
WK: Third draft 18 June, 2008

A BILL
entitled
INSURANCE AMENDMENT ACT 2008

WHEREAS it is expedient to make provision for the Bermuda Monetary Authority to prescribe prudential standards in relation to an enhanced capital requirement and a capital and solvency return to be complied with by registered insurers; to make new provision for classes of insurers, and for Special Purpose Insurers; to provide for additional financial statements to be prepared in accordance with Generally Accepted Accounting Principles by Class 4 insurers; and for connected and related matters:

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:

Short title and commencement

1. (1) This Act may be cited as the Insurance Amendment Act 2008.

(2) Except for sections 3(1)(a), (b), (c), (d)(v) and (d)(vi), 5, 6, 7, 8, 9, 10, 12, 13(b) and (c), 14, 15, 16, 17(b), (c), 18, 19, 21, 22, 27 and 28, this Act shall come into operation on 31 December 2008.

Interpretation

2. In this Act the “principal Act” means the Insurance Act 1978.

Section 1 amended

3. (1) Section 1(1) of the principal Act is amended –

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- (a) In the definition of “Class 1, Class 2, Class 3 and Class 4” by deleting “and Class 4” and substitution “,Class 3A, Class 3B, Class 4 and Special Purpose Insurer”;
 - (b) in the definition of “general business” by adding “or special purpose business” after “long term business”;
 - (c) in the definition of “long term business” by adding “or special purpose business” after “excepted long term business” in the tail piece; and
 - (d) by inserting the following definitions in their alphabetical order –
 - (i) ““available statutory capital and surplus” means an amount equal to the total statutory capital and surplus including any adjustments thereto made under section 6D;”;
 - (ii) “capital and solvency return” means such return relating to the insurer’s risk management practices and to the information used by the insurer to calculate its enhanced capital requirement as may be prescribed by or under an Order made under section 6A;”;
 - (iii) “enhanced capital requirement” means additional capital and surplus requirement imposed by or under an Order made under section 6A;”;
 - (iv) “prudential standards” means such standards of prudence as would, in the opinion of the Authority, ensure that the obligations of the insurer in relation to the security of its policyholders are established at an appropriate level;”;
 - (v) “special purpose business” means insurance business under which an insurer fully funds its liabilities to the persons insured through –
 - (a) the proceeds of any one or more of the following–
 - (i) a debt issuance where the repayment rights of the providers of such debt are subordinated to the rights of the person insured;or
 - (ii) some other financing mechanism approved by the Authority;

-
- (b) cash; and
 - (c) time deposits;”;
 - (vi) “Special Purpose Insurer” means an insurer that carries on special purpose business;”.

Section 2A amended

4. Section 2A (1) of the principal Act is amended –

- (a) by deleting in paragraph (a) “and the grounds for cancellation of a registration specified in Part VIII” ;
- (b) by deleting “and” at the end of paragraph (c); and
- (c) by inserting the following paragraphs after paragraph (d)–
 - “(e) in exercising its powers to make adjustments to an insurer’s enhanced capital requirement and available statutory capital and surplus under section 6D; and
 - (f) in exercising its powers under section 32 to issue directions to a registered person.”.

Section 4 amended

5. (1) Section 4(1) of the principal Act is amended –

- (a) in paragraph (a) by inserting after “Class 3” the words “, Class 3A, Class 3B, ”;
- (b) in paragraph (c) by inserting after “Class 3” the words “, Class 3A, Class 3B, ”;
- (c) by adding the following paragraph after paragraph (c) –
 - “(d) as a Special Purpose Insurer.”.

(2) Section 4(6) of the principal Act is amended –

- (a) in paragraph (a) by inserting after “Class 3” the words “, Class 3A, Class 3B, ”;
- (b) in paragraph (b) by inserting after “Class 3” the words “, Class 3A, Class 3B, ”;
- (c) in paragraph (c) by inserting after “Class 3” the words “, Class 3A, Class 3B, ”.

Section 4A amended

6. Section 4A(1) of the principal Act is amended by inserting after “Class 3” the words “, Class 3A, Class 3B,”.

Section 4D amended

7. Section 4D of the principal Act is amended by deleting “or Class 4” and substituting “, Class 3A, Class 3B, Class 4 insurer or Special Purpose Insurer”.

Sections 4DA and 4DB added

8. The principal Act is amended by inserting the following sections after section 4D –

“Class 3A insurer

4DA (1) This section applies to a body corporate that intends to carry on insurance business in circumstances where —

- (a) 50% or more of the net premiums written; or
- (b) 50% or more of the loss and loss expense provisions;

represent unrelated business.

(2) A body corporate to which this section applies is registrable as a Class 3A insurer if its total net premiums from unrelated business are less than \$50,000,000.

Class 3B insurer

4DB (1) This section applies to a body corporate that intends to carry on insurance business in circumstances where —

- (a) 50% or more of the net premiums written; or
- (b) 50% or more of the loss and loss expense provisions;

represent unrelated business.

(2) A body corporate to which this section applies is registrable as a Class 3B insurer if its total net premiums from unrelated business are \$50,000,000 or more.”.

Section 4F amended

9. Section 4F (1) of the principal Act is amended by inserting the following definitions in their alphabetical order –

“loss and loss expense provisions” means amounts calculated in relation to a body corporate by the application of the principles set out in the Insurance Accounts Regulations

1980 for the calculation of those amounts in relation to an insurer;

“unrelated business” means insurance business consisting of insuring risks of persons who are not shareholders in, or affiliates of, the insurer;”.

Section 5 amended

10. (1) Section 5 of the principal Act is amended by inserting the following subsection after subsection (1) –

“(2) In considering whether to register a body as a Special Purpose Insurer, the Authority shall, in addition to the matters set out in subsection (1), have regard to the following matters –

- (a) whether the insurer is solely insuring or reinsuring one or more risks or group of risks with one or more policyholders; and
- (b) the sophistication of the policyholders or the sophistication of the parties to a debt issuance or other funding mechanism.”.

Sections 6A, 6B, 6C and 6D added

11. The principal Act is amended by inserting the following sections after section 6 –

“Prudential standards

6A. (1) The Authority may by Order prescribe prudential standards in relation to –

- (a) enhanced capital requirement; and
- (b) capital and solvency returns;

that must be complied with by registered insurers.

(2) The Authority may in such Order prescribe standards that impose different requirements to be complied with –

- (a) by different classes of registered insurers;
- (b) in different situations; or
- (c) in respect of different activities.

(3) An Order may provide for the Authority to exercise powers and discretion in relation to prudential standards, including

power to approve, impose, adjust or exclude specific prudential standards in relation to the following –

- (a) a particular registered insurer; and
- (b) a specified class of registered insurers.

(4) An Order may provide for summary offences in relation to the making of false or misleading statements or returns, and may provide for a penalty not exceeding \$50,000 for an offence.

(5) Subject to subsection (6), an Order made under this section shall not come into operation –

- (a) in the case of a first Order made after commencement of this section, until a period of not less than 120 days has elapsed from the date of publication of a draft Order pursuant to section 6B;
- (b) in the case of subsequent Orders, until a period of not less than 180 days has elapsed from the date of publication of a draft Order pursuant to section 6B.

(6) Notwithstanding subsection (5), an Order made under this section may come into operation on such earlier date after it is made, as the Authority may determine, if the Authority considers that it is in the interests of policyholders for the Order to come into operation at such time.

(7) Sections 6, 7 and 8 of the Statutory Instruments Act 1977 shall not apply to Orders made under this section.

Consultation

6B (1) If the Authority proposes to make an Order under section 6A, it must publish a draft of the Order in the way appearing to it to be best calculated to bring it to the attention of the public.

(2) The draft must be accompanied by –

- (a) an explanation of the purpose of the proposed Order; and
- (b) a notice that representation about the proposals may be made to the Authority within a specified time being not less than 28 days from the date of publication.

(3) Before making the proposed Order the Authority must have regard to any representations made to it in accordance with subsection (2).

Authority may exempt insurers from standards

6C (1) The Authority, on the application of an insurer, may exempt it from the requirement to comply with any prudential standard applicable to it by or under an Order made under section 6A.

(2) In granting an exemption under this section, the Authority may impose such conditions on the exemption as it considers appropriate.

(3) The Authority shall not grant an exemption unless it is satisfied that it is appropriate to do so having regard to the obligations of the applicant insurer towards its policyholders.

Authority may make adjustment to enhanced capital requirement and available statutory capital and surplus

6D (1) Without prejudice to its powers under section 32 (1) to give directions, the Authority may in the circumstances mentioned in subsection (6) make such adjustments to an insurer's enhanced capital requirement and available statutory capital and surplus as it considers appropriate.

(2) Before making any adjustments, the Authority shall serve notice on the insurer of its intention to make adjustments giving its reasons therefor.

(3) An insurer served with a notice under subsection (2) may, within a period of 28 days from the date of the notice, make written representations to the Authority; and where such representations are made, the Authority shall take them into account in deciding whether to make the proposed adjustments.

(4) The Authority shall notify an insurer of any adjustments that it has made

(5) An adjustment made by the Authority under subsection (1) shall not have effect until a period of not less than 90 days (or such longer period as the Authority may determine) has elapsed from the date of its notification to the insurer.

(6) The circumstances referred to in subsection (1) are such circumstances as would cause the Authority to conclude that the risk profile of the insurer deviates significantly from –

- (a) the assumptions underlying the enhanced capital requirement applicable to it; or

-
- (b) the insurer's assessment of its risk management policies and practices in calculating the enhanced capital requirement applicable to it.

(7) The Authority may on the application of an insurer make adjustments to the insurer's enhanced capital requirement or available statutory capital and surplus, and any adjustment so made shall take effect on such date as the Authority may determine.”.

Section 7 amended

12. Section 7 (1) of the principal Act is amended –

- (a) in paragraphs (a) and (c) by deleting “or Class 3” where it appears in the paragraphs, and substituting in each case “, Class 3, Class 3A or Class 3B”;
- (b) by substituting a semi-colon for the full stop at the end of paragraph (e) and by inserting the following paragraph after paragraph (e) –
 - “(f) as a Special Purpose Insurer is \$1.”.

Section 8A amended

13. Section 8A of the principal Act is amended –

- (a) in subsection (2) by substituting a semi-colon for the full stop at the end of paragraph (e), and by inserting the following paragraph after paragraph (e) –
 - “(f) a significant loss that is reasonably likely to cause the insurer to be unable to comply with the enhanced capital requirement applicable to it;”;
- (b) in subsection (2) by inserting the following paragraphs after paragraphs (f) –
 - “(g) in relation to a Class 4 insurer, a material change in the nature of its insurance business; or
 - (h) in relation to a Class 3A insurer, where the limit on unrelated business imposed by section 4DA (2) is exceeded.”;
- (c) by inserting the following subsection after subsection (2) –

“(2a) Within 45 days of notifying the Authority of an event referred to in subsection (2)(f), the principal representative shall furnish the Authority with a capital and solvency return reflecting an enhanced capital requirement prepared using post-loss data.”;

(d) by inserting the following subsection after subsection (2a) –

“(2b) Within 30 days of notifying the Authority of an event referred to in subsection (2)(g), the principal representative shall furnish the Authority with unaudited interim statutory financial statements in relation to such period as the Authority may require, together with a general business solvency certificate in respect of those statements.”.

Section 8B amended

14. Section 8B (1) of the principal Act is amended by inserting after “Class 3” the words “, Class 3A, Class 3B,”.

Section 17 amended

15. Section 17 of the principal Act is amended –

- (a) in subsection (3) by repealing “(together with the notes to those statements)” and substituting “(together with the notes to those statements and the auditor’s report thereon)”; and
- (b) in subsection (4) (b) by inserting after “Class 3” the words “Class 3A, Class 3B, Special Purpose Insurer, ”.

Section 17A added

16. The principal Act is amended by adding the following section after section 17 —

“Class 4 insurers: additional financial statements prepared in accordance with GAAP

17A (1) Every Class 4 insurer shall, in addition to preparing statutory financial statements under section 15, prepare financial statements as required by this section (“additional GAAP financial statements”) in respect of its insurance business for each financial year.

(2) Such financial statements shall be prepared in accordance with any one of the following standards or principles—

- (a) International Financial Reporting Standards (IFRS);
- (b) generally accepted accounting principles ('GAAP') that apply in Bermuda, Canada, the United Kingdom or the United States of America; or
- (c) such other GAAP as the Authority may recognise.

(3) Section 16 applies to the appointment and approval of an auditor of additional GAAP financial statements as it applies to an approved auditor.

(4) Section 16A applies to an auditor of additional GAAP financial statements as it applies to an approved auditor.

(5) Every Class 4 insurer shall file with the Authority a copy of the audited financial statements prepared under this section (together with the notes to those statements and the auditor's report thereon) within a period of four months from the end of the financial year to which the financial statements relate or such longer period not exceeding seven months as the Authority may determine on the application of the insurer.

(6) The Authority shall cause to be published in such manner as it considers appropriate a copy of every audited financial statement filed with it under subsection (5) together with the notes to those statements and the auditor's report.

(7) Except at the instance of –

- (a) the Class 4 insurer who engaged the auditor to perform the audit of the financial statements; or
- (b) any other person expressly authorised by the auditor to rely on their work;

no action shall lie against an auditor in respect of any financial statements filed with the Authority and made available for inspection or otherwise published pursuant to this section.”.

Section 18A amended

17. Section 18A of the principal Act is amended —

(a) by repealing subsection (1) and substituting the following –

“(1) Where an insurer fails to comply–

(a) with a duty imposed on it under section 17(1), 17(3), 17A (5) or 18(1); or

(b) with a requirement to file a capital and solvency return imposed by or under an Order made under section 6A;

it shall be guilty of an offence and liable on summary conviction to a fine calculated in accordance with subsection (2).”;

(b) in subsection (2)(b) by deleting “Class 3 insurer” and substituting “Class 3, Class 3A or Class 3B insurer, or Special Purpose Insurer”; and

(c) by repealing subsection (5) and substituting the following –

“(5) The Authority shall appoint an inspector to investigate the affairs of a Class 4 insurer under section 30, if the insurer fails within three months of its filing date to file –

(a) statutory financial statements required by section 17 (3);

(b) additional GAAP financial statements required by section 17A (5);

(c) statutory financial returns required by section 18; or

(d) capital and solvency returns required by or under an Order made under section 6A.”.

Section 18B amended

18. Section 18B of the principal Act is amended in subsections (1) and (2)(a) by inserting after “Class 3” where they appear in the subsections, the words “, Class 3A, Class 3B,”.

Section 31A amended

19. Section 31A of the principal Act is amended –

(a) in subsection (1), by deleting “A Class 3 or Class 4” and substituting “A Class 3, Class 3A, Class 3B or Class 4 insurer or Special Purpose Insurer”; and

(b) by repealing subsection (2).

Section 31AA added

20. The principal Act is amended by adding the following section after section 31A —

“Failure to comply with enhanced capital requirement

31AA (1) An insurer that fails to comply with the enhanced capital requirement applicable to it shall –

- (a) within 14 days of becoming aware of that failure, or of having reason to believe that such a failure has occurred, file with the Authority a written report containing particulars —
 - (i) of the circumstances leading to the failure; and
 - (ii) of the manner and time within which the insurer intends to rectify the failure; and
- (b) within 45 days of becoming aware of that failure, or of having reason to believe that such a failure has occurred, furnish the Authority with –
 - (i) unaudited interim statutory financial statements covering such period as the Authority may require;
 - (ii) the opinion of a loss reserve specialist in relation to lines 17 and 18 of those statements;
 - (iii) a general business solvency certificate in respect of those statements; and
 - (iv) a capital and solvency return reflecting an enhanced capital requirement prepared using post failure data.

(2) Notwithstanding anything to the contrary in any other enactment, an insurer to whom subsection (1) applies shall not declare or pay any dividends until the failure is rectified.”.

Section 31AB added

21. The principal Act is amended by adding the following section after section 31AA –

“Class 3A: exceeding net premium limitation

31AB Where a Class 3A insurer exceeds the net premium limitation imposed on that class by section 4DA(2), the insurer shall, notwithstanding such excess, be entitled to carry on insurance business in that class if –

- (a) its principal representative notifies the Authority of an event mentioned in section 8A (2)(h); and

-
- (b) the insurer makes application under section 56 for a direction that section 4DA(2) would continue to apply to it notwithstanding the excess; and
 - (c) the Authority does not require the insurer to be classified as a Class 3B insurer.”.

Section 31B amended

22. Section 31B (1) of the principal Act is amended by deleting “A Class 4 insurer” and substituting “A Class 3B insurer and a Class 4 insurer”.

Section 32 amended

23. Section 32 (1) of the principal Act is amended –

- (a) in paragraph (c) by inserting after “has not been fulfilled, or” the words “may not be or” and by deleting the word “or” at the end of that paragraph;
- (b) by inserting “or” at the end of paragraph (d) and by inserting the following paragraph after paragraph (d) –
 - “(e) a registered insurer is in breach of the enhanced capital requirement applicable to it;”.

Section 44A amended

24. Section 44A (1) of the principal Act is amended by deleting “or” at the end of paragraph (a) and inserting it at the end of paragraph (b), and by inserting the following paragraph after paragraph (b) –

- “(c) making an adjustment to an insurer’s enhanced capital requirement and available statutory capital and surplus made under section 6D;”.

Section 54 amended

25. Section 54 (2) of the principal Act is amended –

- (a) by deleting “section 17(1), (2) and (3)” and substituting “section 17(2)”; and
- (b) by inserting “31A, 31AA, 31B, 31C” after “30(2)”.

Schedule amended

26. The Schedule to the principal Act (‘Minimum criteria’ for registration) is amended by inserting the following new paragraph after paragraph 4(2)–

- “(2A) A registered person that is an insurer shall not be regarded as conducting its business in a prudent

manner unless it maintains, or as the case may be, will maintain sufficient capital to enable it to meet its insurance obligations given the size, business mix, complexity and risk-profile of its business.”.

Transitional

27. (1) Every insurer registered under the principal Act as a Class 3 insurer immediately before the commencement of this Act that qualifies for registration as a Class 3A insurer or Class 3B insurer respectively under sections 4DA and 4DB of the principal Act as amended by this Act, shall make application to the Authority before 31 December 2008 for re-classification as a Class 3A, or, as the case may be, Class 3B insurer under the principal Act as amended by this Act.

(2) An application under subsection (1) shall be in such form as the Authority may determine, and shall be accompanied with an application fee –

(a) of \$500.00 in the case of a Class 3A insurer; and

(b) of \$1,000.00 in the case of a Class 3B insurer..

(3) Subject to subsection (4), an insurer falling within subsection (1) shall, during the transitional period, continue to be registered as a Class 3 insurer and be subject to the provisions of the principal Act applicable to an insurer of that class.

(4) The Authority may cancel the registration of every insurer falling within subsection (1) that fails to make application for reclassification before 31 December 2008.

(5) In this section “transitional period” means the period beginning with the commencement of this sections and ending on 31 March 2009.

Consequential amendment

28. The Fourth Schedule to the Bermuda Monetary Authority Act 1969 is amended –

(a) in paragraph (3) under the heading “Insurance Act 1978” by –

(i) inserting the following new subparagraphs after subparagraph (a)(iv) –

“(iva) Class 3A insurers\$10,000

(ivb) Class 3B insurers \$10,000”.

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- (ii) inserting the following new subparagraph after subparagraph (a)(vi) –
”(via) Special Purpose Insurers\$10,000”.
 - (a) in paragraph (7) under the heading “Insurance Act 1978” by –
 - (i) inserting the following new subparagraphs after subparagraph (a)(iv) –
“(iva) Class 3A insurers\$10,000
(ivb) Class 3B insurers \$10,000”.
 - (ii) inserting the following new subparagraph after subparagraph (a)(vi) –
”(via) Special Purpose Insurers\$10,000”.

INSURANCE AMENDMENT BILL 2008

EXPLANATORY MEMORANDUM

This Bill seeks to make a number of changes to the regulation of insurance business.

First, it makes provision for the Authority to prescribe by Order prudential standards in relation to enhanced capital requirement and capital and solvency returns for insurance companies. Such standards may apply to all registered insurers or to a class of registered insurers.

Second, it seeks to redefine Class 3 insurers and introduce new classes of insurers, including a Special Purpose Insurer.

Third, it imposes new requirements on Class 4 Insurers to prepare financial statements in accordance with Generally Accepted Accounting Principles ("GAAP") or International Financial Reporting Standards ("IFRS"). Provision is also made requiring Class 4 insurers to file with the Authority annual audited financial statements and requiring the Authority to publish such statements in such manner as it considers appropriate to bring them to the notice of the public.

Clause 1 provides for the Act to come into operation in respect of certain of its provisions, on the date of Assent; and in respect of the remainder on 31 December 2008.

Clause 2 defines "principal Act" as the Insurance Act 1978.

Clause 3 amends section 1 and defines new expressions used in the Act. These include definitions for "available statutory capital and surplus", "capital and solvency return", "enhanced capital requirement", "prudential standards", "special purpose business" and "Special Purpose Insurer".

Clause 4 amends section 2A of the Act by widening the scope of the Authority's powers to publish statements of principles under the Act to include the exercise of its powers to make adjustments to an insurer's enhanced capital requirement and available statutory capital and surplus; and in exercising its powers of intervention under section 32.

Clause 5 amends section 4 to make provision for the registration of the new classes of insurers, those being Class 3A, 3B and Special Purpose Insurer.

Clause 6 makes consequential amendments to section 4A.

Clause 7 makes consequential amendments to section 4D.

Clause 8 adds new sections 4DA and 4DB. These make provision for new classes of commercial insurers (i.e. where 50% or more of the premiums is from unrelated business): Class 3A for insurers with net

premiums below \$50 million; Class 3B for insurers with net premiums above \$50 million.

Clause 9 amends section 4F by inserting definitions of new expressions used in sections 4B to 4E of the Act.

Clause 10 amends section 5 by inserting a new subsection requiring the Authority to take into account additional matters when considering whether or not to register Special Purpose Insurers, such as solely insuring one or more risks with one or more policyholders; and the sophistication of the policyholders.

Clause 11 adds new sections 6A, 6B 6C and 6D to the Act. Section 6A provides for the Authority to prescribe by Order prudential standards in relation to (a) enhanced capital requirements and (b) capital and solvency returns, that must be complied with by registered insurers. Such standards may impose different requirements to be complied with by different classes of insurers, in different situations and in respect of different activities.

Proposed section 6A(5) gives a lead time for the commencement of Orders. In the case of a first Order, that time is 120 days from the date of publication of a consultation draft of the Order under section 6B. Otherwise, that period is 180 days.

Proposed section 6B requires the Authority to consult on any proposals for the making of Orders under section 6A. The Authority is required to publish a draft of the Order together with an explanation of the purpose of the Order and a notice inviting the public to make representations on the proposals within a specified period being not less than 28 days.

Proposed section 6C provides for the Authority to exempt an insurer from the prudential standards applicable to it. In granting such exemptions, the Authority must have regard to the obligations of the insurer towards its policyholders.

Proposed section 6D provides for the Authority to make adjustments to an insurer's enhanced capital requirement and available statutory capital and surplus. The Authority can only make such adjustments in the circumstances set out in subsection (6). These relate to the Authority concluding that the risk profile of the insurer deviates significantly from certain underlying assumptions. Any adjustments so made would only have effect after the elapse of at least 90 days from its notification to the insurer.

Clause 12 makes consequential amendments to section 7.

Clause 13 amends section 8A to require a principal representative to report to the Authority on three additional matters. The first is where by virtue of a significant loss suffered by an insurer there is

a likelihood of the insurer being unable to comply with its enhanced capital requirement. The second is where a material change has occurred in the nature of a Class 4 insurer's business. The third is where a class 3A insurer has exceeded the limit on unrelated business prescribed by section 4DA(2). This clause inserts new subsections (2a) and (2b) that impose a requirement on the principal representative in certain circumstances described in the first and second cases mentioned above, to furnish the Authority with certain returns and financial statements.

Clause 14 makes consequential amendments to section 8B.

Clause 15 makes consequential amendments to section 17.

Clause 16 inserts a new section 17A. This section requires class 4 insurers to prepare and file with the Authority additional financial statements prepared in accordance with Generally Accepted Accounting Principles or International Financial Reporting Standards which must be audited. The filing of these financial statements would be additional to the filing of statutory financial statements under section 15 of the Act.

Clause 17 makes consequential amendments to section 18A (which makes it an offence not to comply with requirements to file certain returns).

Clause 18 makes consequential amendments to section 18B.

Clause 19 makes consequential amendments to section 31A.

Clause 20 adds a new section 31AA. This section would require an insurer that has failed to comply with the enhanced capital requirement to (a) file with the Authority a report about the failure, giving the particulars set out in subsection (1)(a); and (b) furnish the Authority with interim financial statements. Under subsection (2), such an insurer is precluded from declaring any dividends until the failure has been rectified.

Clause 21 inserts a new section 31AB. This section makes provision that would enable a Class 3A insurer that has exceeded the net premium limitation imposed on it under proposed section 4DA (2) to continue to carry on business in that class. However this is subject to certain conditions. These would require the insurer's principal representative to notify the Authority of such event and also require the insurer to apply to the Authority for a direction under section 56 to continue to carry on business in that class.

Clause 22 makes consequential amendments to section 31B.

Clause 23 amends section 32 ('Power of Intervention'). In particular it inserts a new ground for the Authority's intervention. It would enable the Authority to give directions to an insurer in cases where the insurer is in breach of the enhanced capital requirement applicable to it.

Clause 24 amends section 44A. It makes provision for a right of appeal in relation to decisions of the Authority adjusting an insurer's enhanced capital requirement and available statutory capital and surplus under section 6D.

Clause 25 makes consequential amendments to section 54.

Clause 26 amends the Schedule to the Insurance Act which sets out the minimum criteria for the registration of insurers. It inserts a new criterion to be complied with by registered insurers. This requires an insurer to maintain sufficient capital to enable it to meet its insurance obligations.

Clause 27 makes transitional provisions in relation to Class 3 insurers. It requires insurers who so qualify to make application to the Authority to be reclassified as Class 3A or, as the case may be, Class 3B insurers before 31 December 2008. Failure to do so would enable the Authority to cancel their registration.

Clause 28 makes consequential amendments to the Fourth Schedule to the Bermuda Monetary Authority Act 1969 to make provision for fees for the new classes of insurers.