

A BILL

entitled

INSURANCE AMENDMENT ACT 2018

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SCHEDULE
Consequential Amendments

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:

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Citation

1 This Act, which amends the Insurance Act 1978 (the “principal Act”), may be cited as the Insurance Amendment Act 2018.

Amends section 1

2 The principal Act is amended in section 1(1) by inserting the following new definitions in the appropriate alphabetical order—

“Class IGB” means an insurer carrying on general business in an innovative or experimental manner;

“Class ILT” means an insurer carrying on long-term business in an innovative or experimental manner;

“IA” means an insurance agent carrying on the business of an insurance agent in an innovative or experimental manner;

“IB” means an insurance broker carrying on the business of an insurance broker in an innovative or experimental manner;

“IM” means an insurance manager carrying on the business of an insurance manager in an innovative or experimental manner;

“innovative insurance business” means insurance business approved by the Authority to be carried on by a registered innovative insurer in an innovative or experimental manner;

“innovative insurer” means a Class IGB or Class ILT insurer;

“innovative intermediaries” means a reference to IAs, IBs and IMs.

Amends section 4

3 The principal Act is amended in section 4(1)—

(a) in paragraph (c), by deleting “or”;

(b) in paragraph (d), by deleting the period and substituting “; or”;

(c) by inserting after paragraph (d) the following new paragraph—

“(e) as an innovative insurer.”.

Inserts new sections 4EG and 4EH

4 The principal Act is amended by inserting the following new sections after section 4EF—

“Class IGB

4EG A body corporate is registrable as a Class IGB insurer where that body corporate intends at the time of its application for registration, to carry on general business in an innovative or experimental manner.

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Class ILT

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

Amends section 4F

5 The principal Act is amended in section 4F(1) by deleting the words “4EF” and substituting the words “4EH”.

Amends section 5

6 The principal Act is amended in section 5 by inserting after subsection (2) the following new subsection—

“(3) In considering whether to register a body as an innovative insurer, the Authority shall, in addition to the matters set out in subsection (1), have regard to the following matters—

- (a) whether the innovative insurer has satisfactorily demonstrated to the Authority that it is able to use new or different technological or innovative measures—
 - (i) to carry on the proposed innovative insurance business; or
 - (ii) to provide products or services; and
- (b) the sophistication of the policyholders, proposed policyholders and service providers of the innovative insurer.”.

Amends section 6

7 The principal Act is amended in section 6—

- (a) in subsection (1), by inserting after the words “Special Purpose Insurer” the words “, innovative insurer”;
- (b) in subsection (1A), by inserting after the words “Class B”, in the two instances they occur, the words “or Class ILT”.

Amends section 6A

8 The principal Act is amended in section 6A—

- (a) in subsection (1)—
 - (i) in paragraph (f), by deleting the word “and”;
 - (ii) in paragraph (g), by deleting the comma and substituting “; and”;
 - (iii) by deleting the words after paragraph (g);
 - (iv) by inserting after paragraph (g) the following new paragraph—

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“(h) innovative insurer and innovative intermediaries reporting requirements.”;

(b) by inserting after subsection (1), the following new subsection—

“(1A) Rules made by the Authority under subsection (1) must be complied with by—

- (a) insurance managers;
- (b) registered insurers;
- (c) designated insurers;
- (d) innovative insurers; and
- (e) innovative intermediaries.”;

(c) in subsection (2), after paragraph (a), by inserting the following new paragraph—

“(aa) by different classes of innovative insurers.”;

(d) in subsection (3)(a) and (b), by deleting the words “or designated insurer” and substituting the words “, designated insurer, innovative insurer or innovative intermediaries”.

Amends section 6C

9 The principal Act is amended in section 6C(1) and (5) by deleting the words “or designated insurer” and substituting the words “, designated insurer or innovative insurer”.

Inserts new sections 6E and 6F

10 The principal Act is amended by inserting after section 6D the following sections—

“Authority may adjust registration requirements of innovative insurers

6E (1) Without prejudice to its powers under this Act to give directions, the Authority may in the circumstances mentioned in subsection (5) make such adjustments to an innovative insurer’s registration requirements as it considers appropriate.

(2) Before making any adjustments, the Authority shall serve notice on the innovative insurer of its intention to make adjustments giving its reasons therefor.

(3) An innovative insurer served with a notice under subsection (2) may, within a period of 14 days from the date of the notice, make written representations to the Authority; and where such representations are made, the Authority shall take them into account in deciding whether to make the proposed adjustments.

(4) The Authority shall notify the innovative insurer of the adjustments it has made.

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(5) The circumstances referred to in subsection (1) are such circumstances as would cause the Authority to conclude that the requirements applicable to the innovative insurer, including but not limited to corporate governance, capital and risk management requirements, are inappropriate given the innovative insurer's risk profile.

Protection of public interest, policyholders of innovative insurers and clients of innovative intermediaries

6F (1) Without prejudice to its powers under this Act to give directions, the Authority may, where it has made a determination in that respect, take any action necessary or desirable to protect the public, policyholders or proposed potential policyholders of innovative insurers or the clients or potential clients of innovative intermediaries.

(2) Before taking any such action under subsection (1), the Authority shall serve notice in writing on the innovative insurer or innovative intermediary, as the case may be, giving its reasons therefor.

(3) An innovative insurer or innovative intermediary served with a notice under subsection (2) may, within a period of 14 days from the date of the notice, make written representations to the Authority; and where such representations are made, the Authority shall take them into account in deciding whether to take the proposed action.”.

Amends section 7

11 The principal Act is amended in section 7(1)—

- (a) in paragraph (j), by deleting the period and substituting a semicolon; and
- (b) by inserting after paragraph (j) the following new paragraph—

“(k) as an innovative insurer is \$120,000.”.

Amends section 8B

12 The principal Act is amended in section 8B(1) by inserting after the word “Class 1” the words “and a Class IGB”.

Amends section 13

13 The principal Act is amended in section 13—

- (a) in subsection (2), by deleting the word “A” and substituting the words “Subject to subsection (2A), a”;
- (b) by inserting after subsection (2) the following new subsections—

“(2A) Registration of an innovative insurer or innovative intermediary—

- (a) shall be for such period as may be determined by the Authority; and

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- (b) may be extended by the Authority for such additional period as the Authority deems appropriate—
 - (i) where the Authority so determines; or
 - (ii) on the application of the innovative insurer or innovative intermediary.
- (2B) An application under subsection (2A)(b)(ii)—
 - (a) shall be in such form as the Authority may determine; and
 - (b) shall be accompanied by such information as the Authority may require.”.

Amends section 14

14 The principal Act is amended in section 14(1)(ab)(i) by inserting after the words “4A(2),” the words “10(1), 13(2A)(b)(ii),”.

Amends section 17

15 The principal Act is amended in section 17(4)(b) by inserting after the words “Special Purpose Insurer,” the words “innovative insurer,”.

Amends section 18A

16 The principal Act is amended in section 18A(2)(b) by inserting after the words “Special Purpose Insurer,” the words “innovative insurer,”.

Amends section 18C

17 The principal Act is amended in section 18C(1), in the words after paragraph (c), by inserting after the words “Special Purpose Insurers,” the words “innovative insurers,”.

Amends section 26

18 The principal Act is amended in section 26(1) by deleting the words “and Class B” and substituting the words “, Class B and Class ILT,”.

Amends section 27

19 The principal Act is amended in section 27(1) by deleting the words “and Class B” and substituting the words “, Class B and Class ILT,”.

Amends section 31C

20 The principal Act is amended in section 31C(1) by deleting the words “or Class 4 insurer,” and substituting the words “, Class 4 or innovative insurer,”.

Amends section 44A

21 The principal Act is amended in section 44A—

- (a) in subsection (1), by deleting the word “Where” and substituting the words “Subject to subsection (1A) and where”;

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(b) by inserting after subsection (1) the following new subsection—

“(1A) This Part does not apply to—

- (a) an innovative insurer registered under section 4(1)(e); or
- (b) an innovative intermediary.”.

Consequential Amendments

22 The Schedule has effect with respect to amendments to—

- (a) the Bermuda Monetary Authority Act 1969;
- (b) the Insurance Accounts Regulations 1980; and
- (c) the Insurance Returns and Solvency Regulations 1980.

SCHEDULE

(Section 22)

CONSEQUENTIAL AMENDMENTS

Amends Bermuda Monetary Authority Act 1969

1 The Bermuda Monetary Authority Act 1969 is amended in the Fourth Schedule under the heading “Insurance Act 1978”—

- (a) in paragraph (2)(a), by inserting after the words “section 4(3)” the words “or section 10(1)”;
- (b) in paragraph (2)(c), by deleting the words “and Special Purpose Insurers” and substituting the words “, Special Purpose Insurers and innovative insurers”;
- (c) by inserting after paragraph (2)(c) the following new paragraph—
 - “(ca) to be granted an extension of the period of registration under section 13(2A)(b)(ii)\$2,266”;
- (d) in paragraph (3)(a), by inserting after paragraph (xi) the following new paragraphs—
 - “(xii) Class IGB \$6,180
 - (xiii) Class ILT. \$6,180”;
- (e) in paragraph (7)(a), by inserting after paragraph (xi) the following new paragraphs—
 - “(xii) Class IGB \$6,180
 - (xiii) Class ILT..... \$6,180”.

Amends Insurance Accounts Regulations 1980

2 The Insurance Accounts Regulations 1980 are amended—

- (a) in regulation 3(3), by deleting the words “and Class B insurer” and substituting the words “, Class B insurer and innovative insurer”;
- (b) in regulation 4(1), by deleting the words “or Class 3 Insurer” and substituting the words “, Class 3 Insurer or innovative insurer”;
- (c) in regulation 5, by deleting the words “or Class B insurer” and substituting the words “, Class B insurer or ILT insurer”;
- (d) in regulation 8, by deleting the words “and Class B insurer”, in the two instances in which they occur, and substituting the words “, Class B insurer and innovative insurer”;

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- (e) in regulation 9, by deleting the words “and Class B insurer”, in the three instances in which they occur, and substituting “, Class B insurer and innovative insurer”;
- (f) in Schedule I, under the headings “Form 1A” and “Form 2A”, by deleting the words “or Class 3 Insurer” and substituting the words “Class 3 insurer or IGB insurer”;
- (g) in Schedule II, under the headings “Part V” and “Part VI” by deleting the words “and Special Purpose Insurer” and substituting the words “Special Purpose Insurer and innovative insurer”;
- (h) in Schedule III, under the heading “Part IV” by deleting the words “and Special Purpose Insurer” and substituting the words “Special Purpose Insurer and innovative insurer”;
- (i) in Schedule IV, under the heading “Part IV” by deleting the words “and Special Purpose Insurer” and substituting the words “Special Purpose Insurer and innovative insurer”.

Amends Insurance Returns and Solvency Regulations 1980

3 The Insurance Returns and Solvency Regulations 1980 are amended—

- (a) in regulation 2, in the definition of “insurer” by deleting the words “or Special Purpose Insurer” and substituting the words “, Special Purpose Insurer or innovative insurer”;
- (b) in regulation 9(2)(e), by deleting the words “and Class B insurer” and substituting the words “, Class B insurer and ILT insurer”;
- (c) in regulation 14, by deleting the words “or Class B insurer”, in the two instances in which they occur, and substituting the words “, Class B insurer or innovative insurer”;
- (d) in regulation 14F(m), by deleting the words “or Class B insurance business” and substituting the words “, Class B insurer or innovative insurers”;
- (e) in Schedule I—
 - (i) in paragraph 1, by inserting after the words “Class 3 \$1,000,000” the words “IGB insurer \$120,000” ;
 - (ii) in paragraph 2(1), by deleting the words “and Class 3” and substituting the words “, Class 3 and IGB”;
 - (iii) in paragraph 2(2), (3)(a) and (b) and (4), by deleting the words “or Class 3” where they occur and substituting the words “, Class 3 or IGB”;
 - (iv) in paragraph 2(3), in the closing paragraph, by inserting after the words “Class 3 15%” the words “IGB insurer 10%”;
 - (v) in paragraph 3(b), by inserting after the words “Class 3 15%” the words “IGB insurer 10%”;

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- (f) In Schedule II, by inserting after the words “Class B greater of \$250,000 or 1% of assets” the words “ILT insurer greater of \$120,000 or 0.5% of assets,”.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Insurance Act 1978 (the “principal Act”) by making a number of changes to introduce a new class of innovative insurers and innovative insurance managers, brokers and agents (intermediaries).

Clause 1 provides a citation for the Bill.

Clause 2 provides for new definitions relating to new classes of insurers that include “innovative insurers” which may carry on general or long-term “innovative insurance business”; and “insurance intermediaries” which are to carry on the business of an insurance manager, agent or broker in an innovative, new or technological manner not contemplated by the market at the time of registration.

Clause 3 amends the principal Act in section 4 to provide for the registration of innovative insurers.

Clause 4 amends the principal Act to insert two new sections after section 4EF. The new section 4EG provides for the Class IGB insurer, which may be registered where the Authority is satisfied that applicant intends to carry on general business in an innovative or experimental manner. The new section 4EH provides for Class ILT insurer, which may be registered where the Authority is satisfied that the applicant intends to carry on long-term business in an innovative or experimental manner.

Clause 5 amends the principal Act in section 4F to extend the interpretation of terms under that section to innovative insurers.

Clause 6 amends the principal Act in section 5 by inserting a new subsection (3) to provide for additional factors to be considered by the Authority when registering a body as a Class IGB or ILT insurer.

Clause 7 amends the principal Act in section 6 to impose upon innovative insurers the criteria under that section relating to further registration requirements that may be considered necessary to impose by the Authority prior to registering an innovative insurer.

Clause 8 amends the principal Act in section 6A to empower the Authority to make prudential standard rules to be complied with by innovative insurers and innovative intermediaries.

Clause 9 amends the principal Act in section 6C(1) and (5) to make provision for an application to be submitted by innovative insurers or innovative intermediaries (or the Authority on its own volition where required) to exempt or modify any prudential standard requirements imposed on such persons.

Clause 10 amends the principal Act to insert new sections 6E and 6F. The new section 6E provides to empower the Authority to adjust the registration requirements of an innovative insurer where the Authority considers it appropriate do so. The new section 6F

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provides the Authority with a general power to take any action necessary to protect the public or policyholders or potential policyholders of innovative insurers or intermediaries.

Clause 11 amends the principal Act in section 7 to impose a requirement upon innovative insurers to have paid up share capital of \$120,000.

Clause 12 amends the principal Act in section 8B to require Class IGB insurers to appoint an approved loss reserve specialist when directed by the Authority.

Clause 13 amends the principal Act in section 13 by inserting a new subsection (2A) to provide that the registration of an innovative insurer or innovative intermediary shall be for such period as the Authority may determine and to provide for the extension of such period of registration on determination by the Authority or on application by the innovative insurer or innovative intermediary.

Clause 14 amends the principal Act in section 14(1)(ab)(i) to impose a requirement for the payment of fees on applications made under section 10(1) providing for the registration of insurance managers and intermediaries and under section 13(2A)(b)(ii) providing for the application for extension of registration of innovative insurers or innovative intermediaries.

Clause 15 amends the principal Act in section 17(4)(b) to impose upon an innovative insurer a requirement under that section for the keeping and filing of statutory financial statements.

Clause 16 amends the principal Act in section 18A(2)(b) of the principal Act to impose a requirement on innovative insurers to be liable to a civil penalty where they do not comply with obligations imposed to file financial statements or returns with the Authority.

Clause 17 amends the principal Act in section 18C to require innovative insurers to keep records of account in Bermuda.

Clause 18 amends the principal Act in section 26(1) to require innovative insurers carrying on long-term business to appoint an approved actuary.

Clause 19 amends the principal Act in section 27(1) to require innovative insurers to include a certificate prepared by its approved actuary relating to the amount of the outstanding liabilities relating to its long-term business in its statutory financial return submitted to the Authority.

Clause 20 amends the principal Act in section 31C to require innovative insurers to apply to the Authority for its approval where such insurers need to reduce total statutory capital by 15% or more.

Clause 21 amends the principal Act in section 44A(1) to exclude innovative insurers and innovative intermediaries from having the right of appeal under Part VIIIA of the principal Act.

Clause 22 provides for the Schedule to have effect for the purpose of consequential amendments to the Bermuda Monetary Authority Act 1969 to impose, amongst other things, registration and annual fee requirements on innovative insurers and intermediaries; to the Insurance Accounts Regulations 1980 to impose specified obligations on innovative insurers when filing annual statutory financial statements; and to the Insurance Returns

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and Solvency Regulations 1980 to cause specified requirements under the Regulations to apply to innovative insurers.