

**ANTIGUA AND BARBUDA**



**PLAN OF ARRANGMENT (BAICO AND CLICO) BILL, 2015**

**NO. OF 2015**

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**PLAN OF ARRANGMENT (BAICO AND CLICO) BILL, 2015**

**No. of 2015**

**AN ACT** to 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 Plan of Arrangement..

**ENACTED** by the Parliament of Antigua and Barbuda as follows-

**1. Short title and Commencement**

(1) This Bill may be cited as the Plan of Arrangement (BAICO and CLICO) Bill, 2015.

(2) The Act shall come into operation on such day as may be fixed by Order made by the Minister published in the Gazette, either generally or with reference to any particular Part, purpose or provision and different days may be fixed for different Parts, purposes or provisions of this Act.

**2. Interpretation**

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 and CLICO 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;

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

**“Company”** means BAICO and CLICO, as the case may be;

**“Court”** means the West Indies Associated States Supreme Court established by the Courts Order of 1967;

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

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

**“Home Court”** means –

- (a) In the case of BAICO, the Supreme Court of the Bahamas; or
- (b) In the case of CLICO, the Supreme Court of Barbados;

**“Home Territory”** means –

- (a) In the case of BAICO, the Commonwealth of The Bahamas; or
- (b) In the case of CLICO, Barbados;
- (c)

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

**“Judicial Manager”** means any judicial manager or administrator of BAICO or CLICO, as the case may be, 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 a 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, Montserrat, Saint Christopher (St. Kitts) and Nevis, Saint Lucia, and Saint Vincent and the Grenadines and “Other EC Territories” shall be construed accordingly;

**“Other Officers”** means each of the Judicial Managers of a Company appointed by an EC Court or Home Court;

**“Recognition Order”** means an order made by the Court or the Home Court (as the case may be) 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 with responsibility for the incorporation of companies and maintenance of the companies register in a territory; and

**“Sanction Order”** means –

- (a) In the case of an Arrangement proposed under section 3, an order made by the Court under subsection (3); 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.

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

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

(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 the Home Court has not issued such an Order, at least 28 days has passed from the date 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 a Company, as the case may be, 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 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 7 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 Antigua and Barbuda 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

#### **4. Arrangement originating outside Antigua and Barbuda**

(1) If a 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 7 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 Antigua and Barbuda.

(3) If the Court does not make an order under subsection (2) within 28 days of the draft Directions Order being filed, the Company may proceed to file a draft Directions Order with an EC Court or 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 28 days from filing, shall give effect to that order in Antigua and Barbuda 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 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 –
    - (a) the Sanction Order; and
    - (b) the Recognition order made by the Home Court,

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

## **5. Information as to compromise with creditors**

(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 other persons; and
- (b) In 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.

## **6. Sub-Meetings**

(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-meetings, taken together, constitute a single Meeting; and
- (c) The votes in favour of the Arrangement cast at each of the sub-meetings are to be aggregated and the votes against the Arrangement casts at each 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.

## **7. Priority of Distribution of Assets**

(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 shall, in the proposed Arrangement, be prescribed in Regulations or, in the absence of Regulations to this effect, be in accordance with the laws from time to time in force in Barbados.

## **8. Power of Minister to make Regulations**

The Minister shall have the right to make regulations from time to time to give effect to this Act.

Passed the House of Representatives on the \_\_\_\_\_, 2015.  
the \_\_\_\_\_, 2015.

.....  
*Speaker.*

.....  
*President.*

.....  
*Clerk to the House of Representatives.*

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*Clerk to the Senate.*

## **EXPLANATORY NOTES**

In accordance with previous information provided to the Monetary Council of the “Eastern Caribbean Central Bank (ECCB), the Judicial Managers of British-American Insurance Company Limited (BAICO), in collaboration with the Core Technical Committee of the Eastern Caribbean Currency Union (ECCU), seek the enactment of special laws to implement a Plan of Arrangement for insurance creditors BAICO in the ECCU. In addition, the Core Technical committee seeks coverage by those laws to assist with a potential plan of Arrangement for CLICO International Life Insurance Company Limited (CLICO).

The Plan of Arrangement is a statute-based, court-approved legal process under which BAICO and CLICO may enter into an arrangement or compromise with their creditors.

The Bill provides that, before the Court can order a meeting of insurance creditors, the courts of the other jurisdictions must have had the opportunity to review the draft order and propose changes to ensure that insurance creditors in each affected territory receive sufficient notice. Further, the Bill provides for the local Judicial Manager to file the draft Directions Order with the secondary court within 7 days of receiving it and allow for secondary courts to have up to 28 days after filing to issue such an order. Once the 28 days has passed, BAICO may file the draft Directions Order with the primary Court, and the Court may order the Meeting and give directions to how that meeting is to be convened and held.

Since the creditors of BAICO and CLICO are located in numerous jurisdictions, the Bill provides for the individual “sub-meetings” in the territories and these sub-meetings will, together, be treated as one “Meeting”. At the meeting, in order for the Plan to be approved, a simple majority in number of those attending the meeting must vote in favour of the Plan. That majority must represent at least 75% in value of the claims of those attending the meeting. If these thresholds are not reached, the Plan will not be implemented.

If the insurance creditors approve the Plan by the requisite majorities referred to above, BAICO or CLICO (as the case may be) will seek an order from the Court sanctioning the Arrangement. Once this order is filed with the Registrar of Companies in the territory

where the meeting was ordered, and any other specified requirements are met, the insurance creditors are bound by the Plan regardless of whether or how they voted.

Creditors who object to the Plan may attend Court and argue their case, and the Court will consider these arguments in determining whether the Plan should be sanctioned.

Once the court sanctions the Plan, and after it has been filed with the Registrar of Companies, the relevant Judicial Manager will provide a copy of that order to the Judicial Managers of the secondary territories who will seek to have the Plan recognized by their own courts.

The Plan will set out a methodology as to how insurance creditors' claims will be valued and the "ascertainment date". In the event that there is disagreement, insurance creditors will have the opportunity to challenge the valuation.