ownership of information shared with the NAIC and its affiliates and subsidiaries remains with the Commissioner and the NAIC's use of the information is subject to the direction of the Commissioner;

(C) require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC is subject to a request or subpoena to the NAIC for disclosure or production; and

(D) require the NAIC and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the NAIC and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the NAIC and its affiliates and subsidiaries.

(d) The sharing of information by the Commissioner does not constitute a delegation of regulatory authority or rulemaking, and the Commissioner is solely responsible for the administration, execution and enforcement of the provisions of this chapter.

(e) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information may occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (c).

(f) Documents, materials or other information in the possession or control of the NAIC are confidential by law and privileged, are not subject to examination by the public, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action.

### **§ 331 Rules and Regulations.**

The Commissioner may, upon notice and opportunity for all interested persons to be heard, issue such rules, regulations and orders as are necessary to carry out the provisions of this chapter.

### **§ 332 Injunctions, prohibitions against voting securities, sequestration of voting securities.**

(a) Whenever it appears to the Commissioner that any insurer or any director, officer, employee or agent thereof has committed or is about to commit a violation of this chapter or of any rule, or order issued by the Commissioner, the Commissioner may, in accordance with the provisions of chapter 3, section 55 of this title, apply to any appropriate court of competent



jurisdiction in order to obtain an order enjoining the insurer or director, officer, employee or agent thereof from violating or continuing to violate this chapter or any rule, or order, and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditors and shareholders or the public may require.

(b) No security that is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this chapter or of any rule, or order issued by the Commissioner may be voted at any shareholder's meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at any such meeting may be invalidated by the voting of the securities, unless the action materially affects control of the insurer or unless the courts of this Territory have so ordered. If an insurer or the Commissioner has reason to believe that any security of the insurer has been or is about to be acquired in contravention of this chapter or of any rule, or order issued by the Commissioner; the insurer or the Commissioner may apply to any appropriate court of competent jurisdiction in the jurisdiction in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of section 323 or any rule, or order issued by the Commissioner to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders and for such other equitable relief as the nature of the case and the interest of the insurer's policyholders, creditor and shareholders or the public may require.

(c) If a person has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule, or order issued by the Commissioner, any appropriate court of competent jurisdiction in the jurisdiction in which the insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the insurer or the Commissioner, seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue such order as may be appropriate to effectuate this chapter.

(d) Notwithstanding any other provisions of law, for the purposes of this chapter the situs of the ownership of the securities of domestic insurers in the Virgin Islands.

### **§ 333 Sanctions.**

(a) Any insurer failing, without just cause, to file any registration statement as required in this chapter shall, after notice and hearing, pay a penalty of not more than \$1,000 for each day's delay, to be recovered by the Commissioner of Insurance and the penalty so recovered must be paid into the Insurance Guaranty Fund. The maximum penalty under this section is \$25,000. The Commissioner may reduce the penalty if the insurer demonstrates to the Commissioner that the imposition of the penalty constitutes a financial hardship to the insurer.

(b) Every director and officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly permits any of the officers or agents of the insurer to engage in transactions or make investments that are not properly reported or submitted pursuant to sections 325(a), 326(a)(2), or 326(b), or which violate this chapter, shall pay, in their individual capacity, a civil forfeiture of not more than \$5,000 per violation, after notice

and hearing before the Commissioner. In determining the amount of the civil forfeiture, the Commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(c) Whenever it appears to the Commissioner that any insurer subject to this chapter or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract that is subject to section 326 and that would not have been approved had the approval been requested, the Commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the Commissioner may also order the insurer to void any contracts and restore the status quo if the action is in the best interest of the policyholders, creditors or the public.

(d) Whenever it appears to the Commissioner that any insurer or any director, officer, employee or agent thereof has committed a willful violation of this chapter, the Commissioner may cause criminal proceedings to be instituted, in any appropriate court of competent jurisdiction in the jurisdiction in which the principle office of the insurer is located, against the insurer or the responsible director, officer, employee or agent thereof. Any insurer that willfully violates this chapter may be fined not more than \$25,000. Any individual who willfully violates this chapter may be fined in the individual's individual capacity not more than \$25,000 or be imprisoned for not less than one year or more than three years, or both.

(e) Any officer, director or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the Commissioner in the performance of the Commissioner's duties under this chapter, upon conviction must be imprisoned for not more than one year or fined not more than \$25,000, or both. Any fines imposed must be paid by the officer, director or employee in his individual capacity.

(f) Whenever it appears to the Commissioner that any person has committed a violation of section 323 and which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with chapter 51 of this title.

### **§ 334 Receivership.**

Whenever it appears to the Commissioner that any person has committed a violation of this chapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders or the public, the Commissioner may proceed as provided in chapter 51 of this title to take possessions of the property of the domestic insurer and to conduct its business.

**§ 335 Recovery.**

(a) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer: (1) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions other than distributions of shares of the same class of stock paid by the insurer on its capital stock, or (2) any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the insurer or its subsidiary to a director, officer or employee, where the distribution or payment pursuant to (1) or (2) is made at any time during the one year preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of section 335(b), (c), and (d).

(b) No distribution may be recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfil its contractual obligations.

(c) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time the distributions were paid are liable up to the amount of distributions or payments under section 335(a) which the person received. Any person who otherwise controlled the insurer at the time the distributions were declared is liable up to the amount of distributions that would have been received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(d) The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(e) If any person liable under section 335(c) is insolvent or otherwise fails to pay claims due from it, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, is jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

**§ 336 Revocation, Suspension, or Nonrenewal of Insurer's License.**

Whenever it appears to the Commissioner that any person has committed a violation of this chapter that makes the continued operation of an insurer contrary to the interests of policy holders or the public, the Commissioner may, after giving notice and an opportunity to be heard, suspend, revoke or refuse to renew the insurer's license or authority to do business in the Territory for such period as the Commissioner finds is required for the protection of policyholders or the public. Any such determination may be accompanied by specific findings of fact and conclusions of law.

### § 337 Judicial Review.

Any person aggrieved by determination, rule, regulation or order or any other action of the Commissioner pursuant to this chapter may appeal in accordance with the procedures set forth in chapter 7 of this title.

### § 338 Conflict with Other Laws.

All laws and parts of laws of the Territory inconsistent with this chapter are superseded with respect to matters covered by this chapter.

### § 339 Separability of Provisions.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or application, and for this purpose the provisions of this chapter are separable.

**SECTION 3.** Section 2 of this Act takes effect 90 days after enactment.

Thus passed by the Legislature of the Virgin Islands on June 28, 2017.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 7<sup>th</sup> Day of July, A.D., 2017.



A handwritten signature in blue ink, appearing to read "Myron D. Jackson".

Myron D. Jackson  
President

A handwritten signature in blue ink, appearing to read "Jean A. Forde".

Jean A. Forde  
Legislative Secretary

**Bill No. 32-0042 is hereby approved.**

**Witness my hand and the Seal of the Government of the United States Virgin Islands at Charlotte Amalie, St. Thomas, this 20<sup>th</sup> day of July 2017 A.D.**

A handwritten signature in blue ink, appearing to read "Kenneth E. Mapp".

Kenneth E. Mapp  
Governor