

A BILL

entitled

INSURANCE AMENDMENT (NO. 3) ACT 2018

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SCHEDULE

AMENDMENTS TO THE INSURANCE RETURNS AND SOLVENCY REGULATIONS
1980

WHEREAS it is expedient to amend the Insurance Act 1978, and to make amendments to the Insurance Returns and Solvency Regulations 1980;

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:

Citation

1 This Act, which amends the Insurance Act 1978 (the "principal Act"), may be cited as the Insurance Amendment (No. 3) Act 2018.

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Amends section 1

2 The principal Act is amended in section 1(1) by inserting in the appropriate alphabetical order the following definitions—

“restricted special purpose business” means special purpose business conducted between a Special Purpose Insurer and specific insureds approved by the Authority;

“unrestricted special purpose business” means special purpose business conducted by a Special Purpose Insurer with any insured.”.

Amends section 4

3 The principal Act is amended in section 4(1)(d) by inserting after “Insurer” the words “to carry on restricted special purpose business or unrestricted special purpose business”.

Amends section 4A

4 The principal Act is amended in section 4A by inserting after subsection (4) the following new subsections—

“(5) Subject to subsection (1), the Authority may also determine that an insurer may be registered to carry on run off insurance business.

(6) For the purposes of this section, an insurer carries on run off insurance business where it has been registered by the Authority to carry on general business, which involves acquiring portfolios of policyholder obligations or acquiring insurers that will not undertake new business.”.

Amends section 6A

5 The principal Act is amended in section 6A—

(a) in subsection (1)(g), by inserting after “insurance manager” the words “, broker or agent”;

(b) in subsection (1A)(a), by inserting after “insurance manager” the words “, broker or agent”;

(c) in subsection (3)(a), by inserting after “insurance manager” the words “broker or agent,”.

Amends section 6C

6 The principal Act is amended in section 6C—

(a) in subsection (1), by inserting after “insurance manager” the words “, broker or agent,” in both places;

(b) in subsection (3A), by deleting “insurance manager” and substituting the words “business to be conducted by the insurance manager, broker or agent”;

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- (c) in subsection (4), by inserting after “insurance manager” the words “, broker or agent”;
- (d) in subsection (5), by inserting after “insurance manager” the words “, broker or agent”.

Amends section 8

7 The principal Act is amended in section 8—

- (a) by repealing subsection (1) and substituting the following—

“(1) Every insurer, insurance manager, broker and agent shall—

- (a) maintain a principal office in Bermuda; and
 - (b) at the time of registration, give notice in writing to the Authority of the location of its principal office.”;
- (b) in subsection (2), by repealing paragraph (a);
 - (c) in subsection (3), by inserting before “subsection (2)” the words “subsection (1) or”.

Amends section 8B

8 The principal Act is amended in section 8B by repealing subsection (1) and substituting the following—

“(1) Every Class 2 and Class 3 insurer, and when directed by the Authority, a Class 1 and Class IGB insurer, shall appoint an individual as that insurer’s loss reserve specialist approved by the Authority under subsection (3), who shall be a person qualified to assess the adequacy of insurance loss reserves in order to provide an opinion in accordance with the requirements of the Insurance Returns and Solvency Regulations 1980.”.

Amends section 14

9 The principal Act is amended in section 14—

- (a) in subsection (1)—
 - (i) in paragraph (ab)(i), by inserting after “17(4),” the section reference “17A(5),”;
 - (ii) in paragraph (g), by deleting “or insurance manager” and substituting the words “insurance manager, broker or agent”;
 - (iii) in paragraph (g), by deleting “and” at the end thereof;
 - (iv) in paragraph (h), by deleting the period at the end thereof and substituting a semicolon;
 - (v) by inserting after paragraph (h) the following new paragraphs—

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- “(i) application under section 1(1) in paragraph (a)(iv) of the definition of “excepted long-term business; and
- (j) an application to modify an opinion of a loss reserve specialist approved by the Authority under section 8B(1).”;

(b) by inserting after subsection (9) the following new subsections—

“(10) Subject to subsection (12) and in the case where subsections (5) and (6) do not apply, the Authority may, where it has made a determination—

- (a) exempt a registered person from the requirement to pay any fee under this section, as may be prescribed under the Bermuda Monetary Authority Act 1969; or
- (b) reduce any fee required to be paid by a registered person under this section by such amount as it considers appropriate, as may be prescribed under the Bermuda Monetary Authority Act 1969.

(11) In granting an exemption from, or reduction of, any fee payment under subsection (10), the Authority may impose any condition on such exemption or reduction, as it may determine appropriate.

(12) The Authority shall not grant an exemption from, or reduction of, any fee payment under subsection (10) unless it is satisfied that it is appropriate to do so having regard to the nature, scale and complexity of the business carried on by the registered person.

(13) Where the Authority determines not to grant an exemption or reduction of any fee under subsection (12), it shall serve the registered person with a notice of its determination and the registered person may within a period of twenty-eight days from the date of the notice make written representations to the Authority, and where such representations have been made the Authority shall take them into account in making its final determination.”.

Inserts section 17B

10 The principal Act is amended by inserting after section 17A the following new section—

“Insurance manager, broker and agent to file statutory financial returns
17B Every insurance manager, broker and agent shall file a statutory financial return in the prescribed form, and different forms of return may be prescribed in the rules for insurance managers, brokers and agents.”.

Amends section 18A

11 The principal Act is amended in section 18A—

- (a) in subsection (1), by deleting “or insurance manager” and inserting “insurance manager, broker or agent”;

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- (b) in subsection (1)(a), by deleting “or 18(1)” and inserting “(, 17B or 18(1))”;
- (c) in subsection (2), by inserting after “insurer” the words “, insurance manager, agent or broker”;
- (d) in subsection (2)(a), by deleting “or insurance manager” and inserting the words “, insurance manager, broker or agent”;
- (e) in subsection (5), by deleting “or insurance manager” and inserting the words “insurance manager, broker or agent”.

Amends section 28

12 The principal Act is amended in section 28—

- (a) in the title, by inserting after “managers” the words “ and agents”;
- (b) by inserting after “insurance manager” the words “or agent” in the two places it occurs.

Amends section 30

13 The principal Act is amended in section 30—

- (a) in subsection (1), by inserting after “insurance manager” the words “, broker or agent”;
- (b) in subsections (1)(a) and (b) and (4), by inserting after “insurance manager” the words “, broker or agent”;
- (c) in subsections (7) and 8(c), by deleting “insurance manager” and inserting the words “insurance manager, broker or agent”.

Amends section 30AA

14 The principal Act is amended in section 30AA(1A) by inserting after “insurance manager,” the words “broker or agent,”.

Amends section 30CA

15 The principal Act is amended in section 30CA—

- (a) in the heading, by inserting after “insurance manager” the words “, broker or agent”;
- (b) in subsection (1), by inserting after “insurance manager” the words “, broker or agent” where it occurs;
- (c) in subsection (2), by inserting after “insurance manager” the words “, broker or agent”;
- (d) in subsection (3), by inserting after “insurance manager” the words “, broker or agent”;
- (e) in subsection (4), by inserting after “insurance manager” the words “, broker or agent”.

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Amends Schedule

16 The principal Act is amended in the Schedule, in paragraph 4(2B), by inserting after the words “insurance manager” the words “, broker or agent”.

Amends Insurance Accounts and Solvency Returns Regulations 1980

17 The Schedule, which makes amendments to the Insurance Accounts and Solvency Returns Regulations 1980, has effect.

Commencement

18 This Act shall come into operation on 31 December 2018.

SCHEDULE

(Section 17)

AMENDMENTS TO THE INSURANCE RETURNS AND SOLVENCY REGULATIONS 1980

- 1 The Insurance Returns and Solvency Regulations 1980 are amended—
- (a) in regulation 5—
 - (i) in paragraph (1)—
 - (A) in subparagraph (i), by deleting “and”;
 - (B) in subparagraph (j) by deleting the period and substituting a semicolon;
 - (C) by inserting after subparagraph (j) the following new subparagraphs—
 - “(k) schedule of cyber risk management; and
 - (l) schedule of sanctions compliance.”;
 - (ii) in subparagraph (2), by—
 - (A) by deleting “14A and” and substituting the words “14A, 15A and 15B”;
 - (B) deleting “and the schedule of ceded reinsurance respectively” and substituting the words “schedule of ceded reinsurance, schedule of cyber risk management and schedule of sanctions compliance respectively”;
 - (b) by inserting after regulation 15 the following new regulation—

“Schedule of Cyber Risk Management

15A Every insurer shall provide the following information in relation to management of its cyber risks—

 - (a) whether the insurer’s board has approved the insurer’s cyber risk strategy, and if so, the insurer shall state how often the board reviews the strategy;
 - (b) whether the insurer has formally adopted a cyber security standard or practice, and if so, the insurer shall state how often the board reviews the standard or practice;
 - (c) whether cyber risk is considered part of the insurer’s internal management control process, and if so, the insurer shall provide the relevant documentation;
 - (d) whether the insurer has a process in place to identify the organisation’s critical functions, processes and key information

- assets that are exposed to cyber risk, and if so, the insurer shall describe how critical functions are defined and provide any relevant policies or supporting documentation;
- (e) whether the insurer's internal audit department conduct reviews of the organization's cyber security systems, controls and processes, and if so, the insurer shall provide the latest report;
 - (f) whether the insurer has cyber insurance, and if so, the insurer shall provide the applicable limits;
 - (g) whether the insurer performs internal regular vulnerability testing and penetration testing, and if so, the insurer shall provide the latest reports;
 - (h) whether the insurer has engaged an external consultant to perform vulnerability or penetration testing in the last year, and if so, the insurer shall provide the name and address of the vendor engaged and provide the latest vendor report;
 - (i) whether all employees of the insurer are provided with on-going cyber security training;
 - (j) whether an assessment has been made regarding cyber and potential contagion risk from third party service providers of the insurer, and if so, the insurer shall provide the assessment report;
 - (k) whether the insurer has formal policies and procedures in place to protect critical data and sensitive data such as personal identification information, and if so, the insurer shall provide the policies and procedures;
 - (l) whether the insurer has formal policies and procedures in place to ensure maintenance of its software including installation of patches and updates to software in a timely manner, and if so, the insurer shall provide the policies and procedures;
 - (m) whether the insurer has formal policies and procedures in place to monitor its networks and to detect internal and external adverse network activity, and if so, the insurer shall provide the policies and procedures;
 - (n) whether a documented response plan has been implemented and whether formal thresholds are set for events and incidents to determine the appropriate response (including reporting to impacted stakeholders and regulators), and the answer to this query shall include information on the following—
 - (i) if the answer is in the affirmative, the insurer shall provide relevant policies or supporting documentation;
 - (ii) the insurer shall state whether the plan shall include detailed incident recovery process;

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- (iii) the insurer shall state whether the plan shall identify requirements for the remediation of any identified weaknesses and associated controls;
- (iv) the insurer shall state whether he has been subject to a cyber incident, and if so, he shall describe the incident and the amount of loss, if applicable;
- (o) the insurer shall state where he ensures that outsourced functions have equivalent levels of security and protection;
- (p) the insurer shall state the percentage of the current year's budget he allocates to cyber security.

Schedule of Compliance with Sanctions

15B Every insurer shall provide the following information in relation to management of sanctions processes and policies—

- (a) whether the insurer screens policyholders and beneficiaries (where relevant) to determine whether they are subject to measures imposed under the International Sanctions Act 2003 and related regulations ("Bermuda sanctions regime");
- (b) whether the insurer screens employees to determine whether they are subject to measures imposed under the Bermuda sanctions regime;
- (c) the insurer shall state if he has frozen any client assets in the last 12 months pursuant to enforcement action taken under the Bermuda sanctions regime;
- (d) if the answer to the query in paragraph (c) is in the affirmative, the insurer shall state how many asset freezes there have been;
- (e) the insurer shall provide the following details for asset freezes from the consolidated list as published by the United Kingdom's Office of Financial Sanctions Implementation (OFSI)—

	Group ID Name	Name of the insurer	Name of the person/ entity owned/controlled by insurer?	Value of Assets
1				
2				
3				
4				

- (f) the insurer shall include any additional information/comments which he thinks might be relevant to this exercise.”.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Insurance Act 1978 (the “principal Act”) to, amongst other things, make provision for enhanced supervisory and regulatory requirements to apply to insurance brokers and agents in Bermuda, and in furtherance of amendments required to be made to the Fourth Schedule to the Bermuda Monetary Authority Act 1969, under the heading “Insurance Act 1978”.

Clause 1 Clause 1 provides for the Bill’s citation.

Clause 2 amends the principal Act in section 1 to insert new sub-category definitions of “special purpose business”. The new sub-category definitions are “restricted special purpose business” and “unrestricted special purpose business”. The Authority has proposed this amendment in furtherance of enhancing the manner in which it seeks to supervise and regulate the business to be carried on by Special Purpose Insurers. Where a Special Purpose Insurer proposes to conduct business with only one policyholder, it shall be deemed by the Authority to be carrying on “restricted special purpose business”; where a Special Purpose Insurer proposes to carry on business with multiple policyholders, it shall be deemed by the Authority to be carrying on “unrestricted special purpose business”. The Authority already has regard at the time of registration of Special Purpose Insurers regarding the number of policyholders it seeks to insure under section 5(2)(a) and now seeks to formalize this process.

Clause 3 amends the principal Act in section 4 by expanding the manner in which the Authority may register the type of special purpose business to be conducted by Special Purpose Insurers. Under the new provision a Special Purpose Insurer may be registered to carry on either “restricted” or “unrestricted” special purpose business.

Clause 4 amends the principal Act in section 4A to insert subsections (5) and (6), which provide that, when determining the class of general business to be conducted by a corporate body seeking registration, the Authority may also determine whether such corporate body may be registered to carry on run off insurance business.

Clause 5 amends the principal Act in section 6A to allow for the Authority to create prudential rules to govern the manner in which insurance brokers and agents are to comply with technical requirements.

Clause 6 amends the principal Act in section 6C to require insurance brokers or agents to apply to the Authority where they are desirous of being exempted from the requirements of any prudential rule (or any part thereof); or to have an applicable prudential rule modified.

Clause 7 amends the principal Act in section 8 to require insurance brokers and agents to have a principal office and to confirm at registration the location of such office; penalties shall apply for non-compliance.

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Clause 8 amends the principal Act in section 8B by repealing and replacing subsection (1) to provide clarity as to the opinion requirements to be imposed on a loss reserve specialist appointed by a Class 1, 2, 3 or Class IGB insurer.

Clause 9 amends the principal Act in section 14, (i) to require insurance brokers and agents to pay registration, annual and other relevant fees; (ii) to provide a new power to be exercised by the Authority to exempt any registered person from the payment of any fee imposed by or under the section; (iii) to require an application to be made in relation to excepted long term business under section 1(1)(a)(iv); and (iv) to provide a new power for the Authority to reduce any fee payable by a registered person under the section. The new provision requires that prior to granting exemption from or reduction of fee payment, the Authority is to take into account the nature, risks and scope of the business conducted or to be conducted by the registered person. The Authority may also revoke its approval and is required to notify the registered person in writing, who shall have 28 days from the notification date to make representations to the Authority. The Authority is required to have regard to representations made when making its decision.

Clause 10 amends the principal Act by inserting a new section 17B which imposes a requirement on insurance brokers and agents to file statutory financial statements.

Clause 11 amends the principal Act in section 18A to align it with the new requirement imposed on insurance agents and brokers under section 18AA; and ensures that there is a penalty imposed for non-compliance with such requirements.

Clause 12 amends the principal Act in section 28 by requiring insurance agents to maintain a list of insurers for whom they act.

Clause 13 amends the principal Act in section 30 to extend the power of investigations on behalf of the Authority to insurance brokers and agents.

Clause 14 amends the principal Act in section 30AA to require insurance brokers and agents to produce documents to the Authority in accordance with the requirements of the section.

Clause 15 amends the principal Act in section 30CA to require insurance brokers and agents to notify the Authority of changes of shareholder controller or officer.

Clause 16 amends the paragraph 4(2B) of the Schedule to the principal Act to extend the requirements of paragraph 4(2B) of the Schedule on minimum criteria for licensing to insurance brokers and agents.

Clause 17 provides for amendments in the Schedule to the Insurance Returns and Solvency Regulations 1980 to make requirements, among other things, with respect to the schedule of cyber risk management and the schedule of sanctions compliance.

Clause 18 provides for commencement.