

**Insurance**

**INSURANCE (MUTUAL COMPANY)  
(CONVERSION) REGULATIONS, 2002**

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**Insurance**

Cap. 310.

**INSURANCE (MUTUAL COMPANY)  
(CONVERSION) REGULATIONS, 2002**

2002/138.

**Authority:** These Regulations were made on 5th December, 2002 by the Minister under section 182 of the *Insurance Act*.

**Commencement:** 12th December, 2002.

*Preliminary*

**1.** These Regulations may be cited as the *Insurance (Mutual Company) (Conversion) Regulations, 2002*. Short title.

**2.** For the purposes of these Regulations,

Interpretation.

"articles of re-incorporation" means articles of re-incorporation filed under Division C.1 of Part III of the *Companies Act*;

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"certificate of re-incorporation" means articles certificate of re-incorporation issued under Division C.1 of Part III of the *Companies Act*.

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"conversion" means the conversion of a life insurer that is a mutual company into a company with share capital;

"conversion plan" means a plan intended to be implemented to effect the conversion of a mutual life insurance company into a company with share capital;

"converted company" means a life insurer that was a mutual company and that has been converted into a company with share capital;

"converting company" means a life insurer that is a mutual company that has notified the Supervisor of Insurance of the company's proposal to convert into a company with share capital;

"eligibility day" means the day selected by a mutual company on which a final determination is made of the members eligible to vote on a resolution for the conversion of the mutual company into a company that has share capital;

"eligible member" means a person who is the holder of a voting policy that was issued to him and assured by the mutual company in accordance with its by-laws on or before the eligibility day

(a) which is subsisting on the eligibility day; or

(b) which has lapsed before the mutual company's eligibility day but was reinstated to the person subject to the terms of the policy during the period beginning on the eligibility day and ending 90 days before the day on which the mutual company held a special meeting to decide on the conversion of the company; and

(c) is included as an eligible policy-holder under regulation 14(2);

Cap. 308. "group" means 2 or more bodies corporate that are affiliated with each other within the meaning of section 44 of the *Companies Act*;

Cap. 308. "holding company" means a company incorporated under the *Companies Act* that issues shares to the policy-holders of the converted company and holds all the voting shares of the converted company;

"participating policy" means a policy issued by a life insurer that entitles its holder to participate in the profits or surplus income of the life insurer;

"participating policy-holder" means the holder of a participating policy;

"special meeting" means a meeting of policy-holders referred to in regulation 12;

"voting policy" means a policy, issued by the mutual company before a conversion, which entitles its holder to vote at meetings of policy-holders of the company but does not include a policy issued or assumed by a company with share capital that amalgamates with the mutual company after the mutual company has notified the Supervisor of its intention to convert into a company with shares and before the conversion takes place.

*Conversion of mutual insurance company*

**3.** Where a mutual insurance company wishes to convert to a company with share capital, the permission of the policy-holders and the approval of the Supervisor required pursuant to section 147 of the Act shall be obtained in accordance with these Regulations.

Conversion  
in accord-  
ance with  
Regulations.

**4.** (1) A mutual insurance company that is desirous of converting to a company with share capital shall notify the Supervisor of its desire to convert, and shall request, in writing, permission from the Supervisor to establish a plan for the conversion of the company.

Notification  
of conver-  
sion and  
plan.

(2) The converting company shall submit, with the request referred to in paragraph (1), the following information:

- (a) the reasons for the conversion;
- (b) information regarding the status of the converting company;
- (c) annual financial statements and returns for the 5 years immediately preceding the request;
- (d) projections for the performance of the converted company;
- (e) a statement of the likely effect of the conversion on
  - (i) the insurance industry in Barbados;
  - (ii) the rights of policy-holders;
  - (iii) the financial services sector in Barbados.

*Valuation*

Valuation. **5.** (1) The converting company shall ensure that a valuation of the assets of the company is undertaken within one year before the conversion of the company.

(2) Notwithstanding subsection (1), where a company has been engaged in any activity that has affected, or is likely to affect, significantly the assets or liabilities of the company, the company shall submit a valuation to the Supervisor that takes into account the effect the activity has had, or is likely to have, on the finances of the company.

(3) A valuation referred to in this regulation

(a) shall be undertaken by an actuary that is employed by the converting company and confirmed by an actuary that is independent of the converting company;

(b) shall be based on the estimated value of the assets and liabilities of the company, taking into account existing market conditions;

(c) shall not take into account any expenses expected to be incurred by the converting company to effect the conversion.

(4) The effective date of the valuation shall be the eligibility day.

Report. **6.** A mutual company shall cause to be prepared for submission to the Supervisor and the members of the mutual insurance company a report containing

(a) the valuation referred to in regulations 5;

(b) a description of the method of calculating the estimated value, and any assumptions made in doing the calculation; and

(c) a statement by the actuary that the method used and assumptions made to calculate the value of the company are appropriate and that the value reasonably reflects prevailing market conditions on the day the value was estimated.

7. (1) A mutual insurance company, before seeking the permission of the policy-holders in respect of the conversion of the company, shall submit to every policy-holder

Conversion  
proposal.

(a) a copy of a proposal respecting the conversion of the company; and

(b) a copy of the report and valuation referred to in regulation 6.

(2) The proposal referred to in paragraph (1) shall set out the following:

(a) a statement respecting the reasons for the proposed conversion;

(b) the eligibility day selected by the converting company and the reasons why that day was selected;

(c) a description of the form, amount and aggregate value of the benefits to be provided to eligible policy-holders in exchange for their rights with respect to, and interests in, the converting company as a mutual company;

(d) a detailed description of the benefits to be provided to eligible policy-holders and the method to be used to apportion the value of the converting company among eligible policy-holders, indicating

(i) the bases on which any fixed and any variable amounts of benefits will be calculated;

(ii) the rationale for choosing the method for determining and allocating benefits among eligible policy-holders;

(e) a statement

(i) respecting the entitlement to benefits and the protection of rights and interests of policy-holders including proprietary and contractual rights;

(ii) confirming the benefits to which policy-holders are entitled;

- (iii) setting out the criteria to be met to enable the participation in profits or surplus of the company;
  - (iv) containing an undertaking by the company to discharge, after the conversion,
    - (A) contractual obligations under any participating policies; and
    - (B) the reasonable expectations of the holders of those policies in respect of future dividends and other non-guaranteed policy benefits;
- (f) a description of the mechanisms proposed to effect an initial issuance of common shares and any other class of shares of the converted company, or of the holding company, as the case may be, including a copy of the proposed by-law authorising the issuance of those shares;
- (g) where shares of the converted company are to be issued to a holding company, a description of the proposed activities of the holding company;
- (h) where the benefits referred to in paragraph (c) include shares of the converted company, or of a holding company, a description of the measures to be taken by the converted company, or the holding company, as the case may be, in the prescribed period following the effective date of the conversion, to enable policy-holders who receive the shares to sell those shares on a public market;
- (i) a statement that the directors of the converting company may withdraw the conversion proposal at any time before the date stated in regulation 11(2);
- (j) a statement that the amounts of any fixed or variable benefits may be calculated on any factor or combination of factors stipulated by the converting company, including the number of votes to which an eligible member is entitled.



**8.** (1) The converting company shall submit to the Supervisor for his approval

Submission  
of plan etc.  
to Supervi-  
sor.

- (a) the proposed conversion plan;
- (b) a statement of existing business of the converting company that shall be vested in the converted company;
- (c) a statement respecting
  - (i) the classes of members of the converting company;
  - (ii) the rights of each class of members of the converting company;
  - (iii) the voting rights of members provided under the policy; and
  - (iv) the rights of members to share in the surplus or profits of the mutual insurance company;
- (d) an explanation of the likely effects of the conversion on the rights and obligations of policy-holders;
- (e) the proposals and undertaking by the converting company respecting the continuation of rights and benefits, including the right to receive dividends as provided by a participating policy;
- (f) the copy of the report and the valuation of the company to be converted as determined under regulation 6;
- (g) a statement prepared by the actuary of the converting company and confirmed by an independent actuary as to whether
  - (i) the benefits and method referred to in regulation 6 to be used to apportion the value of the converting company among eligible members are fair and equitable to those members; and
  - (ii) the future financial strength of the converting company and the security of members will be materially adversely affected by the conversion.

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- (h) an opinion from a valuation expert that the method and assumptions referred to in regulation 5(3) employed to estimate the value of the converting company are appropriate, and that the value reasonably reflects prevailing market conditions on the date that it was estimated;
  - (i) a detailed description of any significant transaction contemplated in connection with the conversion;
  - (j) any other information requested by the Supervisor.
- (2) A conversion plan shall set out
- (a) the proposed effective date of the conversion;
  - (b) the procedure to be followed in converting the company;
  - (c) a copy of a prospectus relating to the issuance of shares by a converted company or holding company to eligible members, where the converted company or holding company is required to file a prospectus under the laws of any jurisdiction in which it carries on business;
  - (d) the proposed articles of re-incorporation and by-laws of the converted company and the proposed articles of incorporation and by-laws of the holding company;
  - (e) provisions relating to the issuance of shares as set out in regulation 7(f);
  - (f) a statement of the other benefits that are to be provided *in lieu* of shares, and an opinion from a valuation expert that those benefits are an appropriate substitute for the shares on the date that the value of the converting company was estimated;
  - (g) the form of the notice of the special meeting, ballot paper, voting procedures, the form of the proxy and any management proxy circular to be sent out with the notice.

(3) The converting company shall submit to the Supervisor, in addition to the information referred to in paragraph (1), the following financial information:

- (a) the annual statements for the financial year immediately preceding that in which the conversion proposal is made, accompanied by reports for that year from the auditor and actuary of the converting company;
  - (b) where a notice of a special meeting is to be sent to eligible members more than 180 days after the end of the most recently completed financial year of the converting company, financial statements for the portion of the current financial year ending earlier than 180 days before the day on which the notice is sent;
  - (c) *pro forma* financial statements of the converted company, or of the holding company, showing the effect of the conversion and any other significant transactions contemplated in connection with the conversion, including any proposed initial public offering of common shares, based on
    - (i) the annual statements for the most recently completed financial year; or
    - (ii) in the circumstances referred to in sub-paragraph (b), the financial statements for the portion of the current financial year referred to in that paragraph; and
  - (d) the compilation report of the auditor of the converting company, and a statement of reconciliation, in respect of the financial statements referred to in paragraph (c).
- (4) The financial statements referred to in paragraph (3)(b) and (c)
- (a) shall be prepared in accordance with the accounting principles referred to in section 41(2) of the Act; and

(b) shall be accompanied by a report of the chief financial officer of the converting company stating that the financial statements have not been audited but have been prepared in accordance with the accounting principles referred to in section 41(2) of the Act.

(5) The converting company shall submit to the Supervisor, together with the information referred to in this regulation, a copy of the conversion proposal referred to in regulation 7.

Meetings.

**9.** (1) The Supervisor shall

(a) direct the converting company to hold one or more meetings for policy-holders to discuss the proposed conversion of the company and connected matters; and

(b) direct the converting company to take such other measures prior to voting as the Supervisor considers appropriate.

(2) The meetings referred to in paragraph (1)(a) shall be convened not earlier than 3 months from the date of the submission of the conversion proposal to all the policy-holders, in accordance with regulation 7.

(3) A notice of a meeting shall be sent

(a) to each member not less than 28 days and not more than 50 days before the meeting;

(b) to the last known address of each member as shown on the records of the converting company.

(4) The notice shall describe the proposed conversion plan, and inform the eligible member of that member's right to vote on the conversion plan.

Memoran-  
dum  
accompany-  
ing notice.

**10.** (1) The notice referred to in regulation 9 shall be accompanied by a memorandum containing

(a) a description of the advantages and disadvantages of the proposed conversion to the converting company and to the members of the converting company;

- (b) a description of the alternatives to conversion that the directors of the converting company have considered, and the reasons why, in their opinion, the conversion is in the best interests of the converting company and its members as a whole;
- (c) a description of the form, amount and estimated market value, or range of market values, of the benefits to be provided as a result of the conversion to an eligible member to whom the notice is sent in exchange for the member's right with respect to, and interests in, the converting company as a mutual company;
- (d) a description of the income tax treatment accorded the benefits referred to in paragraph (c) of each jurisdiction in which at least 10 per cent of all eligible members reside;
- (e) summaries of
  - (i) the opinion referred to in regulation 8; and
  - (ii) the documents referred to in regulation 8(1);
- (f) the financial statements referred to in regulation 8 and the documents referred to in regulation 8(1)(f) and 8(2)(d); and any other financial statements relevant to the converting company or holding company;
- (g) a brief description of the business carried on by the converting company and its subsidiaries, and the general development of that business during the 3 years preceding a day that is not more than 180 days before the day on which the notice of the meeting is sent to members, and any future business foreseen on that day;
- (h) a brief description of any substantial variations in the operating results of the converting company during the 3 most recently completed financial years preceding the notice of the meeting and, where the notice of the meeting is sent more than 180 days after the end of the most recently completed financial year of the converting company, during the portion of the current financial year ending on a day that is not more than 180 days before the day on which the notice is sent;

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- (i) the name and address of the auditor of the converted company;
  - (j) the names and addresses of the proposed transfer agents and registrars, if any;
  - (k) the proposed location for the securities registers for the initial issuance of common shares of the converted company or the holding company;
  - (l) a copy of the prospectus referred to in regulation 8(2)(c);
  - (m) a description of the restrictions set out in regulations 18 and 19 and of any plans that the converting company or the holding company may have for the establishment of share-option or share-incentive plans for directors, officers or employees of the converted company, or the holding company, after the period referred to in regulation 19;
  - (n) a description of any measures, including the establishment of toll-free lines and internet sites, the holding of information sharing sessions, and the placement of advertisements in widely circulated publications, that the converting company has taken or will take before holding the special meeting, to provide eligible members with information about the proposed conversion and an opportunity to raise questions or concerns about the proposed conversion;
  - (o) a description of the measures that the converting company has taken or will take to encourage eligible members to vote on the conversion proposal; and
  - (p) any other information that the Supervisor has directed should be conveyed to the policy-holders.
- (2) The converting company shall convene such other meetings as are necessary before a vote is taken, to assist eligible members in understanding the relevant issues and in forming a reasoned judgment on the conversion proposal.

(3) The Supervisor, where he is satisfied that the convening of any meeting is necessary for the purpose specified in paragraph (1), may direct the converting company

- (a) to hold one or more meetings for eligible members prior to voting in respect of the special meeting;
- (b) to take such other action, prior to voting, as the Supervisor considers appropriate to facilitate an understanding of the proposal and other relevant information.

**11.** (1) The directors of a converting company may amend a conversion proposal of the converting company at any time before the vote of eligible members is held, if measures approved by the Supervisor are taken by the converting company in respect of the amendment.

Amendment  
or with-  
drawal of  
proposal.

(2) The directors of a converting company may withdraw a conversion proposal of the converting company at any time before applying for approval by the Supervisor under regulation 18.

**12.** (1) Before an application for approval by the Supervisor is made under section 147(2) of the Act, the directors of a mutual company shall call a special meeting of eligible members to obtain

Special  
meeting of  
members.

- (a) approval of the conversion proposal;
- (b) confirmation of any by-law or of any amendment to or repeal of a by-law that is necessary to implement the conversion proposal;
- (c) approval to re-incorporate the converting company under Division C.1 of Part III of the *Companies Act*;
- (d) permission to apply to the Supervisor for approval under section 147(2) of the Act; and
- (e) approval of such other matters as may properly be considered at the meeting.

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(2) Prior to sending a notice of a special meeting, a converting company shall obtain permission from the Supervisor to send a notice to members.

(3) In deciding whether to grant permission to send the notice, the Supervisor may consider any other information, including an opinion or report on any aspect of the conversion proposal.

(4) As a condition of granting permission to send the notice, the Supervisor may require that the notice of the special meeting or the management proxy circular contain such additional information as the Supervisor considers appropriate.

List of eligible policy-holders.

**13.** (1) A converting company shall, not less than 28 days before a special meeting, prepare a list (which may be in electronic form) of all eligible members permitted to vote at the special meeting.

(2) A member may at any time before the date of the special meeting require the converting company to verify from the list referred to in paragraph (1) whether a person identified both by name and some other distinguishing feature is entitled to vote at that meeting.

Eligibility day.

**14.** (1) A converting company shall select as its eligibility day

(a) the day of the notification by the mutual company to the Supervisor of its intention to develop a conversion proposal;  
or

(b) a day not later than 30 days after the day referred to in paragraph (a).

(2) Where a converting company selects an eligibility day referred to in paragraph 1(b), the converting company shall include as eligible members all persons whose policies were involuntarily terminated on the eligibility day.



*Supervisor's Approval*

**15.** Within 30 days after the approval of a conversion proposal by the eligible members, the directors of a converting company shall, unless the conversion proposal is withdrawn, apply to the Supervisor for

Application  
for  
Supervisor's  
approval.

- (a) approval of the conversion scheme pursuant to section 147(2) of the Act; and
- (b) permission to file articles of re-incorporation.

**16.** An application made by a converting company to the Supervisor pursuant to section 147(2) of the Act shall include

Content of  
application.

- (a) the conversion proposal approved by eligible policy-holders under regulation 12;
- (b) the notice of the special meeting at which the conversion proposal was considered and the documentation sent with that notice;
- (c) the articles of re-incorporation and any by-laws, amendments to by-laws or repeals of by-laws approved by eligible policy-holders under regulation 12; and
- (d) the special resolutions of the eligible members referred to in regulation 12(2), accompanied by a certificate of the converting company indicating the results of the votes held in respect of those resolutions.

**17.** (1) The Supervisor shall approve a conversion scheme and grant permission to the converting company to implement the scheme where the Supervisor is satisfied that

Grant of  
approval.

- (a) the conversion scheme
  - (i) complies with the provisions of the Act;
  - (ii) reasonably safeguards the rights of policy-holders in the converting company;

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- (b) the conversion is in the interest of the converting company;
- (c) the successor company is capable of being authorised to carry on long-term insurance business.
- (2) The converting company shall, on receipt of the Supervisor's approval and permission granted under paragraph (1), file the articles of re-incorporation.
- (3) On the date shown on the certificate of re-incorporation,
- (a) the converting company ceases to be a mutual company; and
- (b) the members of the converting company cease to have any rights with respect to, or any interest in, the converting company as a mutual company.
- (4) Within 30 days of the issue of the certificate of re-incorporation referred to in paragraph (3), the converted company or holding company, as the case may be, shall issue to the former eligible policy-holders the shares to which they are entitled under the conversion scheme.

*Restrictions on Benefits*

Restrictions  
on benefits.

- 18.** (1) Subject to paragraph (2), a converting company shall not provide any director, officer or employee of the converting company with any payment, reward, compensation or any other consideration in relation to the conversion of the converting company other than
- (a) the regular compensation provided to the person in that person's capacity as a director, officer or employee of the converting company; and
- (b) any benefits provided to the person as an eligible policy-holder.

(2) A converting company may pay fees or provide compensation or any other consideration to a director, officer or employee pursuant to a contract for services in respect of the conversion that was entered into by the converting company with the director, officer or employee on terms and conditions that are at least as favourable to the converting company as terms and conditions offered to the public in the ordinary course of business on the open market.

**19.** A converted company or a holding company shall not, prior to the listing of its shares on a recognised stock exchange and for a period of 12 months after such a listing, issue or provide shares, share options or rights to acquire shares of the converted company or the holding company to

Issue of  
shares etc.

- (a) any director, officer or employee of the converted company or the holding company;
- (b) any person who was a director, officer or employee of the converted company during the period beginning on the eligibility day and ending on the effective date of conversion of the converted company and who ceased to be a director, officer or employee of the converted company,

other than shares issued to that person as an eligible policy-holder or pursuant to a public offering.

**20.** For the purposes of section 30 of the *Companies Act*, shares issued by a converted company or a holding company under a conversion plan are deemed to be fully paid for in money, and the amount of consideration received by the converted company or the holding company for those shares is deemed to be equal to the net book value of the converted company immediately after the effective date of its conversion, or of the holding company, determined in accordance with the accounting principles referred to in section 41(2) of the *Insurance Act*.

Value of  
shares.  
Cap. 308.

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**21.** The Minister may impose such fees as necessary to defray the costs of evaluating the conversion plan and reviewing all financial statements and other documents connected to the conversion.

Fees.

Enforcement  
and  
offences.

**22.** Where a person

- (a) fails to comply with a direction of the Supervisor under regulation 9; or
- (b) seeks to convert, or converts, a mutual company into a company with share capital without obtaining
  - (i) the approval of the Supervisor; or
  - (ii) the approval of the policy-holders,

the Supervisor may apply to the High Court for an injunction to prevent the company proceeding with the conversion or the operation of the converted company.