



BERMUDA

INSURANCE AMENDMENT (NO. 2) ACT 2015

2015 : 31

TABLE OF CONTENTS

|    |                                                              |
|----|--------------------------------------------------------------|
| 1  | Citation                                                     |
| 2  | Amends section 1                                             |
| 3  | Amends section 6A                                            |
| 4  | Amends section 6D                                            |
| 5  | Amends section 8B                                            |
| 6  | Inserts section 8C                                           |
| 7  | Amends section 14                                            |
| 8  | Amends section 18B                                           |
| 9  | Amends section 26                                            |
| 10 | Amends section 27                                            |
| 11 | Amends section 27B                                           |
| 12 | Amends section 27G                                           |
| 13 | Inserts section 30EA                                         |
| 14 | Amends section 30G                                           |
| 15 | Amends section 30JA                                          |
| 16 | Amends section 31AA                                          |
| 17 | Consequential amendments                                     |
| 18 | Commencement                                                 |
|    | 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;

INSURANCE AMENDMENT (NO. 2) ACT 2015

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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.

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”;

INSURANCE AMENDMENT (NO. 2) ACT 2015

---

- (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”.

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.”.

INSURANCE AMENDMENT (NO. 2) ACT 2015

---

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)—
  - “(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

INSURANCE AMENDMENT (NO. 2) ACT 2015

---

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 —

“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 30JA

15 Section 30JA of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (j), by deleting the full-stop and substituting a semicolon;

(ii) by inserting after paragraph (j) the following new paragraph—

“(k) outsourcing of an officer role.”;

(b) by inserting after subsection (3) the following—

“ “officer” means in relation to an insurer, a chief executive or senior executive performing the duties of underwriting, actuarial, risk

INSURANCE AMENDMENT (NO. 2) ACT 2015

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management, compliance, internal audit, finance or investment matters.”.

Amends section 31AA

16 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

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

Commencement

18 (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, 15 and 16 of this Act shall come into operation on 1 January 2016.

SCHEDULE

(Section 17)

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”.

[Assent Date: 13 July 2015]

*[Operative Dates: All remaining sections in force 13 July 2015 except sections 2, 4, 5, 6, 8, 9, 10, 11, 13-16 in force 1 January 2016.]*