21 June 2016

NOTICE

Re: Consultation on Insurance Amendment Act 2016 (Insurance Managers and Other Matters)

The Bermuda Monetary Authority (the Authority) is posting its responses to the above named consultation paper.

Summary of Consultation comments/responses

Respondent's Name	Paragraph/ Section	Comment	Resolution (for BMA use)
ABIR		1. In keeping with the BMA's risk based regulatory approach, if the Insurance Manager (IM) only manages related party insurers or insurers sponsored by their 'group', does the BMA proposed to provide exemptions or modifications (i.e. application of the proportionality principle) of the Insurance Manager's Code of Conduct (IM Code)?	*The Proportionality Principle section in the code addresses how the Authority will address this issue.*

		2. With respect to the AML regime, the IM as described above (i.e. related party only) in item 1, might not be providing the services/activities set out in paragraph 14 of the CP (*see the second sentence of paragraph 15 "insurance managers that conduct these activities must be subject to Bermuda's AML/ATF Regime*). Do we assume such IM's are covered anyway?	*All IMs are covered however a proportional approach would be taken to related business which will be based on the IMs own risk assessment of that business.*
		3. Appendix 1, Schedule 1, paragraph (g): *where an insurance manager is a principal representative, whether the insurance manager is aware of any insurer that is non-compliant during the period of this return or subsequent to the period end but before the filing date, or may become non-compliant and if so; provide the insurer's name, registration number, insurance class and a description of the non-compliance or potential non-compliance*; We note that Section 8A of the Insurance Act 1978 already imposes a duty for the principal representative to report certain events including non-compliance so is this an additional obligation on the IM or an IM acting as principal representative? If an IM acts as a principal representative, it already has a legal obligation to comply with the relevant reporting provisions of the Insurance Act 1978.	*We acknowledge that section 8A requires the PR to report non-compliance, but the annual reporting requirement will assist it to keep track of these issues and may provide it with a feedback loop with respect to the PR's governance around reporting.*

		4. Will IM's be exempted from registering for a license pursuant to the Corporate Service Provider Business Act 2012? Our concern relates to the potential duplicative reporting/notification for IMs with respect to the Corporate Service Provider Business Act 2012, as amended and the proposed relevant sections of the Insurance Act 1978 relating to IM e.g. Shareholder/controller notification obligations; certificates of compliance vs Declaration of Compliance, and other duplicative reporting/filings.	*Where an IM only works for regulated insurers they will not need to have a CSP license. Where they work for insurers and do other work they will need both licenses*
	Amend Section 15A (1)	5. ABIR does not object to this proposal but the draft Insurance Amendment Act 2016 does not provide an amendment to section 15A (1) to include compliance with the minimum liquidity ratio in the declaration of compliance. ABIR would like sight of the legal language for review and consideration.	*The draft bill as posted on the web reads as follows:* **Amends section 15A** 6 Section 15A (1) of the principal Act is amended — (a) by deleting "may be prescribed" and inserting the words "the Authority may require"; (b) by deleting subparagraph "(d)" and replacing it as follows— "(d) complied with applicable conditions, directions and restrictions imposed on, or approvals granted to; an insurer;"; (c) by inserting the following paragraph after paragraph "(d)" — "(e) complied with the minimum liquidity ratio for general business as at its financial year end.".

	propose to allow the Authority to direct rather than prescribe the form, the latter being done by statutory instrument.	ABIR would support such a proposal but legal language to that effect has not been included therefore has not been subject to our review and consideration.	*This is a practical and straight forward technical change in wording which allows the Authority to amend and change the form as and when needed.*

	Insert a provision in the Act (Sections 14(2A) and 27B (14), (15), (16) to clarify that the annual fees paid by the insurer and designated insurer will be paid	*Proposed language to be added: "(2A) Annual fees payable by all registered persons in accordance with this section shall be applied to the period of the twelve months ending the thirty first day of December of that year."* Could the BMA provide an explanation as to how this would be applied in practice? Why is this being introduced? The current provision which will be kept in states: 14A (2) In addition to the fees for which subsection (1) provides, there shall, subject to subsection (3), be payable by a registered insurer or insurance manager, broker, agent or salesman before the 31 March in every year following the year in which it or he was registered an annual fee of such amount as shall be prescribed under the Bermuda Monetary Authority Act 1969: Provided that— (a) an annual fee shall not be payable by a registered insurer or insurance manager, broker or agent whose winding up is in progress in winding up proceedings in Bermuda, except where— (i) the fee, being due for payment, was not paid; and (ii) the time allowed by this subsection for its payment had expired, before those proceedings were commenced; and (b) if an annual fee that a registered insurer or insurance manager, broker or agent is excused by paragraph (a) of this proviso from paying has in fact been paid, the liquidator may recover it from the Authority.	*The amendment to the annual business fees in the Insurance Act is to support the BMA's existing practice that the annual business fees are paid on a calendar year (1st January to31st December). Payment by 31st March is only a grace period that the BMA must afford registered persons. But the registered person is paying for the period 1st January to 31st December. This is also consistent with the registration fee which is tied to the calendar year. Given the Act is silent on the annual business fee point, we have received queries so we are clarifying with this point and ensuring that all know it is aligned with the registration fee.*

	Amend the Bermuda Monetary Authority Act 1969 to clarify that the Annual Fee payable by Class 3B and Class 4 insurers will be on the gross premium written in the year preceding the year of assessment and not on “expected” gross premiums.	Can the BMA provide the proposed amendment to the BMA Act 1969 for review and consideration?	*This proposed amendment to the BMA Act was actually consulted on in the “PROPOSED FEE CHANGE 2016” CP which was posted to our website in November 2015.* *Due to an oversight the change was not made and the Authority is now reminding industry of the initial planned amendment.*
	Consequential amendments to the Insurance Accounts Regulations 1980 and the Insurance Returns and Solvency Regulations 1980	We note Schedule I of the Amendments to the Insurance Returns and Solvency Regulations 1980 and have no objection. With respect to Schedule II Amendments to the Insurance Accounts Regulations 1980 the following: • Notes to the Financial Statements by (ii) “inserting following before PART III” this does not make sense? • Part I item 1 “The name of the person or persons ultimately having power (whether directly or through having control of…) what does this mean?	*We recognise that this is an error and will correct in the final draft*
Pillar Capital Management Limited		‘I have reviewed the CP on Insurance Amendments and the Ins Mgr Code of Conduct 2016 with our CFO and we have satisfied ourselves regarding our understanding of, and the implementation of both.’	*No response required*