
THE INSURANCE ACT 1978

20XX : XX

INSURANCE RETURNS AND SOLVENCY AMENDMENT REGULATIONS XXXX

ARRANGEMENT OF REGULATIONS

- 1 Citation and
commencement
- 2 Interpretation

In exercise of the powers conferred upon the Ministry of Finance by sections 18 and 53 of the Insurance Act 1978, the following Regulations are made –

Citation and commencement

1. These Regulations may be cited as the Insurance Returns and Solvency Amendment Regulations XXXX and shall come into operation on XXXX.

Interpretation

2. In these Regulations, “principal Regulations” means the Insurance Returns and Solvency Regulations 1980.

Regulation 2 amended

3. Regulation 2 of the principal Regulations is amended –
 - (a) by inserting the following definitions in their alphabetical order –
 - “capital instruments”, in relation to an insurer, means a financial instrument that evidences a residual interest in the assets of an insurer after deducting all of the liabilities of its policyholders;
 - “ECR” means enhanced capital requirement within the meaning of section 1(1) of the Act;
 - “encumbered assets” means assets that are pledged to meet the liabilities of the insurer to the policyholder in the event of a loss;

“Tier 1 capital”, in relation to an insurer’s available statutory capital and surplus, has the meaning given in paragraph (2);

“Tier 2 – ancillary capital”, in relation to an insurer’s available statutory capital and surplus, has the meaning given in paragraph (2);

“Tier 2 – basic capital”, in relation to an insurer’s available statutory capital and surplus, has the meaning given in paragraph (2);

“Tier 2 capital” means the aggregate sum of “Tier 2 – basic capital” and “Tier 2 – ancillary capital”;

“Tier 3 – ancillary capital” has the meaning given in paragraph 2 of the Insurance (Prudential Standards)(Class 3B and Class 4 Solvency Requirement) Order 20XX;

“Tier 3 – basic capital” has the meaning given in paragraph 2 of the Insurance (Prudential Standards)(Class 3B and Class 4 Solvency Requirement) Order 20XX;

(2) by renumbering it as regulation 2 (1) and by inserting the following paragraph after paragraph (1) –

“(2) *For the purposes of these Regulations –*

“Tier 1 capital” shall comprise of the following–

(a) statutory surplus as prescribed in the Insurance Accounts Regulations 1980, Form 8, statutory statement of capital and surplus, Line 2(h), less the difference between the encumbered assets and the policyholder obligations for which the assets have been held as calculated in accordance with, the Insurance Accounts Regulations 1980, Form 1A, statutory balance sheet; and

(b) capital stock and contributed surplus prepared in accordance with instructions set out in Schedule V of the Insurance Accounts Regulations 1980 excluding preference shares; and

(c) capital instruments that satisfy the following-

(i) capable of absorbing losses in a going concern either by way of -

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

(b) mandatory conversion to capital stock when losses accumulate; and

(ii) highest level of subordination in a winding-up; and

(iii) undated or estimated maturity of not less than 10 years; and

(iv) non-redeemable; and

(v) the coupon payment on the instrument is -

(a) cancellable; or

(b) deferrable indefinitely; or

(c) settled only with the issuance of an instrument of equal or higher quality; and

(vi) unencumbered; and

(vii) does not give rise to a right of set off against an insurer's claims and obligations to the investor or creditor.

but excludes capital instruments that are included Tier 2 – basic capital, Tier 2 – ancillary capital, Tier 3 – ancillary capital, and Tier 3 – basic capital.

“Tier 2 – ancillary capital” shall comprise the following-

(a) Tier 1 capital instruments but are callable on demand and are unpaid;

(b) capital instruments that satisfy the following-

(i) callable and convertible on demand to Tier 1 capital when losses accumulate or when the ECR is breached; and

(ii) subordinated in a winding-up; and

(iii) estimated maturity of not less than 5 years; and

(iv) non-redeemable if ECR is breached; and

(v) free of incentives to redeem; and

(vi) the coupon payment is deferrable indefinitely when ECR is breached; and

(vii) unencumbered; and

(viii) does not give rise to a right of set off against an insurer's claims and obligations to the investor or creditor.

but excludes capital instruments that are included Tier 1 capital, Tier 2 – basic capital, Tier 3 – ancillary capital, and Tier 3 – basic capital.

“Tier 2 – basic capital” shall comprise of capital instruments that satisfy the following–

(a) capable of absorbing moderate level of losses on a going concern, include suspending coupon payments if the ECR is breached; and

(b) subordinated in a winding-up; and

(c) estimated maturity of not less than 5 years; and

(d) non-redeemable if the ECR is breached; and

(e) free of incentives to redeem; and

(f) the coupon payment is deferrable indefinitely when ECR is breached;

(g) unencumbered; and

(h) does not give rise to a right of set off against an insurer's claims and obligations to the investor or creditor.

but excludes capital instruments that are included Tier 1 capital, Tier 2 – ancillary capital, Tier 3 – ancillary capital, and Tier 3 – basic capital.

Regulation 5 amended

3. Regulation 5 (1) of the principal Regulations is amended by deleting “ and” at the end of paragraph (e) and inserting the following paragraph after paragraph (e) –

“(f) in the case of Class 3B and Class 4 insurer, a schedule of MSM eligible capital, in addition.”.

Regulation 10 amended

4. (1) Regulation 10 (1) of the principal Regulations is amended by deleting “an insurer” and substituting “a Class 1, a Class 2, a Class 3 and a Class 3A insurer”.

(2) Regulation 10(2) is amended by inserting the following paragraph after paragraph (1) –

(1A) (1) For the purposes of section 6(1A) of the Act, the prescribed amount is the greatest of figure A, figure B, and figure C, where those letters represent values calculated, in relation to that insurer, in accordance with Schedule I; and

(2) For the purposes of section 6(1A) of the Act, the prescribed eligible limit shall be the aggregate of an amount that is not less than 80% of an insurer's Tier 1 capital and an amount that is not more than 20% of an insurer's Tier 2 capital.

(3) Regulation 10 (3) of the principal Regulations is amended in the definition of “general business assets” by deleting “an insurer” and substituting “a Class 1, a Class 2, a Class 3 and Class 3A insurer”.

Regulation 14B added

5. The principal Regulations is amended by inserting the following after Regulation 14A-

“Schedule of MSM eligible capital

14B. The schedule of MSM eligible capital shall disclose the following particulars of the eligible capital limits of the general business of Class 3B and Class 4 insurers-

(a) a separate entry dealing with each capital instrument included in Tier 1 capital, Tier 2 capital, Tier 2 – basic capital, and Tier 2 – ancillary capital and each entry shall include the following-

- (i) a description of the capital instrument;
 - (ii) the date of issue; and
 - (iii) the value.”.
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