

Insurance Amendment Act 2011



Operative **31 December 2011**, the **Insurance Amendment Act 2011** (“The Amendment Act”) imposes requirements on Class 3A insurers which previously were only applicable to Class 3B and 4 insurers and seeks to address some minor issues arising out of consultation with industry. This brief will outline the amendments grouped by applicability to a particular class of insurer. The brief also includes a summary of the changes to definitions, new powers of the BMA, procedural amendments and changes to existing requirements as a result of the Amendment Act.

Changes to definitions

Amendments were made to the Interpretation section of the **Insurance Act 1978** (“The principal Act”) so as to adequately capture the nature of an insurance group in Bermuda.

Enhanced Capital Requirement to apply to Class 3A Insurers

The Amendment Act extends the application of the Enhanced Capital Requirement (ECR) to Class 3A insurers. Hitherto the ECR was only applicable to Classes 3B and 4. With this change, all non-captive classes of general business insurers must now comply with ECR. This change addresses one of the issues identified by the European Insurance and Occupational Pensions Authority (EIOPA) in their draft report on their Solvency II equivalence assessment of the jurisdiction.

Filing obligations for Class 3A and Class E Insurers

There is now an obligation on all Class 3A, Class 3B, Class 4 or Class E insurers to prepare and file in addition to statutory financial statements, financial statements prepared in accordance with IFRS, Bermudian, Canadian, UK or US GAAP; or any other GAAP recognised by the Authority. Hitherto, only Class 3B and Class 4 insurers had to prepare and file GAAP statements with their annual return.

Group Supervision Rules

The definition of “specified insurer” has been revised to include not only Class 3B and Class 4 insurers, but also Class 3A and Class E insurers. The group supervision powers of the BMA therefore now extend to such classes of insurer.

Extension of restrictions as to reduction of capital to Class 3A, Class C and Class D Insurers

The Act has been amended to extend to Class 3A, C and D the requirement to include in any application to the BMA for approval of a reduction of an insurer’s total statutory capital by 15% or more, an affidavit of solvency signed by two directors and the principal representative.

Extension of “safe harbour” provisions for Class C and D Insurers

In line with the current provisions applicable to Class 3A insurers, provision has been made in the Act to allow Class C and D long-term insurers to continue to

carry on business, in certain circumstances, even if they exceed their total asset limits.

Requirements on failure to meet solvency margins extended to all classes of insurer

Section 31A regarding failure to meet solvency requirements has been amended to extend such provisions to all classes of insurer. Insurers failing to meet their minimum margin of solvency shall within 30 days after becoming aware of the failure or having a reason to believe such failure has occurred, file a report with the Authority regarding the manner, time and circumstances leading to the failure, and shall not declare or pay any dividends until the failure is rectified. Previously the obligations under section 31A were not imposed on insurer Classes 1, 2, A or B.

BMA powers and procedural amendments

The Amendment Act allows the BMA to use its discretion to exempt an insurer from any obligations arising out of a rule made in accordance with section 6A (i.e. rules prescribing prudential standards in relation to ECR, capital and solvency returns, insurance reserves and eligible capital). Previously this section only allowed for an exemption to be made upon application by an insurer to the BMA.

The BMA also now has the ability to use its discretion to appoint an inspector to investigate the affairs of any insurer (instead of requiring the BMA to do so) where any insurer fails within 3 months of its filing dates to file any statutory financial statements required, additional GAAP financial statements, statutory financial returns or capital or solvency returns.

Changes to existing requirements under the principal Act

The Amendment Act added a provision for the paid up share capital requirement for Classes C, D and E insurers to be \$250,000 as opposed to the current requirement of \$500,000. This is a related amendment required to align this measure with the obligations of such insurers under Schedule III “Minimum Margin of Solvency for Long-Term Business” to the **Insurance Returns and Solvency Regulations 1980** which

was recently amended to allow for a transitional period for insurers to meet relevant requirements.

A principal representative is now able to report (in addition to existing matters set out thereunder) to the BMA when a Class C insurer exceeds the limitations on its total assets of less than \$250 million; and where a Class D insurer exceeds the limitations on its total assets of less than \$500 million.

Finally, insurers are now able to pay a more favorable prorated registration fee and the BMA now has the power to take into consideration whether annual fees do not have to be paid based on the diminution in the level of insurance business conducted as opposed to the former criteria of whether such payment would be detrimental to the insurance business conducted.

Conclusion

Overall the changes to the regulation of insurance business made by the Amendment Act enables Bermuda to remain a competitive jurisdiction and creates an environment conducive for business and economic growth. On insurance supervision, the Bermuda Government has stated that the goal is to maintain a pragmatic regulatory framework that works for Bermuda which can also be regarded as equivalent to other jurisdictions.

Should you have any questions or requests for further information, please contact one of the following:

Timothy Faries
Group Team Leader - Insurance
Partner
tfaries@applebyglobal.com

Janita Burke
Partner
jburke@applebyglobal.com

Bermuda
British Virgin Islands
Cayman Islands

Guernsey
Hong Kong
Isle of Man

Jersey
London
Mauritius

Seychelles
Zurich