



ANGUILLA

A BILL FOR

SCHEME OF ARRANGEMENT (BAICO AND CLICO) ACT, 2016

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SCHEME OF ARRANGEMENT (BAICO AND CLICO) ACT, 2016

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I Assent

Governor_____
Date

ANGUILLA

No. /2016

A BILL FOR

SCHEME OF ARRANGEMENT (BAICO AND CLICO) ACT, 2016

[Gazette Dated: , 2016][Commencement: under section 57 of the Constitution]

AN ACT to provide a framework to aid in the resolution of the insolvency of British-American Insurance Company Limited and CLICO International Life Insurance Company Limited by means of a scheme of arrangement.

ENACTED by the Legislature of Anguilla**Interpretation****1.** (1) In this Act—

“BAICO” means British-American Insurance Company Limited, a company incorporated in The Bahamas with the registration number 47C;

“CLICO” means CLICO International Life Insurance Company Limited, a company incorporated in Barbados with the registration number 2562;

“Company” means either BAICO or CLICO;

“Court” means the Eastern Caribbean Supreme Court established by the Supreme Court Order 1967;

“Directions Order” means a court order for directions convening a meeting of the creditors, or any class of creditors of the relevant Company;

“EC State or Territory” means any of the following which have enacted scheme of arrangement legislation—

Antigua and Barbuda;
Commonwealth of Dominica;
Grenada;
Saint Christopher (St Kitts) and Nevis;
Saint Lucia;
Saint Vincent and the Grenadines; and
Montserrat;

“Home Court” means in the case of—

- (a) BAICO, the Supreme Court of The Bahamas; and
- (b) CLICO, the Supreme Court of Barbados;

“Home State” means in the case of—

- (a) BAICO, the Commonwealth of the Bahamas; and
- (b) CLICO, Barbados;

“insurance claim” means a claim pursuant to or arising out of an insurance policy issued by the relevant Company;

“Judicial Manager” means any judicial manager or administrator of BAICO or CLICO appointed by the Court or the relevant Home Court;

“meeting” means a meeting of the creditors or class of creditors of the relevant Company that has been ordered by the Court or a Home Court to consider a scheme of arrangement, whether the meeting is held in one place or in multiple places;

“Minister” means the Minister responsible for Finance;

“EC State or Territory” means any of the following which have enacted scheme of arrangement legislation—

Antigua and Barbuda;
Commonwealth of Dominica;
Grenada;
Saint Christopher (St Kitts) and Nevis;
Saint Lucia;
Saint Vincent and the Grenadines; and

Montserrat;

cognisant of the fact that they are all States with the exception of Montserrat which is a Territory;

“Other Officer” means a Judicial Manager of the relevant Company appointed by the Court or the relevant Home Court;

“Recognition Order” means an order made by the Court or a Home Court that grants recognition confirming the full force and effect in that jurisdiction of a scheme of arrangement which is subject to a Sanction Order;

“Registrar of Companies” means the Registrar with the responsibility for the incorporation of companies and the maintenance of the companies register in an EC State or Territory; and

“Sanction Order” means in the case of a scheme of arrangement proposed—

(a) under section 2 an order made by the Court under subsection (3); and

(b) in the Home State or in any EC State or Territory an order made by the Home Court or the Court;

“scheme of arrangement” means a compromise or arrangement proposed between a Company and its creditors or any class of creditors;

“scheme of arrangement legislation” means the legislation enacted to facilitate an arrangement in respect of BAICO or CLICO in an EC State or Territory or in the relevant Home State.

(2) Where any provision of this Act is inconsistent with the provisions in any legislation regulating companies or insurance the provision of this Act shall prevail solely for the purpose and objects of this Act.

Power to compromise with creditors

2. (1) Subject to subsection (2), where a scheme of arrangement is proposed, the Court may, on the application of the relevant Company, order a Meeting to be summoned as the Court directs.

(2) The Court shall not make an order under subsection (1) unless it is satisfied that—

(a) the Court in every EC State or Territory and the Home Court has considered and issued an order with respect to the draft Directions Order under its scheme of arrangement legislation; or

(b) where any Court in any EC State or Territory or the Home Court has not issued an order, at least 28 days has passed from the date that the draft Directions Order was filed with the relevant court; and

(c) where a Court in any EC State or Territory or the Home Court has, in accordance with its own scheme of arrangement legislation, considered the draft Directions Order, and made additions or deletions to ensure that adequate notice will be provided to the Company’s creditors in that State or Territory that those additions or deletions are not inconsistent with the draft order that the Company filed before the Court.

(3) Where a majority in number representing at least three-fourths in value of the creditors or class of creditors of a Company, present and voting either in person or by proxy at the meeting agree to the scheme of arrangement, the scheme of arrangement shall where sanctioned by the Court, be binding on all the creditors or class of creditors wherever they are located and on the Company.

(4) The Judicial Manager shall, within 7 days of the Court making a Sanction Order, provide a copy of that Order to each Other Officer.

(5) The scheme of arrangement shall become binding on all creditors of the Company wherever located and on the Company when all of the following have taken place—

(a) the Sanction Order is delivered to the Registrar of Companies for registration;

(b) the Home Court has granted a Recognition Order; and

(c) a copy of the—

(i) Sanction Order made by the Court, and

(ii) Recognition Order made by the Home Court;

have been delivered to the Registrar of Companies where the Home Court is situated for registration.

Scheme of arrangement originating outside Anguilla

3. (1) Where a Company intends to propose a scheme of arrangement under scheme of arrangement legislation in its Home Territory or in any other EC State or Territory the Judicial Manager shall, within 7 days of receipt of a copy of the draft Directions Order from the Other Officer in the relevant State or Territory, seek a review of the draft Directions Order by filing it with the Court.

(2) The Court shall review the draft Directions Order and may make additions or deletions to ensure that adequate notice will be provided to the Company's creditors in Anguilla.

(3) Where the Court does not make an order under subsection (2) within 28 days of the filing of the draft Directions Order, the Company may proceed to file a draft Directions Order with the Court in any EC State or Territory or the relevant Home Court, which may for the purpose of sub section (1) order the meeting without reference to any subsequent order of the Court.

(4) After a meeting has taken place at which the scheme of arrangement has been approved, an application shall be made to the Court that ordered the meeting for a Sanction Order and the Judicial Manager shall submit it to the Court of any EC State or Territory for the purpose of seeking a Recognition Order.

(5) Where a Sanction Order is filed before the Court in Anguilla the Court shall review it and within 28 days from filing give effect to the order by making a Recognition Order.

(6) The scheme of arrangement shall become binding on the Company and all creditors of the Company wherever located when—

(a) where the Sanction Order was made by the Home Court it is filed for registration with the Registrar of Companies in the Home State; and

(b) where the Sanction Order was made by a Court of an EC State or Territory—

- (i) the Sanction Order is filed with the Registrar of Companies in that EC State or Territory for registration,
- (ii) the Home Court has made a Recognition Order in respect of the scheme of arrangement under the provisions of its scheme of arrangement legislation, and
- (iii) a copy of the—
 - (A) Sanction Order; and
 - (B) Recognition Order made by the Home Court;

have been delivered to the Registrar of Companies in the Home Territory for registration.

Information as to compromise with creditors

4. (1) Where a meeting is summoned under section 2 every notice summoning the meeting which is—

- (a) sent to a creditor shall include a statement explaining the effect of the proposed scheme of arrangement and shall state any material interests of any person connected with its promotion and the effect thereon in so far as it is different from the effect on the like interests of the other creditors; and
- (b) given by advertisement shall include a statement in accordance with paragraph (a) or a notification of the place at which and the manner in which creditors entitled to attend the meeting may obtain copies of the statement.

(2) Where a notice given by advertisement includes a notification under subsection (1) paragraph (b) every creditor who is entitled to attend the meeting shall be given a copy of the statement at no cost.

Sub-meetings

5. (1) Where a meeting is convened the—

- (a) meeting may be held in multiple locations and each meeting in each location shall be designated a sub-meeting;
- (b) sub-meetings taken together constitute a single meeting; and
- (c) votes cast in favour of or against the scheme of arrangement at each of the sub-meetings shall be aggregated accordingly.

(2) Any procedural error or inconsistency with respect to any sub-meeting shall not render the meeting invalid, unless the Court or the Home Court that ordered the meeting orders otherwise.

Priority of distribution of assets

6. (1) Insurance claims shall, after the costs and expenses of the judicial management or the subsequent liquidation of BAICO, have a first priority on the assets of BAICO, and shall rank above all unsecured creditors.

(2) The priority of claims of creditors of CLICO in any proposed scheme of arrangement shall be in accordance with the laws of Barbados.

Regulations

7. The Governor in Council may make regulations to give effect to this Act.

Citation

8. This Act may be cited as the Scheme of Arrangement (BAICO) and (CLICO) Act, 2016.

Leroy Rogers

Speaker

Passed in the House of Assembly on this day of , 2016

Lenox Proctor

Clerk of the House of Assembly

OBJECTS AND REASONS

(The objects and reasons do not form part of this Bill)

The objects and reasons of the Act is to provide a framework to aid in the resolution of the insolvency of British-American Insurance Company Limited and CLICO International Life Insurance Company Limited by means of a scheme of arrangement.

Interpretation

Clause 1 of the Bill defines certain words and phrases which are used in the Bill such as-

In sub clause (1):

“Court” means the Eastern Caribbean Supreme Court established by the Supreme Court Order 1967 (varies from definition in draft);

“Directions Order” means a court order for directions convening a meeting of the creditors, or any class of creditors of the relevant Company; (the draft proposes to address both companies thus it was necessary to incorporate the concept of relevant company where appropriate).’

“EC Court” is defined in the draft legislation. That definition is deleted because it is unnecessary. All the States and the Territory of Montserrat share the same Court (refer to definition above) and Home Court is aptly defined.

“EC State or Territory” means any of the following which have enacted scheme of arrangement legislation—

Antigua and Barbuda;

Commonwealth of Dominica;

Grenada;

Saint Christopher (St Kitts) and Nevis;

Saint Lucia;

Saint Vincent and the Grenadines; and

Montserrat; (new concept introduced for clarity of the legislation and “Other EC Territory” concept discarded)

“Home Court” means in the case of—

(a) BAICO, the Supreme Court of The Bahamas; and

(b) CLICO, the Supreme Court of Barbados;

“Home State” means in the case of—

(a) BAICO, the Commonwealth of the Bahamas; and

(b) CLICO, Barbados;

“Other Officer” means a Judicial Manager of the relevant Company appointed by the Court or the relevant Home Court;

“Recognition Order” means an order made by the Court or a Home Court that grants recognition confirming the full force and effect in that jurisdiction of a scheme of arrangement which is subject to a Sanction Order;

“Sanction Order” means in the case of a scheme of arrangement proposed—

(a) under section 2 an order made by the Court under subsection (3); and

(b) in the Home State or in any EC State or Territory an order made by the Home Court or the Court;

Sub clause (2) states that where any provision of the Act is inconsistent with the provisions in any legislation regulating companies or insurance the provision of the Act shall prevail solely for the purpose and objects of this Act. (This is different from the draft or what appears in the legislation of other States where the exclusivity of application is not addressed).

Power to compromise with creditors

Clause 2 speaks to the situation where a scheme of arrangement is proposed and the role of the Court.

Before summoning a meeting the Court must be satisfied that the conditions spelt out in sub clause (2) are satisfied.

Where a majority in number representing at least three-fourths in value of the creditors or class of creditors of a Company, present and voting either in person or by proxy at the meeting agree to the scheme of arrangement, the scheme of arrangement shall where sanctioned by the Court, be binding on all the creditors or class of creditors wherever they are located and on the Company.

The Judicial Manager must within 7 days of the Court making a Sanction Order provide a copy of that Order to each Other Officer.

The scheme of arrangement becomes binding on all creditors of the Company wherever located and on the Company when the conditions specified in sub clause (5) are satisfied.

Scheme of arrangement originating outside Anguilla

Clause 3 addresses the procedural law requirements that must be satisfied when a scheme of arrangement originates outside Anguilla.

The scheme of arrangement becomes binding on all creditors of the Company wherever located and on the Company when the conditions specified in sub clause (6) are satisfied.

Information as to compromise with creditors

Clause 4 makes it mandatory that where a meeting is summoned under section 2 every notice summoning the meeting must include a statement explaining the effect of the proposed scheme of arrangement and

state any material interests of any person connected with its promotion and the effect thereon in so far as it is different from the effect on the like interests of the other creditors.

Provision is made in respect of the statement reaching the creditors when the notice is given by advertisement.

Sub-meetings

Clause 5 makes provision for sub meetings to be held in multiple locations which are deemed to be a single meeting and further states that any procedural error or inconsistency with respect to any sub-meeting shall not render the meeting invalid, unless the Court or the Home Court that ordered the meeting orders otherwise.

Priority of Distribution of Assets

Clause 6 gives insurance claims first priority on the assets of BAICO ranking above all unsecured creditors after the costs and expenses of the judicial management or the subsequent liquidation of BAICO have been satisfied.

In respect of CLICO the priority of claims of creditors in any proposed scheme of arrangement shall be in accordance with the laws of Barbados.

Regulations

Clause 7 gives the Governor in Council the power to make regulations to give effect to the Act.

Citation

Clause 8 deals with the citation of the Act.

Rupert Jones
Attorney General