BERMUDA MONETARY AUTHORITY

CONSULTATION PAPER

INSURANCE AMENDMENT ACT 2016

(INSURANCE MANAGERS AND OTHER MATTERS)

APRIL 2016

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The views of the insurance industry and of other interested persons on the proposals set out in this paper and Bill are invited. Comments should be sent to the Authority, addressed to policy@bma.bm not later than **27th May**, 2016.

I. INTRODUCTION

1. The Bermuda Monetary Authority (the Authority) has undertaken to enhance its oversight of insurance managers as part of the ongoing development of Bermuda's insurance regulatory framework. The insurance manager plays a vital role in the Bermuda insurance market, and provides services to many of our insurers, including commercial[1] insurers[2].

2. The Authority is proposing to amend the Insurance Act 1978 (the Act) to reflect greater oversight of insurance mangers including the introduction of the Insurance Manager Code of Conduct (IM Code). In addition, the Authority is proposing to make prudential rules to require Insurance Managers to file specific details via an Insurance Manager's Return. Following international best practice, the Authority is also proposing to extend the Anti-Money Laundering/Anti-Terrorist Financing (AML/ATF) regime to include all insurance managers. The Authority will make a recommendation that Regulation 2(2)(d) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 be amended to reflect this.

3. The Authority also takes this opportunity to make other legislative amendments that are regarded as housekeeping matters and/or matters that were previously consulted upon but the consequential legislative amendments were not made.

4. The amendments to the Act (the Bill) will cover the following areas:

    a. Extend the Authority's ability to make prudential rules to cover reporting requirements for insurance managers and to charge a fee for any modifications or exemptions to the prudential standard requirements;
    b. Extend the minimum criteria for registration to require insurance managers to have sufficient professional indemnity insurance cover;
    c. Notify the Authority regarding changes to the controllers or officers of the insurance manager;
    d. Provide the power for the Authority to investigate the affairs of the insurance manager; and
    e. Effect changes to the Act and accompanying regulations that were previously consulted upon and/or housekeeping matters.

[1] Commercial Insurers – Class C, Class D, Class E, Class 3A, Class 3B and Class 4 insurers
[2] Insurers includes reinsurers

II. ENHANCEMENTS TO INSURANCE MANAGER REGULATORY FRAMEWORK

A. Insurance Manager's Return

5. The Authority proposes to amend Sections 6A(1) and 6C of the Act to extend its rule-making power to cover reporting requirements for insurance managers. The proposed Insurance (Prudential Standard) (Insurance Manager) Return (the IM Return) provides the details that must be filed to the Authority within six months after the end of the financial year-end (the filing date). The IM Return allows the Authority to assess the insurance manager's operations and conduct the appropriate risk-based supervisory approach commensurate to its risk profile. The information contained will also assist the Authority in its on-site assessment of the insurance manager.

6. Insurance Managers, upon application and payment of a fee, may request modifications or exemptions to this filing requirement. The IM Return is attached as Appendix I to this consultation paper.

B. Minimum Criteria for Registration and Insurance Manager's Code of Conduct

7. Insurance Managers are currently subject to the provisions under the Minimum Criteria for Registration (the minimum criteria), which they must satisfy as a condition of their licence. The Authority proposes to enhance the minimum criteria by requiring insurance managers to maintain sufficient professional indemnity cover to meet its business obligations. This requirement will be considered when determining if the insurance manager is conducting its business in a prudent manner.

8. In accordance with Section 2BA of the Act, the Authority proposes to introduce the IM Code that will provide duties, requirements and standards that insurance managers must comply with. Key provisions within the IM Code include:

    a. Appropriate corporate governance framework with documented policies and procedures governing its operations;
    b. Effective risk management, compliance, internal audit and internal controls framework;
    c. Record keeping and reporting framework;
    d. Outsourcing;

e. Fraud, Anti-Money Laundering and Anti-Terrorist Financing obligations;
f. Client Due Diligence and Conduct towards clients;
g. Client confidentiality;
h. Insurance manager's responsibilities where it is a principal representative; and
i. Cooperation with regulatory authorities.

9. The Authority will assess, inter alia, the insurance manager's compliance with the IM Code when determining if the insurance manager has satisfied the minimum criteria and is conducting its business in a sound and prudent manner. The Authority will exercise the proportionality principle in the application of the IM Code.

10. The Authority proposes to bring the IM Code into immediate effect and give insurance managers until 31st December 2016 to implement the IM Code.

C. <u>Notification of Change of Controller or Officer of the Insurance Manager</u>

11. Currently, Section 30J(5) of the Act requires that insurance managers provide a list of persons who have become (or ceased to be) shareholder controllers and officers of the insurance manager.

12. The Authority proposes to make this a notification a requirement by introducing Section 30CA to the Act. This section will require insurance managers to provide written notice to the Authority of any changes to its shareholder controllers or officers within 14 days upon knowledge of this change. Concurrently, Section 30J(5) of the Act will be amended to avoid duplicative reporting in this area.

D. <u>Investigation Powers</u>

13. The Authority, as part of its enhanced regulatory oversight of insurance managers, will extend and apply its investigative powers, under Section 30 of the Act, over the insurance manager. The Authority proposes to amend Section 30 of the Act to enable the Authority to appoint a person to investigate the affairs of the insurance manager, where the Authority determines that it is in the interests of the insurance manager's clients.

E. <u>ANTI-MONEY LAUNDERING/ANTI-TERRORIST FINANCING</u>

REGIME

14. The Financial Action Task Force (FATF) Forty Recommendations were revised and adopted in 2012, and expanded the scope of entities to include designated non-financial businesses and professions (DNFBPs)[3]. These DNFBPs include company (or corporate) service providers (CSPs) that conduct the following transactions[4] for clients:
    a. acting as a formation agent of legal persons;
    b. acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
    c. providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
    d. acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;
    e. acting as (or arranging for another person to act as) a nominee shareholder for another person.

    The Authority currently has a regulatory framework for CSPs which also includes AML/ATF requirements.

15. Insurance Managers in Bermuda generally conduct one or more of the activities noted in Paragraph 14 above and, as such, would be within the scope of entities which are subject to the FATF Forty Recommendations. To comply with FATF's Forty Recommendations, insurance managers that conduct these activities, must be subject to Bermuda's AML/ATF Regime. Currently, Regulation 2(2)(d) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 regards an insurance manager, who act as a manager or broker of Long-Term (life) business, as an AML/ATF regulated financial institution (AML/ATF RFIs). The Authority will make a recommendation to Bermuda's National Anti-Money Laundering Committee that this paragraph dealing with insurance managers be amended to include any insurance manager. The new paragraph would read: "is an insurance manager registered under section 10 of the Act 1978". This amendment will ensure that insurance managers, registered under

[3] Recommendations 22 and 23
[4] Recommendation 22(d)

the Act, will be captured as AML/ATF RFIs and be subject to the AML/ATF Regime.

III. OTHER PROPOSED AMENDMENTS TO THE BERMUDA MONETARY ACT 1969, AND THE INSURANCE ACT AND ACCOMPANYING REGULATIONS

1. The Authority also proposes to make other amendments to the Act that are general in nature and are intended to improve the application of certain provisions. Other changes are housekeeping in nature. These changes include:
    a. Amend Section 15A(1) of the Act to include compliance with the minimum liquidity ratio in the declaration of compliance. It is also proposed to allow the Authority to direct rather than prescribe the form, the latter being done by statutory instrument. This will give the Authority the ability to modify the form as and when required. The sample forms of the declaration of compliance can be found in Appendices 2 and 3.
    b. Amend Sections 16A(1)(d) and 16(1A)(a) to (f) of the Act to remove the reference to additional GAAP financial statements;
    c. Repeal Section 17A(4) so that the auditor responsible for the approval of the additional GAAP financial statements has no reportable event requirements to the Authority;
    d. 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 of the Act or any prudential standard rule under Section 6A of the Act. The penalty to be imposed is to be consistent with that for similar breaches;
    e. Apply the same provisions in Section 14(3) of the Act to the insurance groups by inserting Section 27B(14) in the Act where the Authority may levy a penalty for late payment of the group's annual business fee without having to take disciplinary action for a civil penalty;
    f. 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 in the financial year for the period ending 31st December.
    g. 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 this statutory alignment is necessary.

h. Amend Section 32A(1) by inserting after the word "desirable" the words "to remedy the breach or". This is in reference to the Authority giving the designated insurer direction to remedy a breach of any provision in the Act.
i. 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.
j. Consequential amendments to the Insurance Accounts Regulations 1980 and the Insurance Returns and Solvency Regulations 1980.

APPENDIX 1

SCHEDULE I - INSURANCE (PRUDENTIAL STANDARD) (INSURANCE MANAGER) RETURN

(1) Every insurance manager shall provide the following information to the Authority on or before the filing date required in accordance with section 17 of the Act:

(a) the corporate structure of the board of directors of the insurance manager; including but not limited to:

(i) name, roles, residence and work experience of all directors and their initial appointment date;
(ii) whether directors are appointed as executive or non- executive directors to the board;
(iii) whether any sub-committees have been established by the board of directors;

Copies of the most recently approved bye-laws or terms of reference of the board of directors or its sub-committees (if any) if there have been any changes since the last filing;

(b) the structure of the management of the insurance manager; including but not limited to names, roles, residence and work experience of the chief executive, senior executives and officers of the insurance manager;

(c) the number of employees and matters relating to their employment including, but not limited to:
(i) name, role, qualifications and residence of all employees;
(ii) whether employees are full time hires or the position is outsourced;

(d) services provided by the insurance manager to insurers including but not limited to: appointment as principal representative; preparation of statutory financial statements; claims handling, underwriting services, appointment to directorships and officer positions; or any other services including non-insurance services);

(e) whether any services provided by the insurance manager under (d) to insurers are outsourced to service providers or affiliates; and if so confirm:
(i) the name of the service provider or affiliate;

(ii) the services provided by each service provider or affiliate to the insurance manager;

(iii) the jurisdiction where the service provider or affiliate performs the service;

(iv) whether it is an affiliate;

(f) name, registration number and insurance class of all insurers managed;

(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;

(h) confirm whether the insurance manager segregates client assets from:

(i) other clients; and

(ii) itself;

and describe the structure and processes relating to the segregation in connection with the foregoing;

(i) a description of any event(s) which have occurred or decisions made subsequent to the relevant year-end that have materially changed or may have changed the information in the insurance manager's updated business plan;

(j) whether the insurance manager has met all of the requirements of the Act, including the minimum criteria for registration. Where an insurance manager has not, provide a description of the non-compliance and any remedial action taken, if any;

(k) full legal name of the insurer(s) that has issued:

(i) the professional indemnity insurance policy to the insurance manager in accordance with the requirements of the Act and the amount of such insurance cover;

(ii) details of directors and officers insurance (if any).

(l) whether the insurance manager has sufficient financial resources as at the date of its most recent return to:

(i) enable it to continue as a going concern; and

(ii) to satisfy its obligations as and when they fall due for a period of 12 months post the date of the relevant return filed with the Authority.

(2) Every insurance manager shall keep a copy of its returns at its principal place of business for the period of five years beginning with the filing date of the relevant return.

(3) Every insurance manager shall produce a copy of its return to the Authority if so directed by it on or before a date specified in the direction.

(4) Every insurance manager shall, on or before the filing date, file with the Authority a list of every person who has become or has ceased to be an officer or shareholder controller of that person during the previous calendar year, specifying the dates when such person has become a shareholder controller or officer and the dates when such person has ceased to be such controller or officer.

(5) For the purposes of this rule, “filing date” shall mean six months after the end of the financial year to which the return relates (or such longer period, not exceeding nine months, as the Authority may allow in the case of that insurance manager on an application made to it for that purpose).

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APPENDIX 2

XXX LTD.

Insurer's Address
Street Name
Hamilton, Bermuda
HMXX

DECLARATION OF COMPLIANCE

(Prepared in accordance with section 15A of the Insurance Act 1978)

For the Year-Ending – December 31, 201X

We, the undersigned Directors of XXX Ltd. ("the Company") declare that to the best of our knowledge and belief that the Company has:

(a) complied [has not complied] with all requirements of the minimum criteria applicable to it;
(b) complied [has not complied] with the minimum margin of solvency as at [financial year end, e.g. December 31, 201X];
(c) complied [has not complied] with all applicable regulatory conditions, directions, restrictions and approvals imposed on the insurer; and
(d) complied [has not complied] with the minimum liquidity ratio for general business as at [financial year end, e.g. December 31, 201X].

[The Company must include description of non-compliance with (a) to (d) and any remedial action taken, if any, between relevant year-end and filing date]

Director:____________________ Date__________

Director____________________ Date__________

APPENDIX 3

XXX LTD.

Insurer’s Address
Street Name
Hamilton, Bermuda
HMXX

DECLARATION OF COMPLIANCE

(Prepared in accordance with section 15A of the Insurance Act 1978)

For the Year-Ending – December 31, 201X

We, the undersigned Directors of XXX Ltd. (“the Company”) declare that to the best of our knowledge and belief that the Company has:

(a) complied [has not complied] with all requirements of the minimum criteria applicable to it;
(b) complied [has not complied] with the minimum margin of solvency as at [financial year end, e.g. December 31, 201X];
(c) complied [has not complied] with applicable enhanced capital requirements as at [financial year end, e.g. December 31, 201X];
(d) complied [has not complied] with all applicable regulatory conditions, directions, restrictions and approvals imposed on the insurer; and
(e) complied [has not complied] with the minimum liquidity ratio for general business as at [financial year end, e.g. December 31, 201X].

[The Company must include description of non-compliance with (a) to (d) and any remedial action taken, if any, between relevant year-end and filing date]

Director: ____________________ Date__________

Director:____________________ Date__________