



June 20th 2008

Industry Feedback: Consultation on Class 3 reclassification

On May 15th 2008, the Bermuda Monetary Authority (BMA) released a consultation paper and draft legislation on the reclassification of Bermuda's Class 3 insurers and the introduction of a Special Purpose Insurer (SPI) class.

The BMA received nine submissions in response to the consultation paper. Generally there was widespread acceptance of the need for the BMA to further stratify the insurance register to facilitate the full implementation of our risk-based supervisory model to the Class 3 sector. It was also acknowledged by respondents, that the BMA has a responsibility to ensure consistency in how regulations are applied to Bermuda's entire commercial insurance sector. Almost all submissions cited the importance of the BMA conducting the class determination exercise in a pragmatic manner. The key concerns highlighted by commentators are as follows:

1. Increasing costs associated with supervising the proposed new class 3A and 3B insurers, and concern over how those costs are to be funded;
2. The legal status of existing supervisory conditions and/or section 56 directions post the enactment of the amending provisions;
3. Clarity as to how the BMA will address commercial insurers that have subsequently gone into run-off.
4. Clarity as to what factors the BMA will accept as being sufficient for the purpose of ascertaining whether or not certain classes of business written should be treated as "unrelated business" or "connected business".
5. Guidance with respect to how various company types will be viewed during the re-registration process. This included but was not limited to affiliated (re)insurers, segregated accounts companies, sidecars, existing transformer type companies and companies writing warranty business.

Although there were a number of important considerations raised by commentators, none of those concerns raised issues of conflict with the initial draft of the legislative requirements that were issued on May 15th 2008. The BMA is therefore comfortable advancing the tabling of the Bill with the following minor amendments:

1. An amendment to the BMA fee schedule to include annual business fees of \$10,000 per annum for Class 3A, Class 3B and SPI insurers. The BMA will introduce a discussion paper in the fourth quarter of 2008 on draft principles for the setting of annual business fees.
2. An amendment to the transitional provisions of the Amendment Act introducing a re-registration application fee for:
 - a. Class 3A applicants in the amount of \$500, and;
 - b. Class 3B applicants in the amount of \$1,000.
3. Removal of the requirement for an approved actuary to be appointed, and actuarial certification to accompany the annual statutory filing for SPI's.
4. An inconsequential amendment to the definition of special purpose business.
5. Removal of the proposed new definition of Class 3 insurer and minor amendment of the existing definition of Class 3 insurer.

This note will serve to provide general feedback to the industry on matters raised in their submissions. Issued together with this note is the final draft of the legislation which will be tabled before the House of Assembly on Friday June 27th 2008. The revised draft legislation is also located in the Document Centre on the BMA web site at www.bma.bm, and incorporates those provisions necessary to launch the new Bermuda Solvency Capital Requirements for Class 4 insurers. Subject to a favourable reading of the Bill in the House of Assembly, it is expected that the Insurance Amendment Act 2008 will be enacted by July 1st 2008 and will set the stage for a Class 3 re-registration period that will end December 31st 2008. Please note that detailed Guidance Notes will be issued with the application form which will bring further clarity to a number of the queries raised in industry submissions and describe the Authority's position on various reclassification issues.

The BMA is extremely appreciative to all respondents for their comments, and to Insurance Advisory Committee members, who assisted the Authority in formulating the initial policy and drafting the legislative amendments.