23/3/16

A BILL

entitled

INSURANCE AMENDMENT ACT 2016

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WHEREAS it is expedient to amend the Insurance Act 1978, and to make consequential amendments;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Insurance Act 1978 (the "principal Act"), may be cited as the Insurance Amendment Act 2016.

Amends section 6A

2 Section 6A of the principal Act is amended—

(a) in subsection (1) by inserting —

(i) the following after paragraph"(f)":

"(g) insurance manager reporting requirements,";

(ii) in the tail after "by" the words "insurance manager,";

(b) in subsection (3) (a) by inserting after "particular" the words "insurance manager,".

Amends section 6C

3 Section 6C of the principal Act is amended—

(a) in subsections (1), (4) and (5) by inserting ", insurance manager" after the word "insurer" where it occurs;

(b) by inserting the following after subparagraph (3) —

"3A The Authority shall not grant an exemption or modification unless it is satisfied that it is appropriate to do so having regard to the nature, scale, and complexity of the insurance manager.".

Amends section 14

4 Section 14 of the principal Act is amended—

(a) in subsection (1) (g) by inserting after "insurer" the words "or insurance manager";

(b) by inserting the following after paragraph (2) —

"(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.".

Amends section 15

5 Section 15 (3) of the principal Act is amended by inserting after "regulations" the words "or rules".

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.".

Amends section 16A

7 Section 16A of the principal Act is amended—

(d) in subsection (1)(d) by deleting the words "and additional GAAP financial statements";

(e) in subsection (1A) (a) and (d) by deleting the words "or additional GAAP financial statements";

(f) by revoking subsection (1A)(c).

Amends section 17A

8 Section 17A of the principal Act is amended—

(a) in subsection (2B) by deleting the reference to subsection "(4)";

(b) by revoking subsection "(4)".

Amends section 18A

9 Section 18A of the principal Act is amended—

(a) in subsections (1) and (5) by inserting after "insurer" the words "or insurance manager";

(b) in subsection (2) (a) by deleting the words "or Class B insurer" and inserting ",Class B insurer or insurance manager";

Amends section 27B

10 Section 27B of the principal Act is amended—

(a) in subsection (7) by—

(i) deleting the word “company” and inserting “entity” in paragraph “(b)”;

(ii) deleting the word “companies” and inserting “entities” in paragraph “(d)”;

(b) by inserting the following after subsection (13)—

“(14) Where a designated insurer fails to pay a prescribed fee as provided under this section on behalf of an insurance group, it shall pay in addition to such fee a late penalty fee of an amount equal to ten percent of the fee due for every month or part thereof during which the fee remains unpaid.

(15) Annual fees payable by a designated insurer in accordance with this section shall be applied to the financial year.

(16) For the purposes of this section, “financial year” shall be defined as “the twelve months ending the thirty first day of December of that year”.”.

Amends section 30

11 Section 30 of the principal Act is amended—

(a) in subsection (1) by—

(i) inserting after “group” the words “;or in the interests of the clients of an insurance manager,”;

(ii) inserting after “business” the words “or the business of an insurance manager” in paragraph (a);

(iii) deleting “or insurance group,” and inserting the words “,insurance group or insurance manager” in paragraph (b).

(b) in subsection (7) by inserting after “insurer” the words “insurance group or insurance manager”;

(c) in subsection (8) (c) by deleting “or insurance group,” and inserting the words “,insurance group or insurance manager”.

Inserts section 30CA

12 The principal Act is amended by inserting the following after section 30C—

“**Notification of change of shareholder controller or officer of insurance manager**

30CA (1) An insurance manager shall give written notice to the Authority of the fact of any person having become or ceased to be a shareholder controller or officer of it.

(2) A notice required to be given under subsection (1) shall be given before the end of the period of fourteen days beginning with the day on which the insurance manager becomes aware of relevant facts.

(3) An insurance manager which fails to give notice required by this section shall be liable to a civil penalty calculated in accordance with subsection (4).

(4) For each week or part of a week that an insurance manager fails to comply with a requirement imposed under subsection (1) it shall be liable to a civil penalty not exceeding $5,000.”.

Amends section 30J

13 Subsection 30J(5) of the principal Act is amended by deleting the words insurance manager.

Amends section 32

14 Section 32 (1) (b) of the principal Act is amended by inserting after “regulations” the words “or rules”.

Amends section 32A

15 Section 32A (1) of the principal Act is amended by inserting after “desirable” the words “to remedy the breach or”.

Amends Schedule

16 The Schedule to the principal Act is amended by inserting the following after paragraph 4 (2A)—

“(2B) An insurance manager shall not be regarded as conducting its business in a prudent manner unless it maintains, or as the case may be, will maintain sufficient indemnity insurance cover to enable it to meet its business obligations given the nature, scale and complexity of its business.”.

Consequential amendment

17 (1) Schedule 1 which amends the Insurance Accounts Regulations 1980 has effect.

(2) Schedule 2 which amends the Insurance Returns and Solvency Regulations 1980 has effect.

Commencement

18 This Act shall come into operation on assent and shall apply to financial years commencing on or after 1 January 2016.

SCHEDULE 1 (Section 18)

AMENDMENTS TO THE INSURANCE RETURNS AND SOLVENCY REGULATIONS 1980

The Insurance Returns and Solvency Regulations 1980 are amended in regulation 10 by deleting "figure A and figure B" and inserting the words "figure A, figure B and figure C".

SCHEDULE 2 (Section 19)

AMENDMENTS TO THE INSURANCE ACCOUNTS REGULATIONS 1980

The Insurance Accounts Regulations 1980 are amended—

(a)) in Schedule I by amending —

(i) Form 5 Line 34, by deleting "General Business- Class 1, Class 2 or Class 3 insurer:" and inserting the words "INCREASE (DECREASE) IN POLICY RESERVES (Actuarial Liabilities):";

(ii) Form 7 Line 4 by deleting "(DECREASE) INCREASE" and inserting the words "INCREASE (DECREASE)".

(b) in Schedule II "NOTES TO THE FINANCIAL STATEMENTS" by—

(i) inserting following before PART III—

"PART I

1 The name of the person or persons ultimately having power (whether directly or through having control of some other person or persons who directly or indirectly control the insurer) to control the insurer and, where the persons having that ultimate power are a body corporate, the place of incorporation of that body corporate.

2 The general nature of the risks underwritten by the insurer.

3 The insurer's significant accounting policies, the nature of any change made during the relevant year in those policies and the effect, if determinable, of that change on the statutory financial statements.

4 The basis of recognition of premium, investment and commission income.

5 The method used to translate amounts denominated in currencies other than the currency of the statutory financial statements, the amounts, if material, gained or lost on such translation and the manner in which those gains or losses are treated in those statements.

6 Any foreign exchange control restrictions affecting assets of the insurer, with particular reference to money balances which cannot be transferred to the insurer because of reasons that are not insurance reasons.

7 Any contingencies or commitments calling for special mention (for example, a commitment involving an obligation requiring abnormal expenditure, or the conclusion of a long lease).

8 Any default made by the insurer in relation to the principal, interest, sinking fund or redemption provisions of any securities issue made, or any credit agreement entered into, by it.

9 The gross amount of arrears of dividends on preferred cumulative shares, and the date to which those dividends were last paid.

10 The amount of any loan made during the relevant year by the insurer, to any director or officer of the insurer, not being a loan made in the ordinary course of business

11 The amount of any obligation in respect of retirement benefits relating to employees of the insurer arising from service prior to the end of the relevant year remaining to be charged against operations, and the basis on which the insurer proposes to charge that amount.

12 Any transaction made or other event occurring between the end of the relevant year and the date of the auditor's report and materially affecting the statutory financial statements, not being a transaction made or an event occurring in the ordinary course of business.

13 Any other information which in the opinion of the directors is required to be disclosed if the statutory financial statements are not to be misleading.

(ii) by revoking Part III.

INSURANCE AMENDMENT BILL 2016

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Insurance Act 1978 (the "principal Act") by making a number of changes to the regulation of insurance business.

It seeks to address matters relating to aligning Bermuda's insurance framework to take into account Solvency II standards and initiatives; and proposes further technical amendments to enhance Bermuda's existing insurance supervisory and regulatory regime relating to, inter alia; insurance managers.

Clause 1 provides a citation for the Bill and defines "principal Act" as the Insurance Act 1978.

Clause 2 makes provision for amendment to section 6A of the Act to allow the Authority to make prudential rules and standards governing reporting to be made by insurance managers.

Clause 3 proposes to amend section 6C of the Act to provide that an insurance manager may apply to the Authority to have any prudential standards applicable to it modified or exempted; or the Authority where it deems such appropriate, may modify or exempt an insurance manager from having to comply with relevant prudential rules.

Clause 4 proposes to amend section 14 of the Act to make provision for:- (i) the introduction of a fee for insurance managers to be exempted from complying with prudential standards or to have modified prudential standards apply; and (ii) to clarify to the market that all annual fees to be paid by a registered person shall be applicable to the calendar year in which such fees are paid (i.e., 1 January to 31 December of the year the fees are paid).

Clause 5 amends section 15 of the Act by clarifying that insurers and insurance managers will need to have regard to "rules" and "regulations" in relation to the application and interpretation of requirements re the preparation and filing of statutory financial statements. Previously, section 15 only noted the requirements of "regulations".

Clause 6 proposes to amend section 15A the requirements to be provided by insurers in the annual declaration of compliance by confirming that they have met minimum liquidity requirements.

Clause 7 proposes to:- (i) amend section 16A of the Act of the Act by revoking the requirement for the approved auditors to report to the Authority in relation to the preparation of additional GAAP financial statements; and (ii) by deleting the application of additional criteria concerning “material significance” under subsection (1) (e).

Clause 8 amends section 17A of the Act to remove the requirement for approved auditors to report to the Authority in relation to the preparation of additional financial statements or condensed general purpose financial statements.

Clause 9 proposes to amend section 18A of the Act by imposing a civil penalty on insurance managers for noncompliance with any duty imposed on it under section 17 or any prudential standard rule under section 6A. The file to be imposed is consistent with that of a Class, 1, Class 2, Class 3, Class A or Class B insurer of $500 for each week or part thereof that the insurance manager is in contravention of the requirement.

Clause 10 amends section 27B of the Act to: (i) make provision for late penalty fees to be imposed on insurance groups who fail to pay prescribed fees required under the Act (this measure is consistent with similar penalties imposed on insurers); (ii) provide that annual fees payable by a designated insurer on behalf of an insurance group, are applicable to the twelve months ending the thirty first of December in the year the fees are paid; and (iii) clarify that branches are required to be listed as members of an insurance group in accordance with the provisions of subsection (7).

Clause 11 proposes to amend section 30 of the Act to apply the power for the Authority to appoint persons to investigate and provide reports to insurance managers.

Clause 12 inserts a new a section 30CA of the Act to require insurance managers to notify the Authority of a change of shareholder controller or officer of an insurance manager. The reporting requirements proposed under this section take into account the nature, scale and complexity of insurance managers (and are in line with similar reporting requirements imposed on corporate service providers).

Clause 13 proposes to amend section 30J (5) of the Act by removing reference to insurance managers. Reporting requirements relating to the appointment and cessation of officers and shareholder controllers of insurance managers shall instead be embedded under a new prudential rule (which seeks to impose enhanced reporting requirements on insurance managers).

Clause 14 proposes to amend section 32 (1) (b) of the Act to clarify that the Authority when determining whether to give a registered person a direction, will take into account whether such persons are in breach of “rules” and “regulations” made in accordance with the Act. Previously only “regulations” were taken into account, however as prudential standard rules now apply the statutory alignment is required to be made.

Clause 15 proposes to amend section 32A of the Act of the Act by clarifying the manner in which the BMA may direct an insurer or a designated insurer in order to safeguard the interests of policyholders or potential policyholders of that insurer, including directing that a breach be remediated.

Clause 16 The Schedule to the Act is proposed to be amended to require insurance managers to obtain insurance indemnity cover relevant to the nature, scale and complexity of its business.

Clause 17 proposes to make provision for consequential amendments to the Insurance Accounts Regulations 1980 and the Insurance Returns and Solvency Regulations 1980.

Clause 18 provides for the commencement date(s) of the Act.
