

Insurance Amendment (No.3) Act 2010



The Insurance Amendment (No. 3) Act 2010 (the “Act”) became operative on 31 December 2010. The Act enhances the Authority’s current insurance regime and makes additional amendments to the Insurance Act 1978 (the “Principal Act”) in relation to, amongst other matters: (1) the classification of insurers carrying on long-term business; (2) clarifying the requirements of shareholder controllers when notifying the Authority when there is a change/proposed change to the control of an insurer¹; and (3) widening the powers of the Authority in relation to group supervision.

New Classification System for Insurers Carrying on Long-Term Business

The Act introduces a classification system for insurers carrying on long-term business and gives legislative effect to the Authority’s proposals to introduce an enhanced solvency framework for such insurers. The Act defines the new classes as follows:

Class A – Insurer wholly-owned by one person and whose business consists only of insuring the risks of that person OR is an affiliate of a group and intends only to insure the risk of any other affiliates of that group or its own shareholders.

Class B – Insurer is wholly-owned by two or more unrelated persons and not less than 80 per cent of the premiums written will be written for the purpose of insuring the risk of any of those persons or of affiliates of any of those persons OR risks arising out of the business of those persons or any affiliates.

Class C – Insurer has total assets of less than \$250 million and is not registrable as a Class A or Class B insurer.

Class D – Insurer has total assets of \$250 million or more but less than \$500 million and is not registrable as a Class A or Class B insurer.

Class E – Insurer has total assets of more than \$500 million and is not registrable as a Class A or Class B insurer.

Insurers carrying on long-term business have until September 2011 to reclassify under the new regime.

Solvency Requirements for Long-Term Insurers

The Act introduces new solvency requirements for insurers carrying on long-term business.

The Authority will not register an insurer in Classes A, B, C, D or E unless it is satisfied that the insurer meets the minimum margin of solvency. Those minimums are:

- Class A – greater of \$120,000 or 0.5 per cent of assets;
- Class B – greater of \$250,000 or 1.0 per cent of assets;
- Class C – greater of \$500,000 or 1.5 per cent of assets;
- Class D – greater of \$4,000,000 or 2.0 per cent of first \$250 million of assets plus 1.5 per cent of assets above \$250 million; and

¹ References to insurer and insurance include reinsurer and reinsurance

- Class E – greater of \$8,000,000 or 2.0 per cent of first \$500 million of assets plus 1.5 per cent of assets above \$500 million.

Requirement to Notify the Authority regarding New or Increased Shareholder Control

Under the Act no shareholder or prospective shareholder of a private company may become a 10 per cent, 20 per cent, 33 per cent, or 50 per cent shareholder controller of such insurer unless: (1) he notifies the Authority of such intentions; and (2) either the Authority notifies him that it has no objection or the prescribed time elapses without the Authority objecting to such change.

Where an insurer's shares, or its parent company's shares, are traded on any stock exchange the shareholder must notify the Authority within 45 days of becoming a 10 per cent, 20 per cent, 33 per cent, or 50 per cent shareholder controller of such insurer.

Notification by Registered Persons and Designated Insurers of Change of Controller and Officer

A registered person or a designated insurer (save Class 1 and Class 2 insurers, Special Purpose Insurers and Class A and Class B insurers) must notify the Authority that a person has become, or has ceased to be, a controller of that registered person or designated insurer. Class 1 and Class 2 insurers, Special Purpose Insurers and Class A and Class B insurers shall, at the time of filing annual statements, file with the Authority a list of every person who has become or has ceased to be an officer or controller of that person during the financial year to which the financial statements relate.

Material Change

A registered person or designated insurer, in certain circumstances, must notify the Authority that it proposes to take measures that are likely to be of material significance for the discharge, in relation to the insurer or the insurance group, of the Authority's functions under the Principal Act. Measures that are likely to be of material significance include:

- transfer or acquisition of insurance business being part of a scheme falling within section 25 of the Act or section 99 of the Companies Act 1981;
- amalgamation with or acquisition of another firm; and
- engaging in non-insurance business and activities related thereto, where such business or related activity is not ancillary to the insurance business of the insurer.

No insurer shall effect a material change unless: (1) it notifies the Authority of such intentions; and (2) either the Authority notifies it that it has no objection to such change or the prescribed time elapses without the Authority objecting to such change.

Group Supervision

The Authority may now include within group supervision any company that is a member of a group; whether on its own initiative or upon the application of the relevant designated insurer if it is satisfied that:

- the financial operations of the company may have a material impact on the insurance group's operations; and
- the inclusion of the company would be appropriate with respect to the objectives of group supervision.

Conclusion

The new provisions will result in the continued growth of the Island's international business sector as they provide further evidence of Bermuda's commitment to international best practice standards of insurance and they ensure the protection of policy holders.

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