



BERMUDA MONETARY AUTHORITY

INSURANCE DIVISION

**GUIDANCE NOTES FOR
RECLASSIFICATION IN ACCORDANCE WITH THE
INSURANCE AMENDMENT ACT 2008**

1. Introduction

These Guidance Notes have been produced with the aim of providing informal, non-statutory guidance on the reclassification requirements and additional information for consideration when applicable (re)insurers are determining the appropriate class for reclassification applications

The aim of these Guidance Notes is to facilitate the uniform application of the legislation as it relates to the reclassification of all applicable class 3 insurers. All applicants should note however, that it is the responsibility of individual businesses to ensure their compliance with the law. The reader with specific queries may seek further advice from the Authority, as appropriate.

2. Scope of Guidance

The Insurance Amendment Act 2008 (the “Amendment Act”) came into force on 30th July, 2008 and created three new classes of insurance license, Class 3A, Class 3B and Special Purpose Insurers. These Guidance Notes relate principally to the rules set down in the Insurance Act 1978, (as amended by the Insurance Amendment Act 2008) which facilitate the reclassification of the existing Class 3 sector. They also provide additional information for consideration when applicable (re)insurers are determining the appropriate class for reclassification applications.

3. Definitions

In these Guidance Notes, the following terms are used.

"The Act" means the Insurance Act 1978 and its related regulations.

" Class 3 insurer " means the description in section 4D of the Act as amended by section 7 of the Amendment Act.

" Class 3A insurer " means the description in section 8 of the Amendment Act.

" Class 3B insurer " means the description in section 8 of the Amendment Act.

“Unrelated business”, in relation to an insurer, means insurance business consisting of insuring the risks of persons who are not shareholders in, or affiliates of, the insurer (see Section 2 of the Insurance Returns and Solvency Regulations 1980).

“Affiliate” means a body forming part of a group with that insurer (Section 2 of the Act).

“Sidecar” means a special purpose reinsurance vehicle with a defined purpose and a limited lifetime.

4. Application Process

All applicable Class 3 (re)insurers qualifying for reclassification are required to submit an application by 31st December 2008.

Please be advised that those existing Class 3 (re)insurers that do not meet the new licensing criteria for a Class 3A or Class 3B (re)insurer, are still required to submit only the Form T-1 together with a brief description of why said (re)insurer should remain licensed as a Class 3 (re)insurer. Please note however that such (re)insurers shall not be required to remit the application fee.

Any Class 3 (re)insurer that qualifies for reclassification as a Class 3A or Class 3B but fails to apply for reclassification by the 31st December, 2008 may have its registration cancelled by the Bermuda Monetary Authority (“the Authority”) in accordance with Section 27(4) of the Insurance Amendment Act 2008 (“the Act”).

The following documents must accompany a completed Form T-1 application form

- The company’s original Certificate of Registration
- An updated business plan (see appendix 1)
- Most recent audited statutory financial statements
- Management accounts as at 30th June, 2008 or more recent if available
- The applicable application fee \$500.00 in the case of Class 3A and \$1000.00 in the case of Class 3B.

The Authority, in accordance with Section 4A (2) of the Insurance Act 1978 may register a (re)insurer as a particular class of insurer where it would not be so registrable under sections 4B to 4E if, after taking into account –

(a) the nature of the intended relationship between the (re)insurer and its intended policyholders, the interests of those policyholders and of the public generally, and

(b) the level of regulation which is applicable to the different classes of insurer.

The Authority may exercise the powers of Section 4A in certain circumstances where the (re)insurer’s business model, international profile and/or conditions of license (including Section 56 directions and any other regulatory approvals) may warrant registration in a class that the (re)insurer may not normally qualify to be registered in. This could result in a (re)insurer that may normally qualify to be registered in a class having increased regulatory oversight being allowed to register in a lower class and vice versa.

ISSUES FOR CONSIDERATION

5. Affiliated Reinsurers

An affiliated (re)insurer currently registered as a Class 3 insurer shall be registrable as a Class 3A (re)insurer if said (re)insurer is only assuming reinsurance from an affiliated ceding (re)insurer.

An affiliated (re)insurer shall be allowed to assume non-affiliated reinsurance of up to 20% of its total net premiums written and continue to be registrable as a Class 3A. However, if an affiliated reinsurer assumes in excess of \$50 million non-affiliated reinsurance it shall be registrable as a Class 3B.

6. Connected Business

Connected business in this regard is defined as “risk which, in the opinion of the Authority, arises out of the business or operations of those persons or any affiliates of any of those persons”. For the purposes of the reclassification project connected business shall be considered as related party business and shall not be included in the unrelated business percentage when determining the appropriate class of registration.

Should any (re)insurer deem certain lines of its business to be connected for this purpose, said (re)insurer shall provide with its application a detailed description of said business providing a rationale for said business to be considered connected for licensing purposes. The business shall only be considered connected once the Authority has reviewed the details and issued a connected business certificate. If any company, based on the amount of connected business written, believes that it should remain a Class 3 (re)insurer, said company shall follow the instructions in section 4 above with respect to the application process for those companies not qualifying for re-registration as a Class 3A or Class 3B (re)insurer.

The following are examples of the types of business that have been deemed connected by the Authority in the past. Please note that this list is not exhaustive and does not suggest that such lines of business would automatically qualify as connected. The applicant would still need to demonstrate, and the Authority will need to agree, that the risks arise out of the operations of the shareholders or its affiliates:

- Credit and Credit Life
- Malpractice Insurance (or other Professional Liability cover) of Non-employed Physicians
- Employee Benefits
- Risk arising from Joint Venture Projects
- Warranty
- Collision Damage Waiver
- Care, Custody and Control
- Agency Business (reinsurance only)
- Supplier/Contractor Insurance

7. Premium vs. Loss & Loss Expense Provisions

For the purposes of the reclassification requirement any (re)insurer whose net premiums written and/or loss provisions exceeds the 50% unrelated test shall be required to re-register as a Class 3A or Class 3B (re)insurer i.e. if a company is not writing in excess of 50% unrelated net premiums but its booked reserves include over 50% of unrelated loss & loss expense provisions, then said (re)insurer would still meet the criteria of a Class 3A insurer and would be required to make application to re-register. If said (re)insurer is also exceeding the \$50 million unrelated premium test then said (re)insurer would be required to re-register as a Class 3B even if such unrelated premiums are less than 50% of the net premiums written.

8. Net Premiums Written

For the purposes of the re-registration requirement the 50% unrelated test shall apply to the net position only. The gross position with respect to related vs. unrelated shall not be considered.

9. De minimus Premiums Written

The Act makes no express provision for registration as a Class 3 (re)insurer if said (re)insurer meets the criteria for registration as a Class 3A (re)insurer however the amount of net premium written is deemed to be de-minimus. In this regard any (re)insurer writing in excess of 50% unrelated net premiums will be required to make application to be registered as a Class 3A (re)insurer regardless of the dollar amount of said net premiums written.

Please note however that section 4A(2) of the Insurance Act 1978 as noted above allows the Authority to register a (re)insurer in any particular class even if that company may not qualify to be registered in said class, should the Authority deem such registration appropriate. In this regard, should an applicant wish to have the Authority consider registration as a Class 3 (re)insurer when said (re)insurer meets the criteria for registration as a Class 3A (re)insurer, the applicant will need to include with its application a detailed description of the rationale for why said applicant would be more appropriately registered as a Class 3 (re)insurer as opposed to a Class 3A (re)insurer. The Authority will consult with individual firms prior to making a final registration recommendation.

10. In force Regulatory Approvals

All existing regulatory approvals including but not limited to section 56 directions, relevant asset approvals and other fixed capital approvals shall remain in force despite the reclassification of the (re)insurer in accordance with the new criteria. Please be advised that the Authority shall review all such approvals as it reviews the application for re-registration to ensure that said approvals remain appropriate. Should the Authority deem any previously granted approval to no longer be appropriate during the review and analysis of the re-registration application, the Authority shall consult with the applicant prior to amending or voiding said approval.

11. Segregated Accounts Companies/Rent-A-Captives

For the purposes of the re-registration requirement all Segregated Accounts Companies and/or “Rent-a-Captives will be allowed to remain registered as Class 3 (re)insurers at this time. The Authority, as part of its 2009 Business Plan, plans to review this sector of the market with the view of proposing additional amendments to both the regulatory regime and the fee structure in 2009/2010.

12. Permit Companies

Existing Class 3 (re)insurers operating in Bermuda via a 134 permit (Companies Act) that have also been granted a Section 56 Direction giving approval to file a modified return shall also be allowed to retain their current Class 3 license at this time. In this context a modified return shall mean the Financial Statements and Returns and other information filed with the Insurance Regulatory Authorities in the country in which the company is incorporated. As with Segregated Accounts Companies the Authority plans to review our current regulatory regime with respect to such permit companies and will be proposing amendments to the regime in 2009/2010.

13. Sidecars

Existing Class 3 Sidecars established with “fully collateralized” reinsurance policies will not be required to reregister as Class 3A or Class 3B. In this regard “fully collateralized” reinsurance policies shall mean reinsurance policies in respect of which the maximum liability to be incurred thereon at predetermined future dates is assessed at the time of issuance of said policies, and provisions made therein for meeting of those liabilities in full.

At this time the Authority will not require existing Sidecars or other special purpose type insurance vehicles which were previously registered as Class 3 insurers to re-register as Special Purpose Insurers as such term is defined in the Act. Should any entity wish to avail themselves of this new category of registration, the company will need to make application to the Authority for a change of class. Such applications will be considered outside of this Class 3 re-classification exercise and be addressed as a routine change of class by the Licensing & Authorizations Team.

14. Run-off Companies

As per the instructions described above with respect to “Premiums vs. Loss & Loss Expense Provisions” an existing Class 3 (re)insurer which has entered into run-off and is not currently writing any premium will still be required to make application to register as a Class 3A (re)insurer if that (re)insurer would qualify as such based on the percentage of unrelated loss provisions included in line 17 of the statutory balance sheet.

15. Mutual Companies

For the purposes of the current re-classification exercise, insurance and/or reinsurance business written by “Mutual” companies will be considered related party business as long as said Mutual (re)insurer is insuring or reinsuring the risk of its members only.

16. Other issues

Please note that the definition of a Class 3 (re)insurer has been amended such that a Class 3 (re)insurer is now defined as “A body corporate is registrable as a Class 3 insurer where that body corporate is not registrable as a Class 1, Class 2, Class 3A, Class 3B or Class 4 insurer.”

Please be advised that all financial information required to determine the appropriate class of registration shall be based on audited Bermuda statutory financial statements. Financial information based on Generally Accepted Accounting Principles will not be considered. In addition all financial information included with the application should be based on the 2007 audited accounts or the 2008 audited accounts if said audited accounts have been finalized at the time of application.

- Please send the completed application form and the accompanying documents directly to

The Bermuda Monetary Authority
Insurance Division
BMA House
43 Victoria Street
Hamilton HM 12

P.O. Box 2447
Hamilton HM JX

- Should you have any questions, queries or concerns please contact Mr. Shelby Weldon @ (441)278-0209 or sweldon@bma.bm

FAQ

1. What does the Insurance Amendment Act 2008 cover?

The Act prescribes 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;

2. What if an insurer is a composite (i.e., licensed to conduct both “commercial” general and long-term business)?

The re-registration requirement is only applicable to the general business insurance license. The Long-Term license is not affected by this process.

3. What if there are entities that are not currently holding a class 3 license and they wish to re-register into one of the new class 3 sub-classes?

Whilst such companies are not the focus of this current reclassification project, in accordance with our established policy any company wishing to change class can make application to the Licensing & Authorization Unit for a change of class.

4. Where the volume of “unrelated” net premiums written is significant (i.e., greater than \$50 million), but less than 50% of the total business written in a given year, what class of license should be requested?

The first test i.e. % of unrelated business written or loss reserves booked will determine whether or not the company should be licensed as a commercial insurer. The dollar amount of net premiums written will only be used to determine if the (re)insurer is deemed a large commercial (Class 3B) or small commercial (Class 3A) (re) insurer.

5. What happens if a class 3A insurer breaches the \$50 million unrelated net premiums written threshold?

The Insurance Amendment Act 2008 states that “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.”.*

In addition the notification mentioned in (a) above shall include:

- (i) *particulars of the circumstances leading to the unprojected increase of unrelated business net premiums written in that year;*
- (ii) *unaudited interim statutory financial statements covering such period as the BMA may require; and*
- (iii) *a general business solvency certificate in respect of those statements.*

APPENDIX 1

All business plans submitted with respect to the re-registration application shall include at a minimum the following information:

- Executive Summary which shall discuss the basis for the class of registration for which the company has made application.
- Ownership details.
- Description of insurance program(s).
- 3 year pro-forma statutory financial statements which shall estimate the percentage of unrelated business and BD\$ amount of net premiums written over the succeeding 3 year period.
- Assumptions supporting pro-forma statements.
- Any additional information as advised in the afore-mentioned instructions or as the applicant deems necessary to support the application.