

## The New Bermuda Solvency Capital Requirements



On 2 July 2010, the Bermuda Monetary Authority (the “BMA”) issued a draft of the Insurance (Prudential Standards) (Class 4 and Class 3B Solvency Requirement) Amendment Order 2010 (the “2010 Order”).

The 2010 Order amends the Insurance (Prudential Standards) (Class 4 Solvency Requirement) Order 2008 that is already in place for Class 4 Insurers (the “2008 Order” and, as amended by the 2010 Order, the “New Order”), by extending its application to Class 3B Insurers. The New Order is part of the BMA’s continuing programme to establish a risk-based capital model that will allow the BMA to better measure risk and determine appropriate levels of capitalization for Bermuda’s insurance industry. The New Order is expected to be effective on 31 December 2010.

Promulgated by the BMA under its remit to prescribe prudential standards for insurers, the New Order compels each Class 3B Insurer to calculate enhanced capital requirements (“ECR”) and maintain available statutory capital and surplus equal to or exceeding such ECR. The New Order contains the BMA’s prescribed model for calculating ECR; however, a Class 3B Insurer may apply to the BMA for permission to use its own internal capital model. The BMA’s approval of any internal capital model may be subject to conditions and such approval may be revoked if it is determined that the conditions have been breached.

Pursuant to the New Order, each Class 3B Insurer will also need to make a capital and solvency return to the BMA within four months of its financial year end. Any person knowingly or recklessly making a false or misleading statement or return to the BMA will be guilty of an offence and liable to a fine.

A Class 3B Insurer that fails to comply with its ECR must: (a) file a written report with the BMA within 14 days of becoming aware of such failure (or of having reason to believe that failure has occurred); and (b) furnish the BMA with financial statements, the opinion of a loss reserve specialist, a solvency certificate, and a capital and solvency return, all within 45 days of becoming aware of such failure (or of having reason to believe that failure has occurred). Furthermore, the Class 3B Insurer may not declare or pay any dividends until its failure to comply with ECR has been rectified.

In addition, the Insurance Act 1978 (the “Act”) empowers the BMA to give directions to safeguard the interests of clients and potential clients of any Class 3B Insurer that fails to comply with ECR. In particular, the BMA may direct such Class 3B Insurer: (a) not to effect further contracts of insurance or any contract of insurance of a specified description; (b) to limit the aggregate of premiums to be written by it during a specified period; (c) not to vary any contract of insurance (if the effect of the variation would be to increase its liabilities); (d) not to make any investment of a specified class; (e) before the expiration of a specified period, to realize any existing investment of a

specified class; (f) not to declare or pay any dividends or any other distributions, or to restrict the making of such payments to such extent as the BMA thinks fit; (g) not to enter into any specified transaction with any specified person or persons of a specified class; (h) to provide such written particulars relating to its financial circumstances as the BMA thinks fit; (i) to obtain the opinion of a loss reserve specialist with respect to general business, or an actuarial opinion with respect to long-term business, and to submit it to the BMA within a specified time; and (j) to remove a controller or officer.

An insurer that fails to comply with a direction given by the BMA, as well as any person who causes such direction to be contravened, commits an offense under the Act that may be punishable: (a) on summary conviction, by imprisonment for 12 months, a fine, or both; or (b) on conviction on indictment, by imprisonment for 3 years, a fine, or both.

Class 4 Insurers are already required to comply with ECR. The New Order will extend such requirements (along with the consequences for failing to comply with such requirements) to Class 3B Insurers. The BMA has indicated a willingness to discuss the implementation of the New Order and its impact on Class 3B Insurers. Therefore, Class 3B Insurers are encouraged to review their internal capital models in relation to ECR and the BMA's suggested capital model. It is recommended that any issues or questions should be raised with the BMA well in advance of the effective date of the New Order.

Should you have any questions or requests for further information please contact:

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