**VIRGIN ISLANDS**

**INSURANCE GUARANTY ASSOCIATION ACT**

**SECTION ANALYSIS**

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**§ 231. Purpose**

The purpose of this chapter is to provide a mechanism for the payment of covered claims under certain insurance policies, to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

Added March 7, 1984, No. 4900, § 4, Sess. L. 1984, p. 49; amended July 2, 1984, No. 4969, § 2, Sess. L. 1984, p. 190.

**§ 232. Scope**

This chapter shall apply to all kinds of direct insurance, except title, surety, credit, mortgage guaranty and ocean marine insurance.

Added March 7, 1984, No. 4900, § 4, Sess. L. 1984, p. 49; amended July 2, 1984, No. 4969, § 2, Sess. L. 1984, p. 190; Sept. 30, 1985, No. 5097, § 4(1), Sess. L. 1985, p. 132; amended Oct. 6, 2019, No. 8211, § 1, Sess. L. 2019, p. 88.

**§ 233. Construction**

This chapter shall be liberally construed to effect the purpose propounded in section 231 of this title which shall constitute an aid and guide to interpretation.

Added March 7, 1984, No. 4900, § 4, Sess. L. 1984, p. 49; amended July 2, 1984, No. 4969, § 2, Sess. L. 1984, p. 190.

**§ 234. Definitions**

As used in this chapter, unless the context clearly indicates otherwise:

(a) Association" means the Virgin Islands Insurance Guaranty Association created in section 235 of this title.

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

(c) "Covered claim" means an unpaid claim or judgment, including an unearned premium claim, that has been timely filed with the liquidators as provided in section 237 of this title, which arises out of and is within the coverage of an insurance policy to which this chapter applies, and which is issued by an insurer if such insurer becomes an insolvent insurer after the effective date of this chapter and (1) the claimant or insured is a resident of this territory at the time of the insured event; or (2) the property from which the claim arises is permanently located in this territory. "Covered claim" shall not include: (1) any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise, and (2) supplementary payment obligations including but not limited to adjustment fees and expenses, attorney fees and expenses, court costs, interest and bond premiums, prior to the appointment of a liquidator.

(d) "Insolvent insurer" means (1) an insurer which holds a certificate of authority to transact insurance in this territory either at the time the policy was issued or when the insured event occurred and (2) determined to be insolvent by a court of competent jurisdiction. "Insolvent insurer" shall not be construed to mean an insurer with respect to which an order, decree, judgment or finding of insolvency, whether preliminary or temporary in nature, or order of rehabilitation or conservation has been issued by a court of competent jurisdiction prior to July 2, 1984, or which was otherwise in fact insolvent prior to July 2, 1984.

(e) "Member insurer" means any person who (1) writes any kind of insurance to which this chapter applies pursuant to section 232 of this title, including the exchange of reciprocal or inter-insurance contracts, and (2) holds a certificate of authority to transact insurance in this territory. However, an exchange or reciprocal formed in accordance with chapter 18 of this title shall not be required to be a member insurer for the purposes of this chapter.

(f) "Net direct written premiums" means direct gross premiums written in this territory on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums or contracts between insurers and reinsurers.

(g) "Person" means any individual, corporation, partnership, association or voluntary organization.

--Added March 7, 1984, No. 4900, § 4, Sess. L. 1984, p. 49; amended July 2, 1984, No. 4969, § 2, Sess. L. 1984, p. 190; Sept. 30, 1985, No. 5097, § 4(2), Sess. L. 1985, p. 133; June 20, 1986, No. 5176, § 3, Sess. L. 1986, p. 188.

**§ 235. Creation of Association**

There is created a nonprofit unincorporated legal entity to be known as the Virgin Islands Insurance Guaranty Association. All insurers defined as member insurers by subsection (e) of section 234 of this title shall be and remain members of the Association as a condition of their authority to transact insurance in this territory. The Association shall perform its functions under a plan of operation established and approved pursuant to section 238 of this title and shall exercise its powers through a board of directors established pursuant to section 236 of this title.

--Added March 7, 1984, No. 4900, § 4, Sess. L. 1984, p. 49; amended July 2, 1984, No. 4969, § 2, Sess. L. 1984, p. 190.

**§ 236. Board of Directors**

(a) The Board of Directors of the Association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the Board shall be selected by member insurers subject to the approval of the Commissioner. Vacancies on the Board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within 60 days after July 2, 1984, the Commissioner may appoint the initial members of the Board of Directors.

(b) In approving selections to the Board, the Commissioner shall consider, among other things, whether all member insurers are fairly represented.

(c) Members of the Board may be reimbursed from the assets of the Association for expenses incurred by them as members of the Board of Directors.

--Added July 2, 1984, No. 4969, § 2, Sess. L. 1984, p. 190.

**§ 237. Powers and duties of the Association**

(a) The Association shall:

(1) Be obligated to the extent of the covered claims existing prior to the determination of insolvency, or arising within 30 days after the determination of insolvency, before the policy expiration date if less than 30 days after the determination, or before the insured replaces the policy or on request effects cancellation, if he does so within 30 days of the determination, but such obligation shall include only that amount of each covered claim which is in excess of $50 and less than $50,000. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises;

(2) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(3)(A) Assess insurers amounts necessary to pay the obligations of the Association under paragraph (1) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under section 243 of this title and other expenses authorized by this section. The Association shall not be required to make assessments pursuant to subsection (a)(3)(A) of this section at any time that the amount contained in the Insurance Guaranty Fund is less than $20,000,000, and the shortfall is due to appropriations, disbursements, expenditures or other transfers from the Insurance Guaranty Fund for purposes other than pursuant to this chapter 10 of this title. In the event of the shortfall, assessments shall not be made of any member insurer unless and until the Government repays and transfers to the Insurance Guaranty Fund the lesser of (i) the amounts arising from appropriations, disbursements, expenditures or other transfers from the Insurance Guaranty Fund, or (ii) the amount that is necessary to restore the Fund balance to $20,000,000, and under any circumstance excluding appropriations, disbursements or expenditures or other transfers made pursuant to this chapter. Each member insurer shall be notified of the assessment not later than 30 days before it is due. No member insurer may be assessed in any year an amount greater than 3% of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the Association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The Association may defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect an amount of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; Provided, however, That during the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such payment will not reduce capital or surplus below required minimums. Such payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or, in the discretion of any such company, credited against future assessments.

(B) Solely for the purpose of determining assessments, and not for the purpose of determining refunds under paragraph (7) of subsection (b) of this section or for any other purpose, the Association shall consider the amounts contained in the Virgin Islands Insurance Guaranty Fund established pursuant to Title 33, section 3061 of this Code, as an asset of the Association and the Association shall first utilize amounts contained therein in paying the obligations of insolvent insurers. The Association shall request in writing of the Commissioner of Insurance and the Commissioner of Finance transfer to the Association of any amounts contained in said Fund needed to pay such obligations, and the Commissioner of Finance shall promptly make such amounts available to the Association upon the written certification of the Commissioner of Insurance that such funds are in fact needed to pay such obligations. In the event that amounts in excess of the Association's requirements are transferred, the Association shall promptly refund the excess to the Commissioner of Finance for redeposit in the said Fund.

(C) The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the Association by the member insurer less (1) any amounts returned to the member insurer by the Association and (2) any amounts collected under the following proviso, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer; Provided, however, if the total amount assessed member insurers in any year exceeds ¼ of 1% of the member insurers' net direct written premiums for the preceding calendar year, the total amount so assessed shall be recovered during a reasonable period of time by member insurers by a surcharge on the net direct written premium on insurance policy for which such assessment was made. Any such surcharge shall be authorized by regulations promulgated by the Commissioner. Any such surcharge shall not be considered premium for purposes of (1) accounting, (2) premium or other tax and (3) agent and broker compensation, nor shall it be considered a deposit, penalty, fee, charge or tax for purposes of any retaliatory law. The Commissioner may authorize such a surcharge even I f the total amount assessed member insurers in any account in any year does not exceed ¼ of 1%;

(4) Investigate, adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation and deny all other claims;

(5) Notify such persons as the Commissioner directs pursuant to paragraphs (1) and (2) of subsection (b), section 239 of this title;

(6) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility shall be subject to the approval of the Commissioner, but such designation may be declined by a member insurer;

(7) Reimburse each servicing facility for obligations of the Association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the Association and pay the other expenses of the Association authorized by this chapter.

(b) The Association may:

(1) Appear in, defend, and appeal any action on a covered claim or on a claim brought against the Association;

(2) Employ or retain such persons as are necessary to handle claims and perform other duties;

(3) Borrow funds necessary to effect the purposes of this chapter in accordance with the plan of operation;

(4) Sue or be sued;

(5) Negotiate and become party to such contracts as are necessary to carry out the purposes of this chapter;

(6) Perform such other acts as are necessary or proper to effectuate the purposes of this chapter;

(7) Refund to the member insurers in proportion to the contribution of each member insurer to the Association that amount by which the assets of the Association exceed the liabilities, if at the end of any calendar year, the Board of Directors finds that the assets of the Association exceed the liabilities of the Association as estimated by the Board of Directors for the coming year.

-Added July 2, 1984, No. 4969, § 2, Sess. L. 1984, p. 190; amended Sept. 30, 1985, No. 5097, § 4(3), (4), Sess. L. 1985, p. 133 ; Feb. 1, 2001, No. 6388, § 3, Sess. L. 2000, p. 394, Feb. 10, 2012, No. 7342, § 2(a), Sess. L. 2012, p. 2; amended Sept. 30, 2019, No. 8126, § 1, Sess. L. 2018, p. -242; amended Oct. 6, 2019, No. 8214, § 1, Sess. L. 2019, p. 97.

**§ 238. Plan of operation**

(a)(1) The Association shall submit to the Commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the Association. The plan of operation or any amendments thereto shall become effective upon approval in writing by the Commissioner.

(2) If the Association fails to submit a suitable plan of operation within 120 days following July 2, 1984, or if at any time thereafter the Association fails to submit suitable amendments to the plan, the Commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this chapter. Such rules shall continue in force until modified by the Commissioner or superseded by a plan submitted by the Association and approved by the Commissioner.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall:

(1) Establish the procedures whereby all the powers and duties of the Association enumerated in section 237 of this title will be performed;

(2) Establish procedures for handling assets of the Association;

(3) Establish the amount and method of reimbursing members of the Board of Directors created pursuant to the provisions of section 236 of this title;

(4) Establish procedures by which claims may be filed with the Association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the Association or its agent and a list of such claims shall be periodically submitted to the Association or similar organization in another state by the receiver or liquidator;

(5) Establish regular places and times for meetings of the Board of Directors;

(6) Establish procedures for records to be kept of all financial transactions of the Association, its agents, and the Board of Directors;

(7) Provide that any member insurer aggrieved by any final action or decision of the Association may appeal to the Commissioner within 30 days after the action or decision;

(8) Establish the procedures whereby selections for the Board of Directors will be submitted to the Commissioner;

(9) Contain additional provisions necessary or proper for the execution of the power and duties of the Association.

(d) The plan of operation may provide that any or all powers and duties of the Association, except those enumerated in paragraphs (a)(3) and (b)(3) of section 237, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this Association, or its equivalent, in two or more states, territories, or the Commonwealth of Puerto Rico. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the Association. A delegation under this subsection shall take effect only with the approval of both the Board of Directors and the Commissioner, and may be made by only a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter.

--Added July 2, 1984, No. 4969, § 2, Sess. L. 1984, p. 190.

**§ 239. Duties and powers of the Commissioner**

(a) The Commissioner shall:

(1) Notify the Association of the existence of an insolvent insurer not later than three days after he receives notice of the determination of the insolvency;

(2) Upon request of the Board of Directors, provide the Association with a statement of the net direct written premiums of each member insurer.

(b) The Commissioner may:

(1) Require that the Association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this chapter. Such notification shall be by first-class mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient;

(2) Require each agent of the insolvent insurer to give prompt written notice by first-class mail of the insured's last known address to each insured of the insolvent insurer for whom he was the agent of record;

(3) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this territory of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the Commissioner may levy a fine on any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. Such fine shall not exceed 5% of the unpaid assessment per month, except that no fine shall be less than $100 per month.

(c) Any final action or order of the Commissioner issued pursuant to this chapter shall be subject to judicial review in a court of competent jurisdiction.

--Added July 2, 1984, No. 4969, § 2, Sess. L. 1984, p. 190.

**§ 240. Effect of paid claims**

(a) Any person recovering under this chapter shall be deemed to have assigned his rights under the policy to the Association to the extent of his recovery from the Association. Every insured or claimant seeking the protection of this chapter shall cooperate with the Association to the same extent as such person would have been required to cooperate with the insolvent insurer. The Association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out, except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the Association shall not operate to reduce the liability of insurers to the receiver, liquidator, or statutory successor for unpaid assessments.

(b) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the Association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that to which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the Association or similar organization in handling claims shall be accorded the same priority as the liquidator’s expenses.

(c) The Association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the Association and estimates of anticipated claims on the Association which shall preserve the rights of the Association against the assets of the insolvent insurer.

--Added July 2, 1984, No. 4969, § 2, Sess. L. 1984, p. 190.

**§ 241. Nonduplication of recovery**

(a) Any person having a claim against an insurer under any provision in his insurance policy which is also a covered claim shall be required to exhaust first his right under such policy. Any amount payable on a covered claim pursuant to this chapter shall be reduced by the amount of such recovery under the claimant's insurance policy.

(b) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the Association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, from the Association of the location of the property. Any recovery pursuant to this chapter shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.

--Added by July 2, 1984, No. 4969, § 2, Sess. L. 1984, p. 190.

**§ 242. Prevention of insolvencies**

The Board of Directors of the Association may make recommendations to the Commissioner for the detection and prevention of insurer insolvencies.

--Added July 2, 1984, No. 4969, § 2, Sess. L. 1984, p. 190.

**§ 243. Examination of the Association**

The Association shall be subject to examination and regulation by the Commissioner. The Board of Directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the Commissioner.

--Added July 2, 1984, No. 4969, § 2, Sess. L. 1984, p. 190.

**§ 244. Tax exemption**

The Association shall be exempt from payment of all fees and all taxes levied by this territory except taxes levied on real or personal property.

--Added July 2, 1984, No. 4969, § 2, Sess. L. 1984, p. 190.

**§ 245. Immunity**

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the Association or its agents or employees, the Board of Directors, or the Commissioner or his representatives for any authorized action taken by them in performance of their powers and duties pursuant to this chapter.

--Added July 2, 1984, No. 4969, § 2, Sess. L. 1984, p. 190.

**§ 246. Stay of proceedings; reopening of default judgment**

All proceedings in which the insolvent insurer is a party in any court in this territory shall be stayed for 60 days from the date the insolvency is determined to permit proper defense by the Association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the Association, either on its own behalf or on behalf of such insured, may apply to have such judgment, order, decision, verdict, or finding set aside by the same court or administrator that made such judgment, order, decision, verdict, or finding and shall be permitted to defend against such claim on the merits.

--Added July 2, 1984, No. 4969, § 2, Sess. L. 1984, p. 190.

**§ 247. Severability clause**

(a) Except as provided in subsection (b) of this section, the provisions of this chapter are severable. If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application.

(b) The provisions of section 237(a)(3)(B) of this title are nonseverable. If any provision of that paragraph or its application to any person or circumstances is held invalid, the remaining provisions or applications of this chapter are void.

--Added July 2, 1984, No. 4969, § 2, Sess. L. 1984, p. 190.

**§ 248 Prospective application**

This chapter shall not apply to any life and health insurer, with respect to which an order, decree, judgement or finding of insolvency, whether preliminary or temporary in nature, or order of rehabilitation or conservation has been issued by a court of competent jurisdiction prior to January 1, 2020, or which was otherwise in fact insolvent prior to January 1, 2020.

**-**Added Oct. 6, 2019, No. 8211, § 2, Sess. L. 2019, p. 88.