BERMUDA MONETARY AUTHORITY

CONSULTATION PAPER

INSURANCE AMENDMENT ACT 2014

OCTOBER 2014

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I. INTRODUCTION

1. The Bermuda Monetary Authority ("the Authority") is proposing to amend the Insurance Act 1978 ("the Act") and the accompanying Regulations by issuing the Insurance Amendment Act 2014 ("the Bill") for consultation with the insurance industry. The Bill seeks to address the following broad issues:

    a. Enhance the scope of certain provisions within the Act for more effective supervisory oversight;
    b. Provide clarity on certain provisions so as to assist interpretation;
    c. Effect changes to the Act that were previously consulted upon; and
    d. Housekeeping changes

2. 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 31st October, 2014.

II. PROPOSED AMENDMENTS TO THE INSURANCE ACT 1978

Declaration of Compliance – Section 15A

3. The Authority is proposing to add a new section to the Act to create a declaration of compliance with the Minimum Criteria for Registration, the Minimum Margin of Solvency ("MSM") for all insurers registered under Section 4 of the Act, and the Enhanced Capital Requirement ("ECR") for Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurers.

4. This declaration will be an enhancement to the current declaration submitted by insurers as stated in the Notice on the Code of Conduct ("the Code") dated May 2011. The Notice states that as part of the evaluation of insurers' compliance with the Code, "*every registered (re)insurer shall confirm with the submission of its annual statutory financial return that its board, assisted by management, has reviewed the provisions of the Code and has determined that the (re)insurer has complied with those provisions based on the nature, scale and complexity of its operations.*" The new declaration, which supersedes the one described in the Notice, will facilitate the required declaration of compliance with the Code through the Minimum Criteria for Registration.

5. The declaration of compliance, which will include the MSM and ECR, requires insurers to state whether or not they are in compliance with the regulatory capital requirements but it will not require them to disclose the amounts of the MSM or ECR.

6. The declaration of compliance would assist the Authority in exercising its risk-based supervisory regime more efficiently by acting as part of an early warning system that would allow supervisory resources to be focused on insurers with particular issues surrounding compliance with these requirements.

7. The declaration of compliance would be submitted at the same time as the statutory financial return ("SFR") although it would not be considered part of the SFR filing. The declaration must be signed by two directors of the insurer and submitted within the relevant filing date from the end of the financial year of the class to which it relates as per section 17 (4) of the Act, or such longer period as the Authority may determine on the application of the insurer. Insurers would incur civil penalties if the declaration is not filed in the prescribed time. It is proposed that the declaration of compliance will take effect on the date the proposed amendment is passed in

Parliament with insurers providing their first submission in 2015 for the 2014 financial year.

Publication of the Declaration of Compliance – Section 17A

8. In its 2012 Consultation Paper titled, "Enhancements to the Regulatory and Supervisory Regime for Commercial Insurers", the Authority initially published a proposal " *to require commercial insurers*[1] *and insurance groups to publicly disclose their compliance with the MSM and ECR and any material breach of the MSM or ECR*". The Authority subsequently amended its position based on stakeholder feedback that insurers disclose their compliance through the notes to the financial statements filed under section 17A of the Act.

9. Upon further consideration of the issue, the Authority proposes to address the disclosure of insurers' compliance with the regulatory capital requirements through the publication of the declaration of compliance as proposed in section 15A. To facilitate this requirement, the Authority proposes to amend section 17A (6) of the Insurance Act to allow it to publish the declaration for those insurers captured under this section.

Material Changes– Sections 30JA & 30JB

10. The Authority proposes to make amendments to section 30JA and 30JB of the Act to provide clarity and/or enhanced scope to the Material Changes provisions in the Act.

11. The specific amendments are as follows:

    a. Under section 30JA (1)(a), schemes covering acquisition or transfer of business under section 25 of the Act or Section 99 of the Companies Act 1981 are reported as material changes. The Authority proposes to broaden the reporting requirement to cover schemes of arrangements under section 99 that affect persons licensed under the Act. The Authority believes that these schemes should be included as material changes that need to be reported to the Authority.

    b. The Authority proposes to include in section 30JA(1) an additional provision to cover disposal or sale of the insurance operations.

[1] Commercial insurers – Class 3A, Class 3B, Class 4, Class C, Class D, and Class E insurers.

c. The Authority is amending section 30JA (1) (f) by removing the word "and" to read "compliance **or** internal audit". This change clears up any ambiguity surrounding the outsourcing notification requirement when any one of the functions is outsourced, rather than being construed as notification when the functions collectively are outsourced.

d. The Authority proposes to amend section 30JB (4) (b) by replacing the words "fourteen days" with "thirty days". Since implementing the requirements under section 30JA, the Authority has found that given the complexities of certain material changes, 30 days is a more reasonable time period to appropriately evaluate these transactions.

Other Miscellaneous Amendments

12. The Authority proposes to expand the scope of section 31B to cover and apply consistently to all commercial insurers, instead of only Class 3B and Class 4 insurers. Therefore, the section will cover Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurers.

13. The Authority proposes to include in section 32(1) a provision where there is significant risk that the insurer may be unable to meet its obligations to policyholder. This provision further strengthens the policyholder protection framework by allowing the Authority to intervene where it believes that the insurer may be unable to meet its policyholder obligations. Such a situation may not necessarily mean that the insurer is at risk of insolvency, however, its ability to meet policyholder obligations at a particular point in time could be hampered by factors which may be extraneous to its operations and/or temporary in nature.

14. The Authority proposes to expand the scope of section 56 by including section 27 of the Act with section 56 (5)(b) as one of the provisions where the Authority can modify or exempt upon application from the insurer, actuarial declaration of long-term liabilities. Presently, the Authority can modify or exempt, upon application from an insurer, the opinion of the loss reserve specialist. The inclusion of section 27 provides this same facility for the actuarial declaration for long-term liabilities. The Authority also proposes to amend the title of Section 56 by deleting the word "accounting" to broaden the nature of the provisions captured within the section.

15. The Authority issued its Consultation Paper titled "Repeal of Section 57(1)(a) of the Insurance Act 1978" where repeal removes the exemption from regulatory oversight

by the Authority of the insurance business that is done by either a Friendly Society or a Trade Union. The Authority believes that all entities carrying on insurance business should be subject to appropriate prudential regulation and supervision. The Authority also proposed a ninety day transition period to allow time for any Friendly Society or Trade Union that was conducting insurance business and wished to continue to do so to become compliant with the Insurance Act 1978. The consultation period expired on 30th July 2014 and based on stakeholder feedback, the Authority is proceeding with the repeal of the said section.

16. The Authority as a housekeeping amendment, is proposing to delete section 57(3)(d) which makes reference to Section 43(5), which was repealed and is no longer relevant.

17. The Authority proposes to amend the Schedule to the Act concerning the Minimum Criteria for Registration. The amendment to the Schedule to the Act introduces "Corporate Governance" requirements relating to the need for insurers to implement the appropriate corporate governance policies and procedures. Also, the insurer, where appropriate, is required to appoint non-executive directors to its board. The Authority has the ability to assess the insurer's corporate governance structure and determine if there is a need to have non-executive directors and/or if the number appointed is adequate.

III. HOUSEKEEPING AMENDMENTS TO THE INSURANCE ACCOUNTS REGULATIONS 1980 AND INSURANCE RETURNS AND SOLVENCY REGULATIONS 1980

18. The Authority is deleting Line 12 of Schedule II Part VI of the Insurance Accounts and Regulations 1980 as this line is referenced and incorrectly titled in the Notes section.

19. To correct a typographical error, the Authority is amending the reference to section 6(6) in Regulations 10 and 12 of the Insurance Returns and Solvency Regulations 1980 to read section 6.

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30 September 2014/DRW

A BILL

entitled

INSURANCE AMENDMENT ACT 2014

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

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

Citation

1 This Act, which amends the Insurance Act 1978 (the "principal Act"), may be cited as the Insurance Amendment Act 2014.

Inserts section 15A

2 The principal Act is amended by inserting the following new section after section 15—

"**Declaration of compliance**

15A (1) Every insurer shall at the time of filing its statutory financial statements under section 17, also deliver to the Authority a declaration in such form, and with such content as may be prescribed; declaring that the insurer has, with respect to the preceding financial year—

(a) complied with all requirements of the minimum criteria applicable to it;
(b) failed to comply with or any part of the minimum criteria applicable to it;
(c) complied with minimum margin of solvency and applicable enhanced capital requirements as at its financial year end;
(d) failed to comply with minimum margin of solvency and applicable enhanced capital requirements as at its financial year end; and
(e) where a licence is issued by the Authority subject to limitations, restrictions or conditions; that such have been observed.

(2) All declarations to be delivered under this section shall be signed by two directors of the insurer.

(3) Where an insurer delivers to the Authority a declaration in accordance with subparagraphs (1) (b) and (1) (d), it shall, at the time of such delivery; give the Authority particulars of such failure in writing.

(4) The information required to be included in the declaration of compliance pursuant to subparagraph (1) shall provide for—

(a) as early a warning as possible to any person examining the declaration of compliance of any financial or operational difficulties into which an insurer's business has fallen or might appear to fall;

(b) the basis on which the Authority or any other authority may in good time take action under this Act or any other statutory provision to exercise any statutory power available to it for the safeguarding of any element of public interest involved in or affected by an insurer's business.

(5) Where an insurer fails to comply with a duty imposed on it under subsection (1) it shall be liable to a civil penalty calculated in accordance with subparagraph (6).

(6) For each week or part of a week that an insurer fails to comply with a requirement imposed on it under subsection (1), it shall be liable to a civil penalty not exceeding—

(i) $500, in the case of a breach by a Class 1, Class 2, Class 3, Class A or Class B insurer;

(ii) $1000, in the case of a breach by a Class 3A, Special Purpose Insurer, Class C or Class D insurer; or

(iii) $5,000 in the case of a breach by a Class 3B, Class 4 or Class E insurer.".

Amends section 17A

3 Section 17A of the principal Act is amended—

(a) by repealing the title of the section and replacing it as follows—

"**Additional financial statements prepared in accordance with GAAP and declaration of compliance"**.

(b) in subsection (6) by inserting after the words "copy of" the words "the declaration of compliance to be filed pursuant to section 15A and".

Amends section 30JA

4 Section 30JA of the principal Act is amended—

(a) in sub-section (1) (a) by inserting before the word "section;", the words "or any transaction relating to a scheme of arrangement under";

(b) in sub-section (1) (f) by deleting the word "and" and inserting the word "or";

(c) by inserting after sub-section (1) (i) the following new sub-section:

"(j) the sale of an insurer.".

Amends section 30JB

5 Section 30JB (4) (b) of the principal Act is amended by deleting the word "fourteen" and inserting the word "thirty".

Amends section 31B

6 Section 31B (1) of the principal Act is amended by deleting the words "A Class 3B insurer and a Class 4 insurer shall not" and replacing it with the words "No Class 3A, Class 3B, Class 4 or Class C, Class D and Class E insurer shall".

Amends section 32

7 Section 32 of the principal Act is amended by inserting a new subsection after subsection (1) (a) as follows—

"(aa) the business of a registered person which is an insurer is being so conducted that there is a significant risk that the insurer will be unable to meet its obligations to policyholders;”.

Amends section 56

8 Section 56 of the principal Act is amended—

(a) by repealing the section title and replacing it with the following:

“**The Authority may modify certain provisions**”;

(b) in subsection (5) (b) by inserting “, 27” after “18B”.

Amends section 57

9 Section 57 of the principal Act is amended by repealing subsections (1) (a) and (3) (d).

Amendment to Schedule

10 The Schedule to the principal Act is amended by

(a) inserting a new paragraph after paragraph 1 as follows—

“CORPORATE GOVERNANCE

1A Insurers shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, size, complexity and risk profile of the insurer.”

(b) amending paragraph 3 by inserting after the word “operations” the words “; subject to the power of the Authority to review and require the addition of non-executive directors as it may deem appropriate.”.

Consequential amendment

11 (a) Schedule 1 which amends the Insurance Returns and Solvency Regulations 1980 has effect.

(b) Schedule 2 which amends the Insurance Accounts Regulations 1980 has effect.

Transitional

12 (1) A person who is registered under the Friendly Societies Act 1986 or under the Trade Union Act 1965 to carry on insurance business in accordance with the provisions of section 57 (1) (a), may continue to carry on such business without a licence under the Insurance Act 1978 for a period of three months beginning from the date of commencement of this Act.

(2) Where the person referred to in subsection (1) makes an application for a licence within three months from the date of commencement of this Act, he may continue to carry on insurance business without a licence until that application is finally disposed of or withdrawn;

or if the application is refused and an appeal is brought against the refusal, until it has been determined or withdrawn.

Commencement

13 This Act comes into operation on 1 January 2015.

SCHEDULE 1 (Section 14)

AMENDMENTS TO THE INSURANCE ACCOUNTS REGULATIONS 1980

Amends Schedule I

The Insurance Returns and Solvency Regulations 1980 are amended—

(a) in paragraph 10 (1) by deleting the section reference "6(6)" and inserting section reference "6";

(b) in paragraph 12 (1) by deleting the section reference "6(6)" and inserting section reference "6".

SCHEDULE 2 (Section 14)

AMENDMENTS TO THE INSURANCE ACCOUNTS REGULATIONS 1980

Amends Schedule II

The Insurance Accounts Regulations 1980 are amended in Schedule II Part VI by deleting the words “12. Other underwriting income.” and inserting the words “21. Other insurance income”.

INSURANCE AMENDMENT BILL 2014

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; for "insurance business" conducted by friendly societies and trade associations to be brought into the scope of the Act; to revise corporate governance requirements of insurers to make provision for the introduction and implementation of corporate policies and procedures; and to address technical matters ("housekeeping issues") which have arisen through either internal discussion or external consultation.

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

Clause 2 inserts new section 15A which shall require all registered persons to on an annual basis, deliver a certificate to the Authority confirming that they either meet or shall not meet (as the case may be) the minimum criteria for licensing under the Schedule to the Act (; such criteria is further enhanced via the framework set out under the Insurance Code of Conduct 2010) and minimum margin of solvency and applicable eligible capital requirements. The new certification requirements are in line with current, similar statutory requirements for other financial sectors (such as investment businesses;) and shall also provide for a civil penalty to be imposed by the Authority in the event of non-compliance.

Clause 3 amends section 17A to make provision for the title of the section to be amended and that the declaration of compliance now required under new section 15A, to be published. The section has also been amended to carve out the publication requirement thereunder to apply to Class 3A and Class E insurers; until such time as the Authority deems appropriate.

Clause 4 amends section 30JA under subsections (1) (a) to expand or clarify requirements re notification by insurers of those matters considered to be a "material change" of the insurance business, relating to schemes of arrangement; the sale of insurers. The Authority proposes to amend subsection (1) (f) to provide clarity re the outsourcing notification requirement; i.e., that such notification is required when any one of the functions is outsourced by the insurer, as opposed to when the functions are "collectively"; and also proposes to add a new requirement for notification to be provided by an insurer upon the sale of an insurer.

Clause 5 amends section 30JB (4) to increase the number of days the Authority has to provide an insurer with a 'no objection' to a notification made by said insurer to effect a material change, from 14 days to 30 days to reflect the practical administration of this clause.

Clause 6 amends section 31B to apply to Class 3A, Class 3B, Class 4 or Class C, Class D and Class E insurer insurers as opposed to only Class E (in line with previous consultation undertaken by the Authority with the Industry).

Clause 7 makes provision for amendment to section 32 to revise subparagraph (1) (e) for the Authority to be able to also intervene when an insurer is in breach of its minimum margin of solvency and enhanced capital requirements, as opposed to only when there is a breach by it of any applicable enhanced capital requirements. Subparagraphs (1) (a) and (3) have been revised to ensure that the Authority can take such actions available to it under section 32, before the event of an insolvency or prior to insolvency; to ensure that the interests of client and potential clients of a registered person are more effectively protected.

Clause 8 makes provision for amendment to section 56 to amend the title of the section and to provide a power for the Authority to modify requirements of insurers under section 27.

Clause 9 repeals section 57 (1) (a) which has the effect of now requiring friendly societies and trade associations registered under the Friendly Societies Act 1868 and the Trade Union Act 1965 respectively, to be registered by the Authority under the Act, prior to conducting insurance business in Bermuda. Previously, such sectors were exempt from the provisions of the Act if they met certain criteria. However, due to the evolution of regulatory and statutory oversight by the Authority relating to the conduct of insurance business in Bermuda and the importance of the jurisdiction in promulgating a regime that is both prudent, responsible and takes into consideration the protection of policyholders; the Authority is of the view that the current provisions should be repealed and the sectors bought into scope.

Clause 10 makes provision for the Authority revise the Schedule to the Act "Minimum Criteria for Registration" to delete the current requirements "Business to be conducted by at least two individuals" and "Composition of Board of Directors" and introduce "Corporate Governance" requirements relating to the composition of the Board and the requirement for insurers to introduce corporate governance policies and procedures. The measures introduced hereunder are similar to measures already incorporated under similar financial sector legislation administered by the Authority; i.e., the Trusts (Regulation of Trust Business) Act 2001, The Investment Business Act 2003, the Banks and Deposit Companies Act 1999, the Corporate Service Provider Business Act 2010 and the Investment Funds Act 2006. The introduction of such requirements will now ensure that the Authority is administering a consistent corporate governance regime across all sectors.

Clause 11 makes provision for consequential amendments to the Insurance Accounts Regulations 1980 and the Insurance Returns and Solvency Regulations 1980.

Clause 12 provides for the commencement date of the Act.