



BERMUDA MONETARY AUTHORITY

CONSULTATION PAPER

INTRODUCTION OF THE CONCEPT OF INTERNATIONALLY ACTIVE
INSURANCE GROUP PROPOSAL

DECEMBER 2020

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I. BACKGROUND

1. The Bermuda Monetary Authority (Authority or BMA) is considering as part of the review to update Bermuda's "commercial regime" to meet the requirements of the International Association of Insurance Supervisors' (IAIS) Common Framework (ComFrame) for Internationally Active Insurance Groups (IAIGs), to introduce the concept of an IAIG.
2. Relevant extracts of the Insurance Core Principles (ICPs) and ComFrame are presented in point IV of this consultation paper, namely the thresholds to be considered an IAIG and guidance on the circumstances where the group-wide supervisor has discretion to determine that an insurance group is not an IAIG, even if it meets the criteria, or that an insurance group is an IAIG even if it does not meet the criteria.
3. The IAIS has two registers of IAIGs, a private register accessible only to IAIS Members and a public register of IAIGs. IAIS Executive Committee (ExCo) Members have committed to keeping the two records up to date.
4. The Authority is not currently the group supervisor of any IAIG but this situation may change. Were the Authority to disclose to the IAIS and the public that an insurance group under its supervision would meet the ComFrame's criteria for an IAIG, such would pose challenges unless a relevant regime is established under law.
5. IAIGs will be subject to additional regulatory requirements and disclosures that will have to be transposed to our framework in due course. The Authority needs to amend the Insurance Act 1978 (Insurance Act) to make provision for insurance groups to additionally comply in due course with certain standards when they meet minimum criteria as an IAIG. These amendments will be subject to public consultation.
6. Alongside the consultation paper, the Authority is also publishing the associated draft amendments to the Insurance Act.
7. A stakeholder letter on the feedback from the consultation process will be published in February 2021. The new provisions will enter into force on 30 June 2021.
8. Comments on these proposals should be directed to riskanalytics@bma.bm by 31 January 2021.

II. PROPOSAL

9. The Authority proposes that the definition of an IAIG in the Insurance Act captures solely the key thresholds, with additional detail on these items, as well as on the process to be determined an IAIG being provided in guidance of the Authority, which will also be subject to public consultation. This provision will be introduced in "Part IVA - Group Supervision" under "section 27A - Interpretation" by inserting the following definition in the correct alphabetical order:

“internationally active insurance group” or “IAIG” means an insurance group that meets the following criteria—

- (a) writes premium in three or more jurisdictions;
- (b) has gross written premiums outside of Bermuda amounting to at least 10% of the insurance group's total gross written premiums;
- (c) on a three-year rolling average:
 - (i) has total assets of at least \$50 billion; or
 - (ii) total gross written premiums are at least \$10 billion.

10. In line with ComFrame, the BMA also proposes the introduction of a provision that under certain circumstances, the Authority has discretion to determine that an insurance group is not an IAIG even if it meets the criteria or that an insurance group is an IAIG even if it does not meet the criteria. These circumstances will be set out in guidance of the Authority, which will also be subject to public consultation in due course. The Authority envisions these circumstances to mirror those set in ComFrame paragraph 23.0.b as presented in point IV of this consultation paper. The BMA also proposes that prior to being determined as an IAIG, the insurance group shall be notified of the Authority's intention and have the possibility of making representations regarding the impending determination, similar to the process already in place for group supervision determination. The BMA also proposes the Insurance Act be revised to require the Authority to publicly disclose all IAIGs for which the Authority is the group supervisor and that have been determined as such by the Authority.

11. These provisions will be introduced in “Part IVA – Group Supervision” under “section 27H – Designation of an IAIG by the Authority” as follows:

- (1) The Authority may, after consultation with other competent authorities, determine whether an insurance group, for which the Authority is the group supervisor, is an internationally active insurance group in accordance with section 27A.
- (2) Notwithstanding subsection (1), the Authority may, in its discretion determine that an insurance group, for which it is the group supervisor—
 - (a) is not an internationally active insurance group where it meets the criteria of such group; or

(b) is an internationally active insurance group where it does not meet relevant criteria.

(3) The Authority shall give notice in writing to the relevant insurance group of its intention to make a determination under subsections (1) and (2) and shall specify the reasons for that determination.

(4) Where a notice is issued by the Authority pursuant to subsection (3,) the Authority shall take into account any written representations made by the insurance group within such period as it may specify in the notice, prior to issuing its determination under subsection (5).

(5) The Authority shall notify the insurance group and other relevant competent authorities in writing once it has made a determination that an insurance group meets all relevant criteria as an internationally active insurance group, that it is additionally, the group supervisor for it as an internationally active insurance group.

(6) An insurance group that has been designated under this section by the Authority as an internationally active insurance group, shall continue to be subject to the requirements of group supervision.

(7) The Authority shall publish the names of all internationally active insurance groups for which it is the group supervisor on its website at www.bma.bm as soon as reasonably practicable.”

12. Finally, the Authority also proposes to introduce in the Insurance Act in “Part II – Registration” under “section 6A – Prudential and technical standards” the power to make rules prescribing prudential or technical standards in relation to the regulation and supervision of IAIGs. This power does not mean that the totality of ComFrame provisions will be transposed by the Authority through rulemaking but rather as an appropriate combination of legislation, rules and guidance. A comprehensive ComFrame Implementation Roadmap shall be shared with industry in due course. Nonetheless, the referred power to make rules prescribing prudential or technical standards in relation to the regulation and supervision of IAIGs is proposed to be introduced as follows:

Section 6A of the principal Act is amended in—....

- (a) paragraph (1) by inserting the following new paragraph after paragraph "(h)" –
“(i) the supervision and regulation of internationally active insurance groups”;
- (b) paragraph (1A) by inserting the following new paragraph after paragraph "(e)" -
“(f) internationally active insurance groups”.

Question: *Do you see any practical issues that the proposals may introduce?*

III. DRAFT BILL

A BILL

entitled

INSURANCE AMENDMENT ACT 2021

BR / 2021

1. Citation
2. Inserts section 6A
3. Amends section 27A
4. Inserts section 27H
5. Commencement

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, which amends the Insurance Act 1978 (the "principal Act"), may be cited as the Insurance Amendment Act 2021.

Amends Section 6A

2 Section 6A of the principal Act is amended in—

- (a) paragraph (1) by inserting the following new paragraph after paragraph "(h)"
—
" (i) the supervision and regulation of internationally active insurance groups";
- (b) paragraph (1A) by inserting the following new paragraph after paragraph "(e)" —

" (f) internationally active insurance groups".

Amends Section 27A

3 Section 27A of the principal Act is amended by inserting the following definition in the correct alphabetical order—

"internationally active insurance group" or "IAIG" means an insurance group that meets the following criteria—

- a) writes premium in three or more jurisdictions;
- b) has gross written premiums outside of Bermuda amounting to at least 10% of the insurance group's total gross written premiums; and
- c) on a three-year rolling average:
 - (i) has total assets of at least \$50 billion; or
 - (ii) total gross written premiums are at least \$10 billion.

Inserts section 27H

4 The principal Act is amended by inserting the following new section after section 27G—

“Designation of an IAIG by the Authority

27H (1) The Authority may, after consultation with other competent authorities, determine whether an insurance group, for which the Authority is the group supervisor, is an internationally active insurance group in accordance with section 27A.

(2) Notwithstanding subsection (1), the Authority may, in its discretion determine that an insurance group, for which it is the group supervisor—

(a) is not an internationally active insurance group where it meets the criteria of such group; or

(b) is an internationally active insurance group where it does not meet relevant criteria.

(3) The Authority shall give notice in writing to the relevant insurance group of its intention to make a determination under subsections (1) and (2) and shall specify the reasons for that determination.

(4) Where a notice is issued by the Authority pursuant to subsection (3,) the Authority shall take into account any written representations made by the insurance group within such period as it may specify in the notice, prior to issuing its determination under subsection (5).

(5) The Authority shall notify the insurance group and other relevant competent authorities in writing once it has made a determination that an insurance group meets all relevant criteria as an internationally active insurance group, that it is additionally, the group supervisor for it as an internationally active insurance group.

(6) An insurance group that has been designated under this section by the Authority as an internationally active insurance group, shall continue to be subject to the requirements of group supervision.

(7) The Authority shall publish the names of all internationally active insurance groups for which it is the group supervisor on its website at www.bma.bm as soon as reasonably practicable.

Commencement

5 This Act shall be deemed to come into effect on 30th June 2021.

INSURANCE AMENDMENT BILL 2021

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Insurance Act 1978 (the “Act”) to amongst other things; make provision for supervisory requirements relating to administration of internationally active insurance groups in Bermuda.

Clause 1 provides for the Bill’s short title.

Clause 2 seeks to amend section 6A to afford power to the Authority to regulate internationally active insurance groups, and to ensure that any Rules made by the Authority shall apply to such groups.

Clause 3 makes provision for section 27A to be amended to insert the new definition of “internationally active insurance group”

Clause 4 seeks to insert a new section 27H. Such clause shall set out the manner in which the Authority may determine that an insurance group that it is the current supervisor of, shall also qualify to be registered by it as an internationally active insurance group. The BMA shall initially consult with the other supervisors of the insurance group. Once agreement has been reached, the Authority is required to notify the insurance group of such determination. The insurance group shall then be allowed to make written representations to the Authority. The Authority shall take such representations into account when making its final determination. The Authority shall be required to publish a list of all internationally active insurance groups on its website at www.bma.bm, which shall be accessible to all persons. .

Clause 5 provides for commencement.

IV. RELEVANT EXTRACTS OF THE ICP AND COMFRAME AS PER NOVEMBER 2019

CF 23.0.a The group-wide supervisor, in cooperation with other involved supervisors, determines whether an insurance group or an insurance legal entity operating through branches, is an IAIG after considering whether it meets both the following criteria:

- **Internationally active:**
 - Premiums are written in three or more jurisdictions; and
 - Gross written premiums outside of the home jurisdiction are at least 10% of the group's total gross written premiums.
- **Size (based on a three-year rolling average):**

- **Total assets are at least USD 50 billion, or**
- **Total gross written premiums are at least USD 10 billion.**

CF 23.0.a.1 The criteria should be assessed based on the insurance group's reported financial statements, either on a consolidated basis when available or as otherwise submitted to the group-wide supervisor. Intra-group transactions should be eliminated when calculating the amount of insurance business written in each jurisdiction and total insurance business written, and when calculating the total assets of the group.

CF 23.0.a.2 "Total assets" are, at least, group assets related to the insurance business of the group.

CF 23.0.a.3 "Gross written premiums" represent a measure of the volume of insurance business being written. Where alternative but similar volume measures are required under the accounting framework applicable to the group, then these alternative measures may be used as a more practical way of deciding if a group meets the criterion for an IAIG. An example of an alternative measure may be "premiums received" as required for disclosure purposes under International Financial Reporting Standard 17.

CF 23.0.a.4 Although an insurance legal entity that has no parent or subsidiaries is not an insurance group, it should be regarded as an IAIG if it operates on a branch basis in foreign jurisdictions and meets the criteria. The supervisor of this entity, in cooperation with other involved supervisors, would determine whether the IAIG criteria are met. References to a 'group' in this context would include such entities operating through branches which are identified as IAIGs.

CF 23.0.a.5 For the purposes of assessing groups against the internationally active criterion, the United States of America should be regarded as a single jurisdiction and member states of the European Union should be regarded as separate jurisdictions.

CF 23.0.a.6 Any involved supervisor may prompt the process of identifying an IAIG. If no group-wide supervisor has been determined, the supervisor most demonstrating the characteristics of a group-wide supervisor should invite involved supervisors to participate in the process of determining whether a group is an IAIG.

CF 23.0.a.7 The scope of an insurance group should be determined before considering whether the criteria for determining whether the group is an IAIG are met.

CF 23.0.a.8 If there is already a supervisory college for a group, it should be used to facilitate the determination as to whether the group is an IAIG.

CF 23.0.b In limited circumstances the group-wide supervisor has discretion to determine that a group is not an IAIG even if it meets the criteria or that a group is an IAIG even if it does not meet the criteria.

CF 23.0.b.1 If discretion has been used, then the reasons for exercising such discretion should be based on verifiable and documented quantitative and qualitative information.

CF 23.0.b.2 Examples of situations where a group-wide supervisor may exercise discretion to determine that a group is an IAIG despite not meeting all the criteria are where:

- an other involved supervisor requests that the group be treated as an IAIG owing to the materiality of the operations in its jurisdiction;
- the group is expected to meet the criteria in the near future owing to mergers or acquisitions;
- the group's international activity or size have decreased owing to some temporary or transitory effect such as an economic shock or exchange rate fluctuations and it would not be reasonable to alter the group's identification as an IAIG for a short period;
- the group has related entities which are not included in the consolidated financial statements, but which are relevant to the risks of the group;
- the group has significant off-balance sheet assets (such as funds under management held on behalf of investors) which arise from insurance operations and so are more appropriately included in the total assets when assessing the group against the size criterion;
- the group changes or rearranges its business activities to avoid meeting the IAIG criteria including by splitting the insurance business into multiple sub-groups with separate operational controllers.

CF 23.0.b.3 Examples of situations where a group-wide supervisor may exercise discretion to determine that a group is not an IAIG despite meeting the criteria are where:

- the group will cease to meet the criteria in the near future owing to, for example, disposals of some or all of its insurance business;
- the group's international activity or size have increased owing to some temporary or transitory effect such as an economic shock or exchange rate fluctuations and it would be unreasonable to identify the group as an IAIG for a short period; and
- the group's business outside of the home jurisdiction exceeds 10% in aggregate but its business in any one jurisdiction outside the home jurisdiction is negligible.

CF 23.0.c The group-wide supervisor notifies the group of its decision to identify it as an IAIG and reasons for that decision.