

7th October, 2010

Dear (re) Insurers:

Re: – Insurance Amendment No.3 Act 2010

The Bermuda Monetary Authority (the Authority) has issued the Insurance Amendment (No. 3) Act 2010 (the Bill) for consultation to the market. The Bill seeks to effect further enhancements to the Authority's current insurance regime. It includes measures already consulted on and responded to with industry in July 2010, and proposes additional amendments to the Insurance Act 1978 (the "Act") in relation to, among other matters, the classification of Long-Term insurers under a new system; widening the powers of the Authority in relation to group supervision; and clarifying requirements of shareholder controllers in relation to serving notification to the Authority when there is a change/proposed change to the control of an insurer.

The Authority invites the insurance industry and other interested persons to provide their views on the proposed amendments set out in this Bill. Comments should be provided no later than 5th November 2010 addressed to Mr. William Kattan (policy@bma.bm).

Brief description of the proposed changes

1. Available statutory capital - The Bill provides for consequential amendment to the definition of "*available statutory capital*"; and new provisions are contemplated under section 6 of the Act for the Authority to prescribe eligible capital requirements in relation to Class 3B and Class 4 insurers. It is further proposed for all insurers to be required to maintain records in Bermuda (similar to current provisions for some insurers).
2. Group supervision - The Bill makes provision for the Authority to have the power to include a specific entity within a group; whether on its own initiative or upon application made by the relevant designated insurer. The Bill also provides for the imposition of requirements on Class 3B insurers throughout the Act and related regulations; which previously were only applicable to Class 4 insurers.
3. Material changes - Material change notification and approval provisions are proposed to be introduced across the board for all insurers pursuant to a new section 30JB, whereby insurers and designated insurers within a group shall be required to serve notice on the Authority of an intended material change (as such term has been defined in the Bill); and the Authority shall be provided with the power to object to such notice served within 14 days of receipt under the proposed section 30JC. The Authority intends to issue guidance in due course on what it considers to be material for the purposes of the requirement to report material changes, to provide insurers with further clarification of its requirements in this regard. Generally, the Authority would be interested in being notified of proposed changes that would significantly alter an insurer's risk profile in order to assess the impact of such changes.

4. Long-Term insurers – This Bill gives legislative effect to the proposals to introduce an enhanced solvency framework for Bermuda’s Long-Term insurers, as issued in the Authority’s Consultation Paper “Solvency Framework for Long-Term Insurers”. Transitional provisions have been introduced for Long-Term insurers that qualify (prior to commencement of the Bill) to be registered in one of the new classes put forward in thoes proposals; and such insurers shall have until September 2011 to re-classify under the new regime. Consequential amendments are proposed to be made to the Insurance Returns and Solvency Regulations 1980; and the commencement date of the Bill is 31st December 2010.

Encl.

Insurance Amt (No 3) Act 2010

7 Oct 2010

DRAFT

A BILL

entitled

INSURANCE AMENDMENT (NO. 3) ACT 2010

TABLE OF CONTENTS

1	Citation
2	Interpretation
3	Amends section 1
4	Amends section 4
5	Adds new sections 4EA to 4EF
6	Amends section 4F
7	Amends section 6
8	Amends section 7
9	Amends section 8A
10	Amends section 14
11	Amends section 17
12	Amends section 17A
13	Amends section 18A
14	Amends section 18C
15	Adds new section 27CA
16	Repeals and replaces Section 30D
17	Adds section 30E
18	Amends section 30G
19	Repeals and replaces section 30J
20	Inserts new section 30JA
21	Amends section 31A
22	Amends section 31C
23	Amends section 44A
24	Transitional
25	Consequential amendment
26	Commencement
	Schedule

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 may be cited as the Insurance Amendment (No. 3) Act 2010.

Interpretation

2. In this Act, the "principal Act" means the Insurance Act 1978.

Amends section 1

3. Section 1(1) of the principal Act is amended -

- (a) in the definition of "available statutory capital and surplus" by inserting "or under rules made by the Authority under section 6(6)" after "6D";
- (b) by inserting the following definition after the definition of "capital and solvency return" -
"Class A, Class B, Class C, Class D and Class E in relation to an insurer carrying on long-term business mean the class of the insurer's registration under section 4."; and
- (c) by deleting the definition of "long term insurer".

Amends section 4

4. Section 4 of the principal Act is amended—

- (a) by repealing subsection (1) (b) and substituting the following—
"(b) as a Class A, Class B, Class C, Class D or Class E insurer where it proposes to carry on long-term business;
- (b) in subsection (1)(c) by deleting "long-term insurer" and substituting "Class A, Class B, Class C, Class D or Class E insurer";
- (c) in subsection (6)(b) by deleting "long-term insurer" and substituting "Class A, Class B, Class C, Class D or Class E insurer";
- (d) in subsection (6)(c) by deleting "long-term insurer" and substituting "Class A, Class B, Class C, Class D or Class E insurer".

Adds new sections 4EA to 4EF

5. The principal Act is amended by adding the following sections after section 4E—

"Determination of class of registration for long-term business

4EA (1) Subject to subsection (2), the Authority shall determine whether a body corporate proposing to carry on long-term business shall be registered as a Class A, Class B, Class C, Class D or Class E insurer in relation to its long-term business in accordance with sections 4EB to 4EF.

(2) But a body corporate may be registered as a particular class of insurer where it would not be so registrable under sections 4EB to 4EF if, after taking into account—

- (a) the nature of the intended relationship between the body corporate and its intended policy-holders, the interests of those policy-holders and of the public generally, and
- (b) the level of regulation which is applicable to the different classes of insurers carrying on long-term business,

the Authority considers it appropriate, whether or not on an application made to it for that purpose by the body corporate.

(3) An application under this section shall be in such form, shall contain such information and shall be accompanied by such documents as the Authority may require.

Class A insurer

4EB A body corporate is registrable as a Class A insurer where that body corporate—

- (a) is wholly owned by one person and intends to carry on long-term business consisting only of insuring the risks of that person; or
- (b) is an affiliate of a group and intends to carry on long-term business consisting only of insuring the risks of any other affiliates of that group or of its own shareholders.

Class B insurer

4EC (1) A body corporate is registrable as a Class B insurer where that body corporate is wholly owned by two or more unrelated persons and intends to carry on long-term business not less than 80% of the net premiums written in respect of which will be written for the purpose of—

- (a) insuring the risks of any of those persons or of any affiliates of any of those persons; or
- (b) insuring risks which, in the opinion of the Authority, arise out of the business or operations of those persons or any affiliates of any of those persons.

(2) A body corporate is registrable as a Class B insurer where that body corporate would be registrable as a Class A insurer but for the fact that—

- (a) not all of the business which it intends to carry on, but at least 80% of the net premiums written, will consist of the long-term business described in paragraph (a) or (b) of section 4EB; or
- (b) it intends to carry on long-term business not less than 80% of the net premiums written in respect of which will, in the opinion of the Authority, arise out of the business or operations of the person by whom it is owned or any of the affiliates of that person.

Class C insurer

4ED A body corporate is registrable as a Class C insurer where that body corporate has total assets of less than \$250 million and is not registrable as a Class A or Class B insurer.

Class D insurer

4EE A body corporate is registrable as a Class D insurer where that body

corporate 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

4EF A body corporate is registrable as a Class E insurer where that body corporate has total assets of more than \$500 million and is not registrable as a Class A or Class B insurer.”

Amends section 4F

6. Section 4F of the principal Act is amended-

(a) by inserting in its alphabetical order the following definition—

““total assets” in relation to Class C, Class D and Class E insurers means the total assets reported on an insurer’s balance sheet in the relevant year less the amount held in a segregated account.”;

(b) by inserting the following subsection after (2)—

“(3) For the purposes of sections 4ED, 4EE and 4EF account shall be had to the total assets reported on the insurer’s balance sheet in the relevant year less the amount held in a segregated account.

(4) In subsection (3), “segregated account” has the meaning given in section 2 (1) of the Segregated Accounts Act 2000.”.

Amends section 6

7. Section 6 of the principal Act is amended—

(a) by repealing the heading and subsection (1) and replacing with the following—

“Further registration requirements

6 (1) The Authority shall not register a body corporate as a Class 1, Class 2, Class 3 or Class 3A insurer, Special Purpose Insurer or Class A, Class B, Class C or Class D insurer under section 4 unless the Authority is satisfied that the body corporate meets the minimum margin of solvency.

(1A) Notwithstanding subsection (1), the Authority may register a body corporate as a Class D insurer if it is satisfied that that body corporate will meet its minimum margin of solvency on the date when that body corporate commences business as a Class D insurer.”

(b) by repealing subsection (2) and;

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

“(4) The Authority shall not register a body corporate as a Class 3B, Class 4, or Class E insurer under section 4 unless it is satisfied that the amount of the available statutory capital and surplus of the body corporate, on the date of registration, meets—

(a) its minimum margin of solvency; and

(b) its enhanced capital requirement.

(5) Notwithstanding subsection (4), the Authority may register a body corporate as a Class 4 or Class E insurer if it is satisfied that the amount of the available statutory capital and surplus of the body corporate will meet the

requirements of subsection (4) (a) and (b) on the date when the body corporate commences business as a Class 4 or, as the case may be, a Class E insurer.

(6) The Authority may make rules for the purposes of calculating the available statutory capital and surplus of a body corporate or an insurer.

(7) The rules may make different provisions for different classes of insurers.

(8) Section 6A(5), (6) and (7) and section 6B apply to rules made under subsection (6) as they apply to an Order made under section 6A.

(9) In this section “minimum margin of solvency” means the prescribed amount by which the value of the assets of a body corporate exceeds the amount of its liabilities.”

Amends section 7

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

- (a) by repealing paragraphs (b) and (c);
- (b) by inserting the following paragraphs after paragraph (f)—
 - “(g) as a Class A insurer is \$120,000
 - (h) as a Class B insurer is \$250,000
 - (i) as a Class C, D or E insurer is \$1,000,000
 - (j) as an insurer registered in two classes, the aggregate amount of share capital of all the classes for which it is registered.”.

Amends section 8A

9. Section 8A(2) of the principal Act is amended by deleting paragraph (g) and substituting the following—

“(g) in relation to an insurer, a material change within the meaning of section 30JA(1) and (2);”.

Amends section 14

10. Section 14(4) of the principal Act is amended by deleting “or Class 4 insurer” and substituting “Class 4, Class C, Class D or Class E insurer”.

Amends section 17

11. Section 17 (4) of the principal Act is amended -

- (a) in paragraph (a) by deleting “(which is not also a long term insurer)” and substituting “(which is not a Class C, Class D or Class E insurer), or a Class A or Class B insurer”; and
- (b) in paragraph (b) by deleting “ long-term insurer” and substituting “Class C, Class D or Class E insurer”.

Amends section 17A

12. Subsections (1), (5) and (7) of section 17A of the principal Act are amended, in each case, by inserting “Class 3B or” before “Class 4”.

Amends section 18A

13. (1) Section 18A(2) is amended—
- (a) in paragraph (a) by deleting “or a Class 2” and substituting “or a Class 2, Class A or Class B insurer”;
 - (b) in paragraph (b) by deleting “or a long term insurer” and substituting “, Class C, Class D, or Class E insurer”.
- (2) Section 18A(5) of the principal Act is amended by inserting “Class 3B or” before “Class 4”.

Amends section 18C

14. Section 18C(1) of the principal Act is amended in the tailpiece by deleting “Class 1 insurers, Class 2 insurers, Class 3 insurers, Class 4 insurers” and substituting “Class 1, Class 2, Class 3, Class 3A, Class 3B, Class 4, Special Purpose Insurers, Class A, Class B, Class C, Class D and Class E insurers,”.

Adds new section 27CA

15. The principal Act is amended by inserting the following section after section 27C —

“Authority may include specified entities within group supervision

27CA (1) The Authority may, on its own initiative or on the application of the relevant designated insurer, include within group supervision any company that is a member of the group but is not on the register maintained under section 27B(7) if it is satisfied that —

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

(2) The Authority shall notify the relevant designated insurer and competent authority in writing of any decision to include a company within the scope of group supervision.”.

Repeals and replaces Section 30D

16. Section 30D of the principal Act is repealed and replaced by the following—

“Notification by shareholder controllers of new or increased control – private companies

30D (1) This section applies to a shareholder or a prospective shareholder of an insurer whose shares or the shares of its parent company, if any, are not traded on any stock exchange.

(2) No person to whom this section applies shall become a 10 per cent, 20 per cent, 33 per cent, or 50 per cent shareholder controller of an insurer unless—

- (a) he has served on the Authority a notice in writing stating that he intends to become such a controller of the insurer; and
- (b) either the Authority has, before the end of the period of forty-five days beginning with the date of service of that notice, notified him in writing that there is no objection to his becoming such a controller of the insurer, or that period has elapsed without the Authority having served him under section 30F with a written notice of objection to his becoming such a controller of the insurer.

(3) A notice under subsection (2)(a) shall contain such information as the Authority may direct and the Authority may after receiving such a notice from any person, by notice in writing require him to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve notice of objection.

(4) Where additional information or documents are required from any person by a notice under subsection (3) the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (2)(b).”.

Adds section 30E

17. The principal Act is amended by adding the following section after section 30D—

“Notification by shareholder controllers of new or increased control - public companies

30E (1) This section applies to a shareholder of an insurer whose shares or the shares of its parent company, if any, are traded on any stock exchange recognized by the Authority for this purpose.

(2) Not later than forty-five days after a person to whom this section applies becomes a 10 per cent, 20 per cent, 33 per cent, or 50 per cent shareholder controller of an insurer, that person shall file with the Authority a notice in writing stating that he has become such a controller.”.

Amends section 30G

18. Section 30G of the principal Act is amended by inserting after subsection (4) the following—

“(4A) Any person who contravenes section 30E by failing to give the notice required by subsection (2) of that section shall be guilty of an offence.”.

Repeals and replaces section 30J

19. Section 30J of the principal Act is repealed and replaced with the following—

“Notification by registered persons and designated insurers of change of controller and officer

30J (1) A registered person, or a designated insurer shall give written notice to the Authority of the fact that any person has become or ceased to be a controller of that registered person or designated insurer.

(2) A registered insurer and a designated insurer in respect of the parent company of the insurance group, shall give written notice to the Authority of the fact that any person has become or ceased to be an officer of that registered person or of the parent company of the group as the case may be.

(3) A notice under subsection (1) or (2) shall be given before the end of a period of forty-five days beginning with the day on which the registered person, registered insurer or designated insurer becomes aware of the relevant facts.

(4) Notwithstanding subsection (2), a registered person falling within a class specified in subsection (5) (‘specified classes’) shall, at the time of filing the annual financial statements under section 17, 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, specifying the dates when such person has become a controller or officer and the dates when they have ceased to be such controller or officer.

(5) Class 1 and Class 2 insurers, Special Purpose Insurers, Class A and Class B insurers are specified for the purposes of subsection (4).

(6) A person who fails to give the notice required by subsection (1) or (2) or fails to file a list as required by subsection (4) within the time specified therein, is guilty of an offence and liable on summary conviction to a fine of \$50,000.

(7) For the purposes of this section “officer” means a director, chief executive or senior executive performing duties in relation to underwriting, actuarial, risk management, compliance, internal audit, finance or investment matters.”.

Inserts new section 30JA

20. The principal Act is amended by inserting the following section after section 30J –

“Material change

30JA (1) This section applies to a registered insurer and a designated insurer in respect of the group of which it is a member, that proposes to take certain measures that are likely to be of material significance for the discharge in relation to the insurer or the insurance group as the case may be, of the Authority’s functions under this Act (“material change”).

(2) Without prejudice to the generality of subsection (1), the following are measures that are likely to be of material significance for the discharge of the Authority’s functions under this Act —

- (a) transfer or acquisition of insurance business being part of a scheme falling within section 25 of this Act or section 99 of the Companies Act 1981;
- (b) amalgamation with or acquisition of another firm;
- (c) material change in the insurer’s business plan not otherwise reported to the Authority.

Notification of material change

30JB (1) No insurer to whom section 30JA applies shall take steps to give effect to a material change unless it satisfies the requirements of subsection (3).

(2) No designated insurer to whom section 30JA applies shall permit another member of the group to take steps to give effect to a material change unless it satisfies the requirements for notice specified in subsection (3).

(3) Those requirements are that the insurer or designated insurer as the case may be —

- (a) has served on the Authority a notice in writing stating that the insurer, or in the case of a designated insurer, a member of the group as the case may be, intends to effect such a material change; and
- (b) either the Authority has, before the end of the period of fourteen days beginning with the date of service of that notice, notified it in writing that there is no objection to its effecting the material change or that period has elapsed without the Authority having served it with a written notice of objection to the material change.

(4) A notice under subsection (3)(a) shall contain such information as the Authority may direct and the Authority may after receiving such a notice from any person, by notice in writing require it to provide such additional information or documents as the Authority may reasonably require for deciding whether to serve notice of objection.

(5) Where additional information or documents are required from any person by a notice under subsection (4) the time between the giving of the notice and the receipt of the information or documents shall be added to the period mentioned in subsection (3)(b).

Objection to material change

30JC (1) The Authority shall serve a notice of objection under this section on a person who has given notice under section 30JB unless it is satisfied –

- (a) that the interests of policyholders and potential policyholders of the insurer or the insurance group, as the case may be, would not in any manner be threatened by the material change; and
- (b) without prejudice to paragraph (a) that, having regard to the material change the requirements of this Act would continue to be complied with or, if any of those requirements are not complied with, that the insurer concerned is likely to undertake adequate remedial action.

(2) Before serving a notice of objection under this section the Authority shall serve the insurer concerned with a preliminary written notice stating that the Authority is considering service on that insurer of a notice of objection and that notice–

- (a) shall specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and subject to subsection (5), the reasons for which it is not satisfied; and
- (b) shall give particulars of the rights conferred by subsection (3).

(3) A person served with a notice under subsection (2) may, within a period of twenty-eight days beginning with the day on which the notice is served, make written representations to the Authority; and where such representations are made the Authority shall take them into account in deciding whether to serve a notice of objection.

(4) A notice of objection under this section shall –

- (a) specify which of the matters mentioned in subsection (1) the Authority is not satisfied about and, subject to subsection (5), the reasons for which it is not satisfied; and
- (b) give particulars of the rights conferred by section 44A.

(5) Subsections (2)(a) and (4)(a) shall not require the Authority to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party.

Contraventions by insurer

30JD (1) Any person who contravenes section 30JB by failing to give the notice required by subsection (3)(a) of that section shall be guilty of an offence.

(2) An insurer who, before the end of the period mentioned in section 30JB (3)(b), takes steps to effect a material change to which that subsection applies after being served with a preliminary notice under section 30JC(2); and a designated insurer who fails to prevent a member of the group from taking steps to effect such change after being served with such notice as aforesaid, shall be guilty of an offence.

(3) An insurer who contravenes section 30JC(1) by effecting a material change after being served with a notice of objection to such a material change, and a designated insurer who contravenes section 30JC(1) by failing to prevent a member of the group from effecting a material change after being served with such notice as aforesaid, shall be guilty of an offence.”

Amends Section 31A

21. Section 31A of the principal Act is amended in subsection (1) by inserting “and a Class C, Class D, Class E insurer which at anytime fails to meet its minimum margin of solvency” before “shall”.

Amends section 31C

22. Section 31C of the principal Act is amended—

- (a) in subsection (1)—
 - (i) by inserting “Class 3B, Class 3E or” before “Class 4”; and
 - (ii) by deleting “general business” and substituting “minimum”;
- (b) in subsection (4) by deleting “, Class 3A or Class 3B” and substituting “or Class 3A, Class A, Class B, Class C or Class D”.

Amends section 44A

23. Section 44A of the principal Act is amended in subsection (4) by inserting “or 30JC” after “30H”.

Transitional

24. (1) Every insurer registered under the principal Act as a long term insurer immediately before the commencement of this Act that qualifies for registration as a Class A, Class B, Class C, Class D or Class E insurer respectively under sections 4EB, 4EC, 4ED, 4EE and 4EF of the principal Act as amended by this Act, shall make application to the Authority before 30 September 2011 for re-classification as a Class A, Class B, Class C, Class D, or, as the case may be, Class E insurer under the principal Act as amended by this Act.

(2) An application under subsection (1) shall be in such form as the Authority may determine, and shall be accompanied with an application fee —

- (a) of \$500.00 in the case of a Class A, Class B insurer; and
- (b) of \$1,000.00 in the case of a Class C, Class D, Class E insurer.

(3) Subject to subsection (4), an insurer falling within subsection (1) who has made an application with the Authority under subsection (1) shall, during the transitional period, continue to be registered as a long term insurer and be subject to the provisions of the principal Act applicable to an insurer of that class as were in force before the commencement of this Act.

(4) The Authority may cancel the registration of every insurer falling within subsection (1) that fails to make application for re-classification before 30 September 2011.

(5) In this section “transitional period” means the period beginning with the commencement of this section and ending on 31 December 2011.

Consequential amendment

25. The Schedule which makes consequential amendments to the Insurance Returns and Solvency Regulations 1980, has effect.

Commencement

26. This Act comes into operation on 31 December 2010.

SCHEDULE

(section 25)

Amendments to the Insurance Returns and Solvency Regulations 1980

Interpretation

1. In this Schedule, “the principal Regulations” means the Insurance Returns and Solvency Regulations 1980.

Regulation 8 amended

2. Regulation 8(2) of the principal Regulations is amended in paragraph (i) by deleting “general business solvency” and substituting “minimum margin of solvency”.

Regulation 9 amended

3. Regulation 9 (2) of the principal Regulations is repealed and the following is substituted-

“(e) the minimum margin of solvency for long term business prescribed by regulation 12(1), and whether that margin was met;”.

Regulation 10 amended

4. Regulation 10(1) of the principal Regulations is amended-

(a) by deleting “for general business” in the heading;

(b) by deleting “For the purposes of section 6(1) of the Act, the prescribed amount” and substituting “For the purposes of section 6(9) of the Act, the amount”.

Regulation 12 amended

5. Regulation 12 of the principal Regulations is amended by deleting subparagraph (1) and substituting the following -

“(1) For the purposes of section 6 (1) of the Act, the prescribed amount by which the value of the long-term business assets of a long-term insurer must exceed its long term business liabilities is the amount calculated in relation to the relevant class of long-term insurer under Schedule III Minimum Margin of Solvency for Long Term Business.”.

Schedule III added

6. The principal Regulations are amended by adding the following schedule after schedule II -

“SCHEDULE III

(Reg. 12 (1))

MINIMUM MARGIN OF SOLVENCY FOR LONG TERM BUSINESS

<u>Class</u>	<u>Minimum Solvency Margin</u>
A	greater of \$ 120,000 or 2.5% of assets
B	greater of \$ 250,000 or 2.5% of assets
C	greater of \$ 1,000,000 or 2.5% of assets
D	greater of \$ 5,000,000 or 2.5% of assets
E	greater of \$10,000,000 or 2.5% of assets

where assets shall be the total assets reported on an insurer’s balance sheet in the relevant year less the amount held in segregated account.”

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Insurance Act 1978 (the “principal Act”) by making a number of changes to the provisions on the supervision of insurers. It makes the following changes -

- (a) it introduces a new classification system for long term insurers;
- (b) it makes provision for the Authority to prescribe the eligible capital requirements in relation to Class 3B and Class 4 insurers;
- (c) it amends provisions on notification of change of shareholder controllers and notification of changes to controllers and officers;
- (d) it makes provision for insurers to notify the Authority of material changes;
- (e) it makes provision for the Authority as group supervisor to add new entities within scope of group supervision;
- (f) It extends some prudential requirements applicable to Class 4 insurers to Class 3B insurers.

Clause 1 provides a citation for the Bill.

Clause 2 defines “principal Act” as the Insurance Act 1978.

Clause 3 makes a consequential amendment to the definition of “available statutory capital and surplus, and inserts a definition for the new classes of long term business introduced under clauses 4EA to 4EF.

Clause 4 makes provision for the registration of new classes of long term business, those being classes A, B, C, D and E insurers.

Clause 5 makes provision for the criteria for determining the new classes of long term business and for the registration of insurers carrying on such business under the appropriate class.

Proposed section 4EA(1) makes provision for the Authority to determine whether a company proposing to carry on long term business should be registered as a Class A, Class B, Class C, Class D, Class E or Class F insurer in relation to its long term business.

Proposed section 4EA(2) makes provision for the Authority to register an insurer in a class other than that to which it qualifies, if the Authority were satisfied that it is appropriate to do so, having regard to the matters set out in paragraphs (a) and (b) of subsection (2).

Proposed section 4EB makes provision for the criteria for registering a Class A insurer carrying on long term business.

Proposed section 4EC makes provision for the criteria for registering a Class B insurer carrying on long term business.

Proposed section 4ED makes provision for the criteria for registering a Class C insurer carrying on long term business.

Proposed section 4EE makes provision for the criteria for registering a Class D insurer carrying on long term business.

Proposed section 4EF makes provision for the criteria for registering a Class F insurer carrying on long term business.

Proposed section 4F makes provision for a definition of “total assets”. It also requires certain factors to be taken into account in determining total assets for the purposes of sections 4ED, 4EE and 4EF.

Clause 7 amends section 6 by substituting a new heading for the section that better reflects the effect of the section as amended, and by making provision for a minimum margin of solvency and available statutory capital and surplus to be met by certain classes of insurers as a condition of registration.

Amended section 6(1) requires, as a condition of registration as a Class 1, Class 2, Class 3, Class 3A insurers, Special Purpose insurers, Class A, Class B, Class C, and Class D insurers that insurers are able to meet the minimum margin of solvency. The minimum margin of solvency is defined in subsection (6) as “the prescribed amount by which the value of the assets of a body corporate exceeds the amount of its liabilities.” Such an amount would be prescribed by the Minister by regulations made under section 53.

New subsection (IA) requires as a condition of registration as a Class D insurer that the Authority is satisfied that it will meet the minimum margin of solvency on commencement of business.

New subsection (4) requires as a condition of registration as a Class 3B, Class 4 or Class E insurer that they satisfy the amount of available statutory capital and surplus (calculated in accordance with rules made by the Authority under subsection (6)) meets-

- (a) its minimum margin of solvency, and
- (b) its enhanced capital requirement.

Clause 8 amends section 7 and makes provisions consequential to the classification of long term insurers and makes provision for the share capital for each class.

Clause 9 amends section 8A by extending the scope of the obligations of the principal representative to report material changes to all insurers for which they act (and not only limited to class 4 insurers as currently the case).

Clause 10 amends section 14(4) by extending the scope of 50% remission of the fee to classes C, D and E insurers.

Clause 11 amends Clause 17(4) by making provision for extending its application to the new classes of long term insurers.

Clause 12 amends section 17A by making provision for extending its application to Class 3B insurers.

Clause 13 amends section 18A(2) by making provision for extending its application to new classes of long term insurers and Class 3B insurers.

Clause 14 amends section 18C by making provision for extending its applications to Class 3A, Class 3B, Special Purpose Insurers, Class A, Class B, Class C, Class D and Class E insurers.

Clause 15 makes provision for the Authority to include specified entities within group supervision. This would enable the Authority to add a new entity within the scope of group supervision that was not previously so included.

Clause 16 repeals and replaces section 30D by making provision for shareholder controllers of private companies to notify the Authority of new or increased control. This provision would narrow the existing provision that requires controllers of any description to notify the Authority of a change in control in a private or public company.

Under the provisions of this section, a shareholder controller must notify the Authority of a change of control, and the Authority may object to such a change.

Clause 17 adds a new section 30E which makes provision for shareholder controllers of private companies to notify the Authority of a change in control. Unlike the provisions on notification of change in shareholder control in a private company, no provision is made for the Authority to object to a change of control in a public company.

Clause 18 amends a section 30G to make provision for an offence of not complying with the requirement to give notice under section 30E(2).

Clause 19 repeals and replaces section 30J by making provision for registered persons and designated insurers (in respect of members of the group) to notify the Authority of change of controllers and it also makes provision for a registered insurer and a designated insurer (in respect of any member of the insurance group) to notify the Authority of any change of officers of the registered person or any members of the group within 45 days of the event.

Special provision is made for Class 1, Class 2 insurers, Special Purpose Insurers, Class A and Class B insurers requiring them to file at the time of filing the financial statements under section 17 of the Act, a list of every person who has become or ceased to be controller or officer and the dates when they have so become or ceased to be.

Clause 20 adds a new section 30JA which makes provision for insurers to notify the Authority of material changes.

Under proposed section 30JA(1), insurers and designated insurers (in respect of their group) must notify the Authority of proposed measures that are likely to be of material significance for the discharge in relation to the insurer of the Authority's functions under the Act.

Proposed section 30JA(2) provides examples of measures that are considered likely to be of material change. These comprise the transfer and acquisition of insurance business, amalgamation with, or acquisition of another firm; and material change in insurer's business plan not otherwise reported to the Authority.

Proposed section 30JB makes provision precluding an insurer and a designated insurer (in respect of members of an insurance group) from taking steps to give effect to a material change without first serving the Authority with notice of the proposed change and the Authority notifying it within 14 days that there is no objection or the period elapses without the Authority service notice of objection. When no notice of objection is given by the Authority within that time, then the Authority would be deemed not to have any objection.

Proposed section 30JC makes provision for the Authority to serve notice of objection, for giving reasons for the objection and it also makes provision for the insurer and designated insurer to the proposed change to make representations to the Authority on the objection.

Proposed section 30JD makes provision for criminal penalties for contraventions by

insurers of section 30JA and 30JB.

Clause 21 amends section 31A by making provision to extend the scope of reporting particulars on failure to meet solvency requirements to Class C, Class D and Class E insurers.

Clause 22 amends section 31C, which imposes restrictions on reductions of capital. It makes provision extending the application of subsection (1) to Class 3B insurers to require them to seek the approval of the Authority before reducing by 15% or more its total statutory capital, and requires compliance with procedures set out in subsection (2). But the amendment also disapplies subsection (4) to Class 3B insurers.

Clause 23 amends section 44A to make provision for appeals against decisions of the Authority to object to material change under proposed section 30JC.

Clause 24 makes provision for transitional arrangements in relation to long term insurers. It requires long term insurers to apply to the Authority to be reclassified in the appropriate new class of long term business. Such application must be accompanied by the appropriate fee set out in subsection (2).

Clause 24(3) makes provision for long term insurers who have applied to be reclassified to continue to operate, during the transitional period, in that class – pending reclassification. During that period, the provisions of the Act that applied to long term insurers before commencement would continue to so apply.

Clause 25 makes consequential amendments to the Insurance Return Solvency Regulations 1980. These are set out in the schedule to the Bill.

Clause 26 appoints 31 December 2010 as the date commencement of the Act.

The Schedule makes provision for consequential amendments to regulations 9, 10 and 12 of the Insurance Returns and Solvency Regulations 2010.