31st October 2013

**NOTICE**

**Insurance Amendment (No.2) Act 2013**

The Bermuda Monetary Authority (the BMA or Authority) proposes that the Insurance Act 1978 be amended as follows:

1. As a 'housekeeping measure', amend section 6 (5) of the Act whereby such requirements also apply to Class C and D insurers (as such requirements should have been applicable to these insurer classes in 2012).

2. Revise sections 17, 18A and 30J of the Act to make provision for certain reporting requirements, obligations and responsibilities of Class 3 insurers, to be aligned with those of Class 1 and Class 2 insurers.

3. The proposed amendments to the Insurance Accounts Regulations 1980 and Insurance Returns and Solvency Regulations 1980 (IRSR) consulted on with the market in July, did not attract comment and therefore shall be revised by the Authority as proposed. Further, the Authority also confirms, that the IRSR is proposed to be amended to note that the minimum margin of solvency has been removed from the solvency certificate for insurer Classes 3A, 3B, 4, C, D and E as a result of the introduction of a floor to the minimum margin of solvency based on the Enhanced Capital Requirement and has thus been removed as a requirement from the scope of the audit opinion.

4. Comments to the foregoing proposals are invited by 15th November and should be sent to email address: policy@bma.bm.

5. The Authority proposes for all amendments to become effective as of 1st January 2014.

**A BILL**

**entitled**

# INSURANCE AMENDMENT (NO. 2) ACT 2013

TABLE OF CONTENTS

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 2013.

**Amends section 6**

2 Section 6 (5) of the principal Act is amended by inserting before the words "or, as the case may be a Class E insurer"; the words ", Class C, Class D".

**Amends section 17**

3 Section 17 (4) of the principal Act is amended—

(a) in subparagraph (a) by deleting the words "Class 1 or Class 2 insurer" and inserting "Class 1, Class 2 or Class 3 insurer";

(b) in subparagraph (b) by deleting the words "Class 3 insurer,".

**Amends section 18A**

4 Section 18A (2) of the principal Act is amended—

(a) in subparagraph (a) by deleting the words "Class 1 or Class 2 insurer" and inserting "Class 1, Class 2, Class 3 insurer";

(b) in subparagraph (b) by deleting the words "Class 3,".

**Amends section 30J**

5 Section 30J (4) of the principal Act is amended by deleting the words "Class 1 and Class 2 insurer," and inserting "Class 1, Class 2 and Class 3 insurer";

**Consequential amendments**

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

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

**Commencement**

7 This Act comes into operation on 1 January 2014.

**SCHEDULE 1**

(section 7)

**AMENDMENTS TO THE INSURANCE ACCOUNTS REGULATIONS 1980**

**Amends Schedule I**

1 The Schedule 1 of the principal Regulations is amended—

(a) in Form 4 "STATUTORY BALANCE SHEET (Long term Business) of Schedule I by—

(i) deleting Statement Line 4 "INVESTMENTS IN AND ADVANCES TO AFFILIATES"; and inserting—

"4. INVESTMENTS IN AND ADVANCES TO AFFILIATES:
(a) Unregulated entities that conduct ancillary services
(b) Unregulated non-financial operating entities
(c) Unregulated financial operating entities
(d) Regulated non-insurance financial operating entities
(e) Regulated insurance financial operating entities
(f) Total investments in affiliates (equity method)
(g) Advances to affiliates
(h) Total investments in and advances to affiliates (equity method)"

(ii) deleting the word "Affiliates" in Statement Line 12 (a) "FUNDS HELD BY CEDING REINSURERS" and inserting the word "Affiliated".

(iii) repealing and replacing Statement Line 13 "SUNDY ASSETS" as follows—

"13. SUNDRY ASSETS:

| | | |
|---|---|---|
| (a) Derivative instruments | XXX<br>XXX | |
| (b) Segregated accounts companies – | | |
| variable annuities | XXX<br>XXX | |
| (c) Segregated accounts companies - others | XXX<br>XXX | |
| (d) Deposit Assets | XXX<br>XXX | |
| (e) ________ | XXX | XXX |
| (f) Total sundry assets | XXX<br>XXX | |

(iv) amending Form 5 "STATUTORY STATEMENT OF INCOME (Long term business) in Statement Line 19 (d) by inserting the word "PREMIUMS" after the word "REINSURANCE";

(b) amending FORM 6 STATUTORY BALANCE SHEET by─

(i) deleting Statement Line 4 "INVESTMENTS IN AND ADVANCES TO AFFILIATES"; and inserting─

"4. INVESTMENTS IN AND ADVANCES TO AFFILIATES:
(a) Unregulated entities that conduct ancillary services
(b) Unregulated non-financial operating entities
(c) Unregulated financial operating entities
(d) Regulated non-insurance financial operating entities
(e) Regulated insurance financial operating entities
(f) Total investments in affiliates (equity method)
(g) Advances to affiliates
(h) Total investments in and advances to affiliates (equity method)"

(ii) deleting the word "Affiliates" in Statement Line 12 (a) "FUNDS HELD BY CEDING REINSURERS" and inserting the word "Affiliated".

(iii) repealing and replacing Statement Line 13 "SUNDY ASSETS" as follows─
"13. SUNDRY ASSETS:

| | | |
|---|---|---|
| (a) Derivative instruments | XXX<br>XXX | |
| (b) Segregated accounts companies | | |
| - variable annuities | XXX<br>XXX | |
| (c) Segregated accounts companies - others | XXX<br>XXX | |
| (d) Deposit Assets | XXX<br>XXX | |
| (e) ____ | XXX | XXX |
| (f) Total sundry assets | XXX<br>XXX | |

(c) amending FORM 7 STATUTORY STATEMENT OF INCOME (Section 24 (6) Composite and Special Purpose Insurer) in Statement Line 19 (d) by inserting the word "PREMIUMS" after the word "REINSURANCE".

**Amends Schedule III**

2 The principal Regulations are amended in Part III of Schedule III "**Additional instructions for insurers carrying on long-term business only**" in─

(a) paragraph 23 "**Policy reserves- accident & health"** by deleting the words "These reserves shall be actuarially computed" and inserting the words "These reserves shall be an amount, actuarially computed, which are considered adequate,";

(b) paragraph 26 "**Other insurance reserves- long term business"** by deleting the words "These must be actuarially determined". and by inserting after the word "sheet." the words, "These must be actuarially determined and be considered adequate."

## SCHEDULE 2

(section 7)

### AMENDMENTS TO THE INSURANCE RETURNS AND SOLVENCY REGULATIONS 1980

**Regulation 8 amended**

1. Subparagraph (i) of Regulation 8 (2) of the principal Regulations is repealed and replaced 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;".

**Regulation 8A amended**

2. Regulation 8A (2) of the principal Regulations is amended by inserting after the words "Part II" the words "(Classes 1, 2, and 3) and Part IV (Classes 3A, 3B and 4)".

**Regulation 9 amended**

3. Subparagraph (e) of Regulation 9 (2) of the principal Regulations is repealed and replaced 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;".

**Regulation 10 amended**

4. Regulation 10 of the principal Regulations is amended —

(a) in sub-paragraph (1) by deleting the words "and figure C," and inserting ", figure C and figure D,";

(b) by inserting the following after sub-paragraph (1)—

> "(1A) In the case of a Class 4, 3B and 3A insurer, the minimum amount prescribed by paragraph (1) shall not be less than that of figure D, where this letter represents a value calculated, in relation to an insurer, in accordance with Schedule I."

**Regulation 12 amended**

5. Regulation 12 of the principal Regulations is amended by—

(a) deleting roman numeral "II" and inserting "III" in paragraph (1);

(b) inserting after paragraph (1) —

> "(1A) In the case of a Class C, D or E insurer, the amount prescribed in paragraph (1) shall not be less than the MMS floor specified in Schedule III.".

**Regulation 13 repealed**

6. Regulation 13 of the principal Regulations is repealed.

**Regulation 14 repealed and replaced**

7. Regulation 14 of the principal Regulations is repealed and replaced as follows-

"**Actuary's certificate**

14. (1) The actuary's certificate shall relate to the long-term business of the insurer and shall be signed and dated by the insurer's approved actuary.

(2) In such an opinion the insurer's approved actuary shall state to what extent the instructions in Part III of Schedule III to the Insurance Accounts Regulations 1980 relating to Line 27(d) of the statutory balance sheet, in so far as those instructions call for the opinion of an approved actuary, have been complied with."

**Schedule I amended**

8. Schedule I of the principal Regulations is amended by inserting a new paragraph 4 after paragraph 3 as follows—

"Figure D

4. For the purposes of regulation 10 (2), figure D shall be calculated by a Class 3A, Class 3B or Class 4 insurer as 25% of that insurer's ECR reported at the end of its relevant year**.**

**Schedule III repealed and replaced**

9. Schedule III of the principal Regulations is repealed and replaced as follows:

**"SCHEDULE III (Reg. 12 (1))**

**MINIMUM MARGIN OF SOLVENCY FOR LONG-TERM BUSINESS**

| **Class** | **Minimum Margin of Solvency ('MMS')** |
|---|---|
| A | greater of $120,000 or 0.5% of assets; |
| B | greater of $250,000 or 1% of assets; |
| C | greater of $500,000 or 1.5% of assets; |
| D | greater of $4,000,000 or 2% of first $250,000,000 of assets plus1.5% of assets above $250,000,000; |
| E | greater of $8,000,000 or 2% of first $500,000,000 of assets plus1.5% of assets above $500,000,000; |

where assets shall be the total assets reported on an insurer's balance sheet in the relevant year less the amount held in a segregated account.

**Application**

1. The MMS shall be phased in over a period of three years from the coming into force of this Schedule.

2. The applicable MMS for the financial year ending in 2011 shall be 50% of the amount specified above 3.

3. The applicable MMS for the financial year ending in 2012 shall be 75% of the amount specified above.

4. The applicable MMS for the financial year ending in 2013 and beyond shall be the full amounts specified above.

| **Class** | **MMS Floor** |
|---|---|
| C | 25% of ECR |
| D | 25% of ECR |
| E | 25% of ECR |

**Application**

The MMS Floor shall come into operation on 1 January 2017.”

**INSURANCE AMENDMENT BILL 2013**

**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 housekeeping issues to ensure the principal Act is appropriately referenced and matters relating to initiatives arising out of consultation with industry.

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

Clause 2 makes provision for housekeeping matters whereby such requirements should have also applied to Classes C and D in 2012; and aligns the reporting requirements for Class 3 insurers under sections 17, 18A and 30J of the Act to that of Class 1 and 2 insurers.

Clauses 3, 4 and 5 make provision for the obligations and responsibilities of Class 3 insurers under the Act relating to certain reporting requirements, to be aligned with those of Class 1 and Class 2 insurers.

Clause 6 makes provision for consequential amendments to be made to the Insurance Accounts Regulations 1980 (IAR) and the Insurance Returns and Solvency Regulations 1980 (IRSR). Amendments have been made to the IAR and the IRSR generally in relation to housekeeping matters or to clarify technical issues arising out of internal review by the Authority or general queries posed by Industry; including amending the IRSR to note that the minimum margin of solvency has been removed from the solvency certificate for insurer Classes 3A, 3B, 4, C, D and E as a result of the introduction of a floor to the minimum margin of solvency based on the Enhanced Capital Requirement, and has thus been removed from the scope of the audit opinion.

Clause 7 provides for the commencement date of the Act.