ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER S12

SCHEME OF ARRANGEMENT (BAICO AND CLICO) ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 11/2016, in force 8 August 2016

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Attorney General's Chambers
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SCHEME OF ARRANGEMENT (BAICO AND CLICO) ACT

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SCHEME OF ARRANGEMENT (BAICO AND CLICO) ACT

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;

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

"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;

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"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;

"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 a provision 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

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(b) where a Court in any EC State or Territory or the Home Court—

(i) 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

(ii) 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—

(i) the Sanction Order made by the Court, and

(ii) the Recognition Order made by the Home Court,

has 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 subsection (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

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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—

(a) where the Sanction Order was made by the Home Court, when 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, when—

(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;

has 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—

(a) every notice summoning the meeting which is 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) every notice summoning the meeting which is 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)(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—

(a) it may be held in multiple locations and each meeting in each location shall be designated a sub-meeting;

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(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 does 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, Revised Statutes of Anguilla, Chapter S12.

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