

A BILL

entitled

INSURANCE AMENDMENT NO.2 ACT 2021

BR / 2021

1. Citation
2. Amends section 2
3. Amends section 6E
4. Amends section 10
5. Amends section 14
6. Amends section 17
7. Amends section 18A
8. Amends section 30CA
9. Amends section 30J
10. Amends section 30JE
11. Amends section 30JEA
12. Amends section 31AA
13. Amends section 32
14. Amends section 36
15. Consequential Amendment
16. Commencement

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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 No. 2 Act 2021.

Amends Section 2

2 Section 2 (1) of the principal Act is amended by deleting "or salesmen" and substituting the words ", salesmen and or insurance marketplace providers".

Amends Section 6E

3 Section 6 of the principal Act is amended in—

- (a) the title by inserting the words "or innovative intermediaries" after "innovative insurers";
- (b) subsection (1) by inserting the words "or intermediary's" after "innovative insurer's";
- (c) in subsections (2), (3), (4) and (5) by inserting the words "or innovative intermediary" after "innovative insurer".

Amends Section 10

4 Section 10 of the principal Act is amended by inserting the following new subsections after subsection (2) —

"(3) The Authority may at any time, whether or not on an application made by an insurance manager, broker, agent, insurance marketplace provider or salesman, add to, vary or delete any conditions imposed under subsection (1).

(4) Before the Authority exercises its powers under subsection (3) in relation to an insurance manager, broker, agent, insurance marketplace provider or salesman, who has not made an application under that subsection, the Authority shall give notice to the insurance manager, broker, agent, insurance marketplace provider or salesman and shall take into account any written representations made by the insurance manager, broker, agent, insurance marketplace provider or salesman within such period as may be specified in the notice.

(5) On application made to the Authority under subsection (1), the Authority may, where it determines it appropriate to do so, register an insurance manager, broker, agent, insurance marketplace provider or salesman in a different class."

Amends Section 14

5 Section 14 of the principal Act is amended in—

- (a) subsection (1) (ab)—
 - (i) in paragraph (i) by inserting the reference “10 (3), 10(5),” after “10 (1)”;
 - (ii) in paragraph (v) by inserting the reference “42 (1) (a)” after “41 (1) (a)”;

Amends section 17

6 Section 17(4)(b) of the principal Act is amended by deleting “innovative insurer”.

Amends section 18A

7 Section 18A (2)(b) of the principal Act is amended by deleting “innovative insurer”.

Amends Section 30CA

8 Section 30CA of the principal Act is amended by inserting after subsection (4) new subsections (5) and (6) as follows—

“(5) For the purposes of this section, “officer” in relation to an insurance marketplace provider, means a director; chief executive; or a senior executive performing the duties of compliance, internal audit, finance, risk management, information technology or information security.

(6) For the purposes of this section, “officer” in relation to an insurance manager, broker or agent, means a director; chief executive; or a senior executive performing the duties of compliance, internal audit, finance or risk management.”.

Amends section 30J

9 Section 30J of the principal Act is amended by—

- (a) repealing subsections (5) and (7) (b);
- (b) deleting and substituting subsection (7) (c) as follows—

“(c) in relation to an innovative insurer, means a director, chief executive or senior executive performing the duties of underwriting, actuarial, risk management, investment, internal audit, finance, compliance, information technology or information security.”.

Amends Section 30JE

10 Section 30JE (3) of the principal Act is amended by inserting after subparagraph (c), a new subparagraph “(d)” as follows—

“(d) amalgamation with, acquisition of or merger with another firm.”

Amends section 30JEA

11 Section 30JEA (3) is repealed.

Amends section 31AA

12 Section 31AA (1) (b) of the principal Act is amended—
(a) in subparagraph (iii) by deleting “general business solvency certificate” and substituting the words “declaration of compliance”;
(b) by repealing subparagraph “(v)”.

Amends section 32D

13 Section 32D (1) of the principal Act is amended by deleting the reference “18A” and substituting the references “15A (6), 18A and 30CA (4)”.

Amends Section 36

14 Section 36 (4) of the principal Act is amended by—
(a) deleting and substituting sub-paragraph (a) (iii) as follows—
“(iii) insurance debts attributable to its long-term business.”;
(b) deleting and substituting sub-paragraph (b) (iii) as follows—
“(iii) insurance debts attributable to its general business.”;
(c) deleting and substituting subsection (7) as follows—
“(7) Where the assets of the long-term business fund are insufficient to discharge the debts referred to in paragraph (a) of subsection (4) and the assets of the general business fund exceed the value of the debts referred to in paragraph (b) of subsection (4), the assets of the general business fund that represent the excess shall be applied in discharge of the following debts in the following order of priority –
(a) outstanding preferential debts attributable to the insurer’s long-term business;
(b) outstanding insurance debts attributable to the insurer’s long-term business.”;
(d) inserting the following new subsections after subsection (7) —
“(7A) Where the assets of the general business fund are insufficient to discharge the debts referred to in paragraph (b) of subsection (4) and the assets of the long-

term business fund exceed the value of the debts referred to in paragraph (a) of subsection (4), the long-term business fund assets that represent the excess shall be applied in discharge of the following debts in the following order of priority –

- (a) outstanding preferential debts of the general business;
 - (b) outstanding insurance debts of the general business;
- (7B) The insurance debts attributable to the long-term insurance business shall rank equally among themselves and be paid in full, unless the assets of the long-term business fund available after payment of preferential debts attributable to the long-term business, and any available assets of the general business fund applied in accordance with subsection (7), are insufficient to meet them, in which case they abate in equal proportions.
- (7C) The insurance debts attributable to the general business shall rank equally among themselves and be paid in full, unless the assets of the general business fund available after payment of preferential debts attributable to the general business, and any available assets of the long-term business fund applied in accordance with subsection (7A), are insufficient to meet them, in which case they abate in equal proportions.
- (7D) Notwithstanding sub-paragraph (a)(i)(A) of sub-section (4), the assets referred to in the provisions of sub-section 33(4) of the Employment Act 2000, as those provisions are applied by that sub-paragraph, shall be deemed to include any available assets of the general business fund applied in accordance with sub-section (7).
- (7E) Notwithstanding sub-paragraph (b)(i)(A) of sub-section (4), the assets referred to in the provisions of sub-section 33(4) of the Employment Act 2000, as those provisions are applied by that sub-paragraph, shall be deemed to include any available assets of the long-term business fund applied in accordance with subsection (7A).
- (7F) Notwithstanding sub-paragraph (a)(ii)(A) of sub-section (4), the assets and property referred to in the provisions of sub-section 236(5) of the Companies Act 1981, as those provisions are applied by that sub-paragraph, shall be deemed to include any available assets of the general business fund applied in accordance with sub-section (7).
- (7G) Notwithstanding sub-paragraph (b)(ii)(A) of sub-section (4), the assets and property referred to in the provisions of sub-section 236(5) of the Companies Act 1981, as those provisions are applied by that sub-paragraph, shall be deemed to include any available assets of the long-term business fund applied in accordance with subsection (7A).
- (7H) Once all preferential debts and all insurance debts of the insurer have been paid in full, any surplus assets of the insurer shall be applied in discharge of all other debts of the insurer, which debts shall rank equally among themselves and be paid in full, unless the surplus assets are insufficient to meet them, in which case they abate in equal proportions.”.

Consequential Amendment

14 The Schedule, which makes consequential amendments to the Bermuda Monetary Authority Act 1969.

Commencement

15 This Act shall be deemed to come into effect on 1 January 2022.

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AMENDMENT TO THE BERMUDA MONETARY AUTHORITY ACT 1969

The Bermuda Monetary Authority Act 1969 is amended under the heading “**Insurance Act 1978**” by inserting the following new paragraphs after paragraph 2 (b)—

- “(ba) Applying to vary or delete any conditions imposed on the registration of an insurance manager, broker, agent, insurance marketplace provider or salesman pursuant to section 10 (3).

- (bc) to register an insurance manager, broker, agent, insurance marketplace provider or salesman in a different class pursuant to section 10 (5)”.

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INSURANCE AMENDMENT NO. 2 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 the winding of up composite insurers regulated by the Authority.

Clause 1 provides for this Act to be cited as the Insurance Amendment No. 2 Act 2021;

Clause 2 makes provision for section 2 of the Act to note that the statutory powers, duties and functions of the Authority extend to supervising insurance marketplace providers;

Clause 3 makes provision for section 6E of the Act to be amended to apply to innovative intermediaries;

Clause 4 proposes to amend section 10 of the Act to allow for the Authority to vary or delete any conditions imposed on an insurance manager, broker, agent, insurance marketplace provider or salesman;

Clause 5 seeks to amend section 14 of the Act makes provision for the Act to *inter alia*; be amended to allow for the Authority to prescribe a fee for the variation or deletion of any conditions imposed on an insurance manager, broker, agent, insurance marketplace provider or salesman;

Clause 6 makes provision for section 17 (4) (b) of the Act to be amended by deleting “innovative insurer” as a housekeeping measure, as such insurer class is not required to file statutory financial statements;

Clause 7 proposes to amend section 18A (2) (b) of the Act by deleting “innovative insurer” as a housekeeping measure;

Clause 8 seeks to amend section 30CA of the to define the term “officer” with regards to notification of change for insurance managers, broker or agent, and insurance marketplace provider;

Clause 9 proposes to amend section 30J is proposed to be amended by repealing subsections (5) and (7) (b) as a housekeeping measure, as such matters no longer apply to the registered persons noted thereunder; and by repealing subsection 7 (c), to clarify the application of an “officer” in relation to an innovative insurer for the purposes of the section;

Clause 10 seeks to amend section 30JE (3) to expand the notification events by an insurance manager or insurance intermediary to the Authority to include scenarios relating to “amalgamations and acquisitions of or mergers with, other firms”;

Clause 11 proposes for section 30JEA (3) to be repealed as a housekeeping measure.

Clause 12 makes provision for amendment to section 31AA to require insurance groups and commercial insurers to submit an updated declaration of compliance when failing to comply with the enhanced capital requirement.

Clause 13 seeks to amend section 32 by scoping in certain sections where civil penalties are not required to be applied, because administrative penalties are imposed instead.

Clause 14 makes provision for the Act to be amended to ensure that, if one business fund of a dual license-holder in liquidation is not sufficient to pay preferential or policyholder debts of that fund, and there is a surplus in the other business fund after paying preferential and policyholder creditors of the second fund, the second fund's surplus will be used to pay the unpaid preferential and policyholder debts of the first fund before paying non-preferential, non-policyholder creditors. In addition, after all preferential and policyholder debts of both funds have been paid, any surplus is to be pooled to pay non-preferential, non-policyholder creditors of both funds;

Clause 15 makes provision for a consequential amendment to be made to the Bermuda Monetary Authority Act 1969.

Clause 16 provides for commencement.

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