



14th November 2012

NOTICE

The Insurance (Group Supervision) Rules 2012 (the “Rules”)

The following is a summation of the comments received from Industry by the Bermuda Monetary Authority (the “Authority” or the “BMA”) in relation to the last draft of the Rules posted for consultation in June 2012 and confirms the proposals of the Authority in connection therewith. The Authority advises that the proposed amendments to the Rules made herein are final, unless there are substantive policy issues deemed by the Authority to be reviewed and/or revised accordingly.

Internal Audit

Industry noted the proposal to include language limiting performance-based compensation of persons responsible for the group internal audit function that related solely to the performance objectives of the internal audit function. The absence of similar constraints on compensation in the rules of other major insurance domiciles or promulgated by international standard setting bodies, was highlighted to the BMA and that such approach could increase the cost of the internal audit function by making companies rely on fixed bonuses not tied to performance was of concern.

Therefore, the Authority proposes for the following provision to be included under the Rules to ensure independence of the internal audit function and to highlight the importance of board-level attention to internal audit compensation:

“The compensation of persons responsible for the group internal audit function should not compromise their independence, and at a minimum, the parent board or an appropriate committee thereof should establish and periodically review the compensation of the head of internal audit and establish guidelines for the compensation of other internal audit staff.”

Responsibilities of Board of Directors

Industry queried the use of language requiring the board of directors to “ensure” that certain activities are undertaken by a group because this could be interpreted in a manner that could give rise to legal liability.

In this regard, most references have been changed to reflect that certain matters are the responsibility of the board. Industry is also advised that an added a requirement is proposed for the board of directors each year to review the group solvency self-assessment and any changes thereto.

Transitional Provision for Eligible Capital

The BMA proposes for the Rules to be amended to provide a transition until 1st January 2024 for the inclusion of instruments in eligible capital that otherwise comply with the Rules; but such instruments are required to be “non-redeemable or settled only with the issuance of an instrument of equal or higher quality upon a breach (or if redemption would cause a breach) of the enhanced capital requirement”.

Enhanced Capital Requirement

As the implementation of ECR is currently under consultation, the Authority advises that the ECR requirement has been suspended until 1st January 2014.

Other Substantive Changes

The Authority also advises that the Rules are amended to require the submission of an unaudited statement for public disclosure with respect to the group’s compliance with the minimum margin of solvency and the ECR; and to ensure consistency with the relevant draft Guidance Note relating to the “Chief Actuary’s Opinion”; references to the Group Actuary’s certificate in Schedule 2 have been changed to refer to an “opinion”.

Comments on the Rules are invited by 7th December 2012 and should be sent to email address: policy@bma.bm

BERMUDA

INSURANCE (GROUP SUPERVISION) AMENDMENT RULES 2012

BR / 2012

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SCHEDULE

The Bermuda Monetary Authority, in exercise of the powers conferred by section 27F of the Insurance Act 1978, makes the following Rules:

Citation

1 These Rules, which amend the Insurance (Group Supervision) Rules 2011 (the “principal Rules”), may be cited as the Insurance (Group Supervision) Amendment Rules 2012.

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Amends paragraph 1

2 Paragraph 1 of the principal Rules is amended—

- (a) in subparagraph (a) by deleting the word “and” at the last occurrence; and
- (b) by revoking and replacing subparagraph (b) with the following—

“(b) on 1 January 2013, in respect of paragraphs 3 to 19, inclusive, and paragraphs 21, 22 and 29; and

(c) on 1 January 2014, in respect of paragraph 20.”.

Amends paragraph 2

3 Paragraph 2 of the principal Rules is amended—

- (a) in the definition of “IFRS” by deleting the full-stop and substituting a semi-colon; and
- (b) by inserting after the definition of “IFRS” the following—

“ “insurance reserves” comprise the aggregate of amounts shown on line 17(d) and line 27(d) of Form 1 of Schedule 1.”.

Amends paragraph 3

4 Paragraph 3 of the principal Rules is amended—

- (a) in subparagraph (2) by deleting the words “ensure that there are” and substituting “establish and maintain”; and
- (b) in subparagraph (4) by deleting the words “either on the group or the parent of” and substituting “on”.

Amends paragraph 4

5 Paragraph 4 of the principal Rules is amended—

- (a) in subparagraph (3) by inserting after “establish” the words “and maintain”;
- (b) in subparagraph (4) by—
 - (i) inserting after “establish” the words “and maintain”; and
 - (ii) deleting all the words after “operations”;
- (c) by inserting the following after subparagraph (4)—

“(4A) The compensation of persons responsible for the group internal audit function should not compromise their independence, and at a minimum, the parent board or an appropriate committee thereof should establish and periodically review the compensation of the head of internal audit and establish guidelines for the compensation of other internal audit staff .”;

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- (d) in subparagraph (5) by inserting after “establish” the words “and maintain”; and
- (e) in subparagraph (7) by inserting after “establish” the words “and maintain”.

Amends paragraph 5

6 Paragraph 5 of the principal Rules is amended—

- (a) in subparagraph (4) by deleting the words “establish, maintain and review” and substituting “establish and maintain”;
- (b) in subparagraph (5) by deleting the words “is responsible for ensuring that sufficient board committees are established and operational” and substituting “must establish and maintain sufficient committees”; and
- (c) in subparagraph (7)—
 - (i) by inserting the following after clause (b)—

“(ba) reviewing annually the group’s solvency self-assessment and any changes;”; and
 - (ii) in clause (e) by deleting the words “ensuring that any deficiencies in performance are addressed in a timely fashion” and substituting “addressing in a timely manner any deficiencies in performance”.

Amends paragraph 6

7 Paragraph 6 of the principal Rules is amended—

- (a) in subparagraph (1) by deleting the words “ensuring that any deficiencies in performance are addressed in a timely manner” and substituting “addressing in a timely manner any deficiencies”;
- (b) in subparagraph (2) by deleting the words “must ensure that the internal audit, risk management, compliance and actuarial functions are staffed” and substituting “are responsible for staffing the internal audit, risk management, compliance and actuarial functions”;
- (c) in subparagraph (3) by deleting the words “must ensure that systems and controls are established” and substituting “of a parent company are responsible for establishing systems and controls”; and
- (d) by revoking and replacing subparagraph (4)(d) with the following—

“(d) filing all required returns and financial statements in an accurate, complete and timely manner.”.

Amends paragraph 7

8 Paragraph 7(4) of the principal Rules is amended by inserting after “roles” the words “for which the internal audit function has audit responsibility,”.

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Amends paragraph 9

9 Paragraph 9(1) of the principal Rules is revoked and replaced with the following—

“(1) The compliance function is responsible for identifying, measuring, monitoring, and reporting compliance risk across the insurance group and developing and implementing strategies for mitigating material compliance risks.”.

Amends paragraph 10

10 Paragraph 10 of the principal Rules is revoked and replaced with the following—

“(1) The actuarial function is responsible for—

- (a) assessing the appropriateness and reasonableness of methodologies and assumptions relating to obligations to policyholders;
- (b) providing independent support to the risk management function in the modeling and estimation of current and potential obligations to policyholders and appropriate levels of reserves against those obligations;
- (c) providing independent support to the risk management function by providing input into pricing, reserves and risk mitigation techniques including ceding reinsurance and the purchase of protection;
- (d) evaluating and providing independent advice on insurance reserves and a comparison of estimated policyholder obligations to actual policyholder payments; and
- (e) providing a written report to the parent board and other appropriate boards and committees at least annually.

(2) In evaluating insurance reserves, the actuarial function shall apply methodologies and procedures to assess their sufficiency, taking into consideration uncertainties of estimation and data limitations.”.

Amends paragraph 11

11 Paragraph 11(1) of the principal Rules is revoked and replaced with the following—

“(1) The risk management and internal controls framework of an insurance group must be well integrated into the group’s overall system of governance and must contain policies, procedures and processes for implementing the strategies and policies developed by the risk management function to identify, measure, monitor and control in a timely manner the material risks of the insurance group.”.

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Amends paragraph 18

12 Paragraph 18(1) of the principal Rules is amended by inserting after “intra-group exposures” the words “, and the self-assessment and changes are reviewed and evaluated annually by the parent board”.

Amends paragraph 19

13 Paragraph 19 of the principal Rules is amended—

(a) by revoking and replacing subparagraph (1) with the following—

“(1) An insurance group must ensure that the value of the insurance group’s assets exceeds the group’s liabilities by the sum of—

(a) the aggregate minimum margin of solvency (MSM) of each qualifying member of the group controlled by the parent company; and

(b) where the parent company exercises significant influence over a member of the group but does not control the member, the parent company’s percentage shareholding in the member multiplied by the member’s MSM.”;

(b) by revoking subparagraph (2); and

(c) in subparagraph (4) by deleting the words “the definitions contained in U.S., U.K. or Canadian GAAP or IFRS,” and substituting “GAAP as applied in the United States of America, the United Kingdom or Canada or IFRS,”.

Amends paragraph 20

14 Paragraph 20(2) of the principal Rules is amended by deleting the words “In calculating the group ECR” and substituting “In determining whether an insurance group is holding eligible capital in accordance with subparagraph (1), the insurance group shall apply the following requirements”.

Amends paragraph 21

15 Paragraph 21 of the principal Rules is amended—

(a) in subparagraph (3)(a)(i) by inserting after “Act” the words “, or under Rules made under section 6A of the Act”;

(b) in subparagraph (3)(a)(iii) by deleting “Line 37(d) of”;

(c) by revoking and replacing subparagraph (5)(b) with the following—

“(b) the value deducted pursuant to subparagraph 21(3)(a)(ii) of these Rules;”;

(d) by revoking subparagraph (6)(vii);

(e) by revoking subparagraph (7)(vii);

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(f) by revoking and replacing subparagraph (9) with the following—

“(9) For the purposes of these Rules, Tier 1-capital, Tier 2-capital and Tier 3-capital that meet the requirements of subparagraphs (2) through (7), as applicable, but for the requirement that the instrument be non-redeemable or settled only with the issuance of an instrument of equal or higher quality upon breach (or if it would cause a breach) in the ECR may continue to be included in Tier 1-capital, Tier 2-capital or Tier 3-capital, as applicable, until January 1, 2024.”; and

(g) by inserting the following after subparagraph (9)—

“(10) For the purposes of these Rules, Tier-1 capital and Tier-2 capital that meet the requirements of subparagraphs (2) through (7), as applicable, but for the requirement that the coupon payment on the instrument would be cancellable or deferrable indefinitely upon breach (or if it would cause a breach) in the ECR may continue to be included in Tier-1 capital or Tier-2 capital, as applicable, until January 1, 2024.”.

Amends paragraph 23

16 Paragraph 23 of the principal Rules is amended—

- (a) in subparagraph (2)(b) by deleting the word “Bermuda,”;
- (b) in subparagraph (9) by inserting after “member” the words “and the auditor’s report”; and
- (c) by revoking and replacing subparagraph (11) with the following—

“(11) Group Financial Statements shall be accompanied by an unaudited statement for public disclosure with respect to the group’s compliance with the MSM and ECR.”.

Amends paragraph 25

17 Paragraph 25(5) of the principal Rules is amended by deleting the words “the auditor’s report,”.

Amends paragraph 27

18 Paragraph 27 of the principal Rules is amended by deleting the words “loss expense” and substituting “insurance reserves”.

Amends paragraph 29

19 Paragraph 29(3)(b) of the principal Rules is amended by inserting after “Act” the words “or under paragraph 3(4) of these Rules”.

Amends Schedule 1

20 Forms 1, 2, and 8 of Schedule 1 to the principal Rules are revoked and replaced.

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Revokes and replaces Schedule 2

21 Schedule 2 to the principal Rules is revoked and replaced.

Commencement

22 These Rules come into operation on 1 January 2013.

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SCHEDULE

(paragraphs 20 and 21)

*The replaced Forms 1, 2 and 8 referred to in paragraph 20,
and the replaced Schedule 2 referred to in paragraph 21
have been omitted from these Rules.*

*They are available for inspection at the offices of
the Bermuda Monetary Authority or on the website: www.bma.bm.*

Made this day of 2012.

Chairman
The Bermuda Monetary Authority