



November 14<sup>th</sup> 2011

## **NOTICE**

### **Eligible Capital Rules 2011 (“the Rules”)**

In December 2010, the Bermuda Monetary Authority (the “Authority”) posted on its website for market consultation a draft of the Eligible Capital Rules 2011 to be established pursuant to section 6A of the Insurance Act 1978.

The purpose of the Rules is to define tiers of capital which may be taken into consideration when determining an insurer’s available statutory capital and surplus, and its enhanced capital requirements, for the purpose of determining its solvency. During 2011 the Authority conducted several trial runs with the market to test application of its capital adequacy model, the Bermuda Solvency Capital Requirement (BSCR). Firms submitted BSCR filings to the Authority to complete the trial run process. Based on the findings from those trial runs the Authority made changes to the Rules as set out below. The Rules are to take effect on December 31<sup>st</sup> 2011 and are attached to this notice.

Changes to the Rules are as follows:

1. In relation to the deduction from “Tier 1 capital” pertaining to encumbered assets for policyholder obligations in subparagraph 2(3) (a) (ii); the Authority advises that “unearned premiums” have been added to the calculation so that the deduction is equal to the value of encumbered assets in excess of the aggregate of unearned premiums, gross reserves and other insurance reserves.
2. Further note that this deduction is only made when there are unsecured policyholders.

*[Please note that the Rules are subject to final legislative review by the Attorney General’s Chambers as required under the Statutory Instruments Act 1977; further amendments are not anticipated but may possibly result from this review.]*

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**THE INSURANCE ACT 1978**

**2011 : XX**

**ELIGIBLE CAPITAL RULES 2011**

ARRANGEMENT OF SECTIONS

- 1 Short title and commencement
- 2 Interpretation
- 3 Available Statutory Capital and Surplus

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In exercise of the powers conferred upon the Authority by section 6A(1) of the Insurance Act 1978, the following Rules are made:

**Citation and commencement**

1. (1) These Rules may be cited as the Eligible Capital Rules 2011.
- (2) These Rules shall come into force on 31 December 2011.

**Interpretation**

2. (1) In these Rules, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-

“the Act” means the Insurance Act 1978;

“capital instruments” means a financial instrument that is admitted for the purposes of determining an insurer’s total statutory capital and surplus calculated pursuant to the Insurance Accounts Regulations 1980 or is approved as other fixed capital pursuant to the Insurance Accounts Regulations 1980;

“ECR” means enhanced capital requirement and has the same meaning as in section 1(1) of the Act;

“encumbered assets” means assets held for security or as collateral against a liability or contingent liability of the insurer or other person or any other use restriction, excluding encumbered assets for policyholder obligations of the insurer ;

“encumbered assets for policyholder obligations” means the total assets held for security or as collateral or otherwise restricted to meet the liabilities to the policyholders of the insurer in the event of a loss ;

“maturity” means the first contractual opportunity for the insurer to repay or redeem the capital instrument unless it is mandatory that the insurer repay or redeem the instrument with the issuance of an instrument of equal or higher quality;

“minimum margin of solvency” has the same meaning as in section 1(1) of the Act; “Regulations” means the Insurance Accounts Regulations 1980;

“Tier 1- ancillary capital”, in relation to an insurer’s available statutory capital and surplus, has the meaning given in subparagraph (2);

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“Tier 1- basic capital”, in relation to an insurer’s available statutory capital and surplus, has the meaning given in subparagraph (3);

“Tier 2 – ancillary capital”, in relation to an insurer’s available statutory capital and surplus, has the meaning given in subparagraph (4);

“Tier 2 – basic capital”, in relation to an insurer’s available statutory capital and surplus, has the meaning given in subparagraph (5);

“Tier 1 - capital” means the aggregate sum of “Tier 1 – basic capital” and “Tier 1 – ancillary capital”;

“Tier 2 - capital” means the aggregate sum of “Tier 2 – basic capital” and “Tier 2 – ancillary capital”;

“Tier 3 - capital” means the aggregate sum of “Tier 3 – basic capital” and “Tier 3 – ancillary capital”;

“Tier 3 - ancillary capital” has the meaning given in subparagraph (6);

“Tier 3 - basic capital” has the meaning given in subparagraph (7);

“Total statutory capital and surplus” means the total statutory capital and surplus of the insurer as calculated in accordance with the Regulations.

- (2) “Tier 1 -ancillary capital” shall comprise the following–
- (a) capital instruments approved by the Authority as other fixed capital pursuant to the Regulations that satisfy the following -
    - (i) capable of absorbing losses in a going concern either by way of –
      - a. write downs of the principal amount or until losses cease; or
      - b. mandatory conversion to common stock when losses accumulate; and
    - (ii) highest level of subordination in a winding-up; and
    - (iii) paid-up or called; and

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- (iv) undated or estimated maturity of not less than 10 years from the date of issuance; and
  - (v) non-redeemable or settled only with the issuance of an instrument of equal or higher quality; and
  - (vi) free of incentives to redeem; and
  - (vii) the coupon payment on the instrument, upon breach (or if it would cause a breach) in the ECR, is –
    - (a) cancellable; or
    - (b) deferrable indefinitely; and
  - (viii) unencumbered; and
  - (ix) do not contain terms or conditions designed to accelerate or induce an insurer's insolvency; and
  - (x) do not give rise to a right of set off against an insurer's claims and obligations to an investor or creditor; and
- (b) excludes capital instruments that are included in Tier 1 – basic capital, Tier 2 – basic capital, Tier 2 – ancillary capital, Tier 3 – basic capital, and Tier 3 – ancillary capital.

(3) "Tier 1- basic capital" shall comprise the following-

- (a) Statutory surplus as set out in Line 2(h) of Form 8, Statutory Statement of Capital and Surplus of the Regulations subject to the following -
  - i. plus any adjustments to an insurer's total statutory capital and surplus made by the Authority in accordance with the provisions of section 6D of the Act;
  - ii where the value of encumbered assets for policyholder obligations exceeds the higher of subparagraphs a) and b) below and where there are encumbered assets for policyholder obligations which would not be available to meet the obligations of any policyholder in a going concern; less the difference between the value of the encumbered assets for policyholder obligations and the higher of-
    - a) the value of policyholder obligations of the insurer for which the assets have been held

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and calculated in accordance with Form 1A, Lines 17(a) and Line 18 of the Regulations for Class 3A, Class 3B, and Class 4 insurers, and Form 4, Line 27(a), of the Regulations in relation to Class E insurers, and Form 6 Lines 16, Line 17(a), Line 18 and Line 27(a) for Composites; and

- b) the value of the capital requirement applicable to the encumbered assets for policyholder obligations of that insurer; and
  - iii where the value of the encumbered assets exceeds the value reflected in Form 1A or Form 4 of the Regulations arising from the relative liability or contingent liability for which the encumbered assets are held the excess must be deducted; and
  - iv
- (b) capital stock Line 1(a)(i) and contributed surplus prepared in accordance with instructions set out for Form 8 in Schedule V of the Regulations excluding preference shares;
  - (c) capital instruments Line 1(a)(ii) of the Regulations not requiring an approval to be admitted for the purposes of determining an insurer's total statutory capital and surplus calculated pursuant to the Regulations that satisfy the following-
    - (i) capable of absorbing losses in a going concern either by way of -
      - a. write downs of the principal amount or until losses cease; or
      - b. mandatory conversion to common stock when losses accumulate; and
    - (ii) highest level of subordination in a winding-up; and
    - (iii) paid-up or called; and
    - (iv) undated or estimated maturity of not less than 10 years from the date of issuance; and
    - (v) non-redeemable or settled only with the issuance of an instrument of equal or higher quality; and
    - (vi) free of incentives to redeem; and

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- (vii) the coupon payment on the instrument, upon breach (or if it would cause a breach) in the ECR, is –
    - a. cancellable; or
    - b. deferrable indefinitely; and
  - (viii) unencumbered; and
  - (ix) do not contain terms or conditions designed to accelerate or induce an insurer's insolvency; and
  - (x) do not give rise to a right of set off against an insurer's claims and obligations to an investor or creditor; and
- (d) excludes capital instruments and other amounts that are included in Tier 1 – ancillary capital, Tier 2 – basic capital, Tier 2 – ancillary capital, Tier 3 – basic capital, and Tier 3 – ancillary capital.
- (4) “Tier 2 – ancillary capital” shall comprise the following–
- (a) capital instruments approved by the Authority as other fixed capital pursuant to the Regulations that would otherwise qualify for Tier 1- ancillary capital or Tier 1 - basic capital instruments but are callable on demand and are unpaid;
  - (b) capital instruments approved by the Authority as other fixed capital pursuant to the Regulations that satisfy the following–
    - (i) callable and convertible on demand to Tier 1- ancillary capital or Tier 1 - basic capital capital when losses accumulate or when the ECR is breached; and
    - (ii) subordinated to policyholder obligations in a winding-up; and
    - (iii) undated or estimated maturity of not less than 5 years from the date of issuance; and
    - (iv) non-redeemable if ECR is breached or settled only with the issuance of an instrument of equal or higher quality; and
    - (v) free of incentives to redeem; and
    - (vi) the coupon payment is deferrable indefinitely when ECR is breached; and

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- (vii) unencumbered; and
  - (viii) do not contain terms or conditions designed to accelerate or induce an insurer's insolvency; and
  - (ix) do not give rise to a right of set off against an insurer's claims and obligations to the investor or creditor; and
- (c) excludes capital instruments that are included Tier 1- ancillary capital, Tier 1 - basic capital, Tier 2 – basic capital, Tier 3 – basic capital, and Tier 3 – ancillary capital.

(5) "Tier 2 – basic capital" shall comprise the following:

- (a) capital instruments Line 1(a)(ii), Form 8 of the Regulations not requiring an approval to be admitted for the purposes of determining an insurer's total statutory capital and surplus calculated pursuant to the Regulations that satisfy the following:
  - (i) capable of absorbing moderate level of losses on a going concern, include suspending coupon payments if the ECR is breached; and
  - (ii) subordinated to policyholder obligations in a winding-up; and
  - (iii) undated or estimated maturity of not less than 5 years from the date of issuance; and
  - (iv) non-redeemable if the ECR is breached or settled only with the issuance of an instrument of equal or higher quality; and
  - (v) free of incentives to redeem; and
  - (vi) the coupon payment is deferrable indefinitely when ECR is breached; and
  - (vii) unencumbered; and
  - (viii) do not contain terms or conditions designed to accelerate or induce an insurer's insolvency; and
  - (ix) do not give rise to a right of set off against an insurer's claims and obligations to an investor or creditor; and
- (b) where the value of encumbered assets for policyholder obligations exceeds the higher of subparagraphs (i) and (ii)

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and to the extent that these assets would be available to meet the obligations of any policyholder upon winding-up after the liabilities of the policyholders for which the assets are encumbered are settled, the difference between the value of the encumbered assets for policyholder obligations and the higher of-

- (i) the value of policyholder obligations of the insurer for which the assets have been held and calculated in accordance with Form 1A, Lines 16, 17(a) and Line 18, of the Regulations for Class 3A, Class 3B, and Class 4 insurers, and Form 4, Line 27(a), of the Regulations in relation to Class E insurers, and Form 6 Lines 16, 17(a), 18 and 27(a) of the Regulations for Composites; and
  - (ii) the value of capital requirement applicable to the encumbered assets for policyholder obligations; and
- (c) excludes capital instruments and other amounts that are included as Tier 1- ancillary capital, Tier 1 - basic capital, Tier 2 – ancillary capital, Tier 3 – basic capital, and Tier 3 – ancillary capital.
- (6) “Tier 3 - ancillary capital” shall comprise the following-
- (a) capital instruments approved by the Authority as other fixed capital pursuant to the Regulations that satisfy the following-
    - (i) subordinated to policyholder obligations in a winding-up; and
    - (ii) unencumbered; and
    - (iii) undated or maturity of not less than 3 years from the date of issuance; and
    - (iv) do not contain terms or conditions designed to accelerate or induce an insurer’s insolvency; and
    - (v) do not give rise to a right of set off against an insurer’s claims and obligations to the investor or creditor; and

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- (vi) non-redeemable if the ECR is breached or settled only with the issuance of an instrument of equal or higher quality; and
  - (vii) the coupon payment on the instrument, upon breach or if it would cause a breach in the minimum margin of solvency, is –
    - a) cancellable; or
    - b) deferrable indefinitely; andexcludes capital instruments that are included in Tier 1- ancillary capital, Tier 1 - basic capital, Tier 2 – ancillary capital, Tier 2 – basic capital, and Tier 3 – basic capital.

(7) “Tier 3 - basic capital” shall comprise the following

- (a) capital instruments Line 1(a)(ii) Form 8 of the Regulations not requiring an approval to be admitted in determining an insurer’s total statutory capital and surplus calculated pursuant to the Regulations –
  - (i) subordinated to policyholder obligations in a winding-up; and
  - (ii) unencumbered; and
  - (iii) undated or maturity of not less than 3 years from the date of issuance ; and
  - (iv) non-redeemable if the ECR is breached or settled only with the issuance of an instrument of equal or higher quality; and
  - (v) do not contain terms or conditions designed to accelerate or induce an insurer’s insolvency; and
  - (vi) do not give rise to a right of set off against an insurer’s claims and obligations to the investor or creditor; and
  - (vii) the coupon payment on the instrument, upon breach or if it would cause a breach in the minimum margin of solvency, is –
    - a. cancellable; or
    - b. deferrable indefinitely; and

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- (b) excludes capital instruments and other amounts that are included in Tier 1- ancillary capital, Tier 1 - basic capital, Tier 2 – ancillary capital, Tier 2 – basic capital, and Tier 3 – ancillary capital.

(8) For the purposes of these Rules, “the capital requirement applicable to the encumbered assets for policyholder obligations” means the following-

- (a) when determining whether an insurer’s available statutory capital and surplus meets its minimum margin of solvency such capital requirement is equal to the contribution of the pledged assets to the ECR multiplied by the quotient of the minimum margin of solvency divided by the ECR; and
- (b) when determining whether an insurer’s available statutory capital and surplus meets its ECR such capital requirement is equal to the contribution of the pledged assets to the ECR.

**Available Statutory Capital and Surplus**

3. (1) Every Class 3A, Class 3B, Class 4 and Class E insurer shall maintain available statutory capital and surplus of an amount that is equal to or exceeds the value of its minimum margin of solvency in accordance with subparagraph (2).

(2) For the purposes of subparagraph (1), the available statutory capital and surplus is an amount equal to the sum of the following amounts –

- (a) an amount of the insurer’s Tier-1 capital which shall be not less than 80% of the value of the insurer’s minimum margin of solvency; and
- (b) an amount of the insurer’s Tier 2-capital which shall be not more than 25% of the amount of subparagraph (a).

(3) Every Class 3A, Class 3B, Class 4 and Class E insurer shall maintain available statutory capital and surplus of an amount that is equal to or exceeds the value of its ECR in accordance with subparagraph (4) or (5).

(4) In the case of a Class 3B and Class 4 insurer, the available statutory capital and surplus shall be equal to the sum of the following amounts -

