

No. (iii)



BERMUDA
1997 : No. (iii)

Nordica Life (Bermuda) Ltd. Act, 1997

[16th April, 1997]

WHEREAS a petition has been presented to the Legislature by Nordica Life (Bermuda) Ltd. praying that legislation may be enacted to provide for the establishment by the said company of segregated reserves for the purpose of assuring the said company's ability to meet its obligations under certain policies issued by the said company.

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

1. This Act may be cited as the Nordica Life (Bermuda) Ltd. Act, 1997.

Short title

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

Interpretation

(a) "approved actuary" shall have the same meaning assigned to this term by section 26 of the Insurance Act;

- (b) "Company" means Nordica Life (Bermuda) Ltd. a Bermuda exempted insurance company incorporated on 14 October, 1996;
- (c) "Insurance Act" means the Insurance Act 1978 and regulations promulgated thereunder from time to time;
- (d) "long-term business" shall have the same meaning assigned to this term by section 1 of the Insurance Act;
- (e) "Policyholder" means any person under or pursuant to a Policy at the relevant time who is described in the Policy as an owner of a Policy or, in the absence of such description, with whom the Company is contractually bound or who is a beneficiary receiving benefits or payments under a Policy, and shall include such person's successors in title or assigns;
- (f) "Policy" means any contract under which the Company is committed or to which the Company may commit itself from time to time in such form as it may deem expedient whereby (i) persons are protected against loss or liability to loss in respect of risks to which such persons may be exposed, (ii) a sum of money is to be paid or money's worth is to be rendered upon the happening of an event or a specified date, or (iii) the Company administers a pension or other benefits plan, and shall include any extensions or renewals of such contracts and, if a Policy was issued (a) prior to the commencement of this Act or (b) without requiring a Separate Account, the consent referred to in subsection 5(1) of this Act;
- (g) "Registrar" means the Registrar of Companies appointed under section 3 of the Companies Act 1981 or such other person as may be performing his or her duties under the Companies Act 1981;
- (h) "Separate Account" means each account established or recorded pursuant to section 4 of this Act, which shall be evidenced in the records of the Company;
- (i) "subsidiary" has the same meaning assigned to the term "subsidiary company" under the Companies Act 1981; and

- (j) expressions importing the singular shall include the plural and expressions importing the plural shall include the singular.
- (2) Wherever in this Act an obligation or duty is placed on the Company or the Company is authorized to do any act then, unless it is otherwise provided herein, such obligation, duty or act may be carried out by the directors of the Company.
3. (1) This Act applies to the long-term business carried on by the Company including without limitation, Policies issued prior to the commencement of this Act. Application
- (2) Subject to subsections (3), (4) and (5), the Insurance Act shall apply to the Company in accordance with its terms while the Company is registered as an insurer thereunder.
- (3) Notwithstanding section 23 of the Insurance Act, section 24 of the Insurance Act shall not apply to the long-term business carried on by the Company the receipts from, assets of (and income arising therefrom) and liabilities and expenses attributable to which, as the case may be, are carried to or form part of or charged against a Separate Account.
- (4) Section 36(1) of the Insurance Act shall not apply to the Company.
- (5) Section 36(2) to (5) (inclusive) and section 37 of the Insurance Act shall not apply to the long-term business carried on by the Company the receipts from, assets of (and income arising therefrom) and liabilities and expenses attributable to which, as the case may be, are allocated or carried to or form part of or charged against a Separate Account.
4. (1) Where required under the terms of a Policy and in accordance with the terms thereof, the Company shall pursuant to the provisions of this section establish and maintain a Separate Account for such Policy issued by the Company and if the said terms permit, a Separate Account may relate to more than one Policy. Legal Segregation of Assets
- (2) The Company shall maintain separate books and records for each Separate Account, in accordance with such generally accepted accounting principles as adopted by the Company from time to time.

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- (3) The Company shall credit to the relevant Separate Account such portion of the premium, retropremium and other receipts from the related Policy as the related Policy may stipulate.
- (4) Subject to the terms and conditions of the Policy to which a Separate Account relates, the Company may invest and deal with assets, investment income and other property credited to that Separate Account in such manner as the Company thinks fit.
- (5) All income, interest, or other gains earned from and any property acquired by the investing or dealing of the assets forming part of a Separate Account shall be credited to that Separate Account.
- (6) All expenses, fees or losses relating to the Separate Account or incurred from dealing or investing the assets forming part of a Separate Account shall be charged against that Separate Account.
- (7) The assets and property standing to the credit of a Separate Account shall, after deduction of all amounts payable in accordance with subsection (6), be held by the Company subject to the provisions of this Act, for the sole purpose of paying any and all claims arising from or other amounts owing under the related Policy and no other person shall have any right or interest in such assets.

Existing Policies

- 5. (1) The Company may, with the written consent of the relevant Policyholder, establish and maintain a Separate Account for a Policy issued prior to the commencement of this Act or a Policy issued after the commencement of this Act that did not require a Separate Account at the time it was issued and transfer or credit to such Separate Account such reserves and other property of the Company, other than the assets or property of another Separate Account, as the Company deems appropriate, but subject to obtaining the confirmation from the Company's approved actuary as required by subsection (2) of this section.
- (2) No reserves or other property of the Company may be transferred or credited to a Separate Account pursuant to subsection (1) of this section until the approved actuary has approved the transfer or credit to the particular Separate Account. In the event it comes to the attention of the approved actuary that the Company has made or intends to make a transfer or credit requiring the

approval of the approved actuary but such approval has not or will not be given (in this Act referred to as the “unauthorized transfer or allocation”), then the approved actuary shall inform the Registrar within thirty days of the unauthorized transfer or credit coming to his or her attention. The approved actuary shall be obliged to give the Registrar upon the written request of the Registrar any information in the possession of the approved actuary concerning the unauthorized transfer or credit and the reasons why the approved actuary has not or will not give his or her approval. After review of the information and other matters the Registrar shall report to the Minister of Finance who may exercise any powers granted under sections 30 to 32, inclusive, of the Insurance Act, as the Minister of Finance considers appropriate in the circumstances. Section 52 of the Insurance Act shall extend to any information received by the Registrar pursuant to the foregoing.

6. (1) A subsidiary may, subject to the consent of the Minister of Finance, given in his or her discretion, avail itself of the provisions of this Act. Application to Subsidiaries
- (2) The Registrar shall, upon receipt of the consent of the Minister of Finance, register the subsidiary as being entitled to avail itself of the provisions of the Act and such entitlement shall be effective on the date of such registration.
- (3) The Registrar shall maintain a public record of all registrations under this section 6, in such form and manner as the Registrar may in his or her discretion consider appropriate.
- (4) The Registrar shall deregister a company registered as a subsidiary entitled to avail itself of the provisions of the Act pursuant to the provisions of this section 6 upon receipt by the Registrar of written notice from such company stating its desire to be deregistered, and such entitlement will cease on the date of such deregistration.
7. (1) Notwithstanding any statutory provision or any rule of law to the contrary, but subject to subsection (2), Restrictions on winding up Company
- (a) no petition shall be presented to the Court for the winding up of the Company by any person, and
- (b) the Company shall not be voluntarily wound up, without

the consent of the Registrar, which consent shall not be granted until the Company has paid all amounts due under all the Policies or until eighty per centum of the number of the owners of the Policies (each owner being determined as the owner under the terms of the relevant Policy) consent in writing to the proposed petition or the Company being voluntarily wound up (as the case may be).

- (2) The Registrar may, in addition to any power he or she may have under section 35 of the Insurance Act, present a petition for the winding up of the Company in circumstances where he or she may determine, after representations made by the Company or on its behalf or by any Policyholder, that it is expedient in the public interest that the Company be wound up.
- (3) Where a petition for the winding up of the Company is presented by a person other than the Registrar, a copy of the petition shall be served on the Registrar, and he or she shall be entitled to be heard on the petition.

Obligations of
Liquidator

8. Notwithstanding any statutory provision or any rule of law to the contrary, on the commencement of proceedings to wind up the Company,

- (a) the liquidator shall be bound to recognize the separate nature of each Separate Account pursuant to the provisions of the Act and shall not apply the property identified as the property of any one Separate Account (including any interest in a mixed fund or converted or combined property where property may have been commingled) to pay the claims of creditors of the Company, including, without limitation, the claims of Policyholders other than the Policyholder to whom the Separate Account relates;
- (b) if required under the terms of the Policy, the liquidator shall preserve the property in the Separate Account and ensure, where applicable, the property therein matures in the ordinary course for the benefit of the Policyholder;
- (c) the liquidator shall be bound to observe, and shall have no power to void or cancel, the terms of any Policy and any deed, contract or agreement between the Company and any other person with respect to any Policy or Separate Account;

- (d) transfers of property from a Separate Account to the Policyholder to whom the Separate Account relates, whether pursuant to a Policy, the bye-laws of the Company or otherwise, shall not constitute nor be deemed to be a fraudulent preference or a fraudulent conveyance, nor constitute business of the Company being carried on with intent to defraud creditors of the Company or creditors of any person or for any fraudulent purpose, for the purposes of any statute or law relating to bankruptcy or insolvency; and
- (e) for the benefit of the relevant Policyholder the remedies of tracing in law and in equity shall apply to the property and the proceeds of the property of any Separate Account where such property or proceeds may have been commingled.

9. Nothing in this Act contained shall be construed to affect the rights of Her Majesty, Her heirs and successors or of any body politic or corporate or of any other person or persons except such as are mentioned in this Act, and those claiming by, from or under them.

Saving of
Rights of Crown
and Others