BERMUDA MONETARY AUTHORITY

CONSULTATION PAPER

ENHANCEMENTS TO BERMUDA'S INSURANCE REGULATORY REGIME FOR COMMERCIAL INSURERS AND INSURANCE GROUPS

1ST April 2015

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I. Executive Summary

1. As international standards evolve and become entrenched in regulatory standards and best practices, the Bermuda Monetary Authority (the Authority) continues to review its current framework and make adjustments where needed. At this time, the Authority is proposing to make further enhancements to its regulatory and supervisory regimes for commercial[1] insurers[2] and insurance groups.

2. The proposed enhancements ensure that the regulatory and supervisory framework maintains the level of rigour and robustness to appropriately supervise the number of commercial insurers and insurance groups in Bermuda. The Authority recognises that the enhancements must be sufficiently risk-based given that the commercial insurance market has insurers and insurance groups with diversified risk profiles, requiring a proportional approach commensurate with the insurer or insurance group's risk profile.

3. The proposals are intended to be effected in 2016 and, unless stated otherwise, will apply to all commercial insurers and insurance groups. These proposals are:

    a. Shareholder controllers should notify the Authority if they wish to dispose of shareholdings in accordance with specified thresholds;
    b. Commercial insurers are to establish their head office in Bermuda;
    c. Amendment to the Insurance Code of Conduct (the Code) clarifying that the Board must carry out enhanced due diligence when arranging for outsourcing key positions. Furthermore the Board must establish systems and processes for managing oversight of outsourcing arrangements to ensure that the governance of the insurers' operations is sufficiently robust to address the risk profile of the entity.
    d. Increased public disclosures for commercial insurers and insurance groups;
    e. Align certain provisions on eligible capital with international standards through amendments to the Insurance (Eligible Capital) Rules 2012 (the Eligible Capital Rules) and the Insurance (Group Supervision) Rules 2011 (the Group Rules).
    f. Consequential changes related to the implementation of the proposed economic balance sheet regime, and other amendments to the Insurance Act 1978.

[1] Commercial insurers are Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurers.
[2] The terms "insurers" include both insurers and reinsurers, and "insurance" includes reinsurance.

4. Bermuda registered insurers and other interested persons are invited to express their views on the proposals set out in this paper and draft legislation. Comments should be sent to the Authority, addressed to policy@bma.bm no later than **15th May, 2015**.

II. Amendments to the Insurance Regulatory Framework

A. Disposals of Shareholdings

5. Sections 30D and 30E of the Insurance Act 1978 (the Insurance Act) currently require insurers to notify the Authority of shareholder controller changes where there is new or increased control. This allows the Authority to assess the fitness and propriety of those attaining or gaining control of the insurer, and ascertain, where relevant, that such control would not adversely affect the insurer's risk profile or its operations.

6. It is also important for the Authority to be notified if an existing shareholder controller is reducing its shareholdings in an insurer. This is even more pertinent where a shareholder controller has 50 per cent or more shares and would seek to reduce below 50 per cent. The Authority recognises that shareholding changes can occur frequently which may not suggest anything untoward, for example, employees with stock options may cash in their stocks, etc. However, movement in shareholding changes, especially where shareholders are reducing their shares may trigger additional enquiries from the Authority.

7. The Authority proposes to require notification of shareholding disposals for commercial insurers that mirrors the existing reporting thresholds for acquisition of shareholding, i.e. upon becoming 10 per cent, 20 per cent, 33 per cent and 50 per cent shareholder controller. Where a commercial insurer is a private company, as understood under Section 30D of the Insurance Act, then the shareholder controller who intends to reduce its shareholdings from one threshold to another, should notify the Authority in writing prior to disposal. Where a commercial insurer is a public company, as understood under Section 30E of the Insurance Act, then the shareholder controller who reduces its shareholdings from one threshold to another, should notify the Authority in writing no later than forty five days after the change has taken place.

8. The Authority proposes to amend the Insurance Act to reflect this provision, which will take effect on 1st January 2016.

B. Establishment of the Head Office in Bermuda

9. Commercial insurers shall be required to establish a head office in accordance with the proposed requirements of Section 8C of the Act. The Authority proposes this amendment to make its current insurance supervisory and regulatory framework more robust.

10. At the time of licensing, the Authority assesses the nature, scale and complexity of an insurer's business to be conducted in accordance with the provisions of the Insurance Act, the Code and the Insurance Statement of Principles (the insurance framework). In relation to commercial insurers, the Authority further measures compliance with the insurance framework by taking into consideration various factors to ensure that it can exercise sufficient regulatory oversight over the business to be carried on in Bermuda. In this regard, the Authority proposes to require commercial insurers incorporated in Bermuda, to establish their head office in Bermuda. The Authority will consider, inter alia, the following matters in ascertaining whether the direction and management is in Bermuda for determining if the head office has been established:

    a. Where the underwriting, risk management and operational decision making of the commercial insurer takes place;
    b. Presence of senior executives who are responsible for and involved in the decision making related to the insurance business of the commercial insurer;
    c. Where board meetings of the commercial insurer are taking place;
    d. The location where management meets to effect policy decisions of the commercial insurer;
    e. The residence of the senior officers, insurance managers or operational employees of the commercial insurer; and
    f. The residence of one or more directors of the commercial insurer.

11. The proposed amendment to the Insurance Act will take effect on 1st January 2016.

C. Outsourcing Arrangements Governing Senior Management

12. The Authority recognises that given the level of diversity and complexity within the insurance market, a more robust level of supervision should be applied to those insurers with higher risk profiles. Further, the Authority supports a strong corporate governance framework, which now requires insurers to implement corporate governance policies and processes commensurate with their risk profile as part of

meeting the minimum criteria for registration. Additionally, in 2014, the Authority revised the Code in support of this position.

13. The Code provides further guidance on the matters to be taken into account by insurers when establishing and implementing appropriate corporate governance policies and procedures. Although paragraphs 17 and 18 of the Code currently provide guidance to insurers in relation to the outsourcing of the CEO and senior management positions to an insurance manager, upon further review; the Authority has adopted the position that the establishment and implementation of such measures require more detail and increased due diligence. Furthermore, the Authority is of the view that, with the exception of those key functions noted in Section 30JA(1)[3] of the Insurance Act, large commercial insurers should not outsource these positions. Therefore, in order to provide greater clarity and certainty to insurers regarding the application of this provision, paragraphs 17 and 18 of the Code will be amended to reflect the Authority's revised policy position.

    Paragraphs 17 and 18 are therefore proposed by the Authority to be revised as follows:

    "17. Where the insurer employs an insurance manager, the board must ensure that the duties, responsibilities, and authorities of the insurance manager are clearly set out in a management agreement. For insurers, other than Class 3B, Class 4 and Class E insurers, the management agreement may outsource the chief and senior executives' responsibilities to the insurance manager, and the board shall ensure that the insurance manager is fit and proper to execute these functions. The board shall also ensure that the provisions relating to the chief and senior executives throughout the Code would be applicable to the insurance manager, and that the corporate governance structure continues to remain appropriate to provide oversight of these outsourced functions.

    18. The board should assess the fitness and propriety of the insurance manager including ensuring that the insurance manager has a strong risk management and internal controls framework and is sufficiently knowledgeable about jurisdictional laws and regulations to appropriately discharge its responsibilities. The board should have appropriate reporting and controls in place to provide effective oversight of the insurance manager's function."

    This amendment will take immediate effect upon adoption.

[3] Section 30JB of the Insurance Act requires that insurers must get the Authority's approval to outsource functions as noted in Section 30JA(1)(f)(g).

D. Public Disclosures

14. Bermuda is committed to the principles of transparency. This ensures that persons, in particular the policyholders and beneficiaries and counterparties, are fully informed of the financial condition of the licensed entities. Accordingly, the Authority continues to review its public disclosures regime to ensure that it is aligned with international standards adopted by the International Association of Insurance Supervisors (IAIS), whilst also taking into account the nature of the Bermuda insurance market and its statutory obligation to protect policyholders. The Bermuda insurance market is predominantly a wholesale market, whose commercial insurers and insurance groups conduct substantial cross-border insurance business and serve a wide cross-section of businesses. In accordance with IAIS principles, public disclosures must be appropriate to the nature of the policyholder protection for this market. Furthermore, for those insurers that operate in the retail market, they should be obliged to make information available to the general public, so that informed decisions can be made as appropriate.

15. The Authority has promulgated two guiding principles on public disclosures:

    a. Public disclosures, while taking into consideration the public's interest, should be reliable, clear, understandable, consistent, relevant and material[4], and for information that would not compromise competitive advantage and confidentiality; and

    b. Disclosures should be developed and implemented in tandem with international standards and be proportional to size, business mix, complexity, and the risk profile of insurers.

16. The Authority's continued assessment of public disclosures has resulted in further enhancements to the regime, geared towards policyholder protection. Therefore, the Authority proposes that all commercial insurers and insurance groups be required to prepare and publish a Financial Condition Report (FCR). The FCR shall provide details of inter alia; measures governing the business operations, corporate governance framework, solvency and financial performance of a commercial insurer or insurance group. The FCR is intended to provide additional information to the public in relation to the commercial insurer's and insurance group's business model,

[4] Material or Materiality will be construed as to the reasonable judgment of management in determining materiality. In general, if a transaction is material for purposes of the disclosure requirements of a listed company, it would be deemed material for purposes of reporting a material change to the Authority.

whereby they may make an informed assessment on whether the business is run in a prudent manner. This is most critical where the insurer is selling a retail insurance product direct to members of the general public.

17. The proposed FCR will contain both qualitative and quantitative information on the following areas:
    a. Business and Performance
    b. Governance Structure
    c. Risk Profile
    d. Solvency Valuation
    e. Capital Management
    f. Subsequent Events

18. The Authority proposes to amend the Insurance Act enabling the Authority to make prudential standard rules relating to public disclosures. The FCR shall be filed by a commercial insurer or insurance group with the Authority on or before its filing date[5]. The FCR will not be published on the Authority's website; instead, insurers and insurance groups will be required to publish in accordance with the prudential rules.

19. In this connection, prudential standards shall establish technical requirements for commercial insurers and insurance groups to prepare and subsequently publish the FCR on their websites, no later than fourteen days after being filed with the Authority; or be made available within ten days of a request for the information. The FCR shall be required to be kept at the head office of the commercial insurer, and in the case of groups at the head office of the designated insurer, for at least five years from the first filing date.

20. In addition, prudential standards shall further require the filing of an update to a FCR where, in the opinion of the board of a commercial insurer or the parent company of the insurance group, a significant event has occurred, which may materially affect the information contained in the most recent version of a FCR filed with the Authority. Where a significant event has occurred after the financial year-end but before the filing date, the commercial insurer or insurance group will include in the section entitled "Subsequent Events" in the FCR which describes the event and the impact on the information contained in the report. Where the FCR has already been published or made publicly available, and a significant event has occurred during the reporting

[5] Filing Date for commercial insurers has its meaning in Section 17(4)(b) of the Insurance Act. Filing date for insurance groups has its meaning in Rule 25 (2) of the Group Rules.

period; then a commercial insurer or insurance group will be required to submit to the Authority, and make publicly available, an update of the event and how it materially impacts the FCR. This update shall be required to be filed with the Authority within fourteen days, and be made publicly available within ten days after the event.

21. The Authority is of the view that the board of a commercial insurer or the parent board of an insurance group should review the policies, processes and procedures to be developed in response to the preparation and publication of the FCR and related updates. The board must ensure that the content is appropriate; reviewed and approved prior to being filed and published in accordance with the prudential standards. The FCR must be signed-off by the chief executive officer and either the chief risk officer or chief financial officer of the commercial insurer or the parent company of the insurance group declaring, at the time of filing, the appropriateness of the information contained in the FCR. The Authority proposes to amend the Code requiring commercial insurers to establish policies and processes regarding public disclosures. The provision to establish processes surrounding public disclosures are already applicable to insurance groups under Rule 4(3) of the Group Rules.

22. There are circumstances where the Authority may, upon application and approval made under section 6C or section 27F of the Insurance Act, allow exemptions or modifications to the FCR requirements. Circumstances that may occur include:
    a. Where the supervisor is satisfied that disclosures of certain information will result in competitive disadvantage for the commercial insurer and insurance group;
    b. Where there are contractual obligations with policyholders or other counterparty relationships to keep certain information confidential;
    c. Where such disclosures may be prohibited by a jurisdiction's law or may breach a direction issued by the supervisor;
    d. Where the Authority is satisfied that it is appropriate for commercial insurers to make the FCR directly available to all policyholders and their beneficiaries, as well as counterparties;
    e. Where the commercial insurer is part of an insurance group, as Group Supervisor, the Authority may waive the submission of the legal entity FCR and may require the submission of the group FCR which must clearly include information specific to the insurer; and
    f. Where there are other public disclosures on the commercial insurer and insurance group, references can be made to these disclosures as long as these disclosures provide equivalent information as that required in the FCR.

Where a waiver has been granted, the FCR may state that the supervisor has approved the non-disclosure of a particular area.

23. The Authority proposes to bring this requirement into effect in 2016 with the first filing being for the 2016 financial year-end.

FINANCIAL CONDITION REPORT CONTENT

24. As noted above, the FCR will be comprised of six sections:
    a. Business and Performance;
    b. Governance Structure;
    c. Risk Profile;
    d. Solvency Valuation; and
    e. Capital Management
    f. Subsequent Event

25. The "Business and Performance" section requires insurers and insurance groups to provide particulars regarding the organisational/group structure, its insurance business activities and financial performance. The FCR should contain details, where applicable and appropriate, on the following:
    a. Name of the insurer/insurance group;
    b. Name and contact details of the supervisor and group supervisor;
    c. Name and contact details of the approved auditor;
    d. A description of the ownership details including proportion of ownership interest;
    e. Corporate structure chart showing where the insurer fits within the wider corporate structure and the parent. For insurance groups, a group structure that shows the entities that belong to the group;
    f. The insurance activities including the underwriting performance by business segment and region;
    g. Performance of investments, by asset class and details on material income and expenses incurred during the reporting period;
    h. Significant events that have occurred and had a material impact on operations (e.g. acquisitions, divestitures, new lines of business etc.) during the reporting period; and
    i. Any other material information.

26. The "Governance Structure" section requires insurers and insurance groups to provide particulars regarding the corporate governance, risk management and solvency self-

assessment frameworks[6]. The FCR should contain details, where applicable and appropriate, on the following:

a. Board and Senior Executive:
   i. structure of the board and senior executive, their roles, responsibilities and segregation of these responsibilities;
   ii. remuneration policy and practices and performance-based criteria governing the board, senior executive and employees;
   iii. supplementary pension or early retirement schemes for members, the board and senior executive; and
   iv. any material transactions with shareholders, persons who exercise significant influence, the board and/or senior executive.

b. Fit and Proper Requirements:
   i. description of the fit and proper process and assessment of the board and senior executive; and
   ii. description of the professional qualifications, skills, and expertise of the board and senior executive to carry out their functions.

c. Risk Management and Solvency Self-Assessment:
   i. risk management process and procedures to effectively identify, measure, manage and report on risk exposures;
   ii. how the risk management and solvency self-assessment systems are implemented and integrated into the organisational/group structure and decision making process;
   iii. relationship between the solvency self-assessment, solvency needs, and capital and risk management systems; and
   iv. description of the solvency self-assessment approval process including the level of oversight and independent verification.

d. Internal Controls:
   i. a description of the internal control system;
   ii. how the compliance function is executed; and
   iii. how the group's internal controls system and reporting are consistently applied across the group.

[6] In Bermuda, the solvency self-assessment framework for commercial insurers is the Commercial Insurer's Solvency Self-Assessment (CISSA) and for insurance groups, it is the Group Solvency Self-Assessment (GSSA). This framework is already contained in the prudential rules.

e. Internal Audit – a description of how the internal audit function is implemented and how it maintains its independence and objectivity when conducting its functions.

f. Actuarial Function – a description of how the actuarial function is implemented.

g. Outsourcing:
   i. a description of the outsourcing policy and information on any key or important functions that have been outsourced; and
   ii. information on material intra-group outsourcing.

h. Any other material information.

27. The "Risk Profile" section requires insurers and insurance groups to provide particulars regarding exposures on underwriting risk, market risk, credit risk, liquidity risk, operational risk and other material risks. The report shall also include information on how these risk areas are assessed and managed. The FCR should contain details, where applicable and appropriate, on the following:

    a. Material risks that the insurer and insurance group are exposed to, including how these risks are measured and any material changes that have occurred during the reporting period;
    b. How risks are mitigated including the methods used and the process to monitor the effectiveness of these methods;
    c. Material risk concentrations;
    d. How assets are invested in accordance with the prudent person principle as stated in Section 5.1.2 of the Code and Rule 12 of the Group Rules;
    e. The stress testing and sensitivity analysis to assess material risks, including the methods and assumptions used, and the outcomes; and
    f. Any other material information.

28. The "Solvency Valuation" section requires insurers and insurance groups to provide particulars regarding the valuation bases, methods and assumptions on the inputs used to determine solvency. The FCR should contain details, where applicable and appropriate, on the following:

    a. The valuation bases, assumptions and methods used to derive the value of each asset class;

b. The valuation bases, assumptions and methods used to derive the value of technical provisions and the amount of the best estimate. The amount of the risk margin as well as the level of uncertainty to determine the value of the technical provisions should be included;
c. Reinsurance recoverables from reinsurance contracts, including special purpose insurers and other risk transfer mechanisms;
d. The valuation bases, assumptions and methods used to derive the value of other liabilities;
e. Any other material information.

29. The "Capital Management" section requires insurers and insurance groups to provide particulars regarding an assessment of their capital needs and their regulatory capital requirements. The FCR should contain details, where applicable and appropriate, on the following:

a. Eligible Capital:
   i. capital management policy and process to determine capital needs for business planning , how capital is managed and any material changes during the reporting period;
   ii. eligible capital categorised by tiers as described in the Eligible Capital Rules and Group Rules;
   iii. eligible capital, categorised by tiers, used to meet the Enhanced Capital Requirement (ECR) and Minimum Margin of Solvency (MSM);
   iv. eligible capital that is subject to transitional arrangements as stated in the Eligible Capital Rules and Group Rules;
   v. any factors affecting encumbrances impacting the availability and transferability of capital to meet the ECR;
   vi. ancillary capital instruments that have been approved by the Authority;
   vii. in the case of an insurance group, where eligible capital instruments are issued by insurers and other entities for the group to satisfy the group ECR; and
   viii. differences in shareholder's equity as stated in the financial statements versus available statutory capital and surplus.

b. Regulatory Capital Requirements:
   i. the amount of the ECR and MSM at the end of the reporting period;
   ii. any non-compliance with the MSM and the ECR;
   iii. the amount and circumstances surrounding the non-compliance, the remedial measures taken and their effectiveness; and

iv. where the non-compliance has not been resolved, the amount of the non-compliance at the end of the reporting period.

c. Approved Internal Capital Model used to derive the ECR:
   i. purpose and scope of the business and risk areas where the internal model is used;
   ii. where a partial internal model is used, how is it integrated with the Bermuda Solvency Capital Requirement ("BSCR") Model;
   iii. methods used in the internal model to calculate the ECR;
   iv. aggregation methodologies and diversification effects;
   v. main differences in the methods and assumptions used for the risk areas in the internal model versus the BSCR Model; and
   vi. nature and suitability of the data used in the internal model;
   vii. material sources of group diversification effects;

d. Any other material information.

30. The Subsequent Event section will contain any significant event which takes place after the financial year end and before the filing of the FCR with the Authority as part of its annual filings.

E. Eligible Capital

31. The Authority proposes to refine the Insurance (Eligible Capital Rules) 2012 and Group Rules (collectively "the Rules" unless specified otherwise) so that they are reflective of current standards. These changes are also aligned with the Authority's practice in interpretation and embedding this practice in the Rules will provide greater certainty.

32. The Authority proposes to make the following amendments to the Rules:

a. Amend paragraphs 2(2)(a)(iii) and 2(3)(c)(iii) of the Eligible Capital Rules and paragraph 21(2)(a)(iii) and 21(3)(c)(iii) of the Group Rules by deleting the requirement for certain capital instruments to be "paid up or called", to now be required to be "paid up" only. The Authority is of the view that capital instruments that have "callable features" would not be perpetually available to meet policyholder obligations, hence disqualifying them as meeting Tier 1 capital requirements. The deletion of the "called" requirement, as a feature of Tier 1 capital instruments, would be aligned with the

characteristics associated with the highest quality capital available to meet policyholder obligations.

b. Delete the requirements under paragraph 2(3)(c)(i) of the Eligible Capital Rules and paragraph 21(3)(c)(i) of the Group Rules respectively. This revision is proposed as perpetual non-cumulative preference shares are usually subordinated to policyholders to eventually satisfy policyholder obligations. Therefore, requiring this capital instrument to have convertible features or be written down to common shares, to qualify as Tier 1 basic capital, is viewed by the Authority as an added cost to policyholders without providing added protection to them.

c. Revise the definition of "maturity". Currently, the definition of "maturity" does not provide for early redemption of a capital instrument unless it is mandatory to do so. However, the Authority recognises that there may be instances where the commercial insurer or insurance group may wish to exercise an early redemption option and reissuance of the capital instrument; (for example where market conditions become more favourable and it can lower its cost of capital). In this regard, the definition of "maturity" will be amended to make provision for early redemption of capital instruments with the Authority's approval.

d. Delete the requirement of "estimated" in connection with the interpretation of "maturity" as stated throughout the Rules. The Authority's interpretation and application is more definitive and is meant to include "actual" rather than "estimated" maturity. The deletion of the requirement re "estimated maturity" is in line with current supervisory practices.

e. Amend the requirements of Rule 21(9) of the Group Rules to extend to Tier 2 and Tier 3 capital only. The Group Rules currently provide that upon breach or possible breach of the ECR, a capital instrument would be deemed "non-redeemable or settled with the issuance of a capital instrument of equal or higher quality". This qualification is not applicable to Tier 1 capital, which until now would have been non-redeemable in any case.

III. Housekeeping and Consequential amendments

33. The Authority proposes the amendments to the Insurance Act which will also address a number of housekeeping and consequential amendments as follows:

a. The proposed amendments relate to definitions and provisions for the economic balance sheet regime:
   i. The definitions for “statutory economic balance sheet” and “total statutory economic capital and surplus” will be introduced in the Insurance Act to reference reporting by commercial insurers and insurance groups in accordance with the proposed economic balance sheet framework.
   ii. The definition of “insurance reserves” will be deleted and replaced by the definition “insurance technical provisions” and the term “insurance technical provisions” will be inserted where it occurs in Sections 6A and 8B of the Act.
   iii. A definition of “available statutory economic capital and surplus” will be inserted under Section 6D; and a definition of “unaudited statutory economic balance sheet, is proposed to be inserted under Section 31AA in relation a failure by insurers to report compliance with enhanced capital requirements.

b. There will be a new provision inserted under Section 14 for fees to be paid in relation to applications for adjustments or exemptions to applicable prudential standard requirements.

c. Section 18B will be amended to require preparation of loss reserve specialist opinions by Class 2 and Class 3 insurers only, as the requirements for Class 3A, Class 3B and Class 4 insurers will now be incorporated under relevant prudential standard rules for those commercial insurers.

d. Section 27 will be amended to require preparation of actuary opinions by Class 2 and Class 3 insurers only, as the requirements for commercial insurers will be incorporated under relevant prudential standard rules for those insurers.

e. Section 27B is amended to enable the Authority to modify annual fees paid by a designated insurer on behalf of an insurance group.

f. Housekeeping technical changes to the Insurance Returns and Solvency Regulations 1980, which were previously consulted upon.

IV. Commencement Provisions

34. As seen in the afore-mentioned proposals, various provisions and the rules are to come into effect at different times. In summary, the disposal of shareholdings, the head office and public disclosure requirements, and all consequential changes related to the economic balance sheet regime will come into effect on 1st January, 2016. The remaining proposals which deal with fees, applications related to modifications or exemptions and the changes to the Insurance Returns and Solvency Regulations will come into effect when the Act is passed.

V. Conclusions

35. The Authority continues to monitor international developments while also having ongoing discussions that are affecting the standards which impact the Bermuda insurance industry. As these discussions become more formalised by standard setting bodies and other international groups, the Authority will assess the impact and make the necessary changes, in a manner that is suitable to the characteristics of the Bermuda insurance market, ensuring that it remains both credible and appropriate.

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INSURANCE (ELIGIBLE CAPITAL) AMENDMENT (No. 2) RULES 2015

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The Bermuda Monetary Authority, in exercise of the powers conferred by section 6A (1) of the Insurance Act 1978, makes the following Rules:

Citation

1 These Rules, which amend the Insurance (Eligible Capital) Rules 2012 (the "principal Rules"), may be cited as the Insurance (Eligible Capital) Amendment (No. 2) Rules 2015.

Paragraph 2 amended

2 Paragraph 2 of the principal Rules is amended—

(a) in sub-paragraph (1) by deleting the definition of "maturity" and inserting the following:

"maturity" means the first contractual opportunity for the insurer to repay or redeem the capital instrument without the Authority's approval, unless it is mandatory that the insurer repay or redeem the instrument with the issuance of an instrument of equal or higher quality."

(b) by deleting the words "estimated maturity" where they occur and inserting the words "actual maturity";

(c) in sub-paragraph (2) (a) (i) by deleting the words "either by way of write downs of the principal amount or until losses cease, or mandatory conversion to common stock when losses accumulate";

(d) in sub-paragraph (2) (a) (iii) by deleting the words "or called";

(e) in sub-paragraph (3) (c) (i) by deleting the words "either by way of mandatory conversion to common stock when losses accumulate or are non-cumulative";

(f) in sub-paragraph (3) (c) (iii) by deleting the words "or called".

Commencement

3 These Rules come into operation on 1 January 2016.

Made this day of 2015.

Gerald Simons
Chairman
The Bermuda Monetary Authority

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INSURANCE (GROUP SUPERVISION) AMENDMENT (NO. 2) RULES 2015

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The Bermuda Monetary Authority, in exercise of the powers conferred by section 6A of the Insurance Act 1978, makes the following Rules:

Citation and commencement

1. These Rules which amend the Insurance (Group Supervision) Rules 2011 (the "principal Rules") may be cited as the Insurance (Group Supervision) Amendment (No. 2) Rules 2015 and shall come into operation on 1 January 2016.

Paragraph 2 amended

2. The principal Rules are amended in paragraph (1) by:

(a) inserting the following in alphabetical order:

""Act" means the Insurance Act 1978;

"financial condition report" means any financial condition report prepared in accordance with Rule 30;

"filing date" has the meaning given in paragraph 25 (2) of these Rules;

"significant event" means an event in the opinion of the parent board which has occurred:

(a) after year-end but before the filing date of the financial condition report; and

(b) after the filing date and publication of the financial condition report;

that has or will have a material impact on the information contained in the financial condition report regarding the insurance group's operations; including but not limited to, acquisitions, divestitures or new lines of business entered into. "

(b) deleting the definition of "maturity" and replacing it as follows:

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""maturity" means the first contractual opportunity for the insurer to repay or redeem the capital instrument without the Authority's approval, unless it is mandatory that the insurer repay or redeem the instrument with the issuance of an instrument of equal or higher quality."

Paragraph 21 amended

3. Paragraph 21 of the principal Rules are amended -

(a) by deleting the words "estimated maturity" where they occur and inserting the words "actual maturity";

(b) in subparagraph (2) (a) (i) by deleting the following:

"either by way of –

(A) write downs of the principal amount or until losses cease; or

(B) mandatory conversion to common stock when losses accumulate";

(c) in subparagraph (2) (a) (iii) by deleting the words "or called";

(d) in subparagraph (3) (c) (i) by deleting the following:

"either by way of –

(A) mandatory conversion to common stock when losses accumulate; or

(B) are non-cumulative";

(e) in subparagraph (3) (c) (iii) by deleting the words "or called".

Inserts Paragraphs 30, 31 and 32

4. The principal Rules are amended by inserting the following after paragraph 29 -

"Financial Condition Report

30 (1) Schedule I has effect.

(2) An insurance group shall prepare a financial condition report in accordance with Schedule I, in connection with public disclosure requirements under paragraph 4 (3).

(3) A financial condition report shall be comprised of an electronic version and a printed version of the financial condition report and shall be filed by the designated insurer of the insurance group with the Authority on or before the filing date.

(4) An insurance group with a website shall publish on its website a copy of the financial condition report within 14 days of the date the report was filed with the Authority.

(5) An insurance group that does not have a website must furnish to the public a copy of a financial condition report within 10 days of receipt of a request made in writing.

(6) The designated insurer of an insurance group shall keep copies of the financial condition report at its head office for a period of five years beginning with the filing date.

(7) In considering an application under section 27F of the Act to modify or

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exempt an insurance group from any requirements of these Rules, the Authority may take into account the matters set out under subparagraph (8).

(8) Those matters are where -

(a) the Authority is satisfied that the disclosure of certain information will result in a competitive disadvantage for an insurance group;

(b) there are contractual obligations between the insurance group and any policyholder or counterparty to keep certain information confidential;

(c) such disclosures may be prohibited by a jurisdiction's law or may breach a direction issued by the Authority or any other relevant overseas authority; and

(d) there are other statutory public disclosure requirements imposed on an insurance group under the Act and the Authority is satisfied that references may be made to the requirements under this Rule, where such disclosures provide similar information to that required in the financial condition report.

(9) Where approval has been granted by the Authority for a modification or exemption in accordance with the Act; the financial condition report may state that the Authority has provided such approval.

Subsequent Event

31 (1) Where a significant event occurs on or before an insurance group's filing date, the insurance group shall prepare a report on the event at the time of filing its financial condition report under Rule 30 as part of the financial condition report under Schedule I, heading "Subsequent Event".

(2) Where a significant event occurs after an insurance group's filing date, an insurance group shall prepare for the Authority a report on the event within 14 days of the occurrence of such event; which shall be filed with the Authority by the designated insurer of the insurance group.

(3) An insurance group with a website shall publish on such website, a report on a significant event occurring after the filing date within 30 days of the date submission of the report to the Authority.

(4) An insurance group that does not have a website must furnish to the public a copy of any report prepared on a significant event occurring after the filing date within 30 days of receipt of a request made in writing.

(5) The designated insurer of the insurance group shall keep copies of reports on any significant event at its head office for a period of five years beginning with the filing date.

Declaration on Financial Condition Report or Significant Event

32 Every financial condition report or report on a significant event filed by a designated insurer of an insurance group shall be signed by—

(a) the chief executive of the parent company; and

(b) any chief risk officer or chief financial officer of the parent company;

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declaring that to the best of their knowledge and belief, the financial condition report or the report on a significant event fairly represents the financial condition of the insurance group in all material respects.

Schedule 3 inserted

5. The principal Rules are amended by inserting the following after Schedule 2:

Made this day of 2015

Gerald Simons
Chairman
Bermuda Monetary Authority

DRAFT

"SCHEDULE 3 (Paragraph 2)

SCHEDULE OF FINANCIAL CONDITION REPORT OF INSURANCE GROUP

[blank] name of Parent

The schedule of Financial Condition Report of an insurance group shall provide particulars of the insurance group's organizational structure, insurance business activities and financial performance as follows-

(a) business and performance;

(b) governance structure;

(c) risk profile;

(d) solvency valuation;

(e) capital management;

(f) subsequent event.

INSTRUCTIONS AFFECTING SCHEDULE I

i. Business and Performance

An insurance group shall provide particulars regarding the organisational structure, insurance business activities and financial performance as follows:

a. Name of the insurance group;

b. Name and contact details of the group supervisor;

c. Name and contact details of the approved group auditor;

d. A description of the ownership details including proportion of ownership interest of the insurance group;

e. A group structure chart detailing the group structure;

f. Insurance business written by business segment and by geographical region by the insurance group;

g. Performance of investments, by asset class and details on material income and expenses incurred by the insurance group during the reporting period;

h. Any other material information.

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ii. Governance Structure

Insurance groups shall provide particulars of corporate governance, risk management and solvency self-assessment frameworks; and should provide information where applicable and appropriate, on the following:

a. Parent Board and Senior Executive:

   i. a description of the structure of the parent board and its senior executive, the roles, responsibilities and segregation of these responsibilities;

   ii. a description of remuneration policy and practices and performance-based criteria governing the parent board, and its senior executives and employees;

   iii. a description of the supplementary pension or early retirement schemes for members of the insurance group, the parent board and its senior executives; and

   iv. any material transactions with shareholder controllers, persons who exercise significant influence, the parent board or its senior executives.

b. Fitness and Propriety Requirements:

   i. a description of the fit and proper process in assessing the parent board and senior executive; and

   ii. a description of the professional qualifications, skills, and expertise of the parent board and its senior executives to carry out their functions.

c. Risk Management and Solvency Self-Assessment:

   i. a description of the insurance group's risk management process and procedures to effectively identify, measure, manage and report on risk exposures;

   ii. a description of how the insurance group's risk management and solvency self-assessment systems are implemented and integrated into the insurance group's operations; including strategic planning and organisational and decision making process;

   iii. a description of the relationship between the solvency self-assessment, solvency needs, and capital and risk management systems of the insurance group; and

   iv. a description of the solvency self-assessment approval process including the level of oversight and independent verification by the parent board and senior executives.

d. Internal Controls:

   i. a description of the internal control system; and

   ii. a description of how the compliance function of the insurance group is

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executed;

e. Internal Audit - a description of how the internal audit function of the insurance group is implemented and how it maintains its independence and objectivity when conducting its functions.

f. Actuarial Function – a description of how the insurance group's actuarial function is implemented.

g. Outsourcing:

   i. a description of the insurance group's outsourcing policy and information on any key or important functions that have been outsourced; and

   ii. a description of insurance group's material intra-group outsourcing.

h. Any other material information.

iii. Risk Profile

An insurance group shall provide particulars on exposures on underwriting risk, market risk including off balance sheet exposures, credit risk, liquidity risk, operational risk and other material risks; and shall also include information on how these risk areas are assessed and managed as follows:

a. Material risks that the insurance group is exposed to, including how these risks are measured and any material changes that have occurred during the reporting period;

b. How risks of the insurance group are mitigated including the methods used and the process to monitor the effectiveness of these methods;

c. Material risk concentrations;

d. How assets are invested by and on behalf of an insurance group in accordance with the prudent person principle as stated in paragraph 12 (1) (a) of these Rules;

e. The stress testing and sensitivity analysis to assess material risks, including the methods and assumptions used by the insurance group, and the outcomes;

f. Any other material information.

iv. Solvency Valuation

An insurance group shall provide particulars of the valuation bases, methods and assumptions on the inputs used to determine the insurance group's solvency; and include details, where applicable and appropriate, on the following:

a. The valuation bases, assumptions and methods used to derive the value of each asset class;

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b. The valuation bases, assumptions and methods used to derive the value of technical provisions and the amount of the best estimate. The amount of the risk margin as well as the level of uncertainty to determine the value of the technical provisions should be included;

c. A description of the recoverables from reinsurance contracts, including special purpose insurers and other risk transfer mechanisms;

d. The valuation bases, assumptions and methods used to derive the value of other liabilities;

e. Any other material information.

v. Capital Management

An insurance group shall provide particulars regarding an assessment of the insurance group's capital needs and regulatory capital requirements; and include details where applicable and appropriate, on the following:

a. Eligible Capital:

i. a description of the capital management policy and process of the insurance group to determine capital needs for business planning, how capital is managed and any material changes during the reporting period;

ii. a description of the eligible capital of the insurance group categorised by tiers in accordance with these Rules;

iii. a description of the eligible capital insurance group categorised by tiers, in accordance with these Rules used to meet the ECR and the Minimum Margin of Solvency ("MSM") defined in accordance with section (1) (1) of the Act;

iv. confirmation that the insurance group's eligible capital is subject to transitional arrangements as required under these Rules;

v. Identification of any factors of the insurance group affecting encumbrances affecting the availability and transferability of capital to meet the ECR;

vi. Identification of ancillary capital instruments that have been approved by the Authority;

vii. Identification of differences in shareholder's equity as stated in the financial statements versus available statutory capital and surplus.

b. Regulatory Capital Requirements:

i. Identification of the amount of the insurance group ECR and MSM at the end of the reporting period;

ii. Identification of any non-compliance by the insurance group with the MSM and the ECR;

iii. a description of the amount and circumstances surrounding the insurance

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group's non-compliance, the remedial measures taken and their effectiveness; and

iv. where the non-compliance has not been resolved, a description of the amount of the non-compliance of insurance group at the end of the reporting period.

c. Approved Internal Capital Model used to derive the insurance group's ECR:

i. a description of the purpose and scope of the business and risk areas where the Group BSCR Model is used;

ii. where a partial internal model is used, a description of how it is integrated with the Group BSCR Model;

iii. a description of methods used in the Group BSCR Model to calculate the ECR;

iv. a description of aggregation methodologies and diversification effects;

v. a description of the main differences in the methods and assumptions used for the risk areas in the internal model versus the Group BSCR Model; and

vi. a description of the nature and suitability of the data used in the Group BSCR Model;

vii. any other material information.

vi. Significant Event

In accordance with paragraph 31(1), every insurance group shall provide detailed particulars and explanations of a significant event including, but not limited to the following:

a. a description of the significant event;

b. approximate date(s) or proposed timing of the significant event;

c. confirmation of how the significant event has impacted or will impact, any information provided in the most recent financial condition report filed with the Authority;

d. any other material information.".

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THE INSURANCE ACT 1978

1978: [ ]

INSURANCE (PUBLIC DISCLOSURES) RULES 2015

In exercise of the powers conferred upon the Bermuda Monetary Authority ('the Authority') by section 6A of the Insurance Act 1978, the following Rules are made—

Citation and commencement

1. These Rules may be cited as the Insurance (Public Disclosure) Rules 2015 and shall come into operation on the 1 January 2016.

Interpretation

2. In these Rules—

"Act" means the Insurance Act 1978;

"Code" means the Insurance Code of Conduct;

"Eligible Capital Rules" mean the Insurance (Eligible Capital) Rules 2012;

"filing date" has the meaning given in section 17 (4) (b) of the Act;

"financial condition report" means any financial condition report prepared in accordance with Rule 3;

"relevant overseas authority"; means an authority discharging in another jurisdiction or territory functions corresponding to those of the Authority under the Act;

"significant event" means an event in the opinion of the Board of Directors of a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer which has occurred:

(a) after year-end but before the filing date of the financial condition report; and

(b) after the filing date and publication of the financial condition report;

that has or will have a material impact on the information contained in the financial condition report regarding an insurer's operations; including but not limited to, acquisitions, divestitures or new lines of business entered into.

Financial Condition Report

3. (1) Schedule I has effect.

(2) Every Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer shall prepare a financial condition report in accordance with Schedule I.

(3) A financial condition report shall be comprised of an electronic version and a printed version of the financial condition report and shall be filed with the Authority on or before the filing date.

(4) Every Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer with a website shall publish on its website a copy of the financial condition report within 14 days of the date the report was filed with the Authority.

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(5) Every Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer that does not have a website must furnish to the public a copy of a financial condition report within 10 days of receipt of a request made in writing.

(6) Every Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer shall keep copies of the financial condition report at its head office for a period of five years beginning with its filing date.

(7) In considering an application made in accordance with section 6C of the Act to modify or exempt a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer from the requirements under these Rules, the Authority may take into account the matters set out under subparagraph (8).

(8) Those matters are -

(a) where the Authority is satisfied that the disclosure of certain information will result in a competitive disadvantage for a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer;

(b) where there are contractual obligations between a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer and policyholders or counterparties to keep certain information confidential;

(c) where such disclosures may be prohibited by a jurisdiction's law or may breach a direction issued by the Authority or any other relevant overseas authority;

(d) where the Authority is satisfied that the disclosure of information by the Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer will be made directly to all policy holders, beneficiaries and counterparties and the disclosures are equivalent to the information required for the FCR;

(e) where a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer is a member of an insurance group and the Authority is the Group Supervisor of the insurance group; and is satisfied that the filing of the insurance group's financial condition report provides information that is appropriate and specific to the Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer's business**;** and

(f) where there are other statutory public disclosure requirements imposed on a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer under the Act; and the Authority is satisfied that references may be made to the requirements under this Rule where such disclosures provide similar information to that required in the financial condition report.

(9) Where approval has been granted by the Authority for a modification or exemption in accordance with the Act, the financial condition report may state in its financial condition report that the Authority has provided such approval.

Subsequent Event

4. (1) Where a significant event occurs on or before a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer's filing date, such insurer shall submit to the Authority a report on the event at the time of filing its financial condition report under paragraph 3 as part of the financial condition report under the Schedule I, heading "Subsequent Event".

(2) Where a significant event occurs after a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer's filing date, such insurer shall submit to the Authority a report on the event within 14 days of the occurrence of such event.

(3) Every Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer

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with a website shall publish on such website, a report on a significant event occurring after the filing date within 30 days of the date submission of the report to the Authority.

(4) Every Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer that does not have a website must furnish to the public a copy of any report on a significant event occurring after the filing date within 30 days of receipt of a request made in writing.

(5) Every Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurers shall keep copies of reports on any significant event at its head office for a period of five years beginning after the date such report was filed with the Authority.

Declaration on Financial Condition Report or Significant event

5. Every financial condition report or report on a significant event submitted by a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer shall be signed by—

(a) the chief executive of the insurer; and

(b) any chief risk officer or chief financial officer of the insurer;

declaring that to the best of their knowledge and belief, the financial condition report or the report on a significant event fairly represents the financial condition of the insurer in all material respects.

Failure to file a Financial Condition Report or Significant Event

6. (1) Where a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer fails to file a financial condition report or a report on a significant event as the case may be; it shall be liable to a civil penalty calculated in accordance with subparagraph (2).

(2) For each week or part of a week that a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer fails to comply with a requirement imposed on it under paragraphs 3 and 4 of these Rules, it shall be liable to a civil penalty not exceeding-

(a) $1000 in the case of a Class 3A or Class C insurer;

(b) $5,000 in the case of a Class 3B, Class 4, Class D or Class E insurer;

and the civil penalty applicable to an insurer falling within more than one paragraph shall be the higher penalty.

Made this day of 2015.

Gerald Simons
Chairman
Bermuda Monetary Authority

DRAFT

SCHEDULE I (Paragraph 3)

SCHEDULE OF FINANCIAL CONDITION REPORT

[*blank*] name of Parent

The schedule of financial condition reportof a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer shall provide particulars of the following matters-

(a) business and performance;

(b) governance structure;

(c) risk profile;

(d) solvency valuation;

(e) capital management;

(f) subsequent event.

INSTRUCTIONS AFFECTING SCHEDULE I

i. **Business and Performance**

Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurers shall provide particulars regarding the organisational structure, insurance business activities and financial performance as follows:

a. Name of the insurer;

b. Name and contact details of the insurance supervisor and group supervisor;

c. Name and contact details of the approved auditor;

d. A description of the ownership details including proportion of ownership interest;

e. Where the insurer is part of a group, a group structure chart showing where the insurer fits within the group structure;

f. Insurance business written by business segment and by geographical region;

g. Performance of investments, by asset class and details on material income and expenses incurred during the reporting period;

h. Any other material information.

ii. **Governance Structure**

Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurers shall provide particulars of corporate governance, risk management and solvency self-assessment frameworks; and should provide information where applicable and appropriate, on the following:

a. Board and Senior Executive:

i. a description of the structure of the board and senior executive, the roles, responsibilities and segregation of these responsibilities;

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ii. a description of remuneration policy and practices and performance-based criteria governing the board, senior executive and employees;

iii. a description of the supplementary pension or early retirement schemes for members, the board and senior executive; and

iv. any material transactions with shareholder controllers, persons who exercise significant influence, the board or senior executive.

b. Fitness and Propriety Requirements:

i. a description of the fit and proper process in assessing the board and seniorexecutive; and

ii. a description of the professional qualifications, skills, and expertise of the board and senior executives to carry out their functions.

c. Risk Management and Solvency Self-Assessment:

i. a description of the risk management process and procedures to effectively identify, measure, manage and report on risk exposures;

ii. a description of how the risk management and solvency self-assessment systems are implemented and integrated into the insurer's operations; including strategic planning and organisational and decision making process;

iii. a description of the relationship between the solvency self-assessment, solvency needs, and capital and risk management systems; and

iv.) a description of the solvency self-assessment approval process including the level of oversight and independent verification by the board and senior executives.

d. Internal Controls:

i. a description of the internal control system; and

ii. a description of how the compliance function is executed;

e. Internal Audit - a description of how the internal audit function is implemented and how it maintains its independence and objectivity when conducting its functions.

f. Actuarial Function – a description of how the actuarial function is implemented.

g. Outsourcing:

i. a description of the outsourcing policy and information on any key or important functions that have been outsourced; and

ii. a description of material intra-group outsourcing.

h. Any other material information.

iii. **Risk Profile**

Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurers shall provide particulars on exposures on underwriting risk, market risk including off balance sheet exposures, credit risk, liquidity risk, operational risk and other material risks; and shall also include information on how these risk areas are assessed and managed as follows:

a. Material risks that the insurer is exposed to, including how these risks are measured and any material changes that have occurred during the reporting period;

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b. How risks are mitigated including the methods used and the process to monitor the effectiveness of these methods;

c. Material risk concentrations;

d. How assets are invested in accordance with the prudent person principle as stated in Paragraph 5.1.2 of the Code;

e. The stress testing and sensitivity analysis to assess material risks, including the methods and assumptions used, and the outcomes;

f. Any other material information.

iv. **Solvency Valuation**

Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurers shall provide particulars of the valuation bases, methods and assumptions on the inputs used to determine solvency; and include details, where applicable and appropriate, on the following:

a. The valuation bases, assumptions and methods used to derive the value of each asset class;

b. The valuation bases, assumptions and methods used to derive the value of technical provisions and the amount of the best estimate. The amount of the risk margin as well as the level of uncertainty to determine the value of the technical provisions should be included;

c. A description of recoverables from reinsurance contracts, including special purpose insurers and other risk transfer mechanisms;

d. The valuation bases, assumptions and methods used to derive the value of other liabilities;

e. Any other material information.

v. **Capital Management**

Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurers shall provide particulars regarding an assessment of capital needs and regulatory capital requirements; and include details where applicable and appropriate, on the following:

a. Eligible Capital:

i. a description of the capital management policy and process to determine capital needs for business planning, how capital is managed and any material changes during the reporting period;

ii. a description of the eligible capital categorised by tiers in accordance with the Eligible Capital Rules;

iii. a description of the eligible capital categorised by tiers, in accordance with the Eligible Capital Rules used to meet the Enhanced Capital Requirement ("ECR") and the Minimum Margin of Solvency ("MSM") defined in accordance with section (1) (1) of the Act;

iv. confirmation that eligible capital is subject to transitional arrangements as required under the Eligible Capital Rules;

v. Identification of any factors affecting encumbrances affecting the availability and transferability of capital to meet the ECR;

vi. Identification of ancillary capital instruments that have been approved by the Authority;

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vii. Identification of differences in shareholder's equity as stated in the financial statements versus available statutory capital and surplus.

b. Regulatory Capital Requirements:

i. Identification of the amount of the ECR and MSM at the end of the reporting period;

ii. Identification of any non-compliance with the MSM and the ECR;

iii. a description of the amount and circumstances surrounding the non-compliance, the remedial measures taken and their effectiveness; and

iv. where the non-compliance has not been resolved, a description of the amount of the non-compliance at the end of the reporting period.

c. Approved Internal Capital Model used to derive the ECR:

i. a description of the purpose and scope of the business and risk areas where the internal model is used;

ii. where a partial internal model is used, a description of how it is integrated with the BSCR Model;

iii. a description of methods used in the internal model to calculate the ECR;

iv. a description of aggregation methodologies and diversification effects;

v. a description of the main differences in the methods and assumptions used for the risk areas in the internal model versus the BSCR Model; and

vi. a description of the nature and suitability of the data used in the internal model;

vii. any other material information.

vi. **Significant Event**

ii. In accordance with paragraph 4 (1) , every Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurer shall provide detailed particulars and explanations of a significant event including, but not limited to the following:

a. a description of the significant event;

b. approximate date(s) or proposed timing of the significant event;

c. confirmation of how the significant event has impacted or will impact, any information provided in the most recent financial condition report filed with the Authority;

d. any other material information.

DRAFT

April 1, 2015/DRW

A BILL

entitled

INSURANCE AMENDMENT (No. 2) ACT 2015

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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 (No. 2) Act 2015.

Amends section 1

2 Section 1 of the principal Act is amended by inserting in alphabetical order the following:—

(a) ""available statutory economic capital and surplus" means the amount shown in Line 40 of Form 1EBS of these Rules including any adjustments made thereto under section 6D of this Act or by or under Rules made under section 6A of this Act;

(b) "statutory economic balance sheet" means the balance sheet required to be produced in accordance with the prudential standards made under section 6A of this Act; that are applicable to any Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer or insurance group;;

(c) "total statutory economic capital and surplus" means the total statutory economic capital and surplus of a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer or insurance group; calculated in accordance with prudential standards made under section 6A of this Act."

Amends section 6A

3 Section 6A (1) of the principal Act is amended–

(i) in subparagraph (c) by deleting the words "insurance reserves" and inserting the words "insurance technical provisions";"

(ii) by inserting a new subparagraph "(e)" after subparagraph "(d)" as follows:

"(e) public disclosures,".

Amends section 6D

4 Section 6D of the principal Act is amended –

(a) by deleting the title of the section and inserting the following:

"**Authority may make adjustment to enhanced capital requirement, available statutory capital and surplus and available statutory economic capital and surplus**";

(b) by deleting the words "available statutory capital and surplus" wherever they appear and inserting the words "available statutory capital and surplus or available statutory economic capital and surplus";

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(c) in paragraph (1) by deleting the words "insurance reserves" and inserting the words "insurance technical provisions".

Amends section 8B

5 Section 8B (1) of the principal Act is amended by deleting the words "insurance loss reserves" and inserting the words "insurance loss reserves or insurance technical provisions".

Inserts section 8C

6 The principal Act is amended by inserting the following after section 8B:

"**Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurer to maintain head office in Bermuda**

8C (1) Every Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurer shall maintain its head office in Bermuda that satisfies the requirements of subsection (2).

(2) The insurance business of the insurer must be directed and managed from Bermuda and in determining whether the insurer complies with this requirement, the Authority shall consider, inter alia, the factors set out in subsection (3).

(3) The factors are:

(a) where the underwriting, risk management and operational decision making of the insurer occurs;

(b) whether the presence of senior executives who are responsible for and involved in the decision making related to the insurance business of the insurer is located in Bermuda;

(c) where meetings of the board of directors of the insurer occur.

(4) Notwithstanding the considerations set out in subsection (3), the Authority may also have regard to the following matters:

(a) the location where management of the insurer meets to effect policy decisions of the insurer;

(b) the residence of the officers, insurance managers or employees of the insurer; and

(c) the residence of one or more directors of the insurer in Bermuda;

(5) Subsection (1) shall not apply to a Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurer which has a permit under section 3 of the Non-Resident Insurance Undertakings Act 1967 or a permit under section 134 of the Companies Act 1981.".

Amends section 14

7 Section 14 (1) of the principal Act is amended by inserting the following after subparagraph "(f)" —

"(g) application for approval to exempt or modify prudential standard requirements applicable to an insurer in accordance with the provisions of section 6C;

(h) application under section 6D (7) for an adjustment to an insurer's or insurance

group's enhanced capital requirement or available statutory capital and surplus or available statutory economic capital and surplus as the case may be."

Amends section 18B

8 Section 18B of the principal Act is amended in —

(a) subsection (1) by deleting the words "Class 2, Class 3, Class 3A, Class 3B or 4 insurer" and inserting the words "Class 2 or Class 3 insurer";

(b) subsection (2) (a) by deleting the words ", Class 3A, Class 3B or Class 4".

Amends section 26

9 Section 26(1) of the principal Act is amended by deleting the words "long-term insurance reserves" and inserting the words "long-term insurance reserves or long term insurance technical provisions".

Amends section 27

10 Section 27(1) of the principal Act is amended by deleting the words "An insurer to which this Part applies" and inserting the words "Every Class A and Class B insurer".

Amends section 27B

11 Section 27B of the principal Act is amended by inserting the following after subsection (11) —

"(11A) Sections 14 (5), (6), (7), (8) and (9) shall apply mutatis mutandis in relation to the payment of an annual fee by a designated insurer under subsection (11) in respect of an insurance group."

Amends section 27G

12 Section 27G (1) of the principal Act is amended by deleting the words "insurance reserves as reported in its statutory financials" and inserting the words "insurance technical provisions in accordance with the requirements of Schedule XIV "Group Statutory Economic Balance Sheet" of the Insurance (Prudential Standard) (Insurance Group Requirements) Rules 2011".

Inserts section 30EA

13 The principal Act is amended by inserting the following new section after section 30E—

"**Notification by shareholder controllers of disposal of shares- public and private companies**

(1) No person who is a shareholder controller in accordance with section 30D, shall reduce or dispose of his holding in a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer, where the proportion of the voting rights held by the shareholder controller in the insurer will reach or fall below 10 per cent, 20 per cent, 33 per cent or 50 per cent as the case may be; unless that shareholder controller has served on the Authority a notice in writing stating that he intends to reduce or dispose of such holding.

(2) A person who is a shareholder controller in accordance with section 30E, shall serve on the Authority a notice in writing that he has reduced or disposed of his holding in a Class 3A, Class 3B, Class 4, Class C, Class D or Class E

insurer; where the proportion of the voting rights in the insurer held by him will have reached or has fallen below 10 per cent, 20 per cent, 33 per cent or 50 per cent as the case may be; not later than 45 days after such disposal."

Amends section 30G

14 The principal Act is amended in section 30G—

(a) by inserting the following as subsection "(5AB)" after section (5A):

"(5AB) Any person who contravenes section 30EA by failing to give the notice required by subsections (1) and (2) of that section shall be guilty of an offence."

(b) in subsection (6) by deleting the words "(1) or (5A)" and inserting the words "(1), (5A) or (5AB)".

Amends section 31AA

15 Section 31AA (1) (b) of the principal Act is amended—

(a) in subparagraph (i) by deleting the words "unaudited interim financial statements" and replacing it with the words "unaudited statutory economic balance sheet and unaudited interim financial statements prepared in accordance with GAAP";

(b) in subparagraph (ii) by deleting the words "in relation to line 17(d) of those statements" and replacing them with the words "in relation to line 19 of the statutory economic balance sheet";

(c) in subparagraph (vi) by deleting the words "in relation to line 27(d) of those statements" and replacing them with the words "in relation to line 27C of the statutory economic balance sheet".

Consequential amendment

16 Schedule 1 which amends the Insurance Returns and Solvency Regulations 1980 has effect.

Commencement

17 The provisions of sections 2, 3(i), 4, 5, 6, 8, 9, 10, 11, 13, 14 and 15 shall be deemed to have come into operation on 1 January 2016.

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SCHEDULE 1 (Section 16)

AMENDMENTS TO THE INSURANCE RETURNS AND SOLVENCY REGULATIONS 1980

The Insurance Returns and Solvency Regulations 1980 are amended—

(a) by repealing paragraph 8 (2) (i) and replacing it as follows:

"(i) in relation to Class 1 insurers, Class 2 insurers and Class 3 insurers, the amount prescribed by regulation 10 as the minimum margin of solvency, and whether it was met;".

(b) in paragraph 8A (2) by deleting the words "and Part IV (Classes 3A, 3B and 4) of Schedule III";

(c) by repealing paragraph 9 (2) (e) and replacing it as follows:

"(e) in relation to Class A insurers and Class B insurers, the minimum margin of solvency for long-term business prescribed by regulation 12 (1), and whether that margin was met;".

(d) in paragraph 14 (1) by deleting the words "of the insurer" and inserting the words "of a Class A or Class B insurer"; and

(e) in paragraph 14 (2) by deleting the words "The insurer's" and inserting the words "A Class A or Class B insurer's".

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INSURANCE AMENDMENT BILL 2015

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.

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

Clause 2 makes provision for new definitions for "available statutory economic capital and surplus", "statutory economic balance sheet" and "total statutory economic capital and surplus" in relation to Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurers and insurance groups. Such definitions are proposed to be inserted into the Act in order to facilitate the implementation of economic capital requirement measures under Bermuda's statutory economic balance sheet framework.

Clause 3 amends section 6A to make provision for the Authority to also prescribe prudential standard rules in relation to the preparation and publication of a financial conditional report by Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurers and insurance groups. In this regard, the Authority will make prudential standard rules to provide for technical requirements relating to the preparation and publication of such reports for each class of insurer.

Clause 4 amends section 6D to include reference to available economic capital and surplus to enable the Authority to make adjustments when the economic balance sheet regime is in place.

Clause 5 proposes to amend Section 8B to require for both insurance loss reserves and insurance technical provisions to be assessed by an insurer's appointed loss reserve specialist. Previously the requirement was only for insurance loss reserves to be assessed; however in accordance with new requirements proposed under the economic balance sheet regime; "technical provisions" will now also require assessment by the Authority.

Clause 6 inserts a new Section 8C which shall require all Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurers to establish its head office in Bermuda. Such requirements shall not apply to Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurers which have a permit issued under the Companies Act 1981 or the Non-Resident Insurance Undertakings Act 1967,

Clause 7 amends section 14 to make provision for a fee to be paid where

an insurer applies to the Authority in accordance with section 6C to be exempted from or to modify insurance prudential standard requirements applicable to it; and for an insurer or insurance group to make an application under section 6D (7) to request an adjustment to its enhanced capital requirement and available statutory capital and surplus. These amendments are "house-keeping" measures as provision is already made pursuant to the Fourth Schedule to the Bermuda Monetary Authority Act 1969, under the heading "Insurance Act 1978" for fees to be paid on application made to the Authority. Therefore, the Authority seeks to include appropriate provisions under its primary legislation to clarify the fee related to this application process.

Clause 8 proposes to amend section 18B and to limit the existing loss reserve specialist opinion (LRSO) statutory requirement to Class 2 and Class 3 insurers. For Class 3A, Class 3B and Class 4 insurers, the LRSO will be required in accordance with statutory economic balance sheet requirements under applicable prudential standards.

Clause 9 amends section 26 in accordance with the rationale set out for loss reserve specialists under Clause 5.

Clause 10 seeks to amend section 27, to clarify that the statutory obligation for an approved actuary opinion (AAO) applies to Class A and Class B insurers, as the obligation to prepare the AAO for Class C, Class D and Class E insurers will be imposed under the Insurance (Prudential Standards) (Class C Class D and Class E Solvency Requirement) Rules 2011.

Clause 11 proposes to amend section 27B to make provision for the requirements set out under sections 14 (5), (6), (7), (8) and (9) to apply to the annual fee paid by a designated insurer in respect of an insurance group under section 27B (11); whereby if the Authority is satisfied, it may reduce the annual fee payable by such designated insurer in the same manner as annual fees reduced by it under section 14.

Clause 12 proposes to amend section 27G to clarify that the group actuary will submit the group actuarial opinion under the Insurance (Prudential Standards) (Insurance Group Solvency Requirement) Rules 2011, which is being amended.

Clause 13 proposes to insert a new section 30EA after section 30E to make provision for shareholder controllers of Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurers to notify the Authority of their intent to dispose of holdings in such an insurer whereby the reduction results in their holdings falling below or being reduced to 10 per cent, 20 per cent, 33 per cent or 50 per cent in that insurer. In relation to "public companies" the notification may occur within 45 days after the disposal; however in relation to "private companies" the

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notification is required to be made prior to the intended disposal. The new provisions are required to enhance the Authority's supervisory oversight in relation to a commercial insurer's beneficial ownership structure.

Clause 14 proposes to amend section 30G whereby it shall be an offence for a Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurer to fail to file a notification in accordance with proposed section 30EA; similarly to the offence created under this section in relation to a failure by an insurer to file a notification under section 30E.

Clause 15 seeks to amends section 31AA to make provision for failure by an insurer to comply with enhanced capital requirements. Upon failure, an insurer shall be required to provide to the Authority an interim "statutory economic balance sheet", in addition to unaudited interim GAAP financial statements, and any other requirements in accordance with relevant prudential standards.

Clause 16 proposes to make provision for consequential amendments to the Insurance Returns and Solvency Regulations 1980.

Clause 17 provides for the commencement date of the Act. The Authority proposes for various provisions of the Act to commence on different dates. The provisions of sections 2, 3(i), 4, 5, 6, 8, 9, 10, 12, 13, 14 and 15 shall be deemed operable on 1 January 2016. These sections pertain to head office requirements and the economic balance sheet regime. The remaining sections 1, 7, 11, 16 and 17 which deal with additional applications for modifications, fees, disposal of shareholdings and the changes to the Insurance Returns and Solvency Regulations are to come into effect when the Act is passed.

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