



MONTSERRAT

## CHAPTER 11.33

# PLAN OF ARRANGEMENT (BAICO AND CLICO) ACT

**Revised Edition**

showing the law as at 1 January 2019

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

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Page

3





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Page  
3



## CHAPTER 11.33

### PLAN OF ARRANGEMENT (BAICO AND CLICO) ACT

#### ARRANGEMENT OF SECTIONS

##### SECTION

1. Short title
  2. Interpretation
  3. Power to compromise with creditors
  4. Arrangement originating outside Montserrat
  5. Information as to compromise with creditors
  6. Sub-Meetings
  7. Priority of distribution of assets
  8. Power to make Regulations
- 

## CHAPTER 11.33

### PLAN OF ARRANGEMENT (BAICO AND CLICO) ACT

*(Act 5 of 2016)*

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 PLAN OF ARRANGEMENT.

#### **Commencement**

*[5 May 2016]*

#### **Short title**

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

#### **Interpretation**

2. (1) In this Act—

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

“**Arrangement Legislation**” means the legislation enacted to facilitate an Arrangement in respect of a Company 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 or CLICO, as the case may be;

“**Court**” means the Eastern Caribbean Supreme Court established by the Supreme Court Order 1967 (S.I. 1967 No. 223);

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

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

“**Home Court**” means—

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

(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;  
and

(b) in the case of CLICO, Barbados;

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

“**Judicial Manager**” means a judicial manager or administrator of a Company, appointed by the Court, the Home Court or an 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 the EC Court or the Home 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, Saint Christopher (St Kitts) and Nevis, Saint Lucia, and Saint Vincent and the Grenadines;

“**Other Officer**” means each of the Judicial Managers of a 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 an Arrangement which is subject to a Sanction Order;

**“Registrar of Companies”** means the Registrar with responsibility for the incorporation of companies and maintenance of the companies register in a territory or his equivalent; and

**“Sanction Order”** means—

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

(2) If this Act is inconsistent with the provisions in the legislation regulating companies or insurance, this Act shall prevail.

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

3. (1) Subject to subsection (2), if an Arrangement is proposed, the Court may, on the application of a Company, order a Meeting to be summoned in a 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 an EC Court or the Home Court has not issued such an order, at least twenty eight days has passed from the date that the draft Directions Order was filed with the Court; and
- (b) if an EC Court or the 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  $\frac{3}{4}$  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 the creditors or a 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 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 in Montserrat 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 Montserrat**

4. (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 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 Montserrat.

(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 an EC Court or the Home Court, which may order the Meeting without reference to a 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 Montserrat 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.

### Information as to compromise with creditors

5. (1) If 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—
  - (i) the material interests of a person connected with the promotion of the Arrangement; and
  - (ii) the effect of the Arrangement on the material interests of a person connected with the promotion 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 the statement under paragraph (a) 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 the statement under paragraph (a).

(2) If 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, a creditor shall, on making application in the manner indicated by the notice, be furnished by a Company free of charge with a copy of the statement.

## Sub-Meetings

6. (1) If 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 cast at each of the Sub-Meetings are to be aggregated, accordingly.

(2) A procedural error or inconsistency with respect to a Sub-Meeting shall not render the Meeting invalid, unless the Court, the EC Court of the Home Court that ordered the Meeting orders otherwise.

## Priority of distribution of assets

7. (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 as 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.

## Power to make Regulations

8. The Governor acting on the advice of Cabinet may make regulations to give effect to this Act.