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Accredited as a Full Member of the International Actuarial Association

Dear Regulators

Re: Comments on the ECCU [UNIFORM] INSURANCE BILL 2013 DRAFT REV I

The Caribbean Actuarial Association ("CAA") is pleased to be given the opportunity to comment on the ECCU [Uniform] Insurance Bill 2013 Draft Rev 1 ("the Bill"). Our comments relate to the November draft that we were provided with in March 2014. As such all section references also relate to this draft. We are currently reviewing the July 4, 2014 Consultation Draft for which comments have been requested by the end of August 2014.

The CAA comprises actuaries who practice and who also have an interest in actuarial issues as they pertain to the Caribbean region. The CAA's mandate includes the encouragement and support of the development of actuarial science in the Caribbean and as part of this mandate promotes the maintenance of high standards within the actuarial profession in the Caribbean.

An integral part of fulfilling this mandate is the setting of Actuarial Standards of Practice for our members. The CAA currently has three standards of practice covering the areas of pensions, life insurance and social security. We are currently working on developing additional standards of practice in the areas of property and casualty insurance and life insurance as well as developing a standard on discount rates. Our new Standard which will cover best practices across all areas of actuarial practice will be exposed to our members in August.

We must commend the ECCU on this initiative to consolidate the legislation of the insurance and pension industry among the ECCU jurisdictions. As actuaries practising in the region we are required by our standards to be objective. Our aim is to work alongside the Regulators in ensuring that the industries remain robust and effective. We see the introduction of consolidated legislation and the requirement of a uniform set of Actuarial Standards of Practice to apply in the region as tools to support these objectives.

Our comments are provided in the context of actuaries who practise in the Caribbean and who are guided by the CAA Standards of Practice.

Risk Based Supervision

As you are aware, risk based supervision of the industry is promoted by the IAIS and is being practised by some of your counterpart Regulators in the region

We support the implementation of risk-based supervision as this should ensure that appropriate capital is held commensurate to the risks a company is undertaking. This also encourages the pricing ofproducts to reflect the obligations the company is assuming in accepting the risk. The implementation of a single method for the determination of the appropriate levels of capital across the Caribbean would avoid inefficient arbitrage between the separate jurisdictions.

We understand from the wording of the Bill that Solvency and Capital requirements will be addressed in the Regulations. The CAA welcomes the opportunity to comment on these Regulations. Further, in the interest of harmonization and uniformity of risk based legislation and supervision in the Caribbean, we encourage the ECCU to capitalize on the work done by both Jamaica and Trinidad and Tobago through impact studies of their risk based framework.

Proposal regarding Corporate Structure for insurance operations in the ECCU

Many of the companies that operate in the ECCU have a presence elsewhere in the Caribbean. In addition we are not clear if it is intended to require subsidiary operations in each of the ECCU countries. We note that the Bill proposes that for all such companies that currently operate agencies or branches in the ECCU they will be required to set up separate companies in the ECCU. The decision to require subsidiary operation may be driven by a number of reasons. Given the size of the ECCU market we would recommend that the related cost of requiring this specific structure be compared to the anticipated advantages.

In terms of maintaining international competitiveness of the industry and a consistent playing field in the Caribbean when considering risk based capital, we recommend that you consider a minimum risk based capital amount as opposed to a minimum dollar amount of capital. Alternatively, another way the ECCU could achieve the same objective would be a Caribbean agreement that insurers would be required to hold a common risk based capital reflecting the risks of the insurance business in each country while the benefits of scale could be taken into account in the home territory of the Group. Such an agreement may well facilitate the continuation of agency or branch operations. Our interests are to maintain a level playing field in the Caribbean and international competitiveness of the industry without including unnecessary market constraints.

The CAA's comments on the legislation were prepared by its technical committees on Life Insurance, Property and Casualty Insurance and Pensions. The members of these committees are experienced actuaries with an in-depth knowledge of the insurance and pension industries in the region. The comments provided by the technical committees were reviewed internally before distribution.

We thank you again for the opportunity to comment on this proposed legislation and will be providing comments on the July 2014 version.

We request that you add us to your distribution list for any further consultation drafts of legislation within the ECCU.

You may contact me at lwade@eckler.ca or at caa.secretariat@gmail.com if you wish to discuss this document any further.

Yours sincerely

Lisa Wade FFA, FSA

President

Caribbean Actuarial Association

CAA Comments on the Draft ECCU Insurance Bill

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Section 2 Interpretation "officer" includes (a) the chief executive officer, manager, secretary, treasurer and actuary of a company or any other person designated as an officer of a company by its articles of incorporation, its by-laws or any rules regulating its operation, or a person acting in a similar capacity with respect to an unincorporated entity; and (b) the primary representative of an external insurer;	A definition of general insurance is missing. A suggested definition is: "general insurance" means insurance of a class specified in [Class] of Schedule 1; Only an appointed actuary should necessarily be an officer of a company. Furthermore, such an actuary may be internal or external. An external actuary is not an officer of the company and so the words 'internal appointed' should be inserted before the word 'actuary'.
Section 4: Non-Application to Captive Insurers This Act does not apply to [captive insurance regulated under the [Captive Insurance Companies Act] [Cap].	This assumes that each territory without a Captive insurers Act would pass one, and clarify what activities are not covered under that Act.
Section 15: Insurers deemed licensed 1) An insurer that is registered to carry on insurance business in [territory] under the repealed Act at the date of the commencement of this Act is deemed for a period of two years to be licensed under this Act carry on the same class of insurance business that it was authorised to carry on under the repealed Act. 2) An insurer that is licensed under subsection (1) shall within two years of the date of the commencement of this Act submit an application for licensing in accordance with the requirements of Part 3 or Part 4 this Act.	**Insurance Core Principle (ICP) 4 – Licensing and Registration** • Licensing plays an important role in ensuring efficiency and stability in the insurance industry. Strict conditions governing the formal approval through licensing of insurers are necessary to protect consumers. In effect, proper licensing procedures may significantly reduce the risk of non-compliance and prudential and market conduct problems in the future, • as the regulator is able to set the stage for a stable industry by ensuring that the companies that enter the market are suitable. • A legal entity which intends to engage in insurance activities must be licensed before it can operate within a jurisdiction. The requirements and procedures for licensing must be clear, objective and public, and be consistently applied. • The supervisor assesses applications, makes decisions and informs applicants of the decision within a reasonable time which is clearly specified. The three month period for a response from the Commission specified under Section 20-22 above achieves this objective. • The supervisor refuses to issue a license where the applicant does not meet the

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	licensing requirements. The supervisor has the authority to impose additional requirements, conditions or restrictions on an applicant where appropriate. A license clearly states its scope. **Precedents:** • In the case of Trinidad and Tobago, registration is a pre-requisite of operation. The Central Bank approves and issues licenses as soon as possible once it is satisfied that the conditions for registration are met. It is an offence to carry on insurance business in Trinidad and Tobago without a license. Under the proposed insurance legislation, a person who commits such an offense is liable on summary conviction to a fine of TT $10 million (US $ 1.56 million) and 10 years in prison. If a company commits the offense, every director is liable to a fine of TT$ 5 million (US $780,000) and 5 years in prison. Grandfathering, transition period of five years, for example, exists for companies operating before the Act commences. • In Jamaica registration is also a pre-requisite for operation. Restrictions on registrations for both long-term and short-term business by the same insurer exist as well. The penalty for operating without a license is J $5 million (US $ 47,041) on summary conviction. •
Section 67: Vacancy of Auditor 1) When a vacancy occurs in the office of auditor of an insurer for any reason,: (a) in the case of a local insurer, if a new auditor has not been appointed at the same meeting of shareholders at which the appointment of the previous auditor was revoked, the board of directors of the insurer shall within seven days fill the vacancy; or (b) in the case of an external insurer, the insurer will within seven days appoint a new auditor for the insurer's business in [Territory], subject to the approval of the Commission (2) If the insurer does not comply with subsection (1) within two months days after the cessation of the previous auditor], the Commission may	In section 67 (2), the word 'days' should be deleted.

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fill the vacancy by notice to the insurer at the expense of the insurer.	
Section 75: Appointment of Actuary 1) A local insurer [that is a long-term insurer] shall appoint an actuary for its business	In accordance with best practice, all insurers – both long term and short term insurers – should appoint an actuary for its business. A transitional period of three years, say, could be included to give general insurers time to comply with the legislation. Trinidad and Tobago have adopted this approach with its proposed insurance legislation.
Sections 75 to 91 Various sections with reference to actuarial requirements	With the exception of Section 89 – Actuarial Reports - these sections should apply to all insurers. A transitional period of one year should be considered with respect to the first submission of a Financial Condition Report – Section 90.
Section 81: Revocation of Appointment of Actuary The appointment of an actuary of: a) a local insurer may be revoked by a resolution passed at a properly constituted meeting of the shareholders of the local insurer; and b) an external insurer may be revoked by the external insurer with the authorisation of its board of directors.	This section should only apply to an appointed actuary of a company. Whilst removal of an appointed actuary of a local insurer should be more onerous than appointment in order to protect the actuary who is complying with Standards that may not be acceptable to management of the insurer, the protection can be achieved more easily through authorisation by the board of directors. Furthermore, Standards dictate that any new appointee to the position of appointed actuary must discuss this appointment with his predecessor.
Section 96: Prohibition on Payments of Dividends 1) A dividend may not be paid by a local insurer- a) while its assets are less than the amount required for solvency by section 107; b) Its statutory fund does not contain sufficient assets as required by this Act; or c) if the dividend would reduce its assets below the amount referred to in subsection (a) or would impair its capital; d) until all the capitalized expenditure, including preliminary expenses, organisation expenses, share-selling commission and brokerage of the local insurer not represented by tangible assets has been completely written off; e) In the event of the Commission's exercise of its special emergency powers under section 159 without first obtaining the Commission's approval. 2) An insurer that contravenes this section commits an offence and is liable on summary conviction to a fine of two million dollars and each	Payment of a dividend should not impair the margin of solvency. Insurers who pay dividends when they are not allowed, can be fined EC $2 million (US $ 740,740) on summary conviction and directors can be fined EC $2 million and imprisoned for a maximum of five years on summary conviction. **ICP 11 - Enforcement** • The supervisor enforces corrective action and, where needed, imposes sanctions based on clear and objective criteria that are publicly disclosed. • The supervisor has the power to enforce corrective action in a timely manner where problems involving insurers are identified. The supervisor issues formal directions to insurers to take particular actions or to desist from taking particular actions. The directions are appropriate to address the problems identified. • The supervisor has a range of actions available in order to apply appropriate enforcement where problems are encountered. Powers set out in legislation should at a minimum include restrictions on business activities and measures

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director is liable on summary conviction to a fine of two million dollars and to imprisonment for five years.	to reinforce the financial position of an insurer. **Precedents:** • In the case of the Cayman Islands the general penalty for contravening the Act is Cayman $5,000 (US $6,100) and imprisonment for one year on summary conviction. • The Insurance Act of the British Virgin Islands (BVI) (Section 13 (3)) provides that an insurer must be solvent after a distribution or else prohibits the distribution. Schedule 1 of the Act attaches a penalty on summary conviction of US$30,000 for a company and US$20,000 for an individual for contravening this requirement. • In the case of Bahamas, the general penalty for offences against the Act, if not specified, is US$10,000 plus US$1,000 per day if a continuing offence. For individuals the fine is 50% of the fine applicable to a company. The regulator may also take additional action against the company. • In the proposed Trinidad and Tobago insurance bill, the general penalty, if not specified, is TT$600,000 (US$95,000) plus TT$60,000 per day (US$9,500).
Section 98: Delivery of Statements and Reports 1) Within three months of the end of each financial year, an insurer shall deliver to the Commission a) a copy of its audited annual financial statements; b) the signed report of its auditor regarding the financial statements;(2) Within three months of the end of each financial year, a long-term insurer must provide to the Commission a report from its appointed actuary in respect of the position at the end of that financial year on the valuation of its technical provisions in [Territory]. (3) A long-term insurer is not required to provide a report under subsection (2) for any financial year that ends less than six months after the commencement of this Act.	A transition period should be included in the legislation. It is suggested that no change in the time for submission occurs at the end of the first financial year subsequent to enactment of the legislation, followed by a four month period at the end of the second financial year with submission of all documentation within three months for each financial year end thereafter.
Section 106: Minimum Capital 1) A local insurer that is issued with a licence under section 20 shall: a) maintain sufficient capital or, in the case of a mutual insurer, uncommitted assets in [Territory] to operate its business and will meet as a minimum the requirements for capital or uncommitted assets in this section and in section 107; and	**ICP 17 - Capital Adequacy** • The supervisor establishes capital adequacy requirements for solvency purposes so that insurers can absorb significant unforeseen losses and to provide for degrees of supervisory intervention. • The supervisor establishes regulatory capital requirements at a sufficient level

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b) maintain on an ongoing basis, assets in an amount that exceed its liabilities by not less than: i) In the case of a general insurer, five million dollars and; ii) In the case of a long-term insurer, eight million dollars million).	so that, in adversity, an insurer's obligations to policyholders will continue to be met as they fall due and requires that insurers maintain capital resources to meet the regulatory capital requirements. **Precedents:** • In proposed Trinidad and Tobago Insurance Bill specifies TT$15 million (US$2.4 million) capital for local insurers or mutual companies and TT$ 22.5 million (US$3.6 million) for composite insurers. The proposed Act requires a risk based capital requirement to determine solvency. • In Barbados the Insurance Act (Section 9) requires that general or long-term business maintain minimum capital of at least B$3,000,000 (US$1.5 million). Both general and long-term businesses are required to maintain a minimum capital of B $5,000,000 (US$2.5 million). There is also a Margin of Solvency requirement which differs for long-term, general and composite insurers. For general insurance the value of the assets must exceed the amount of the liabilities by the greater of B$ 500,000 (US$ 250,000) or 25% of general premium income received in the previous year. For long-term insurers the assets must exceed the liabilities by a prescribed amount and composite insurers must ensure that the higher of the preceding two solvency criteria is maintained. • In Bahamas, the margin of solvency for long-term insurers is US$3 million plus the greater of 20% of premiums and US$500,000. For general insurers the margin is US$2 million plus 20% of the first $10 million of premiums and 18% thereafter
Sections 111 – 117: Mutualisation and Demutualisation	Whilst mutualisation is very unlikely, the actuarial requirements should apply to all insurers.
Section 139 (1 &7): Limit on Acquisition of Shares 1) Subject to subsection (7), except with the approval of the Commission, a person shall not hold or acquire, either directly or indirectly, so much of the paid-up capital of a local insurer, that would confer upon him or her, more than 20 per cent of the total voting rights, attached to all the shares, that can be voted at a general meeting of the local insurer. 7) Subsection (1) shall not apply to the Government or to any person who,	**ICP 6 Changes in Control and Portfolio Transfers** • Supervisory approval is required for proposals to acquire significant ownership or an interest in an insurer that results in that person (legal or natural), directly or indirectly, alone or with an associate, exercising control over the insurer. The same applies to portfolio transfers or mergers of insurers. • The supervisor approves any significant increase above the predetermined control levels in an insurer by person(s) (legal or natural), whether obtained individually or in association with others. This also applies to any other interest in that insurer or its intermediate or ultimate beneficial owners. The supervisor

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at the commencement of this Act, has acquired more than 20 per cent of the total voting rights attached to all the shares of the local insurer, but such person shall not, without the consent of the Commission, acquire any additional shares, which shall have the effect of increasing that person's percentage of the total voting rights.	requires appropriate notification from insurers in the case of a significant decrease below the predetermined control levels. • The reason for this is to protect the autonomy of the insurer and at the very least to keep the supervisor aware of any such change and to give to the supervisor the power to limit the entities which could gain controlling interest of the insurer. However in smaller Caribbean-type economies special provisions might be desirable for insurance entities where a few individuals have controlling interests. **Precedents** • The Insurance Act of the BVI (Section 21 (3))states that an insurer cannot issue or allot its shares in a way that cause an entity to obtain a significant interest or to increase or decrease a significant interest without the prior written approval of the Commission. A significant interest is defined as control of 10% or more of the voting rights. • For Bahamas the limit is 20% without the regulator's permission. • See sections 69 and 70 of the proposed Trinidad and Tobago Insurance Bill which addresses entities where there are controlling interests in the insurer. There is a restriction (50%) above which a written permit from the regulator is required provided certain criteria is met. A significant shareholder is defined as having at least 20% voting rights.
Sections 140 - 150: Statutory Fund	Some pitfalls of relying on a Statutory Fund: • Can give a false sense of security when the real issue might be inadequate technical reserves or inadequate capital • High administrative burden for the Regulator and for the Company The trusteeship of mortgages and certain instruments is problematicA risk based capital regime, coupled with Fund Accounting like the Malaysian Model may be a better alternative (see Division 6 of Part 5 of the Malaysian legislation)
Section 146: Local Asset Ratio 1) An insurer shall invest an amount not less than **[**seventy-five per cent**]** of each of its statutory fund requirements in assets in any ECCU member state. 2) For the purposes of subsection (1), assets not exceeding ten per cent of	• Should a % of international assets be prescribed? • Should a deduction be allowed for reinsurer's share of provisions?

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the statutory fund requirements shall be deemed to be assets in the ECCU where such assets— a) are approved by the Commission; and b) originate in any ECCU member state. 3) Where an insurer establishes and maintains a statutory fund in respect of long-term insurance business, for the purpose of determining whether the company is complying with the provisions of subsection (1), policy loans shall be excluded from the assets and deducted from the liabilities of the company. 4) For the purposes of this Part—"assets in the Participating States" means assets which— a) originate, and are physically held in any of the Participating States; b) assets that are denominated in Eastern Caribbean dollars; or c) where denominated in a foreign currency, such assets are fully guaranteed by a the Government of a Participating State.	
Sections 151 - 158: Transfers and Amalgamations	• These provisions are substantially similar to the provisions of the Trinidad and Tobago Insurance bill now before the Joint Select Committee of Parliament. • It is not clear what constitutes a Scheme of Transfer versus a Transfer Agreement. Are these terms in law? No definition of "market share"
Section 155(1): Approval of Transfer or Amalgamation by the Commission. 1) In determining whether to approve a proposed transfer or amalgamation, the Commission shall consider the following: a) any other relevant matters as determined by the Commission.	Rather than relying on (f) suggest spelling out one of the most material considerations i.e. The effects of the proposed transaction on policyholders' interests.
Sections 159 - 168: Statutory Intervention	These provisions give similar powers to issue directives similar to those under the Compliance Directions and Injunctive Relief Part of the T&T Bill. Different process, different notice periods etc.
Section 160: Conditions to Exercise Power	Consider expanding the list to include:

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The Commission may exercise the power of intervention conferred by section 159 where the Commission is satisfied that: a) it is necessary in order to protect policyholders or prospective policyholders of the insurer against the risk of the insurer's inability to meet its liabilities or, where the insurer is carrying on long- term insurance business, to fulfill the reasonable expectations of policyholders or prospective policyholders; b) the insurer has failed to satisfy any obligation imposed on it by this Act; c) the insurer has furnished misleading or inaccurate information to the Commission for the purposes of any provision of this Act; d) the assets of an insurer are less than its liabilities or the insurer is otherwise considered by the Commission to be unable to meet its obligations to the public; e) the value of the assets representing the statutory fund maintained by the insurer in compliance with Part 7, is less than the amount prescribed; f) there has been unreasonable delay in the settlement of claims under policies issued by the insurer; g) the conditions to intervene under the equivalent of this provision or otherwise in any other Participating State has been met; h) any other regulator responsible for the supervision of the insurer in any other territory has exercised its power to intervene; or i) it is in the best interests of the policyholders for the Commission to intervene. j)	• When the insurer fails to maintain adequate capital or adequate forms of liquidity • When the insurer commits any action or omission that is contrary to general accepted standards of prudent operation and conduct, the possible consequences of which, if continued would be a risk of loss or damage to a registrant, policyholders or consumers or could have material adverse effects on the financial condition of the insurer • When the reinsurance arrangements of the insurer are not adequate It is not clear whether or not the circumstance of under reserving is covered by any of (a) to (j). - the legal minds should opine on this.
Section 170(1) e: Application to Judicial Management 1) The Commission may apply to the court for an order that an insurer or any part of the insurance business of an insurer be placed under judicial management on the ground: e) there are reasonable grounds for believing that the financial position or management of the company may be unsatisfactory	Suggest changing "position" to "condition"

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Section 175: Remuneration, Charges and Expenses of Judicial Management The court may direct how and by whom the remuneration, charges and expenses of the judicial manager shall be borne and may, if it thinks fit, charge that remuneration and those charges and expenses on the property of the insurer in such order of priority in relation to any existing charges on that property as it thinks fit.	Should restrictions apply to the use of premiums for a life insurer if it is not clear claims can be paid? Would this provision be in conflict with provisions in other legislation governing bankruptcy, insolvency and windup?
Section 195: Priority of Policyholders Debt On the winding up of an insurer, if the assets are insufficient to meet the related liabilities, the claims of policyholders, beneficiaries and claimants to the statutory fund, shall after the costs and expenses of the winding up, have priority on the assets of the company over other unsecured creditors with respect to the other assets of the insurer.	ICP 12 Covers the Winding-up and Exit from the Market. ICP 12.1 states that "The procedures for the winding-up and exit of an insurer from the market are clearly set out in legislation. A high legal priority is given to the protection of the rights and entitlements of policyholders. The procedures aim at minimizing the disruption to the timely provision of benefits to policyholders." And ICP 12.0.3 states that "The legislation should establish the priority that policyholders receive in winding-up an insurer. However, it is also common in many jurisdictions that priority is given to other stakeholders, such as employees or the fiscal authorities. In some jurisdictions, a policyholder protection fund provides additional or alternative protection. ICP 16 requires that the legal framework gives priority to the protection of policyholder s in the event an insurer is wound-up. Note that in the Canadian Winding up and Restructuring Act (http://laws-lois.justice.gc.ca/eng/acts/W-11/FullText.html , http://en.wikipedia.org/wiki/Winding-up_and_Restructuring_Act), only liquidation expenses and arrears of salaries come before the policyholders (see Section 161 of the attached). It is not clear that this is the position under the new Bill. Based on our read of 195 secured creditors rank before policyholders This doesn't appear to be in keeping with the ICP's This section covers winding up, what is the priority on restructuring?
Section 225: Exception to Representation 1) Notwithstanding the provisions of section 223, an insurance agent may represent two insurers if for one of the insurers being represented, the insurance agent sells only long term insurance and for the other	Should an agent representing more than one insurer be required to become a broker?

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insurer being represented, he sells only general insurance. 2) Any insurance agent to whom subsection (1) applies shall clearly disclose to his clients in writing as soon as practicable the identity of his principal insurers, the types of products in respect of which he represents each insurer, and the services the insurance agent is authorised to provide for each insurer.	
Section 233(b): Placing of Insurance Outside An insurance broker shall not place or assist in the placing of insurance for a policyholder with an insurer that is not licensed as an insurer, or not subject to an exemption from licensing, under this Act (a "non-regulated insurer"), unless: a) sufficient insurance cannot be obtained on the form of policy required by the [prospective][policyholder] from insurers licensed under this Act; b) the insurance broker holds a special insurance broker's licence under section 234;	Is a special licence needed?
Section 234: Special Insurance Brokers Licence 1) On application by an insurance broker the Commission may issue a special insurance broker's licence if the Commission is satisfied that the insurance broker has: a) at least five years of experience with no major contraventions of the [this Act][law]; b) demonstrated that he has relevant knowledge, experience or training in evaluating the financial strength and claims payment record of non-regulated insurers, and to advise on the types of cover the broker is to be authorized in respect of under the special broker's licence. 2) For the avoidance of doubt: a) a special insurance brokers licence only authorizes a person to place insurance business outside the Territory in accordance with section 233; and b) a special insurance broker must comply with the requirements relevant to an insurance broker under this Act.	Should special insurance broker be required to regularly report on business of this nature?

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Section 250: Premium Rates to be Approved by Actuary 1) The Commission may at any time, require an insurer to obtain and to provide it with a report by an actuary as to the suitability of the rate of premium chargeable under any policy or type of policy issued by it and, if the actuary considers that the rate is not suitable, a report as to the rate of premium that the actuary approves as suitable in respect of such policy or type of policy. 2) When preparing a report referred to in subsection (1) in respect of a rate of premium under a policy or type of policy, the actuary shall have regard to- a) the maximum rate of commission proposed to be paid to any person; and b) the maximum rate of reduction of premium to be allowed to any person, in respect of that policy or type of policy. 3) Where the report referred to in subsection (1) states that the rate of premium on a policy or type of policy is not suitable, the insurer shall not pay or allow in respect of that policy or any policy of that type a commission or a reduction of premium at a rate greater than the maximum rate of commission or reduction of premium that the report finds suitable for that policy or type of policy.	"Rates of premium" do not apply to flexible premium and accumulation type products. Pricing of the products is more relevant where pricing includes charging structures as well as premium rates. Furthermore, whilst the Commission needs the right to request a report from an actuary as to the suitability of the pricing of existing products, this right should only be exercised in exceptional circumstances when other factors prevail to suggest that the insurer is in trouble. The Bill should be amended to require an actuary to certify all new types of product introduced into the market together with significant amendments to existing products which entail either revised premium rates or a new charging structure. It is suggested that such a requirement applies only to new products and significant amendments introduced subsequent to enactment of the legislation.
Section 277: Surrender of Policies 1) Notwithstanding the terms of a particular policy, the owner of a policy that has been in force for at least [two] years, shall, on application to the insurer, be entitled to surrender the policy and to receive not less than the cash surrender value of the policy less any tax payable and the amount of any debt owing to the insurer under, or secured by, the policy. 2) The insurer shall on a policy by policy basis with the marketing materials provide the scale of the minimum surrender value for the life of the policy.]	**277(1)** Can this clause be interpreted that someone with a term policy must be given a cash surrender value after two years? Use of the words "Notwithstanding the terms of a particular policy" gives that impression. **277(2)** What does this mean?

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Section 281: Non- forfeiture of Industrial Life policies 1) An industrial life policy on which less than one year's premiums have been paid shall not be forfeited by reason only of the non-payment of any premium, unless the premium has remained unpaid for at least four weeks after it became due. 2) An industrial life policy on which not less than one year's but less than two years' premiums have been paid shall not be forfeited by reason only of the non-payment of any premium, unless the premium has remained unpaid for not less than eight weeks after it became due. 3) An industrial life policy on which at least two years' premiums have been paid shall not be forfeited by reason only of the non-payment of any premium, unless the premium has remained unpaid for at least twelve weeks after it became due. 4) If an industrial life policy on which at least three years' premiums have been paid has been forfeited by reason of the non-payment of any premium, the insurer shall, without requiring any application from the policyholder, issue a paid-up policy for an amount not less than that specified in the table included in the policy. 5) If an insurer issues a paid-up policy pursuant to subsection (4) and the contingency occurs that would have rendered it liable under the original policy it shall then be liable under the paid-up policy limited to its paid-up value. 6) The insurer shall notify the policyholder in writing of the fact that the paid-up policy has been granted and shall specify the amount of the policy and the contingency upon which the policy is payable. 7) An industrial life policy shall not be forfeited by reason only of the non-payment of any premium if the non-payment is as a result of non-collection by the insurer.	Are new industrial life policies still being written? If not, remove provisions applicable to their issue.

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Section 288: Interpretation in Section 289 and 290	Section 51 refers to Unit-Linked business however there is no definition of Unit Linked in this Bill. In normal usage, unit-linked is UK terminology whereas Variable is US terminology – the generic term covering both unit-linked and variable is Investment Linked. This is as opposed to Interest sensitive business where returns are based on company discretion. These provisions should apply to Investment Linked, Interest Sensitive, Adjustable and Participating products.
Section 299: Premium Rates to be Approved by an Actuary 1) The Commission may, at any time, require an insurer carrying on general insurance business to obtain and to furnish it with a report by an actuary as to the suitability of the rate of premium chargeable under any policy or type of policy issued by the insurer and, if the actuary considers that the rate is not suitable, a report as to the rate of premium that the actuary approves as suitable in respect of that policy or type of policy. 2) When preparing a report referred to in subsection (1) in respect of a rate of premium under a policy or type of policy, the actuary shall have regard to- a) the maximum rate of commission proposed to be paid to any person; and b) the maximum rate of reduction of premium to be allowed to any person, in respect of that policy or type of policy. 3) Where the report referred to in subsection (1) finds the rate of premium for a policy or type of policy is not suitable, the insurer shall not pay or allow in respect of that policy or any policy of that type a commission or a reduction of premium at a rate greater than the maximum rate of commission or reduction of premium that the report finds suitable for that policy or type of policy.	Similar comments apply to this section as were made with respect to Section 250. The pricing of a general insurance policy incorporates the premium rate which can be tailored for the needs of a particular policyholder; e.g. insuring a fleet of motor cars. A transitional period, three years, say, would be sensible before pricing of new types of general insurance policies or significant amendments to existing general insurance policies must be authorised by an actuary.

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Section 304: Technical Provisions 1) The technical provisions for general insurance shall consist of- a) reserves for unexpired policies; b) reserves for outstanding claims; c) reserves for incurred but not reported claims, and d) claims admitted but not yet paid, and shall be included among its liabilities in its annual statement of account.	There appears to be duplication here. Items 1 b) and 1 d) can be considered to be identical.
Section 305: Methods of Reserving 1) If requested by the Commission, an insurer shall submit to the Commission details of the methods used in calculating the provisions to be provided under section 304 within such timeframe as is specified by the Commission. 2) The Commission may disallow any method used in calculating the reserves referred to in subsection (1) if the Commission is satisfied that the method does not result in the provision of adequate reserves.	The following wording is suggested: 1) If requested by the Commission, an insurer shall submit to the Commission the actuarial analysis supporting the provisions reported by the insurer under section 304 within such timeframe as is specified by the Commission. 2) The Commission may disallow the reported technical provisions referred to in subsection 1) if, based on sound actuarial evidence, the Commission is satisfied that the actuarial analysis provided by the insurer is incomplete, inaccurate, or not supportive of adequate technical provisions.
Section 307: Qualifications for Licensing 1) Subject to this Part, if a plan establishes a fund under trusts that are subject to the laws in force in [Territory], in connection with an undertaking or a combination of undertakings carried on wholly or partly in [Territory], and the main purpose of that fund is- a) the provision of superannuation allowances on retirement to persons employed in the undertaking or in the combination of undertakings in connection with which the fund is established; b) the provision of pensions to the spouses of persons who are or have been so employed and of periodical allowances to or in respect of the children of those persons; or c) the assurance of capital sums on the death of persons who were so employed, the plan shall be qualified for licensing under this Part if the rules of the plan comply with the requirements set out in Part I of Schedule 3. 1) A plan that is licensed or registered immediately before the commencement of this Act is deemed to be licensed under this Part,	In some jurisdictions, there is sometimes confusion over whether a retirement savings arrangement is subject to the local pension plan regulations. In this case it appears that only pension plans that set aside funds in trust would be subject to the legislation. On this basis, arrangements such as ex-gratia unfunded pension promises and savings arrangements that pay out a lump sum on leaving would be fall outside of the scope of the legislation.

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and the Commission shall issue a licence under this Part within six months of the commencement of this Act. 3) If a plan establishing a fund for any of the purposes set out in paragraph (1)(a), (b) or (c) is in operation before the commencement of this Act that plan shall, subject to such directions as to the amendment of its rules that the Commission may give, be treated as qualified for licensing under this Part even where - a) the fund created under the plan is not established under trusts or under trusts that are subject to the laws of [Territory]; or b) the plan does not comply with the requirements set out in Part I of Schedule 3. **4)** The rule of law relating to perpetuities shall not apply and shall be deemed never to have applied to the trusts of a licensed plan.	
Section 315 1): Submission of annual accounts 1) The trustees of each licensed plan shall- a) submit annually to the Commission a balance sheet and statement of accounts for each accounting year within three months of the expiration of that financial year; and **b)** file with the Commission annually or at the periods and in the form set out in Schedule 3 any information or return relating to the licensed plan.	To enable everything to be completed correctly, the time period for submission of annual accounts should be six months.
Section 316: Actuarial Valuations 1) The trustees of each defined benefit plan shall appoint an actuary to make an investigation into the financial condition of the defined benefit plan and to report on his findings.	Only actuarial valuations of defined benefit pension plans are required. Whilst this appears reasonable, we note that actuarial valuations of defined contribution pension plans are required in some OECS islands. In light of the uncertainty as to what constitutes a defined benefit or defined contribution pension plan, we recommend that a definition of a defined benefit pension plan is included in section 306(1). It is sometimes simpler to define a defined benefit plan on the grounds that it is not a defined contribution pension plan. The CAA defines a defined contribution pension plan as a pension scheme in which:: a. the employer pays a fixed contribution into the scheme and has no legal or constructive obligation to pay further contributions into the scheme in relation

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	to past periods of service; and b. the total investment earnings on the assets backing the members' accounts are credited to their accounts by means of unitisation or otherwise; and c. each member's benefit is based solely on the value of his account which is made up of contributions paid by and/or on behalf of the member plus investment earnings as well as any other components which may arise from forfeitures or transfer payments; and d. on retirement, the risk of paying the pension is transferred to an insurance company by purchasing annuities or transferred to an approved retirement arrangement.
2) An investigation under subsection (1) shall be made every years or at a shorter interval as specified by the Commission. 3) The trustees of a defined benefit plan shall furnish to the Commission a copy of the report of the actuary. 4) Subsections (1), (2) and (3) shall not apply to a defined benefit plan insured with an insurer, but the trustees of the plan must obtain from the insurer a certificate of registration to the effect that the plan has been valued by an actuary. **5)** The trustees shall deposit the certificate of registration required by subsection (4) with the Commission. **6)**	The frequency of actuarial valuations has been omitted. We recommned that actuarial investigations are performed every three years. A pension plan invested with an insurance company, e.g. in a deposit administration contract, should be sub ject to the same actuarial valuation requirements as set out in Section 316 1).
Section 318: Corporate Governance Arrangements 1) Every person who is: a. a trustee, b. a director or officer of a trustee that is an entity; or c. a third party administrator of a plan or fund, shall be fit and proper to hold the particular position. 2) The Trustee of the plan shall appoint an auditor of the plan, and that auditor shall not be the auditor of: a) The employer; or b) The third party administrator. 2) Specific requirements may be prescribed with respect to plans, including in respect of the corporate governance, fit and proper requirements, the engagement of third party administrators, audit or	Whilst we understand the possibility of a conflict of interest, we do not believe that the sponsoring employer's auditor should automatically be prohibited from auditing the accounts of the pension plan. There are many large auditing companies that could if required, devote separate resources to auditing the accounts of the employer and the pension plan. We also note that usually the pension plan's trustees, and not the employer, are responsible for appointing the pension plan's auditor.

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financial reporting. **3)** For the purposes of this section, "third party administrator" means an entity that is engaged by the trustee to perform administration services in respect of a plan.	
Section 345(4): Disclosure and Representations before Contract or Variation Any rule of law to the effect that a consumer insurance contract is one of the utmost good faith is modified to the extent required by the provisions of this Act.	**345(4)** Does the Marine Insurance Act in the ECCU get used by the courts to interpret common law insurance rules? If the wording mirrors the UK s17, we would need that overriding provision
Section 354(1): Procedures for Complaint An insurer and insurance broker shall: **a)** have an internal complaints handling process for dealing with complaints from consumers, including potential policyholders, policyholders, and beneficiaries under insurance policies, which comply with any Regulations;	**54(1) (a)** Either this approach, under which the industry would collaborate with the Commission to create a scheme, or an Ombudsman is proposed.
Schedule 4: Insurers' Remedies for Qualifying Misrepresentation 9(1)This paragraph— a) applies if the qualifying misrepresentation was careless, but **b)** does not relate to any outstanding claim. **c)**	**9(1) (b)** Might need to tighten this wording.
Schedule 1: Classes of Business	This schedule contains no information. We welcome the opportunity of commenting on this Schedule when it is completed.
Schedule 3 – Assets in which a Registered Plan may be Invested	We note that aspects of this section are incomplete so we assume that some of the wording still has to be agreed. However, the section implies that investments will not be permitted outside of CARICOM . Whilst this was the case for most OECS countries, St Lucia amended its Act to allow pension plans to invest up to 20% of their assets outside of CARICOM. This was a welcome amendment and we hope that the uniform legislation would look to extend this change to other OECS countries rather than reverse it in St Lucia. This is because one of the key problems faced by OECS pension plans is the lack of availability of appropriate long-term investments. With this in mind we hope that the investment restrictions for OECS pension plans will be revisited and relaxed. However, we would understand if this were to form part of a separate exercise, which we would be happy to help with.

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Schedule 5: Rules for Determining Status of Agent 4 (1) If it appears to the Commission that the list of factors in sub-paragraph (3) or (4) of paragraph 3 has become outdated, the Commission may by Order published in the Gazette bring the list up to date by amending the subparagraph so as to add, omit or alter any factor.	This Schedule is from the UK law. Is it necessary in the ECCU? **4(1)** Let's consider whether some of our existing/planned powers could cover this**.**