



BERMUDA MONETARY AUTHORITY

INFORMATION BULLETIN

Enhanced Commercial Insurer Regime - Public Disclosure

DECEMBER 2016

Waivers and Modifications to Sections 15A and 17A of the Insurance Act 1978, and the Insurance (Public Disclosure) Rules 2015

The Bermuda Monetary Authority's ("the Authority") Information Bulletin on "Waivers and Modifications to Sections 15A and 17A of the Insurance Act 1978 ('the Act'), and the Insurance (Public Disclosure) Rules 2015" ("the Rules"), is intended to provide clarity and greater transparency regarding the Authority's exercise of Section 56 of the Act as it relates to producing and publishing the Declaration of Compliance and additional financial statements as required under Sections 15A and 17A of the Act, respectively; and Section 6C of the Act as it relates to the granting of waivers and modifications to the Financial Condition Report ("FCR").

The Information Bulletin seeks to provide instances where the Authority would consider such modifications or waivers but they should not be construed as exhaustive or as an automatic approval. The Authority will consider each situation on a case-by-case basis and be guided accordingly.

TABLE OF CONTENTS

I.	INTRODUCTION	4
II.	WAIVERS AND MODIFICATIONS TO SECTION 17A	5
III.	WAIVERS AND MODIFICATIONS TO SECTION 15A	6
IV.	WAIVERS AND MODIFICATIONS TO THE INSURANCE (PUBLIC DISCLOSURE) RULES 2015	7

I. INTRODUCTION

1. The International Association of Insurance Supervisors' ("IAIS") Insurance Core Principle ("ICP") 20 promotes the necessity for appropriate public disclosures to support the regulator's mandate for ensuring that insurance participants are conducting their activities in a manner that would preserve the stability and sustainability of the insurance industry; and policyholders and other market participants are protected by having the necessary information to make appropriate and informed decisions.

2. ICP 20 specifically requires that:

"The supervisor requires insurers to disclose relevant, comprehensive and adequate information on a timely basis in order to give policyholders and market participants a clear view of their business activities, performance and financial position. This is expected to enhance market discipline and understanding of the risks to which an insurer is exposed and the manner in which those risks are managed."

3. The Bermuda insurance market is predominantly a wholesale one, whose commercial insurers conduct substantial cross-border insurance business, and serve a wide cross-section of businesses. The Authority's approach to its disclosures and transparency regime seeks to create a bespoke framework that is aligned with international regulatory best practices while also reflecting the specifics of the Bermuda market. The Authority is committed to the principles of transparency. This ensures that persons, in particular the policyholders and beneficiaries, counterparties and other interested stakeholders, are fully informed of the financial condition of licensed insurers.

4. The Authority has engaged the insurance industry and other interested stakeholders on its enhanced disclosures and transparency regime in a number of papers since releasing its first consultation paper on the subject in June 2009¹. Since then the Authority has issued a number of policy papers² relating to transparency and disclosures. These papers formed part of a series of initiatives designed to enhance the insurance regulatory framework to be both aligned with international standards and appropriate for the Bermuda market.

5. The Authority recognises that there are circumstances that may require us to consider modifying the public disclosure requirements under the aforementioned Sections of the Act for a particular insurer and would exercise Sections 56 and Section 6C of the Act for a waiver or modification once the situation merits such a consideration.

¹ Consultation Paper on Disclosure and Transparency, June 2009

² Consultation Paper on Disclosures and Transparency June 2010 Update

Consultation Paper on A Solvency Framework for Long-Term Insurance, August 2010

Consultation Paper on Enhancements to the Regulatory and Supervisory Regime for Commercial Insurers, January 2012

Consultation Paper on Enhancements to Bermuda's Insurance Regulatory Regime for Commercial Insurers and Insurance Groups, April 2015

Consultation Paper on Implementation of Bermuda Reporting Regime for Commercial Insurers and Insurance Groups, September 2015

II. WAIVERS AND MODIFICATIONS TO SECTION 17A

6. Section 17A of the Act requires insurers to produce and publish additional financial statements prepared in accordance with accounting standards, including International Financial Reporting Standards, generally accepted accounting principles applicable in Bermuda, Canada, United Kingdom, United States of America (“GAAP”) or other GAAP that the Authority may recognise. Class 3A, C and D insurers can elect to file condensed GAAPs, and Class E insurers may apply under Section 56 of the Act for approval to file condensed GAAP.

Basis for Section 17A Modification or Waiver: The Authority reserves the right to consider each case based on its own merit.	BMA Policy
A. Where the insurer is part of a group and the Authority is the group-wide supervisor	The insurer may be permitted to file the consolidated GAAP statements of the group if the associated group disclosures do not materially differ from that which would be disclosed for the insurer.
B. Where the insurer is dormant (does not have any insurance risk), in liquidation or provisional liquidation	The insurer may apply for a waiver from Section 17A if the insurer is not conducting insurance business.
C. Where the insurer has not commenced its business operations	Section 17A waiver may be granted if the insurer confirms: <ul style="list-style-type: none"> i. It has not written any business during the pertinent financial year, and ii. The expected date the insurer will commence operations.
D. Where the insurer is in run-off (Note: for the purposes of this Bulletin, the run-off category does not include run-off specialists whose business model is to purchase portfolios in run-off)	A GAAP waiver may be granted if the cost of producing the additional audited GAAP financial statements may have a significant impact on the insurer’s ability to meet its policyholder obligations.
E. Where the insurer believes that the publication of such financial statements may create a competitive disadvantage	Competitive disadvantage does not qualify the insurer for a waiver from filing GAAPs with the Authority; however, if the insurer satisfies the Authority that disclosure of the GAAPs puts the insurer at a competitive disadvantage, the Authority will consider waiving the publication of the audited GAAPs.

<p>F. Where the insurer is writing 100% affiliated insurance business</p>	<p>The Authority may consider waiving the publication of the GAAPs because the cedant would have access to this information (Note: this position in relation to cedants, differs from the Authority’s position for the FCR where the Authority takes a “look through” approach to the ultimate policyholders and beneficiaries). <u>In some cases, there may be external stakeholder interest. For example, the insurer is material to the group and of keen interest to other regulators. In such cases, waivers may not be provided.</u></p>
<p>G. Where the insurer may have a modified filing requirement approval (i.e. in the case of Branches)</p>	<p>The requirement will be modified such that the insurer files its parent’s audited consolidated financial statements in satisfaction of Section 17A requirements. The parent’s GAAPs will be published.</p>
<p>H. Where the insurer submits other financial information in lieu of the requirements of Section 17A of the Act, such as filings with a reputable securities exchange or another supervisor</p>	<p>The Authority will require the insurer to file comparable information that will achieve the transparency and disclosure objectives of Section 17A of the Act.</p>

III. WAIVERS AND MODIFICATIONS TO SECTION 15A

7. Section 15A of the Act requires insurers to file a Declaration of Compliance with the Authority, which is to be made public.

<p>Basis for Section 15A Modification or Waiver: The Authority reserves the right to consider each case based on its own merit.</p>	<p>BMA Policy</p>
<p>A. Where the insurer is in liquidation or provisional liquidation</p>	<p>The insurer may be exempted from Section 15A of the Act.</p>

IV. WAIVERS AND MODIFICATIONS TO THE INSURANCE (PUBLIC DISCLOSURE) RULES 2015

8. The Rules set out criteria for FCR modification and waiver. Rule 3(8) states that, where approval has been granted by the Authority for a modification or waiver under Section 6C of the Act, the insurer may state in its FCR that the Authority has provided such approval. Other than where an insurer is in liquidation or provisional liquidation, the Authority will not provide a waiver from the Capital Management Section of the FCR.

<p>Basis for FCR Modification or Waiver under Section 6C of the Act: The Authority reserves the right to consider each case based on its own merit.</p>	<p>BMA Policy</p>
<p>A. Where the insurer believes that the disclosure of certain information will result in a competitive disadvantage</p>	<p>The insurer must satisfy the Authority that publication of the FCR puts the insurer at a competitive disadvantage for the Authority to provide a waiver.</p>
<p>B. Where the insurer has entered into contractual arrangements with policyholders or counterparties to keep certain information confidential</p>	<p>The insurer will be required to complete the FCR; however, the Authority may waive certain information if the insurer has provided evidence confirming there is a contractual obligation to keep certain information confidential.</p>
<p>C. Where the insurer is prohibited by a jurisdiction's law or may breach a direction issued by the Authority or any other relevant overseas authority</p>	<p>The Authority will seek a solution that achieves the transparency and disclosure objectives of the Rules without causing the insurer to breach any laws.</p>
<p>D. Where the insurer will disclose information comparable to that required in an FCR directly to all policy holders, beneficiaries and counterparties</p>	<p>The Authority will consider a waiver in cases where the ultimate policyholders are a part of a closed group/ membership (e.g. pure mutual, etc.) where the ultimate policyholders are the owners and they, as well as beneficiaries and counterparties, have access to comparable information <u>(Note: the FCR is intended to provide transparency and disclosure for the ultimate policyholders and beneficiaries, not just the cedants of the insurer).</u></p>
<p>E. Where an insurer is a member of an insurance group and the Authority is the Group Supervisor of the insurance group; and the insurer is satisfied that the filing of the insurance group's FCR provides information that is appropriate and specific to the insurer's business</p>	<p>The Authority may grant a waiver if it is satisfied that the insurance group's FCR also provides information that is appropriate and specific to the insurer's business.</p>
<p>F. Where there are other statutory public disclosure requirements imposed on the insurer under the Act or by other regulatory bodies like the United States Securities and Exchange Commission ("SEC"); and that information is comparable to what is required under the Rules</p>	<p>The application for FCR modification should include a comparison of the required FCR disclosures to the information the insurer is proposing to file. The Authority may give recognition to the existing public filings, but all disclosure requirements under the FCR must be satisfied in some form.</p>