



## ST. CHRISTOPHER AND NEVIS

### CHAPTER 18.43

## BAICO (PLAN OF ARRANGEMENT) ACT

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### BAICO (PLAN OF ARRANGEMENT) ACT

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## **CHAPTER 18.43**

### **BAICO (PLAN OF ARRANGEMENT) ACT**

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## **CHAPTER 18.43**

### **BAICO (PLAN OF ARRANGEMENT) ACT**

AN ACT TO PROVIDE A FRAMEWORK TO AID IN THE RESOLUTION OF THE INSOLVENCY OF BRITISH AMERICAN INSURANCE COMPANY LIMITED BY MEANS OF A PLAN OF ARRANGEMENT.

#### **Short title.**

1. This Act may be cited as the BAICO (Plan of Arrangement) Act.

#### **Interpretation.**

2. In this Act—

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

“Arrangement Legislation” means the legislation enacted to facilitate an Arrangement in respect of BAICO in the Other EC Territories or in the relevant Home Territory;

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

“Company” means BAICO;

“Court” means a court of competent jurisdiction including the Eastern Caribbean Supreme Court;

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

“EC Court” means the relevant court in the Other EC Territory;

“Home Court” means the Supreme Court of The Bahamas;

“Home Territory” means the Commonwealth of The Bahamas;

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

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

“Meeting” means the meeting of the creditors or class of creditors, as the case may be, of the Company that has been ordered by a court to consider an Arrangement, whether the meeting is held in one place or in multiple places;

“Minister” means the Minister with responsibility for Finance;

“Other EC Territory” means any of the following which have enacted Arrangement Legislation: Anguilla, Antigua and Barbuda, the Commonwealth of Dominica, Grenada, Montserrat, Saint Lucia, Saint Vincent and the Grenadines, and “Other EC Territories” shall be construed accordingly;

“Other Officers” means each of the judicial managers of the Company appointed by an EC Court or the Home Court;

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

“Registrar of Companies” means the Registrar of Companies appointed pursuant to the provision of the Companies Act, Cap. 21.03;

“Sanction Order” means—

- (a) in the case of an Arrangement proposed under section 3, an order made by the Court under subsection (2); or
- (b) in the case of an Arrangement proposed in the Home Territory, or any Other EC Territory, an order made by a court in the relevant territory pursuant to its Arrangement Legislation that sanctions the Arrangement.

(2) Where any provisions of this Act are inconsistent with the provisions in the legislation regulating companies or insurance, the provisions of this Act shall prevail.

#### **Power to compromise with creditors.**

3. (1) Subject to the requirements under subsection (2), where an Arrangement is proposed, the Court may, on the application of the Company, order a Meeting to be summoned in such manner as the Court directs.

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

- (a) either—
  - (i) each EC Court and the Home Court has considered and issued an order with respect to the draft Directions Order under its Arrangement Legislation; or
  - (ii) if any EC Court or Home Court has not issued such an order, at least 28 days has passed from the date that the draft Directions Order was filed with the relevant court; and
- (b) if an EC Court or Home Court has, in accordance with its own 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 territory, those additions or deletions have been made to, or are not inconsistent with, the draft order that the Company proposes the Court make under subsection (1).

(3) If a majority in number representing three-fourths in value of the creditors or class of creditors of the Company, present and voting either in person or by proxy at the Meeting, agree to the Arrangement, the Arrangement shall, if sanctioned by the Court, be binding on all the creditors or any class of creditors, as the case may be, wherever they shall be located, and also on the Company.

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

(5) The Arrangement shall become binding on all creditors of BAICO wherever located, and on BAICO, when all of the following have taken place—

- (a) the Sanction Order is delivered to the Registrar of Companies in Saint Christopher and Nevis for registration;

- (b) the Home Court has granted a Recognition Order under its Arrangement Legislation; and
- (c) a copy of—
  - (i) the Sanction Order made by the Court; and
  - (ii) the Recognition Order made by the Home Court,have been delivered to the Registrar of Companies in the Home Territory for registration.

**Arrangement originating outside Saint Christopher and Nevis.**

4. (1) If the Company intends to propose an Arrangement under Arrangement Legislation in its Home Territory or in any Other EC Territory, then the Judicial Manager shall, within seven days of receipt of a copy of the draft Directions Order from the Other Officer in the relevant 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 such additions or deletions to ensure that adequate notice will be provided to the Company's creditors in Saint Christopher and Nevis.

(3) If the Court does not make an Order under subsection (2) within twenty eight days of the draft Directions Order being filed, the Company may proceed to file a draft Directions Order with any EC Court or the Home Court, which may order the Meeting without reference to any subsequent order of the Court.

(4) After a Meeting has taken place at which the Arrangement has been approved, and the court that ordered the Meeting makes a Sanction Order, the Judicial Manager shall submit it to the Court for the purpose of seeking a Recognition Order.

(5) The Court shall review the Sanction Order and, within twenty eight days from filing shall give effect to that order in Saint Christopher and Nevis by making a Recognition Order.

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

- (a) if the Sanction Order was made by the Home Court, the Sanction Order is delivered to the Registrar of Companies in the Home Territory for registration; and
- (b) if the Sanction Order was made by an EC Court—
  - (i) the Sanction Order is delivered to the Registrar of Companies or its equivalent, in that EC Territory for registration;
  - (ii) the Home Court has made a Recognition Order in respect of the Arrangement under the provisions of its Arrangement Legislation; and
- (iii) a copy of—
  - (aa) the Sanction Order; and
  - (bb) the 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.**

5. (1) Where a Meeting is summoned under section 3, there shall—
- (a) with every notice summoning the Meeting which is sent to a creditor, be sent also a statement explaining the effect of the proposed Arrangement and in particular stating any material interests of any person connected with the promotion of the Arrangement, and the effect thereon of the Arrangement, in so far as it is different from the effect on the like interests of the other persons; and
  - (b) with every notice summoning the Meeting which is given by advertisement, be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the Meeting may obtain copies of such a statement as aforesaid.
- (2) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the Arrangement proposed can be obtained by creditors entitled to attend the Meeting, every such creditor shall, on making application in the manner indicated by the notice, be furnished by the Company free of charge with a copy of the statement.

**Sub-Meetings.**

6. (1) Where a Meeting is convened—
- (a) the Meeting may be held in multiple locations and each meeting in each location shall be designated a Sub-Meeting;
  - (b) the Sub-Meeting, taken together, constitute a single Meeting; and
  - (c) the votes in favour of the Arrangement cast at each of the Sub-Meeting are to be aggregated and the votes against the Arrangement cast at each of the Sub-Meetings are to 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 court that ordered the Meeting orders otherwise.

**Priority of Distribution of Assets.**

7. 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.

**Regulations.**

8. The Minister may make Regulations to give effect to the provisions of this Act.
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