BERMUDA MONETARY AUTHORITY

CONSULTATION PAPER

REPORTING MATERIAL CHANGE FOR GROUPS BY DESIGNATED INSURERS

5[TH] JUNE 2013

TABLE OF CONTENTS

I. INTRODUCTION

1. This consultation paper outlines the proposed amendments to the Insurance Act 1978 (the "Act") that the Bermuda Monetary Authority (the "Authority") intends to advance during the present sitting of Parliament. The first proposed amendment would entail removing the requirement for a designated insurer to give prior notification and seek pre-approval by the Authority for a material change effected by a member of its insurance group ("group"). This proposed change would only apply to a group for which the Authority is the Group Supervisor, and not to a solo insurer regulated by the Authority. An amendment is also proposed to the interpretation of "competent authority."

2. For the purposes of this paper:

> "competent authority" means "a regulatory authority that is empowered by law to supervise insurers" as proposed for amendment in the Act;
>
> "designated insurer" means an insurer designated by the Authority under section 27B(5) of the Act in respect of an insurance group;
>
> "equivalent jurisdiction" means a jurisdiction that has supervisory standards that the Authority determines to be equivalent to those established by or under this Act;
>
> "insurance group" means a group that conducts insurance business;
>
> "insurer" is used synonymously with the term "reinsurer" and the term "insurance" includes "reinsurance"; and
>
> "material change" is as defined under section 30JA of the Act.

3. The insurance industry and other interested parties are invited to submit their views on the proposals set out in this paper. Comments should be sent to the Authority and addressed to policy@bma.bm no later than Friday, 14th June, 2013.

II. CURRENT STRUCTURE

Notification of Material Change

4. Under section 30JB of the Act, the designated insurer of a group is required to seek approval from the Authority before effecting a material change, as defined under section 30JA of the Act.

5. Written notice must be served on the Authority by the designated insurer, on behalf of a member of the group, indicating their intent to effect a material change.

6. If the Authority has an objection to the material change, it must serve a written objection on the designated insurer within a period of 14 days of the notice being served by the designated insurer on the Authority. Any concerns that the Authority has regarding the material change would be specified in its written notice of objection.

7. In the case where the Authority has no objection, a written notice so stating may be given to the designated insurer within the period of 14 days, or the time period simply elapses with no notice of objection being given. The group member then has the Authority's non-objection with regard to the implementation of the material change.

8. The Authority, in the role of group supervisor, is required to assess material changes undertaken by members of a group in an effort to determine the impact and risk implications that may be experienced on the overall group.

9. However, if a member of a group is regulated by a competent authority in an equivalent jurisdiction, then the designated insurer is only required to notify the Authority in writing within 90 days of the material change taking effect by the member. In this case, the Authority would rely on the regulator in the equivalent jurisdiction to conduct an initial review and assessment as to the nature and overall impact of the change upon receipt of the notice of a material change. This would then be followed-up with the Authority's own review when the written notice of a change was received within the stipulated 90 day notification period.

III. RATIONALE FOR CHANGE TO SECTION 30JB

10. Concerns have been raised by industry representatives regarding section 30JB of the Act and the perceived duplicative pre-approval or review processes for the reporting of material changes by the designated insurer of a group. At one level, there is the material change review by local competent authorities in the jurisdictions where the members effecting the material change are located, and at another level there is the pre-approval requirement imposed by the Authority in Bermuda.

11. In the Authority's efforts to build and maintain an effective and efficient regulatory and supervisory framework, practical implementation and application of the legislation is a key component.

12. In so doing, the Authority has made significant progress in implementing its group supervisory regime. In particular, its increased frequency and regularity in the hosting of supervisory colleges as group supervisor has served to further strengthen and solidify the Authority's relations with competent authorities in other jurisdictions.

13. As a result, for the groups and their members for which the Authority is the group supervisor, and in light of the very broad powers the Authority has in relation to addressing any issues which may arise as a result of a material change effected by a member on the group, the Authority now considers notification after the event of a material change to be a more efficient approach. Upon notification, the Authority will review the change and its impact on the group and may decide to take additional supervisory measures to offset the impact on the group.

14. Since this change effectively removes any equivalent jurisdictional assessment for material change, the Authority felt that a notification period of 90 days in which to report a material change after the event was no longer appropriate; thereby a shortened notification period of 30 days is being proposed.

IV. PROPOSED AMENDMENTS TO THE ACT

15. The Authority is intending to proceed with the following modifications to the Act:

Section 30JB

a. removal of the requirement for the designated insurer to seek the Authority's approval of a material change on behalf of a member of the group;
b. introduction of the requirement for reporting a material change after the event;
c. replacement of the 90 day notification period with a shortened notification period of 30 days; and

Section 27A

d. alteration to the interpretation of "competent authority."

16. The proposed amendments to the Act can be found below in Appendix A.

V. APPENDIX A

Insurance Amendment Act 2013 June 2013

A BILL

entitled

INSURANCE AMENDMENT ACT No. 1 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. 1 Act 2013.

Amends section 27A

2 Section 27A of the principal Act is amended in the definition of "competent authority" by deleting the word "national" and inserting the word "regulatory".

Amends section 30JB

3 Section 30JB of the principal Act is amended by-

(a) repealing subsection (2) and replacing it as follows-

"(2) A designated insurer shall notify the Authority of any material change proposed by a member of the group within 30 days of such proposed change taking effect.

(b) repealing subsection (3); and

(c) deleting the words "and (2)" and "or in the case of a designated insurer, a member of the group," in subsection (4) where they occur.

Amends section 30JC

4 Section 30JC of the principal Act is amended by deleting the words "or the insurance group" where it occurs.

Commencement

5 This Act comes into operation on 1st August 2013.

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 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 The Authority proposes to clarify the meaning of "competent authority" to note that such applies to any "regulatory" authority (which would include a "national" authority). This is a housekeeping matter proposed by the Authority.

Clause 3 the Authority proposes to amend the provisions of the principal Act in respect of certain material change requirements.

Clause 4 provides for consequential amendments to section 30JC as a result of the proposals made under section 30JB.

Clause 5 provides for the commencement date of the Act.

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