



BERMUDA MONETARY AUTHORITY

CONSULTATION PAPER

LEGISLATIVE ENHANCEMENTS TO INNOVATIVE CLASSES, INTRODUCTION OF INNOVATIVE LONG-TERM INSURER CLASS AND ENHANCEMENTS TO SECTION 24 DUAL-LICENSED INSURERS TO MAINTAIN SEPARATE ACCOUNTS

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I. EXECUTIVE SUMMARY

1. This Consultation Paper (CP) sets out the Bermuda Monetary Authority's (Authority or BMA) proposals to enhance the innovation regulatory regime by introducing a new innovative class for long-term business and proposing a number of enhancements to the existing innovative classes introduced in 2019. This CP also proposes to amend section 24 of the Insurance Act 1978 (Act) to enhance the regulatory and supervisory regime for dual-licensed insurers.
2. The views of the insurance industry and other interested persons on the proposals set out in this paper are invited. Comments should be sent to the Authority, addressed to RiskAnalytics@bma.bm, no later than 31 May 2022.

II. INTRODUCTION TO CLASS IILT

3. The BMA envisions that market developments over the next decade will lead to the convergence of insurance, capital markets, artificial intelligence and distributed ledger technology (e.g., blockchain and web3 applications) both with and without the use of digital assets.
4. In May 2019, the Authority [released a CP](#), proposing new classes of insurer that included an innovative class for general business insurers (Class IIGB). Continuing on this initiative, the Authority proposes the introduction of a new class for innovative insurers for long-term business, to be called, hereinafter, Class IILT.
5. The introduction of Class IILT is in response to the Authority's experience since its implementation of the regulatory sandbox and innovation hub regimes in 2019. From this experience, the Authority has identified the need for a counterpart offering to Class IIGB that will cater to innovative insurers in the long-term sector. The introduction of Class IILT is a natural progression from the sandbox Class IILT, to ensure there is an appropriate class for companies graduating from the sandbox, where expected business models do not fit in any of the traditional classes upon graduation. This proposal is consistent with the Authority's goal of providing a regulatory environment that appropriately protects policyholders while remaining conducive to product and technological innovation.
6. The Class IILT is intended for, but not limited to, innovative business models, such as those insurers that utilise digital assets for their operations. Similar to Class IIGB, the Authority proposes that this class be structured and regulated using the same approach as Class IIGB insurers, and tailored to the unique and specific needs of long-term business. The Authority reiterates that although the innovative insurer regimes are being designed to meet the international insurance regulatory standards adopted by the International Association of Insurance Supervisors, both IIGB and IILT do not fall under the commercial insurance frameworks. Rather, they are aligned with the same objectives and approach as the limited purpose insurers,

while maintaining a framework that is flexible to the scale and risk level of proposed business.

7. Given that there is already significant flexibility in the existing classes, it is envisioned that the Class IILT regulatory framework will initially be for specific innovation (primarily the insurer business models that incorporate digital assets), as opposed to all innovation, which can be incorporated in the other classes (e.g., business models that provide indemnity coverage for digital assets in fiat currency, which can be appropriately regulated in another class). Nonetheless, the Authority will exercise a case-by-case assessment and is prepared to allow other innovations if the Class IILT framework proves to be the most appropriate for the proposed business models.
8. It is important to note that Class IILT will not be allowed to be used as a means of circumventing appropriate legal and regulatory requirements or to allow an insurer to benefit from regulatory arbitrage.
9. The BMA envisions that the insurance sector will increasingly embrace the token economy (digital assets) to enhance liquidity and risk transfer efficiency. Further, the insurance capacity for digital asset businesses is still currently scarce. As more jurisdictions introduce robust regulatory frameworks for digital asset businesses, similar to the Digital Asset Business Act 2018 (DABA) and Digital Asset Issuance Act 2020 (DAIA) and related regulations, and as the overall digital asset business sector matures, this could be a growth area for insurance indemnity coverage for the long-term sector.
10. Currently, only a few insurers are prepared to provide insurance indemnity coverage to digital asset businesses in fiat currency; however, eventually (arising from the demand) both premiums will be paid, and indemnity coverage will be provided in the form of a digital asset for a number of long-term insurance contracts. Given the challenges in valuation and other complexities with digital assets, the Authority is proposing the introduction of a Class IILT.

III. PROPOSED REGULATORY FRAMEWORK FOR CLASS IILT

11. Where appropriate, the Authority proposes to initially grant a Class IILT (regulatory sandbox) licence to business models incorporating digital assets and subsequently move these companies to Class IILT after successful graduation from the regulatory sandbox. Where an insurer's business model and necessary infrastructure to operate are well developed upon licence application, the Authority may allow the regulatory sandbox phase to be by-passed.
12. Similar to Class IIGB insurers, the BMA proposes that the Class IILT insurer regulatory reporting framework and statutory financial statements be reported and audited under US GAAP, IFRS or any other GAAP recognised by the Authority. If appropriate, Class IILT insurers may alternatively use audited condensed GAAP as

- prescribed by the Authority for these purposes. The Class IILT regulatory framework will also provide for the filing of a declaration of compliance. In cases where US GAAP or IFRS has not provided for valuation standards for digital assets, the BMA proposes to prescribe valuation standards in the relevant prudential rules. Similar to traditional long-term classes, Class IILT insurers will also be required to appoint an approved actuary to opine on the adequacy of the company's long-term insurance reserves on an annual basis.
13. The Authority proposes that Class IILT insurers be required to meet the head office requirements of section 8C of the Act in accordance with proportionality. Class IILT insurers would also be subject to a risk-based regulatory capital requirement arising from a model resembling the Bermuda Solvency Capital Requirement-Small and Medium-Sized Entities (BSCR-SME), reflecting all material risks at 99% tail value at risk over a one-year time horizon. This capital requirement (Enhanced Capital Requirement (ECR)) will be subject to a minimum margin of solvency floor that would be akin to the Class C requirement.
 14. Particularly in the case of insurers incorporating digital assets within their business models, the Class IILT regulatory framework will provide the ability for the BMA to issue supervisory directions to tailor requirements to suit the characteristics of the business model, given the vast variety that may seek to be licensed.
 15. Where a Class IILT insurer enters into an insurance contract that allows for claims to be settled with a digital asset, the Authority will generally require that the premiums also be paid in that same digital asset to reduce basis risk. Otherwise, Class IILT insurers are expected to demonstrate a robust risk management framework to mitigate related risks.
 16. Where it is determined upon application that a company applying to be a Class IILT insurer also performs any activities licensable under the DABA and DAIA as part of their business model in Bermuda, the company shall be required to apply for the appropriate licence. In such cases, the Authority will provide consolidated supervision to ensure a holistic view of the business risks and to have an effective and efficient application of the respective regulatory frameworks.
 17. In line with other long-term classes, all Class IILT insurers will be subject to sanctions and suspicious activity reporting regulations and, where appropriate, will be considered to be an "anti-money laundering/anti-terrorist financing regulated financial institution" under section 42A(c) of the Proceeds of Crime Act 1997.
 18. Applications for modifications permitted within other regulatory frameworks would be allowed under the Class IILT regulatory framework using the same application process for traditional classes.

19. Similar to other long-term classes, the registration and annual business fees for Class IILT insurers will be based upon total assets subject to a floor (see Appendix II).

IV. PROPOSED AMENDMENT TO SECTION 24 OF THE ACT

20. As prescribed in section 24 of the Act, a Bermuda insurer that has an approved long-term business licence and general business licence is required to keep its accounts in respect of its long-term business separate from the accounts in respect of its general business.
21. The Authority is proposing that an insurer shall seek prior approval from the Authority before transferring its assets between the long-term business balance sheet and the general business balance sheet. The application process provides the Authority with the opportunity to assess whether there will be sufficient assets remaining to meet the insurance obligations under the respective licences once the funds have been transferred and whether the relevant solvency margins, liquidity ratio and other ratios under Bermuda law, as may be applicable to each licence, will continue to be met subsequent to the transfer. This will allow the Authority to satisfy itself that policyholders will not be exposed to any unexpected solvency, market or liquidity risks as a result of the transfer.
22. As part of the Authority's ongoing review to ensure the legislative requirements are relevant and effective, a historical issue was also identified in this section of the Act. In instances where insurers transfer assets from the long-term business balance sheet to the general business balance sheet, they are required to meet their ECR and the minimum margin of solvency requirement in respect of the long-term balance sheet immediately following such transfer; and where insurers transfer assets from the general business balance sheet to the long-term business balance sheet, they are required to meet their ECR, liquidity ratio and the minimum margin of solvency requirement in respect of the general business balance sheet immediately following such transfer.
23. The Authority is proposing to remove reference to the ECR requirement from sections 24(5B) and 24(5C) of the Act, respectively, as the ECR for commercial insurers is determined based on the insurer's consolidated economic balance sheet basis; therefore, transfers between the long-term balance sheet and the general business balance sheet will not impact the insurer's ECR.

V. HOUSEKEEPING AMENDMENTS TO INNOVATIVE INSURERS (IGB AND ILT) AND INNOVATIVE INTERMEDIARIES (IA, IB, IM AND IMP)

24. Finally, learning from the Authority's ongoing implementation of the regulatory sandbox regime, the BMA identified a number of enhancements that need to be addressed in the Act to ensure consistency of the legislative requirements against

the intended implementation approach. Some of the key proposed amendments include:

- a. Amend section 7 of the Act to require at registration an appropriate amount, as the Authority deems fit, for Class IGB and Class ILT insurers based on the nature, size and complexity of the proposed business;
- b. Amend section 6E of the Act to add innovative intermediaries into the scope of the Authority's powers to adjust registration requirements, as appropriate; and
- c. Make various housekeeping amendments to specific reporting requirements under sections 15 to 18 of the Act for innovative insurers and innovative intermediaries.

APPENDIX I – PROPOSED LEGISLATIVE AMENDMENTS

Amendments to the Act and new rules for Class IILT

The following are the proposed amendments to the Act to establish regulatory frameworks for Class IILT:

Amends section 1

2 Section 1 (1) of the principal Act is amended—

(a) in the definition of the class of insurers that are registered to carry on long-term business under section 4, by inserting “Class IILT, Class IILT” after the words “Class B”;

(b) by inserting the following definition in the appropriate alphabetical order—

“**Class IILT**” A body corporate is registrable as a Class IILT insurer where that body corporate intends, at the time of its application for registration, to carry on long-term business in an innovative manner.”

Amends section 4

3 Section 4 of the principal Act is amended in—

(a) subsection (1) in—

(i) paragraph (b) by inserting after “Class B” the words “Class IILT”;

(ii) paragraph (c) by inserting after “Class B” the words “Class IILT”;

(b) subsection (6) by inserting new subparagraphs “(d)” and “(e)” after subparagraph “(c)” as follows:

“(d) register a Class IGB as a Class 1, Class 2, Class 3, Class 3A, Class IIGB, Class 3B or Class 4 insurer where it proposes to carry on general business;

(e) register a Class IILT as a Class A, Class B, Class C, Class IILT, Class D or Class E insurer where it proposes to carry on long-term business.”

Amends section 4EA

4 Section 4EA (1) of the principal Act is amended by inserting after “Class B” the words “Class IILT”.

Amends section 4ED

5 Section 4ED of the principal Act is amended by deleting “or Class B” and substituting the words “Class B or Class IILT”.

Amends section 4EE

6 Section 4EE of the principal Act is amended by deleting “or Class B” and substituting the words “Class B or Class IILT”.

Amends section 4EF

7 Section 4EF of the principal Act is amended by deleting “or Class B” and substituting the words “Class B or Class IILT”.

Inserts section 4EJ

8 The principal Act is amended by inserting the following after section “4EI”—

“Class IILT

4EJ A body corporate is registrable as a Class IILT insurer where that body corporate intends, at the time of its application for registration, to carry on long-term business in an innovative manner.”

Amends section 4F

9 Section 4F (1) of the principal Act is amended in the definition of “total assets” by inserting before “Class C” the words “Class IIL”.

Amends section 6

10 Section 6 of the principal Act is amended in—

- (a) subsection (1) by inserting after “Class B” the words “Class IILT”;
- (b) subsection (1A) by inserting after “Class B” the words “or Class IILT” where it occurs;
- (c) subsection (4) by inserting after “Class 4” the words “Class IILT”;
- (d) subsection (5) by inserting after “Class 4” the words “Class IILT” where it occurs.

Amends section 6C

11 Section 6C of the principal Act is amended in—

- (a) the heading by inserting, “ innovative intermediaries” after the word “managers”;
- (b) subsection (1) by inserting after “designated insurer” the words “, innovative intermediary” where it occurs;
- (c) subsection (3) by deleting “towards”; and substituting the words “or innovative intermediary towards”;
- (d) subsection (3A) by deleting “or insurance marketplace provider” and substituting the words, “ insurance marketplace provider or an innovative intermediary”;
- (e) subsection (4) by inserting before “insurance manager” the words “innovative insurer, innovative intermediary”;

- (f) subsection (5) by inserting after “designated insurer” the words “, innovative intermediary”.

Amends section 6E

12 Section 6E (1) of the principal Act is amended by deleting “an innovative insurer’s registration requirements” and substituting the words “the registration requirements of innovative insurers, innovative intermediaries, Class IIGB insurers and Class IILT insurers”.

Amends section 7

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

- (a) in subparagraph (g) by inserting after “Class A” the words “or Class IILT”;

- (b) by deleting and substituting subparagraph “(k)” as follows:

“(k) as an innovative insurer is not less than \$50,000 and not more than \$1,000,000 based on the nature, scale and complexity of the insurance business.”.

Amends section 8

14 Section 8 (1) of the principal Act is amended by inserting “innovative insurer, innovative intermediary” after the word “agent”.

Amends section 8C

15 Section 8C of the principal Act is amended—

- (a) in the heading by inserting after “Class 4” the words “Class IILT”;

- (b) in subsections (1) and (5) by inserting after “Class 4” the words “Class IILT”.

Amends section 10

16 Section 10 (1) of the principal Act is amended by inserting after “insurance marketplace provider” the words “, innovative intermediary”.

Amends section 11

17 Section 11 of the principal Act is amended by inserting after “insurance marketplace provider” the words “, innovative intermediary”.

Amends section 13

18 Section 13(3) of the principal Act is amended by inserting after subparagraph “(c)” a new subparagraph “(d)” as follows—

- “(d) the date the registration terminates, in the case of an innovative intermediary or innovative insurer.”

Amends section 15

19 Section 15 (1) of the principal Act is amended by inserting after “insurer” the words, “ other than an innovative insurer or an innovative intermediary”.

Amends section 15A

20 Section 15A of the principal Act is amended in —
(a) subsection (1) by inserting after “insurer” the words, “ other than an innovative insurer or an innovative intermediary”;
(b) subsection (6)(b) by deleting the words “Class IIGB,”.

Amends section 17

21 Section 17(4)(b) of the principal Act is deleted and substituted as follows—
“(b) in the case of a Class IIGB or Class IILT insurer, Collateralized Insurer, Special Purpose Insurer, Class 3A, Class 3B, Class 4 insurer; or a Class C, Class D or Class E insurer, four months after the end of the financial year to which the statements relate (or such longer period, not exceeding seven months, as the Authority may allow in the case of that insurer on an application made to it for that purpose)”.

Amends section 18

22 Section 18 (1) of the principal Act is amended by inserting after “insurer”, the words, “ other than an innovative insurer or innovative intermediary”.

Amends section 18A

23 Section 18A (2)(b) of the principal Act is deleted and substituted as follows:
“(b) \$1,000, in the case of a breach by a Class 3A, Class IIGB, Collateralized Insurer, Special Purpose Insurer, Class IILT, Class C, or Class D insurer; or”.

Amends section 18C

24 Section 18C (1) of the principal Act is amended in the tail by inserting after “Class B” the words “Class IILT”.

Amends section 24

25 Section 24 of the principal Act is amended by deleting and substituting subsections “(5B)” and “(5C)” as follows —
“(5B) No insurer, to which this section applies, shall transfer assets from the long-term business fund to the general business fund without prior written approval from the Authority. When requesting approval, insurers must demonstrate that, following such transfer, the insurer shall continue to meet its minimum margin of solvency requirements with respect to its long-term business.
“(5C) No insurer, to which this section applies, shall transfer assets from the general business fund to the long-term business fund without prior written

approval from the Authority. When requesting approval, insurers must demonstrate that, following such transfer, the insurer shall continue to meet its minimum margin of solvency requirements and liquidity ratios with respect to its general business.”

Amends section 26

- 26 Section 26 of the principal Act is amended—
- (a) in subsection (1) by deleting, “ Class B and Class IILT” and substituting the words “and Class B insurer”;
 - (b) by inserting the following new subsection after subsection (1A) —

“(1B) Every Class IILT shall appoint an individual approved by the Authority under subsection (3) who is qualified to assess the adequacy of long-term insurance reserves.”

Amends section 27

- 27 Section 27 of the principal Act is amended in —
- (a) subsection (1) by deleting, “ Class B and Class IILT” and substituting “and Class B”;
 - (b) subsection (1A) by inserting before “Class C” the words “Class IILT”.

Section 29

30 Section 29 of the principal Act is amended by inserting after “salesman” the words “, innovative intermediary,” where it occurs.

Amends section 30CA

31 Section 30CA (1) of the principal Act is amended by inserting, “ insurance marketplace provider, innovative intermediary” after the word “agent” where it occurs.

Amends section 30EA

32 Section 30EA of the principal Act is amended by inserting, “ innovative insurer, Class IILT” after the words “Class 4” where it occurs.

Amends section 30JE

- 33 Section 30JE of the principal Act is amended—
- (a) in the heading by inserting “, innovative intermediaries,” after the word “managers”;
 - (b) in subsections (1) through (5) by inserting, “ innovative intermediary” after the word “agent”.

Amends section 31B

34 Section 31B (1) of the principal Act is amended by inserting after “Class 4” the words “Class IILT”.

Amends section 31C

35 Section 31C (1) of the principal Act is amended by inserting after “Class 3B” the words “Class IILT”.

Amends section 32

36 Section 32(4)(ba) of the principal Act is amended by inserting after “Class 4” the words “Class IILT”.

Amends section 42

37 Section 42 of the principal Act is amended in–

- (a) the heading by inserting after “salesman” the words “innovative intermediaries”;
- (b) subsection (1) by inserting after “salesman” the words “innovative intermediaries” where it occurs;
- (c) subsection (3) by inserting after “salesman” the words “innovative intermediaries”.

Consequential amendment

38 (1) Schedule 1, which makes a consequential amendment to the Insurance Accounts Regulations 1980, has an effect.

(2) Schedule 2, which makes consequential amendments to the Bermuda Monetary Authority Act 1969, has an effect.

Schedule 1

Insurance Accounts Regulations 1980

Amends paragraph 5

- (a) Paragraph 5 of the Insurance Accounts Regulations 1980 is amended by deleting “Class B insurer or ILT insurer” and substituting the words “or Class B insurer”.

Amends Schedule I

- (b) Schedule I to the Insurance Accounts Regulations 1980 is amended in the heading “**Form 1A**” by revoking “Class 3 insurer or IGB insurer” and substituting “or Class 3 insurer”.

APPENDIX II – PROPOSED FEE

Schedule 2

Bermuda Monetary Authority Act 1969

The Fourth Schedule to the Bermuda Monetary Authority Act 1969 is amended in paragraph 3 by inserting a new subparagraph “(h)” after subparagraph “(g)” as follows—

“(h)

Total Assets	Fee
A) not exceed \$150 million	\$25,000
B) exceed \$150 million but not exceed \$350 million	\$28,000
C) exceed \$350 million but not exceed \$2 billion	\$31,000
D) exceed \$2 billion but not exceed \$5 billion	\$61,000
(E) exceed \$5 billion but not exceed \$10 billion	\$65,000
(F) exceed \$10 billion	\$100,000