

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

INSURANCE AMENDMENT (NO. 2) ACT 2015

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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 consequential amendments;

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. 2) Act 2015.

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Amends section 1

2 Section 1 of the principal Act is amended by inserting in the appropriate alphabetical order the following definitions—

“available statutory economic capital and surplus” means an amount equal to the total statutory economic capital and surplus including any adjustments thereto made under section 6D or by or under Rules made under section 6A of this Act;

“statutory economic balance sheet” means the balance sheet required to be produced in accordance with the prudential standards made under section 6A of this Act; that are applicable to any Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer or insurance group;

“total statutory economic capital and surplus” means the total statutory economic capital and surplus of a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer or insurance group; calculated in accordance with prudential standards made under section 6A of this Act;”.

Amends section 6A

3 Section 6A (1) of the principal Act is amended—

- (a) in paragraph (c), by deleting “insurance reserves; and” and substituting “insurance technical provisions;”;
- (b) in paragraph (d) by deleting the comma and substituting “; and”;
- (c) by inserting after paragraph (d) the following new paragraph—
 - “(e) public disclosures,”.

Amends section 6D

4 Section 6D of the principal Act is amended—

- (a) by deleting the section heading and substituting the following—

“Authority may make adjustment to enhanced capital requirement, available statutory capital and surplus, and available statutory economic capital and surplus”;

- (b) in subsection (1), by deleting “and available statutory capital and surplus ” and substituting “, available statutory capital and surplus, and available statutory economic capital and surplus”.

Amends section 8B

5 Section 8B (1) of the principal Act is amended by deleting “insurance loss reserves” and substituting “insurance loss reserves or insurance technical provisions”.

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Inserts section 8C

6 The principal Act is amended by inserting after section 8B the following new section—

“Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurer to maintain head office in Bermuda

8C (1) Every Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurer that satisfies the requirements of subsection (2) shall maintain its head office in Bermuda.

(2) The insurance business of the insurer must be directed and managed from Bermuda and, in determining whether the insurer complies with this requirement, the Authority shall consider, inter alia, the factors set out in subsection (3).

(3) The factors referred to in subsection (2) are—

- (a) where the underwriting, risk management and operational decision making of the insurer occurs;
- (b) whether the presence of senior executives who are responsible for, and involved in, the decision making related to the insurance business of the insurer are located in Bermuda;
- (c) where meetings of the board of directors of the insurer occur.

(4) Notwithstanding the considerations set out in subsection (3), the Authority may also have regard to the following matters—

- (a) the location where management of the insurer meets to effect policy decisions of the insurer;
- (b) the residence of the officers, insurance managers or employees of the insurer; and
- (c) the residence of one or more directors of the insurer in Bermuda.

(5) Subsection (1) shall not apply to a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer which has a permit under section 3 of the Non-Resident Insurance Undertakings Act 1967 or a permit under section 134 of the Companies Act 1981.”.

Amends section 14

7 Section 14(1) of the principal Act is amended—

- (a) in paragraph (e), by deleting “and”;
- (b) in paragraph (f), by deleting the period and substituting a semicolon;
- (c) by inserting the following after paragraph (f)—

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- “(g) application for approval to exempt or modify prudential standard requirements applicable to an insurer in accordance with the provisions of section 6C(1); and
- (h) application under section 6D (7) for an adjustment to an insurer’s or insurance group’s enhanced capital requirement or available statutory capital and surplus or available statutory economic capital and surplus, as the case may be.”.

Amends section 18B

8 Section 18B of the principal Act is amended in—

- (a) subsection (1) by deleting “Class 2, Class 3, Class 3A, Class 3B or Class 4 insurer” and substituting “Class 2 or Class 3 insurer”;
- (b) subsection (2)(a), by deleting the words “, Class 3A, Class 3B or Class 4”.

Amends section 26

9 Section 26(1) of the principal Act is amended by deleting “long-term insurance reserves” and substituting “long-term insurance reserves or long-term insurance technical provisions”.

Amends section 27

10 Section 27(1) of the principal Act is amended by deleting “An insurer to which this Part applies” and substituting “Every Class A and Class B insurer”.

Amends section 27B

11 Section 27B of the principal Act is amended by inserting after subsection (11) the following new subsection—

“(11A) Sections 14(5), (6), (7), (8) and (9) shall apply mutatis mutandis in relation to the payment of an annual fee by a designated insurer under subsection (11) in respect of an insurance group.”.

Amends section 27G

12 Section 27G (1) of the principal Act is amended by deleting “insurance reserves as reported in its statutory financials” and substituting “insurance technical provisions in accordance with the requirements of Schedule XIV “Group Statutory Economic Balance Sheet” of the Insurance (Prudential Standards) (Insurance Group Solvency Requirement) Rules 2011”.

Inserts section 30EA

13 The principal Act is amended by inserting after section 30E the following new section —

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“Notification by shareholder controllers of disposal of shares in public and private companies

30EA (1) No person who is a shareholder controller in accordance with section 30D, shall reduce or dispose of his holding in a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer, where the proportion of the voting rights held by the shareholder controller in the insurer will reach or fall below 10 per cent, 20 per cent, 33 per cent or 50 per cent, as the case may be; unless that shareholder controller has served on the Authority a notice in writing stating that he intends to reduce or dispose of such holding.

(2) A person who is a shareholder controller in accordance with section 30E, shall serve on the Authority a notice in writing that he has reduced or disposed of his holding in a Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer, where the proportion of the voting rights in the insurer held by him will have reached or has fallen below 10 per cent, 20 per cent, 33 per cent or 50 per cent as the case may be, not later than 45 days after such disposal.”.

Amends section 30G

14 The principal Act is amended in section 30G—

(a) by inserting after section (5A) the following new subsection—

“(5B) Any person who contravenes section 30EA by failing to give the notice required by subsections (1) and (2) of that section shall be guilty of an offence.”;

(b) in subsection (6) by deleting “(1) or (5A)” and substituting “(1), (5A) or (5B)”.

Amends section 31AA

15 Section 31AA(1)(b) of the principal Act is amended—

(a) in subparagraph (i), by deleting “unaudited interim statutory financial statements” and substituting “unaudited statutory economic balance sheets and unaudited interim financial statements prepared in accordance with GAAP”;

(b) in subparagraph (ii), by deleting “in relation to line 17(d) of those statements” and substituting “in relation to line 19 of the statutory economic balance sheet”;

(c) in subparagraph (vi), by deleting the words “in relation to line 27(d) of those statements” and substituting “in relation to line 27C of the statutory economic balance sheet”.

Consequential amendments

16 The Schedule, which amends the Insurance Returns and Solvency Regulations 1980, has effect.

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Commencement

17 (1) Subject to subsection (2), this Act shall come into operation when assented to.

(2) Sections 2, 4, 5, 6, 8, 9, 10, 11, 13, 14 and 15 of this Act shall come into operation on 1 January 2016.

SCHEDULE

(Section 16)

AMENDMENTS TO THE INSURANCE RETURNS AND SOLVENCY REGULATIONS 1980

The Insurance Returns and Solvency Regulations 1980 are amended—

(a) by deleting regulation 8(2)(a) and substituting the following—

“(a) in relation to Class 1 insurers, Class 2 insurers and Class 3 insurers, the amount prescribed by regulation 10 as the minimum margin of solvency, and whether it was met;”.

(b) in regulation 8A(2) by deleting “and Part IV (Classes 3A, 3B and 4)”;

(c) by deleting regulation 9(2)(e) and substituting the following—

“(e) in relation to Class A insurers and Class B insurers, the minimum margin of solvency for long-term business prescribed by regulation 12(1), and whether that margin was met;”;

(d) in paragraph 14(1), by deleting “of the insurer” and substituting “of a Class A or Class B insurer”; and

(e) in paragraph 14 (2) by deleting “The insurer’s” and substituting “A Class A or Class B insurer’s”.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Insurance Act 1978 (the “principal Act”) to address outstanding matters relating to the alignment of Bermuda’s insurance framework with the standards and initiatives under Solvency II. Consequential amendments in this regard are made, in the Schedule, with respect to the Insurance Returns and Solvency Regulations 1980.

Clause 1 provides a citation for the Bill.

Clause 2 amends the principal Act in section 1 to provide for the following new definitions: “available statutory economic capital and surplus”, “statutory economic balance sheet” and “total statutory economic capital and surplus” in relation to Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurers and insurance groups. The new definitions are to facilitate the implementation of economic capital requirement measures under Bermuda’s statutory economic balance sheet framework.

Clause 3 amends the principal Act in section 6A to make provision for the Authority to also prescribe prudential standard rules in relation to the preparation and publication of a financial conditional report by Class 3, Class 3B, Class 4, Class C, Class D and Class E insurers and insurance groups. In this regard, the Authority will make prudential standard rules to provide for technical requirements relating to the preparation and publication of such reports for each class of insurer.

Clause 4 amends the principal Act in section 6D to include reference to available economic capital and surplus to enable the Authority to make adjustments when the economic balance sheet regime is in place.

Clause 5 amends the principal Act in section 8B to require for both insurance loss reserves and insurance technical provisions to be assessed by an insurer’s appointed loss reserve specialist. Previously the requirement was only for insurance loss reserves to be assessed; however, in accordance with new requirements proposed under the economic balance sheet regime, “technical provisions” will now also require assessment by the Authority.

Clause 6 amends the principal Act to insert a new Section 8C which shall require all Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurers to establish a head office in Bermuda. Such requirements shall not apply to Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurers which have a permit issued under the Companies Act 1981 or the Non-Resident Insurance Undertakings Act 1967.

Clause 7 amends the principal Act in section 14 to make provision for a fee to be paid where an insurer applies to the Authority in accordance with section 6C to be exempted from or to modify insurance prudential standard requirements applicable to it; and for an insurer or insurance group to make an application under section 6D(7) to request an adjustment to its enhanced capital requirement or available statutory capital and surplus. These amendments are “house-keeping” measures as provision is already made pursuant

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to the Fourth Schedule to the Bermuda Monetary Authority Act 1969, under the heading "Insurance Act 1978", for fees to be paid on application made to the Authority. Therefore, the Authority seeks to include appropriate provisions under its primary legislation to clarify the fee related to this application process.

Clause 8 amends the principal Act in section 18B to limit the existing loss reserve specialist opinion (LRSO) statutory requirement to Class 2 and Class 3 insurers. For Class 3A, Class 3B and Class 4 insurers, the LRSO will be required in accordance with statutory economic balance sheet requirements under applicable prudential standards.

Clause 9 amends the principal Act in section 26 to provide in accordance with the rationale set out for loss reserve specialists under Clause 5.

Clause 10 amends the principal Act in section 27 to clarify that the statutory obligation for an approved actuary opinion (AAO) applies to Class A and Class B insurers, as the obligation to prepare the AAO for Class C, Class D and Class E insurers will be imposed under the Insurance (Prudential Standards) (Class C, Class D and Class E Solvency Requirement) Rules 2011.

Clause 11 amends the principal Act in section 27B to make provision for the requirements set out under sections 14(5), (6), (7), (8) and (9) to apply to the annual fee paid by a designated insurer in respect of an insurance group under section 27B (11); whereby if the Authority is satisfied, it may reduce the annual fee payable by such designated insurer in the same manner as annual fees reduced by it under section 14.

Clause 12 amends the principal Act in section 27G to clarify that the group actuary will submit the group actuarial opinion under the Insurance (Prudential Standards) (Insurance Group Solvency Requirement) Rules 2011, which are being amended.

Clause 13 amends the principal Act to insert a new section 30EA to make provision for shareholder controllers of Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurers to notify the Authority of their intent to dispose of holdings in such an insurer whereby the reduction results in their holdings falling below or being reduced to 10 per cent, 20 per cent, 33 per cent or 50 per cent in that insurer. In relation to "public companies" the notification may occur within 45 days after the disposal; however, in relation to "private companies" the notification is required to be made prior to the intended disposal. The new provisions are required to enhance the Authority's supervisory oversight in relation to a commercial insurer's beneficial ownership structure.

Clause 14 amends the principal Act in section 30G to make it an offence for a Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurer to fail to file a notification in accordance with proposed section 30EA. This is similar to the offence created under this section in relation to a failure by an insurer to file a notification under section 30E.

Clause 15 amends the principal Act in section 31AA to provide for where an insurer fails to comply with enhanced capital requirements. Upon failure, an insurer shall be required to provide to the Authority an interim "statutory economic balance sheet", in addition to unaudited interim GAAP financial statements, and any other requirements in accordance with relevant prudential standards.

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Clause 16 provides for consequential amendments to the Insurance Returns and Solvency Regulations 1980.

Clause 17 provides for the commencement of the Act and for various provisions of the Act to commence on different dates. The provisions of sections 2, 4, 5, 6, 8, 9, 10, 11, 13, 14 and 15 shall come into operation on 1 January 2016. These sections pertain to head office requirements and the economic balance sheet regime. The remaining sections 1, 3, 7, 12, 16 and 17 which deal with additional applications for modifications, fees, disposal of shareholdings and the changes to the Insurance Returns and Solvency Regulations are to come into effect when the Act is assented to.