



REGULATORY UPDATE

July – December 2019



Preface

This Regulatory Update reports on activities at the Bermuda Monetary Authority (BMA or Authority) for the quarter ended 31 December 2019.*

The Regulatory Update is only published in electronic format and can be downloaded as a PDF file on the Authority's website (www.bma.bm). If you wish to receive an e-mail notice when the next edition is available, you may sign up to our e-subscription service by clicking the E-alerts button on the homepage of the Authority's website.

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Regulatory and Legislative

Supervision

NAIC Grants Bermuda Reciprocal Jurisdiction Status

On 10 December 2019, the National Association of Insurance Commissioners (NAIC) announced Bermuda was granted Reciprocal Jurisdiction status. In becoming a Reciprocal Jurisdiction, qualifying Bermuda commercial (re)insurers meeting the NAIC criteria are eligible for collateral relief. The NAIC also renewed Bermuda's Qualified Jurisdiction status, which had been in effect since January 2015.

BMA Publishes Insurance Cyber Risk Reports

On 23 December 2019, the BMA published a *Bermuda Insurance Sector Operational Cyber Risk Management* report.

This report assessed the results of questions included in the 2018 year-end Commercial Insurer Capital and Solvency Return filing designed to assess information security, cybersecurity and data privacy preparedness of (re)insurers. A subset of those questions was included in the 2018 year-end filing for limited purpose (re)insurers and intermediaries. The report discussed how the BMA closely monitors cyber risk management and how an Operational Cyber Risk Management Code of Conduct will come into effect in January 2021.

A separate *Cyber Underwriting – 2019 Report* was also issued on 23 December 2019, which summarised data from the Authority's 2018 insurance statutory filings. The data revealed an increased number of insurers offering the cyber line of business and significant increases in gross affirmative cyber written premiums. The report also showed an increase in the number of organisations utilising Bermuda captive structures to cover some of their cyber risk exposures. Finally, it showed challenges continue to exist in key operational aspects such as pricing, risk aggregation and reserving for this line of business.

In addition to the above, three other BMA Reports were published in December:

I. Catastrophe (CAT) Risk in Bermuda – 2018 Report

The report's objectives were to:

- Give a high-level overview of the capacity of the sector to absorb shocks from various catastrophe CAT risk events underwritten by Bermuda (re)insurers
- Review various stress tests to assess if Bermuda (re)insurers are adequately capitalised to withstand severe, but remote, underwriting losses from various possible CAT events
- Analyse the exceedance probability curve trends, including the level of reliance and sufficiency of the reinsurance and pricing dynamics
- Analyse the CAT modelling practices in Bermuda

II. Macprudential Risk: Annual Statutory Filings

This report highlights the performance of Bermuda's commercial (re)insurers during the 2018 financial year. These included general market developments, aggregate capital structure, profitability and financial indicators, asset quality indicators, actuarial indicators and forward-looking indicators.

III. Macprudential Risk: Annual Statutory Filings

This report provides an overview of Bermuda's foreign portfolio holdings including geographical distribution, sectoral behaviour, Bermuda-derived liabilities and global holdings.

All of the above are available on the [BMA Reports and Surveys](#) page of the BMA website.

LEGISLATIVE

The Authority proposed the introduction of the **Fund Administration Provider Business Act 2019** to embed a separate supervisory framework for the regulation and supervision of fund administrators in Bermuda. The Act sets out appropriate supervisory requirements for licencees given the nature of fund administration provider business and aligns relevant standards for the sector with those already in place for other financial institutions. Assent was granted on 5 August 2019. The operative date was 31 December 2019.

The Authority requested that the Minister of Finance make an order to amend Schedule 1 of the Money Services Business Act 2016, “Minimum Criteria for Licensing”. Specifically, the Authority proposed (via the **Money Service Business Order 2019**) to require all money services businesses to hold insurance cover relevant to the nature and scale of the licensed business to be conducted. The Order was made by the Minister of Finance on 5 August 2019 and became operable on 6 August 2019.

The Authority proposed amendments to the **Trusts (Regulation of Trust Business) Act 2001** and **Corporate Service Provider Business Act 2012** to ensure Bermuda’s supervisory frameworks for Trust Businesses and Corporate Service Providers (CSPs) met expected international standards and best practices. In relation to these standards and practices, Group of International Finance Centre Supervisors (GIFCS) (of which the BMA is a competent authority) issued a best practice statement almost 20 years ago, which has been continually updated to ensure the worldwide trust and CSP sector is being supervised appropriately. Following an internal review of Bermuda’s framework *vis-a-vis* the latest GIFCS standards, the above Acts were amended to make provision for: requirement of physical presence in Bermuda; segregation of client monies from operating funds; and a power to be exercised by the Authority to restrict a proposed surrender of licence. Assent was granted on 5 August 2019, and the amendments became effective 31 December 2019.

The **Bermuda Monetary Authority Amendment Act 2019 (Fees Bill)** made important amendments to the Bermuda Monetary Authority Act 1969. Most notably, it introduced a revised fee structure for CSPs under which licencees will pay fees aligned with their scale and the business risk they undertake. The Act also made fee amendments of a housekeeping nature within several regulated sectors and granted the Authority a new principal object enabling it to establish and administer an Innovation Hub and to charge fees in respect of same. The Fees Bill was passed by Parliament in December 2019 and took effect on 31 December 2019.

In general, the BMA sought to further confirm persons seeking to utilise the exemptions frameworks arising under the Corporate Service Provider Business Exemption Order 2015 and the Trusts (Regulation of Trust Business) Exemption Order 2002 via the **Corporate Service Provider**

Business Exemption Amendment Order 2019 and the **Trust (Regulation of Trust Business) Exemption Amendment Order 2019** (respectively, the Orders). In line with international standards and practices promulgated by international bodies, such as GIFCS, the Authority proposed to require exempted persons utilising the Orders to annually declare to the Authority that such exemptions continue to apply. This “notification mechanism” shall enable the Authority to make determinations, when necessary, to require licensing or impose penalties where it is of the view that such persons are carrying on business under Trusts and Corporate Service Provider Business regimes without a licence. The Orders came into force on 31 December 2019.

The Digital Asset Business Act 2018 (DABA) was amended by Parliament on 8 October 2019 via the **Digital Asset Business Amendment Act 2019** to, amongst other things, close supervisory gaps and ensure the Authority has the ability to appropriately licence persons seeking to carry on Digital Asset Business in Bermuda. Therefore, proposals were made to expand licensing activities to include persons operating or conducting the activities of: a “digital asset benchmark administrator”; “digital asset derivative exchange”; and “digital asset trust services”. Amendments also include the insertion of clarifying definitions of: “administration and management of a digital asset”; “digital asset benchmark”; and “digital asset derivative.” Enhancements were made to the existing activity of “exchanges” under DABA, which will now be noted as “digital asset exchanges”. The Authority currently publishes information about such licencees. It proposes to increase its transparency by listing additional information on its website regarding the class of licence approved, the activity to be carried on and the expiration of any licence. Further minor technical (housekeeping) measures were also adopted. Relevant fees will be charged for the undertaking of the new activities and the Fourth Schedule to the Bermuda Monetary Authority Act 1969 was consequentially amended accordingly.

Amendments to the Insurance Act 1978 were proposed by the Authority via the Insurance Amendment Act 2019 in the following areas:

- (a) For the ability of the Authority to adjust an insurer’s total statutory capital, and for an insurer or designated insurer to apply to adjust its available statutory economic capital and surplus

(b) For an insurer to have a right of appeal to a tribunal if that insurer is aggrieved by a decision of the Authority to make an adjustment to that insurer's total statutory capital and surplus, and available statutory economic capital and surplus

(c) To allow for minor housekeeping amendments to be made

The amendments came into force as of 31 December 2019.

The **Insurance Returns and Solvency Regulations 1980 and the Insurance Accounts Regulations 1980** (the Regulations) were amended as of 31 December 2019 by Parliament (except where noted under law) to revoke provisions relating to Special Purpose Insurers and to require information to be filed with the Authority by insurers who are funded by alternative capital arrangements. The Authority proposes to introduce technical Rules to apply to such insurers this year.

The Authority proposed revisions to the Investment Funds Act 2006 (Act), and Rules, which were passed by Parliament in December 2019. **The Investment Funds Amendment Act 2019**, amongst other things, expanded the scope of the funds regime to include "closed-ended" vehicles; established classification requirements for Professional Closed Funds and designation requirements for overseas investment funds that are managed or carry on promotion in or from within Bermuda; and introduced enhanced supervisory and regulatory requirements to apply to registered, authorised or designated investment funds, including "fit and proper" requirements. The Act came into force on 1 January 2020.

The **Investment Funds (Definition) Order 2019**, which clarifies when arrangements are not to be defined as "investment funds" under the Act; the Investment Fund Rules 2019, which replaced the (now repealed) Fund Rules 2007; and the Investment Fund Offering Document Rules 2019, which replaced the (now repealed) Fund Prospectus Rules 2007, were all published in the Official Gazette and came into force on 1 January 2020. The above enhancements to Bermuda's investment funds regime represented an important element of Bermuda's overall response to the economic substance initiative being advanced by the European Union's Code of Conduct Group

(COCG), and specifically the assessment of the island's investment funds regime being conducted by representatives of the European Commission (EC) on behalf of the COCG.


INTERNATIONAL

In July, the BMA attended the Annual General Meeting and member sessions of The Group of International Insurance Centre Supervisors (GIICS) in London. Discussions focused on International Association of Insurance Supervisors (IAIS) developments, including technology, climate change, economic substance and updates from member jurisdictions.

In August, the BMA attended the NAIC Summer National meetings in New York City. Topics of interest included updates to the Qualified Jurisdiction/Reciprocal Jurisdiction (QJ/RJ) process, accreditation standards and technology and innovation. The NAIC advised of the intention to revise the accreditation standard under the Financial Regulation Standards and Accreditation programme in order to support updates to the Credit for Reinsurance Model Law and Regulation. It is anticipated a revised standard will be presented to the Committee for consideration at the Spring National Meeting in 2020.

The annual BMA/NAIC bilateral meeting also took place during the Summer Session. Members of the BMA and NAIC Senior Management discussed mutual issues of interest, including Bermuda's progress towards QJ/RJ status, a general discussion on Cyber and FinTech issues, and state of play on key discussions within the IAIS.

In September, the BMA attended the European Insurance and Occupational Pensions Authority's (EIOPA) conference on Global Insurance Supervision in Frankfurt. The theme focused on sustainable insurance and discussed topics such as: embracing the global challenges of business models, protection gaps and systemic risks. The BMA also attended the Organisation for Economic Co-operation and Development's (OECD) Global Blockchain Policy Forum in Paris. Overarching themes included observing recent blockchain developments, as well as addressing challenges with its adoption and implementation.



In early November, representatives from the BMA attended the GIFCS Plenary and joint Financial Stability Institute seminar held in Grand Cayman. These events focused on supervisory technology and crisis management of non-systematic banks, specifically the use of innovative technology in supervision and progress concerning ongoing assessments for member jurisdictions' trust and corporate service provider regimes.

Throughout the period, BMA representatives continued their engagement with a number of working groups and committees of the IAIS. In mid-November, representatives from the BMA attended the IAIS Committee Meetings and Annual Conference in Abu Dhabi. A number of key initiatives were adopted, including the comprehensive review of the Insurance Core Principles; the Common Framework for the Supervision of Internationally Active Insurance Groups; the Holistic Framework for the mitigation of systemic risk in the insurance sector; and the commencement of the monitoring period for the Insurance Capital Standard Version 2.0. Furthermore, the BMA delegation was updated on the Macroprudential Committee's Global Insurance Market Report, as well as adjustments to the committee's structure. During the Annual General Meeting, Craig Swan, then Managing Director of Supervision, was appointed as a member of the IAIS Executive Committee, representing the Caribbean and Offshore Region.

In December, a delegation from the BMA attended the NAIC Fall Meetings in Austin, Texas. Conference sessions discussed regulatory developments concerning climate risk and resilience, reinsurance, and innovation and technology. The group also attended meetings with the Florida Insurance Commissioner and representatives from the Illinois Department of Insurance. During the Reinsurance Task Force, Mr. Swan delivered an opening address to Task Force members and meeting observers, expressing thanks to NAIC staff for their cooperation during Bermuda's QJ Reassessment and the RJ assessment process. Mr. Swan also expressed the intentions of continuing close relations with the NAIC and US State Insurance Commissions. The Task Force then adopted the evaluations of Bermuda, Japan and Switzerland as Qualified and Reciprocal Jurisdictions. Meetings in Austin concluded with the BMA facilitating an informative session at the Texas Department of Insurance.

In November and December, the BMA attended the Financial Stability Board's (FSB) Regional Consultative Group for the Americas (RCGA) 17th meeting and the FSB RCGA Non-Bank Financial Intermediation Working Group in Mexico City. At these meetings, groups discussed regional risks and vulnerabilities and the recently released Global Monitoring Report on Non-Bank Financial Intermediation 2019.

