

CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, reflecting the sky and surrounding environment. The building is partially obscured by a semi-transparent blue rectangle containing text. The foreground shows a paved plaza with geometric patterns and a few small, cylindrical bollards.

Bermuda Insurance Companies

Preface

This publication has been prepared for the assistance of those who are considering the formation of an insurance or reinsurance company in Bermuda. It deals in broad terms with the requirements of Bermuda law for the establishment and operation of such companies under the Insurance Act 1978. It is not intended to be exhaustive but merely to provide brief details and information on the topic. We recommend that persons seek legal advice in Bermuda on any specific proposals they may have before taking steps to implement them. In addition, before proceeding with any such proposals, persons are advised to consult with their tax, legal and other professional advisers in their respective home jurisdictions.

Copies of the Insurance Act 1978, together with its related regulations, are available on request.

Conyers Dill & Pearman

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1. INTRODUCTION

Bermuda's insurance industry began in 1947 when the founder of the American International Group (C.V. Starr) based the group's international business in Bermuda. In the 1960s, Bermuda became a pioneering domicile for captive insurance companies and is now the world's second largest domicile for captive companies, after the United States. Alongside the captive industry, Bermuda has also attracted a large number of general business and long-term business commercial insurers which write a wide range of insurance and reinsurance products.

Recognising that a system of regulation is essential to maintain a healthy insurance industry, the public and private sectors worked together to produce the Insurance Act 1978. Since that time, the laws and regulations pertaining to Bermuda's insurance industry have been regularly amended to recognize the diverse range of underwriting activities conducted by Bermuda insurers and reinsurers. In the lead up to attaining Solvency II equivalency in early 2016, Bermuda phased in a number of new regulations designed to bolster its regulatory and supervisory framework, particularly as it relates to its commercial insurers.

2. INSURANCE REGULATORY FRAMEWORK

2.1. Insurance Licensing and Regulatory Legislation

The insurance licensing and regulatory regime in Bermuda is primarily comprised of the Insurance Act 1978, as amended (the “**Insurance Act**”) and its related regulations (the “**Regulations**”). Hereinafter, references to the “Insurance Act” are to the Insurance Act 1978 and the Regulations.

The Insurance Act applies to any person carrying on insurance business in or from within Bermuda, including local companies (companies that are predominantly owned by Bermudians and which carry on business mainly within the domestic economy), exempted companies (companies that are predominantly owned by non-Bermudians and which carry on business from Bermuda but not within the domestic economy unless licensed to do so), non-resident insurance undertakings (which are incorporated overseas and carry on domestic business in Bermuda pursuant to a permit granted under the Non-Resident Insurance Undertakings Act 1967) and overseas permit companies (which are incorporated overseas and carry on non-domestic insurance business from an office in Bermuda pursuant to a permit granted under the Companies Act 1981). All persons carrying on business in or from within Bermuda as an insurance manager, broker, agent, marketplace provider or salesman are also required to be registered under the Insurance Act.

The Insurance Act distinguishes between long term business, special purpose business and general business.

Long term business consists of insurance contracts covering life, annuity, accident and disability risks, and certain other types of contracts which do not include “excepted long-term business” (as defined in the Insurance Act).

Special purpose business includes insurance business under which an insurer fully funds its liabilities to its insureds through the proceeds of a debt issuance, cash, time deposits or some other financing mechanism approved by the Bermuda Monetary Authority (the “**BMA**”).

General business is any insurance business which is not long-term or special purpose business and includes accident and disability policies in effect for less than 5 years.

The Insurance Act does not distinguish between insurers and reinsurers: companies are registered under the Insurance Act as “insurers” (although in certain circumstances a condition to registration may be imposed to the effect that the company may carry on only reinsurance business). However, the Insurance Act does distinguish between ‘captive insurers’, being insurers that predominantly insure the risks of their affiliates (i.e. Class 1, Class 2, Class 3, Class A and Class B insurers), and ‘commercial insurers’, being insurers that predominantly insure third party risks (i.e. Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurers). The Insurance Act uses the defined term “insurance business” to include reinsurance. References herein to insurance companies include reinsurance companies.

2.2. The Bermuda Monetary Authority

The regulation of those matters pertaining to the Insurance Act is the responsibility of the BMA. The BMA is responsible for the licensing, regulation, supervision and inspection of Bermuda’s insurance companies and for the licensing of all insurance brokers, agents, managers, marketplace providers and salesmen.

3. REGISTRATION UNDER THE INSURANCE ACT

All persons seeking to carry on insurance business in or from within Bermuda are required to be registered under the Insurance Act. All applications for registration are subject to BMA approval. When making an application, a captive insurer or a special purpose insurer must, among other things, submit an acceptable business plan and 5-year financial projections. Commercial insurers and collateralized insurers submit a more detailed application including detail regarding the proposed directors and senior management, investment strategy, code of conduct, compliance and pro forma runs of the Bermuda Solvency and Capital Model, in addition to information regarding the insurer’s underwriting strategy. There is a separate application process and licensing regime for those persons seeking to carry on business as Innovative Insurers or innovative intermediaries (i.e. insurance marketplace providers).

Where the applicant is seeking registration as an insurance manager, broker, agent, marketplace provider or salesman under the Insurance Act, a business plan and application form must be submitted to the BMA and an applicant seeking registration as a broker or manager is also required to provide evidence that they have at least \$1 million of professional indemnity insurance coverage. A marketplace provider will need to provide evidence that it has in place sufficient indemnity insurance coverage which may be appropriate given the nature, scale and complexity of its business.

When considering whether or not to approve an application, the BMA is bound by the Insurance Act to have regard to whether the applicants are conducting, or will conduct business in a prudent manner, with integrity and the professional skills appropriate to the nature and scale of the company’s business. The BMA also must be satisfied that every person who is, or would be, a controller or senior officer of a registered entity is a fit and proper person to perform the functions pertaining to the company’s activities.

The BMA has the discretion to approve or decline any registration application or to impose conditions if it feels it is appropriate to do so. The BMA is required to exercise its discretion in the public interest.

3.1. Incorporation of New Insurance Companies

Initially, an “in principle” application for registration as an insurer is submitted to the BMA. It is possible to delay the incorporation of the new company until the in principle application has been approved. However, most applicants prefer to incorporate and organise the new company prior to receiving the in principle approval so they can proceed with opening bank accounts and other preliminary matters.

Once the approval in principle has been received and the necessary capital (as described in its business plan) has been paid into the company, a formal application may then be made for the company to be registered as an insurer. This application closely resembles the initial application, particularly if no change in circumstances has occurred between the initial application and the time of the formal application being filed.

The incorporation submission and the application for registration do not form a part of any public file in Bermuda.

Registration under the Insurance Act, once granted, remains in force until cancelled by the BMA on any grounds specified in the Insurance Act.

4. GENERAL BUSINESS INSURERS

4.1. General Business Classifications

The classes of general business insurer range from pure captives (companies established with the specific objective of financing risks emanating from its parent or parent group) to large commercial insurers writing excess liability or property catastrophe reinsurance business.

Brief descriptions of the criteria applicable to the various general business insurance classifications are set out below:

Class 1 Insurers

A company is registrable as a Class 1 insurer where it is wholly owned by one person and intends to carry on insurance business consisting only of insuring the risks of that person or its affiliates.

Such insurers are often referred to as “pure captives” and are subject to the lowest regulatory oversight of all the classes of general business insurer.

A Class 1 insurer must have paid up share capital of at least \$120,000.

Class 2 Insurers

A company is registrable as a Class 2 insurer where it is wholly owned by two or more unrelated persons and intends to carry on general business with not less than 80% of the net premiums written for the purpose of:

- (a) insuring the risks of any of those persons or of any affiliates of any of those persons, or

- (b) insuring risks which, in the opinion of the BMA, arise out of the business or operations of those persons or any of their affiliates.

While still regarded as “captives”, such companies differ from pure captives in two ways: (1) they have more than one owner, and (2) as much as 20% of the risks that they insure may come from outside their ownership group.

Class 2 insurers are subject to the next lowest regulatory oversight of all classes of general business insurer.

A Class 2 insurer must have paid up share capital of at least \$120,000.

Class 3 Insurers

A body corporate carrying on general business is registrable as a Class 3 insurer where it is not otherwise registrable as a Class 1, Class 2, Class 3A, Class 3B, Class 4, Class IIGB, Collateralized Insurer, or Special Purpose Insurer.

For regulatory purposes, Class 3 insurers are generally regarded as “captives” and are subject to less rigorous regulation than Class 3A, Class 3B and Class 4 insurers.

A Class 3 insurer must have paid up share capital of at least \$120,000.

Class 3A Insurers

A company is registrable as a Class 3A where it intends to carry on general business and;

- (a) 50% or more of the net premiums written; or
- (b) 50% or more of the loss and loss expense provisions

represent unrelated business and its total net premiums written from unrelated business are less than \$50 million.

Class 3As are regarded as small commercial insurers and are subject to more rigorous regulatory and supervisory oversight than captive insurers.

A Class 3A insurer must have paid up share capital of at least \$120,000 and capital and surplus of at least \$1,000,000.

Class 3B Insurers

A company is registrable as a Class 3B insurer where it intends to carry on general business and;

- (a) 50% or more of the net premiums written; or
- (b) 50% or more of the loss and loss expense provisions

represent unrelated business and its total net premiums written from unrelated business are \$50 million or more.

Class 3Bs are regarded as large commercial insurers and attract more or less the same level of regulatory oversight as the Class 4 insurers, the most heavily regulated class.

A Class 3B insurer must have paid up share capital of at least \$120,000 and capital and surplus of at least \$1,000,000.

Class 4 Insurers

A company is registrable as a Class 4 insurer where it intends to carry on general business and;

- (a) it has at the time of its application for registration, or will have before it carries on insurance business, a total statutory capital and surplus of not less than \$100,000,000; and
- (b) it intends to carry on insurance business including excess liability business or property catastrophe reinsurance business.

Class 4 insurers currently undergo the most rigorous regulatory oversight of any class of general business insurer, and in recent years, the regulatory and supervisory regime pertaining to Class 4 insurers has been bolstered, particularly in the areas of capital adequacy, governance, own risk and solvency assessment and increased public disclosure and transparency.

A Class 4 insurer must have paid up share capital of at least \$1,000,000 and capital and surplus of at least \$100,000,000.

Class IIGB Insurers

A company is registrable as a Class IIGB Insurer where it intends to carry on general business in an innovative manner, but outside of the regulatory 'sandbox' approach used for Class IGB and ILT insurers (See Section 8).

A Class IIGB Insurer must have paid up share capital of at least \$120,000.

4.2. Minimum Solvency Margins (General Business)

All general business insurers' statutory assets must exceed their statutory liabilities by an amount greater than or equal to a prescribed minimum solvency margin which varies depending on the category of their registration and their net premiums written and loss reserves posted (the "**Minimum Solvency Margin**").

The Minimum Solvency Margin for a Class 1 insurer is the greater of:

- (a) \$120,000, or
- (b) 20% of the first \$6 million of net premiums written; if in excess of \$6 million, the figure is \$1.2 million plus 10% of net premiums written in excess of \$6 million, or
- (c) 10% of net discounted aggregate loss and loss expense provisions and other insurance reserves.

The Minimum Solvency Margin for a Class 2 insurer is the greater of:

- (a) \$250,000, or
- (b) 20% of the first \$6 million of net premiums written; if in excess of \$6 million, the figure is \$1.2 million plus 10% of net premiums written in excess of \$6 million, or
- (c) 10% of net discounted aggregate loss and loss expense provisions and other insurance reserves.

The Minimum Solvency Margin for Class 3 insurers is the greater of:

- (a) \$1 million, or
- (b) 20% of the first \$6 million of net premiums written; if in excess of \$6 million, the figure is \$1.2 million plus 15% of net premiums written in excess of \$6 million, or
- (c) 15% of net discounted aggregate loss and loss expense provisions and other insurance reserves.

The Minimum Solvency Margin for Class 3A and Class 3B insurers is the greater of:

- (a) \$1 million, or
- (b) 20% of the first \$6 million of net premiums written; if in excess of \$6 million, the figure is \$1.2 million plus 15% of net premiums written in excess of \$6 million, or
- (c) 15% of net discounted aggregate loss and loss expense provisions and other insurance reserves, or
- (d) 25% of its ECR (described below) as reported at the end of the relevant year.

The Minimum Solvency Margin that must be maintained by a Class 4 insurer is the greater of:

- (a) \$100 million, or
- (b) 50% of net premiums written (with a credit for reinsurance ceded not exceeding 25% of gross premiums), or
- (c) 15% of net discounted aggregate loss and loss expense provisions and other insurance reserves, or
- (d) 25% of its ECR (described below) as reported at the end of the relevant year.

The Minimum Solvency Margin that must be maintained by a Class IIGB insurer is the greater of:

- (a) \$120,000, or
- (b) 20% of net premiums, where net premiums written by the Class IIGB insurer in its current financial year (or projected to be written, in the case of an application for registration as a Class IIGB insurer) do not, or (as the case may be) are not projected to, exceed \$6,000,000, or

- (c) \$1,200,000 plus 15% of net premiums written by the Class IIGB insurer in its current financial year (or projected to be written, in the case of an application for registration as a Class IIGB insurer) do, or (as the case may be) are projected to, exceed \$6,000,000, or
- (d) 15% of the aggregate of net loss and loss expenses provisions and other insurance general reserves, as indicated in the Class IIGB insurer's statutory financial statements (or as projected in the case of an application for registration), or
- (e) 25% of the Class IIGB insurer's ECR reported at the end of its relevant year.

Any insurer which at any time fails to meet its Minimum Solvency Margin must, upon becoming aware of such failure, immediately notify the BMA and within 14 days thereafter file a written report containing particulars of the circumstances that gave rise to the failure and setting out its plan (detailing specific actions to be taken and the expected timeframe) as to how the insurer intends to rectify the failure.

4.3. Enhanced Capital Requirements (General Business)

All Class IIGB, Class 3A, Class 3B and Class 4 general business insurers are required to maintain available statutory capital and surplus at a level equal to or in excess of their enhanced capital requirement ("**ECR**"). The ECR applicable to qualifying insurers is established by reference to either the appropriate Bermuda Solvency Capital Requirement model (standard mathematical models used to determine an insurer's capital adequacy) or a BMA-approved internal capital model.

Any insurer that fails to comply with its ECR must, upon becoming aware of such failure, or of having reason to believe that such a failure has occurred, immediately notify the BMA and within 14 days thereafter file a written report containing particulars of the circumstances that gave rise to the failure and setting out its plan (detailing specific actions to be taken and the expected timeframe) as to how the insurer intends to rectify the failure. Furthermore, within 45 days of becoming aware of the failure, or of having reason to believe that such a failure has occurred, such insurer must furnish the BMA with (i) unaudited statutory economic balance sheets and unaudited interim financial statements prepared in accordance with GAAP covering such period as the BMA may require, (ii) an opinion from its loss reserve specialist in relation to its total general business insurance technical provisions (as set out in the economic balance sheet) where applicable, (iii) a general business solvency certificate in respect of such interim financial statements, and (iv) a capital and solvency return reflecting an ECR prepared using post failure data where applicable.

While not specifically set out in the Insurance Act, the BMA has also established a target capital level for each insurer equal to 120% of its ECR. While qualifying insurers are not currently required to maintain their statutory capital and surplus at this level, the target capital level serves as an early warning tool for the BMA and failure to maintain statutory capital at least equal to the target capital level will likely result in increased BMA regulatory oversight.

4.4. Eligible Capital Requirements (General Business)

For each insurer subject to an ECR, the BMA has introduced a three-tiered capital system designed to assess the quality of capital resources that an insurer has available to meet its capital requirements.

The regime classifies all capital instruments into one of three tiers based on their “loss absorbency” characteristics. Highest quality capital is classified as Tier 1 Capital; lesser quality capital is classified as either Tier 2 Capital or Tier 3 Capital.

The maximum amount of Tier 1, Tier 2 and Tier 3 Capital (determined by registration classification) that may be used to support the insurer’s Minimum Solvency Margin, ECR and target capital level will be determined in accordance with applicable eligible capital rules in effect from time to time.

4.5. Minimum Liquidity Ratio

All general business insurers are required to maintain the value of their “relevant assets” at not less than 75% of the amount of their “relevant liabilities” (the “**Minimum Liquidity Ratio**”).

The term “relevant assets” is defined by reference to certain items contained in the insurer’s statutory balance sheet for general business. These items include (1) cash and cash equivalents, (2) quoted investments, (3) unquoted bonds and debentures, (4) investments in first mortgage loans on real estate, (5) investment income due and accrued, (6) accounts and premiums receivable, (7) reinsurance balances receivable and (8) funds held by ceding reinsurers. It should be noted that unquoted equities, investments in and advances to affiliates, real estate and collateral loans are not relevant assets but the BMA, on application by the insurer, may designate such assets as relevant assets for the insurer.

“Relevant liabilities” are total general business insurance reserves and total other liabilities less deferred income tax, letters of credit, guarantees and other similar instruments.

4.6. Loss Reserve Specialist

Each Class 2, Class 3, Class 3A, Class 3B, Class 4, and Class IIGB general business insurer (and any Class 1 when directed to do so by the BMA) shall appoint an individual approved by the BMA to be its loss reserve specialist.

To qualify as an approved loss reserve specialist, an applicant must be an individual qualified to provide an opinion in accordance with the requirements of the Insurance Act and the BMA must be satisfied that the individual is fit and proper to hold such an appointment.

Each Class 3, Class 3A, Class 3B and Class 4 insurer is required to submit an opinion of its approved loss reserve specialist annually with its statutory financial return in respect of its total general business insurance technical provisions.

Class 2 insurers are required to submit in every third year (beginning with the return relating to the financial year following the insurer’s registration as a Class 2 insurer) an opinion of its approved loss reserve specialist with its statutory financial return in respect of its loss and loss expense provisions.

4.7. Restrictions on Dividends and Distributions (General Business)

Where a general business insurer fails to meet its Minimum Solvency Margin or Minimum Liquidity Ratio (the “**Relevant Margins**”) on the last day of any financial year, it is prohibited from declaring or paying any dividends during the next financial year without the prior approval of the BMA.

Furthermore, notwithstanding anything to the contrary in any other enactment, any insurer that fails to comply with its ECR is also prohibited from declaring and paying any dividends until the failure has been rectified.

In addition, no Class IIGB, Class 3A, Class 3B or Class 4 insurer may declare or pay in any financial year dividends of more than 25% of its total statutory capital and surplus (as shown on its previous financial year's statutory balance sheet) unless it files (at least seven days before payment of such dividends) with the BMA an affidavit stating that the declaration of those dividends has not caused the insurer to fail to meet its Relevant Margins.

The restrictions on declaring or paying dividends and distributions under the Insurance Act are in addition to the solvency requirements under the Companies Act 1981 (the “**Companies Act**”) which restricts a company from declaring or paying a dividend or a distribution out of contributed surplus if there are reasonable grounds for believing that the company is, or after the payment of the dividend or distribution would be, unable to pay its liabilities as they become due or that the realizable value of that company's assets would thereby be less than its liabilities.

4.8. Reduction of Capital (General Business)

No general business insurer may reduce its total statutory capital, as set out in its previous year's financial statements, by 15% or more unless it has received the prior approval of the BMA. Total statutory capital includes the amount paid in with respect to the issue of its shares as well as all contributed surplus.

Class IIGB, Class 3A, Class 3B and Class 4 insurers seeking to reduce their statutory capital, as set out in its previous year's financial statements, by 15% or more, must also submit an affidavit signed by at least two directors (one of whom must be a Bermuda resident director if any of the insurer's directors are resident in Bermuda) and the principal representative (discussed below) stating that, in the opinion of those signing, the proposed reduction will not cause the insurer to fail to meet its Relevant Margins.

5. LONG-TERM INSURERS

Any person seeking to carry out long-term insurance business is required to be registered as either a Class A, Class B, Class C, Class D, Class E, or Class ILT insurer under the Insurance Act.

5.1. Long-Term Business Classifications

Class A Insurer

A company is registrable as a Class A insurer where it (a) is wholly owned by one person and intends to carry on long-term business consisting only of insuring the risks of that person or its affiliates.

A Class A insurer must have paid up share capital of at least \$120,000 and capital and surplus of at least \$120,000.

Class B Insurer

A company is registrable as a Class B insurer if it is wholly owned by two or more unrelated persons and intends to carry on long-term business not less than 80% of the premiums and other considerations

written in respect of which will be written for the purpose of (a) insuring the risks of any of those persons or any affiliates of those persons; or (b) insuring risks which, in the opinion of the BMA, arise out of the business or operations of those persons or any affiliates of those persons.

A company is also registrable as a Class B insurer if it would be registrable as a Class A insurer but for the fact that (a) not all of the business which it intends to carry on, but at least 80% of the premiums and other considerations written, will consist of insuring risks of its parent or any affiliates of that person; or (b) it intends to carry on long-term business not less than 80% of the premiums and other considerations written in respect of which will, in the opinion of the BMA, arise out of the business or operations of its parent or any affiliates of that person.

A Class B insurer must have paid up share capital of at least \$250,000 and capital and surplus of at least \$250,000.

Class C Insurer

A company carrying on long-term business is registrable as a Class C insurer if it has total assets of less than \$250 million and is not registrable as a Class A or Class B insurer.

A Class C insurer must have paid up share capital of \$250,000 and capital and surplus of at least \$500,000.

Class D Insurer

A company carrying on long-term business is registrable as a Class D insurer if it has total assets of \$250 million or more, but less than \$500 million, and is not registrable as a Class A, Class B or Class C insurer.

A Class D insurer must have paid up share capital of \$250,000 and capital and surplus of at least \$4,000,000.

Class E Insurer

A company carrying on long-term business is registrable as a Class E insurer if it has total assets of more than \$500 million and is not registrable as a Class A or Class B insurer. Notwithstanding that a long-term insurer has total assets of more than \$500 million and is not registrable as a Class A or Class B insurer, the BMA has the authority to classify such insurer as either a Class C or Class D insurer, if circumstances warrant such a classification.

A Class E insurer must have paid up share capital of \$250,000 and capital and surplus of at least \$8,000,000.

5.2. Minimum Solvency Requirements (Long-Term)

All long-term insurers' statutory assets must exceed their statutory liabilities by an amount greater than the prescribed Minimum Solvency Margin.

- The Minimum Solvency Margin for a Class A insurer is the greater of \$120,000 or 0.5% of assets.
- The Minimum Solvency Margin for a Class B insurer is the greater of \$250,000 or 1% of assets.

- The Minimum Solvency Margin for a Class C insurer is the greater of \$500,000; (b) 1.5% of assets or (c) 25% of the ECR as reported at the end of the relevant year.
- The Minimum Solvency Margin for a Class D insurer is the greater of (a) \$4,000,000; (b) 2% of the first \$250,000,000 of assets plus 1.5% of assets above \$250,000,000 or (c) 25% of the ECR as reported at the end of the relevant year.
- The Minimum Solvency Margin for a Class E insurer is the greater of (a) \$8,000,000; (b) 2% of the first \$500,000,000 of assets plus 1.5% of assets above \$500,000,000; or (c) 25% of the ECR as reported at the end of the relevant year.

Assets are defined as the total assets reported on an insurer's balance sheet in the relevant year less the amount held in a segregated account.

Any long-term insurer which at any time fails to meet its Minimum Solvency Margin must, upon becoming aware of such failure, immediately notify the BMA and within 14 days thereafter file a written report containing particulars of the circumstances that gave rise to the failure and setting out its plan detailing specific actions to be taken and the expected timeframe) as to how the insurer intends to rectify the failure.

5.3. Enhanced Capital Requirements (Long-Term)

All Class C, Class D and Class E long-term insurers are required to maintain available statutory capital and surplus at a level equal to or in excess of an ECR which is established by reference to either the Bermuda Solvency Capital Requirement for the long-term insurers' model or its BMA-approved internal capital model.

If any Class C, Class D or Class E insurer fails to meet its applicable ECR, it must, upon becoming aware of such failure, or of having reason to believe that such a failure has occurred, immediately notify the BMA and within 14 days thereafter file a written report containing particulars of the circumstances that gave rise to the failure and setting out its plan (detailing specific actions to be taken and the expected timeframe) as to how the insurer intends to rectify the failure. Furthermore, within 45 days, such insurer must furnish the BMA with (i) unaudited statutory economic balance sheets and unaudited interim financial statements prepared in accordance with GAAP covering such period as the BMA may require, (ii) an opinion from its approved actuary in relation to its total long-term insurance business technical provisions, (iii) a long-term business solvency certificate in respect of such interim statutory financial statements, and (iv) a capital and solvency return reflecting an ECR prepared using post failure data where applicable.

As discussed above in relation to general business insurers, the BMA will, concurrently with the imposition of the ECR, also establish a target capital level for each long-term commercial insurer subject to an ECR equal to 120% of its ECR. Similarly, qualifying insurers are not statutorily required to maintain their statutory capital and surplus at this level, but the target capital level serves as an early warning tool for the BMA and failure to maintain statutory capital at least equal to the target capital level will likely result in increased BMA regulatory oversight.

5.4. Eligible Capital Requirements (Long-Term)

All commercial long-term insurers are required to assess the quality of their capital resources available to meet their capital requirements. Similar to the system for the general business insurers, the new eligible capital system for commercial long-term insurers classifies all capital instruments into one of three tiers based on their “loss absorbency” characteristics. Highest quality capital is classified as Tier 1 Capital; lesser quality capital is classified as either Tier 2 Capital or Tier 3 Capital.

The maximum amount of Tier 1, Tier 2 and Tier 3 Capital that may be used to support a Class C, Class D or Class E insurer’s Minimum Solvency Margin and ECR will be determined in accordance with applicable eligible capital rules in effect from time to time.

5.5. Actuaries

A long-term insurer must appoint an actuary approved by the BMA. In order to be approved, the actuary must be a member in good standing of either the Canadian Institute of Actuaries, the Casualty Actuarial Society (in the US), the Institute of Actuaries of Australia, the Institute and Faculty of Actuaries (for the UK), the Society of Actuaries (in the US), the American Academy of Actuaries or a member of an actuarial body recognised by the BMA. It is the approved actuary who prepares the annual actuary’s certificate for filing with the insurer’s statutory financial return. The actuary must be an individual.

5.6. Long-Term Business Fund

A long-term insurer must maintain accounts in respect of its long-term business separate from any accounts kept in respect of any other business and all receipts of its long-term business shall form part of its long-term business fund.

5.7. Payments

The long-term business fund is a legally segregated pool of assets whose use is restricted under the Insurance Act. No payment may be made, directly or indirectly, out of the long-term business fund for any purpose other than the insurer’s long-term business except in so far as such payment can be made out of any surplus certified by the insurer’s approved actuary to be available for distribution otherwise than to policyholders.

5.8. Restrictions on Dividends & Distributions (Long-Term)

A long-term insurer must refrain from declaring or paying any dividends during any financial year if it would cause the long-term insurer to fail to meet its Minimum Solvency Margin or (in the case of a Class C, Class D or Class E insurer) ECR. Where a long-term insurer fails to meet its Minimum Solvency Margin on the last day of any financial year, it will be prohibited from declaring or paying any dividends during the next financial year without the approval of the BMA. Furthermore, a long-term insurer may not declare or pay a dividend to any person other than a policyholder unless the value of the assets of its long-term business fund (as certified by the insurer’s approved actuary) exceeds the extent (as to certified) of the liabilities of its long-term business and the amount of any such dividend shall not exceed the aggregate of that excess and any other funds properly available for the payment of dividends arising out of the business of the insurer other than long-term business.

In addition, no Class C, Class D or Class E insurer may declare or pay in any financial year dividends of more than 25% of its total statutory capital and surplus (as shown on its previous financial year's statutory balance sheet) unless it files (at least seven days before payment of such dividends) with the BMA an affidavit stating that the declaration of those dividends has not caused the insurer to fail to meet its Minimum Solvency Margin.

In addition to these restrictions under the Insurance Act, a long-term insurer remains subject to the provisions of the Companies Act which restrict it from declaring or paying a dividend or a distribution out of contributed surplus if there are reasonable grounds for believing that the long-term insurer is unable, or after the payment of the dividend or distribution would be unable, to pay its liabilities as they become due or that the realizable value of that company's assets would thereby be less than its liabilities.

5.9. Reduction of Capital (Long-Term)

No long-term insurer may reduce its total statutory capital, as set out in its previous year's financial statements, by 15% or more unless it has received the prior approval of the BMA. Total statutory capital includes the amount paid in with respect to the issue of shares as well as contributed surplus and any other fixed capital designated by the BMA as statutory capital (such as letters of credit).

Class C, Class D and Class E insurers seeking to reduce their statutory capital, as set out in its previous year's financial statements, by 15% or more, must also submit an affidavit signed by at least 2 directors (one of whom must be a Bermuda resident director if any of the insurer's directors are resident in Bermuda) and the principal representative (discussed below) stating that, in the opinion of those signing, the proposed reduction will not cause the insurer to fail to meet its Minimum Solvency Margin.

5.10. Life Insurance Act 1978 (the "Life Act")

To the extent that the long-term insurer issues life insurance policies which are made in Bermuda and governed by Bermuda law, the Life Act will also apply. The Life Act requires certain matters to be stipulated in the policies issued by the insurer and defines the meaning of insurable interest in respect thereof. Other provisions deal with the assignability of policies and the designation of beneficiaries.

6. COMPOSITE INSURERS

The Insurance Act permits an insurer to be registered as both a general business insurer and a long-term business insurer. However, it should be noted that the BMA has indicated it will only permit commercial insurers (that is every Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer) to be registered as both a general business insurer and long-term business insurer if the long-term business is limited to reinsurance.

Currently, the minimum paid up share capital for an insurer holding dual licenses is the aggregate amount of paid up capital required for each class for which it is registered.

7. SPECIAL PURPOSE INSURERS AND COLLATERALIZED INSURERS

Special Purpose Insurers ("SPI") and Collateralized Insurers are insurers which carry on special purpose business.

Special purpose business is defined under the Insurance Act as insurance business pursuant to which an insurer fully funds its liabilities to the persons insured through (a) the proceeds of one or more of (i) a debt issuance where the repayment rights of the providers of such debt are subordinated to the rights of the person insured, or (ii) some other financing mechanism approved by the BMA; (b) cash; and (c) time deposits. The underlying risks of special purpose business may be either life/long-term related risks or general business risks.

An insurer may be registered as an SPI, the principal features of which are as follows: (i) the minimum paid up share capital is \$1.00; (ii) the applicable minimum solvency margin requires that the value of the special purpose business assets of the SPI exceed its special purpose business liabilities by at least \$1.00 at all times; (iii) an SPI is only permitted to write "special purpose business"; and (iv) the SPI will be restricted from entering into any other business save for ancillary agreements to effect its special purpose business. An SPI may be registered to carry on either restricted special purpose business or unrestricted special purpose business. Restricted special purpose business means special purpose business conducted between an SPI and specific insureds approved by the BMA. Unrestricted special purpose business means special purpose business conducted by an SPI with any insured.

An insurer that carries on special purpose business, but is not registrable as an SPI, may be registered as a Collateralized Insurer. A Collateralized Insurer must have paid up share capital of at least \$120,000 and is subject to a Minimum Solvency Margin of \$250,000. A Collateralized Insurer is required to meet an Enhanced Capital Requirement under a BSCR model made up of market risk, credit risk and operational risk. In addition, unlike an SPI, a Collateralized Insurer will be subject to the Head Office rules described in section 9.2 below.

8. INNOVATIVE INSURERS

The Insurance Act permits the licensing of insurers that carry on business in an “innovative and experimental manner”, known as “Innovative Insurers”. Other than Class IIGB insurers, there are two other classifications of Innovative Insurers: Class IGB (an insurer carrying on general business in an innovative or experimental manner) and Class ILT (an insurer carrying on long-term business in an innovative or experimental manner).

Class IGB and Class ILT insurers operate in a closely-controlled regulatory ‘sandbox’ for a limited period (typically six months to one year, which may be extended), during which such an insurer can operate and experiment with new technologies under the scrutiny of the BMA. This allows these sandbox Innovative Insurers to provide their insurance products and services to clients in a controlled-risk space, with the BMA determining what legal and regulatory aspects of existing legislation should apply to them in order to ensure policyholder protection. The intention is that within or following the initial period of controlled development, such a company could graduate from the sandbox and apply to be registered as an insurer under one of the standard classifications of general business, long-term business or special purpose business insurer, as applicable.

9. OTHER REQUIREMENTS OF THE INSURANCE ACT

There are certain provisions of the Insurance Act that are applicable to all registered insurers.

9.1. Principal Representative and Principal Office

The Insurance Act requires every insurer to appoint a resident principal representative and to maintain a principal office in Bermuda.

Without a reason acceptable to the BMA, an insurer may not terminate the appointment of its principal representative, and the principal representative may not cease to act as such, unless 30 days' notice in writing to the BMA is given of the intention to do so.

It is the duty of the principal representative to forthwith notify the BMA where the principal representative believes there is a likelihood of the insurer (for which the principal representative acts) becoming insolvent or that a reportable "event" has, to the principal representative's knowledge, occurred or is believed to have occurred. Examples of a reportable "event" include a failure by the insurer to comply substantially with a condition imposed upon it by the BMA relating to a solvency margin or a liquidity or other ratio and the insurer ceasing to carry on insurance business in or from within Bermuda. Within 14 days of such notification to the BMA, the principal representative must furnish the BMA with a written report setting out all the particulars of the case that are available to the principal representative.

The principal office may be the office of the person acting as principal representative, or the office of the management company, and will normally be distinct from the registered office of the company where the share register, minute book, seal, etc. are kept by the company secretary. Certain minimum records are required to be maintained at the principal office, e.g. premium registers, loss registers and general records on reinsurances.

9.2. Head Office

Each Collateralized Insurer, Class II GB, Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer must maintain its head office in Bermuda. In determining whether the insurer satisfies this requirement, the BMA shall consider, *inter alia*, the following factors: (i) where the underwriting, risk management and operational decision making of the insurer occurs; (ii) whether the presence of senior executives who are responsible for, and involved in, the decision making related to the insurance business of the insurer are located in Bermuda; and (iii) where meetings of the board of directors of the insurer occur. In making its determination, the BMA may also have regard to (a) the location where management of the insurer meets to effect policy decisions of the insurer; (b) the residence of the officers, insurance managers or employees of the insurer; and (c) the residence of one or more directors of the insurer in Bermuda. This provision does not apply to an insurer that has a permit to conduct business in Bermuda under the Companies Act or the Non-Resident Insurance Undertakings Act 1967.

9.3. Auditor

The Insurance Act generally requires that every insurer must appoint an independent auditor (based in Bermuda) who will annually audit and report on the statutory financial statements (and, in relation to a commercial insurer, the GAAP financial statements) of the insurer. The auditor must be approved by the BMA as the independent auditor of the insurer. The auditor may be the same person or firm which reports to the shareholders. If the insurer fails to appoint an approved auditor or at any time fails to fill a vacancy for such auditor, the BMA may appoint an approved auditor for the insurer and shall fix the remuneration to be paid to the approved auditor within 14 days, if not agreed sooner by the insurer and the auditor.

An SPI permitted to carry on restricted special purpose business is not required to appoint an independent auditor. An SPI permitted to carry on unrestricted special purpose business may file an application under the Insurance Act to have such requirement waived.

9.4. Non-insurance Business

No Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer may engage in non-insurance business unless that non-insurance business is ancillary to its insurance business. Non-insurance business means any business other than insurance business and includes carrying on investment business, managing an investment fund as operator, carrying on business as a fund administrator, carrying on banking business, underwriting debt or securities or otherwise engaging in investment banking, engaging in commercial or industrial activities and carrying on the business of management, sales or leasing of real property.

9.5. Group Supervision

The BMA may, in respect of an insurance group, determine whether it is appropriate for the BMA to be the group supervisor of that group. An insurance group is defined as a group of companies that conducts insurance business.

The BMA may make such determination where it ascertains that (i) the group is headed by a “specified insurer” (that is to say, it is headed by either a Class 3A, Class 3B or Class 4 general business insurer or a Class C, Class D or Class E long term insurer or another class of insurer designated by order of the BMA); or (ii) where the insurance group is not headed by a “specified insurer”, where it is headed by a parent company which is incorporated in Bermuda or (iii) where the parent company of the group is not a Bermuda company, in circumstances where the BMA is satisfied that the insurance group is directed and managed from Bermuda or the insurer in the group with the largest balance sheet total is a specified insurer.

Where the BMA determines that it should act as the group supervisor, it shall designate a specified insurer that is a member of the insurance group to be the designated insurer (the “**Designated Insurer**”) and it shall give to the Designated Insurer and any other applicable insurance regulatory authority written notice of its intention to act as group supervisor.

Certain specified entities may be excluded from group supervision on the application of the Designated Insurer, or on the BMA’s initiative. Companies that may be excluded must (i) be from countries or territories in which legal impediments to information exchange exist; (ii) have financial operations that would have a negligible impact on the operations of the insurance group; or (iii) be considered an inappropriate inclusion in light of the objectives of group supervision.

The BMA may withdraw from acting as group supervisor voluntarily following the request of a competent authority from an equivalent jurisdiction, or on the application of a Designated Insurer. For the purposes of the Insurance Act, a competent authority is a national authority that is legally empowered to supervise insurers and an equivalent jurisdiction is one possessing supervisory standards deemed equivalent by the BMA to those under the Insurance Act.

Once the BMA has been designated as group supervisor, the Designated Insurer must ensure that the insurance group of which it is a member appoints (i) an individual approved by the BMA who is qualified to provide an opinion on the insurance group's insurance technical provisions and (ii) an auditor approved by the BMA to audit the financial statements of the insurance group.

In addition, each qualifying insurance group must comply with the Insurance (Group Supervision) Rules 2011 and the Insurance (Prudential Standards) (Insurance Group Solvency Requirement) Rules 2011 (together, the **"Group Rules"**).

Under the Group Rules, each qualifying insurance group is required to prepare and submit, annually, a group capital and solvency return (including an opinion of the group actuary), group GAAP financial statements (and auditor's report thereon), group statutory financial statements and an annual group statutory financial return which shall include, among other matters (i) an insurance group business solvency certificate; (ii) particulars of ceded reinsurance comprising the top ten unaffiliated reinsurers for which the group has the highest recoverable balances exceeding 15% of the insurance group's statutory capital and surplus; (iii) any adjustments applied to the group GAAP financial statements by the group to produce the statutory financial statements in the form of a reconciliation of amounts reported as total assets, total liabilities, net income and total statutory capital and surplus; (iv) a list of non-insurance financial regulated entities owned by the group; and (v) particulars of 'qualifying members' (i.e. any member of the group subject to solvency requirements in the jurisdiction in which it is registered).

Additionally, the insurance group must ensure that the value of the insurance group's total statutory economic capital and surplus exceeds the aggregate of (i) the Minimum Solvency Margin of each qualifying member of the group controlled by the parent company and (ii) the Minimum Solvency Margin of each member of the group that is significantly under the influence of (but not controlled by) the parent company multiplied by the parent company's percentage shareholding in that member.

The BMA will maintain a register of particulars for every insurance group of which it acts as the group supervisor, detailing the names and addresses of (i) the Designated Insurer for the insurance group; (ii) each entity that is a member of the insurance group falling within the scope of group supervision; (iii) the principal representative of the insurance group in Bermuda; (iv) other competent authorities supervising other entities that are members of the insurance group; and (v) the insurance group auditors. The Designated Insurer must notify the BMA of any changes to the above details entered on the register of its insurance group.

As group supervisor, the BMA also performs a number of supervisory functions including (i) coordinating the gathering and dissemination of information which is of importance for the supervisory task of other competent authorities; (ii) carrying out a supervisory review and assessment of the financial situation of an insurance group; (iii) carrying out an assessment of an insurance group's compliance with the rules on solvency, risk concentration, intra-group transactions and good governance procedures; (iv) planning and coordinating with other competent authorities supervisory activities in respect of an insurance group, both as a going concern and in emergency situations; (v) coordinating any enforcement action that may need to be taken against an insurance group or any of its members; and (vi) planning and coordinating meetings of colleges of supervisors in order to facilitate the carrying out of the functions described above.

The Insurance Act and the Group Rules impose various other obligations on insurance groups, their parent companies and Designated Insurers. A memo describing Group Solvency and Supervision is available on request.

9.6. Fit and Proper Controllers

The BMA maintains supervision over the controllers of all registered insurers in Bermuda.

A controller includes (i) the managing director of the registered insurer or its parent company; (ii) the chief executive of the registered insurer or of its parent company; (iii) a 10%, 20%, 33% or 50% shareholder controller; and (iv) any person in accordance with whose directions or instructions the directors of the registered insurer or of its parent company are accustomed to act.

The definition of shareholder controller is set out in the Insurance Act but generally refers to (i) a person who holds 10% or more of the shares carrying rights to vote at a shareholders' meeting of the registered insurer or its parent company, or (ii) a person who is entitled to exercise 10% or more of the voting power at any shareholders' meeting of such registered insurer or its parent company, or (iii) a person who is able to exercise significant influence over the management of the registered insurer or its parent company by virtue of its shareholding or its entitlement to exercise, or control the exercise of, the voting power at any shareholders' meeting.

Where the shares of the registered insurer, or the shares of its parent company, are traded on a recognised stock exchange, and a person becomes a 10%, 20%, 33% or 50% shareholder controller of the insurer, that person shall, within 45 days, notify the BMA in writing that he has become such a controller. In addition, a person who is a shareholder controller of a Collateralized Insurer, Class IIGB, Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer whose shares or the shares of its parent company (if any) are traded on a recognised stock exchange must serve on the BMA a notice in writing that he has reduced or disposed of his holding in the insurer where the proportion of voting rights in the insurer held by him will have reached or fallen below 10%, 20%, 33% or 50% as the case may be, not later than 45 days after such disposal.

Where the shares of an insurer, or the shares of its parent company, are not traded on a recognised stock exchange, the Insurance Act prohibits a person from becoming a shareholder controller unless he has first served on the BMA notice in writing stating that he intends to become such a controller and the BMA has either, before the end of 45 days following the date of notification, provided notice to the proposed controller that it does not object to his becoming such a controller or the full 45 days has elapsed without the BMA filing an objection. Where neither the shares of the insurer nor the shares of its parent company (if any) are traded on any stock exchange, the Insurance Act prohibits a person who is a shareholder controller of a Collateralized Insurer, Class IIGB, Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer from reducing or disposing of his holdings where the proportion of voting rights held by the shareholder controller in the insurer will reach or fall below 10%, 20%, 33% or 50%, as the case may be, unless that shareholder controller has served on the BMA a notice in writing stating that he intends to reduce or dispose of such holding.

Where it appears to the BMA that a person who is a controller of any description is not or is no longer a fit and proper person to be such a controller, it may serve him with a written notice of objection to his

continuing as a controller of the registered person. Before issuing a notice of objection, the BMA is required to serve upon the person concerned a preliminary written notice stating the BMA's intention to issue a formal notice of objection. Upon receipt of the preliminary written notice, the person served may, within 28 days, file written representations with the BMA which shall be taken into account by the BMA in making its final determination.

Each Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurer (and, in respect of the parent company of an insurance group, the Designated Insurer) is required to notify the BMA in writing within 45 days of becoming aware of a change of its shareholder controller or officer.

Each Class 1, Class 2, Class 3, Class A and Class B insurer and each SPI is required, at the time of filing annual financial statements, to file with the BMA (a) a list of every person who has become or has ceased to be a shareholder controller or director of the insurer; and (b) where no registered insurance manager has been appointed to manage the affairs of the insurer, a list of every person who has become or has ceased to be an officer of that insurer (specifying the dates when each such person has become and/or has ceased to be a shareholder controller, director or other officer, as applicable), during the financial year to which the financial statements relate.

An officer in relation to an insurer or the parent company of an insurance group means a director, chief executive or senior executive performing duties of underwriting, actuarial, risk management, compliance, internal audit, finance or investment matters.

9.7. Notification of Material Changes

All registered insurers are required to give notice to the BMA of certain measures that are likely to be of material significance to the BMA in the discharge of its functions under the Insurance Act.

For the purposes of this provision, a material change includes (i) the transfer or acquisition of insurance business being part of a scheme falling under section 25 of the Insurance Act or section 99 of the Companies Act, (ii) an amalgamation with or acquisition of another firm, (iii) engaging in unrelated business that is retail business, (iv) the acquisition of a controlling interest in an undertaking that is engaged in non-insurance business which offers services and products to persons who are not affiliates of the insurer, (v) outsourcing all or substantially all of an insurer's actuarial, risk management, compliance or internal audit functions, (vi) outsourcing all or a material part of an insurer's underwriting activity, (vii) the transfer other than by way of reinsurance of all or substantially all of a line of business, (viii) the expansion into a material new line of business, (ix) the sale of an insurer, and (x) outsourcing of an officer role.

Similarly, each Designated Insurer is required to give notice to the BMA notice of any material change (which includes any change listed in items (ii) through (viii) above) in respect of the insurance group of which it is a member.

No registered insurer shall take any steps to give effect to a material change, and no Designated Insurer shall, subject to the immediately following paragraph, permit any member of its group to take steps to give effect to a material change, unless it has first served notice on the BMA that it intends to effect such material change and before the end of 30 days, either the BMA has notified such company in writing that

it has no objection to such change or that period has lapsed without the BMA having issued a notice of objection.

Before issuing a notice of objection, the BMA is required to serve upon the person concerned a preliminary written notice stating the BMA's intention to issue a formal notice of objection. Upon receipt of the preliminary written notice, the person served may, within 28 days, file written representations with the BMA which shall be taken into account by the BMA in making its final determination.

9.8. Statutory Financial Statements and Returns

Captive Insurers

The Insurance Act requires every Class 1, Class 2, Class 3, Class A and Class B insurer to prepare annual statutory financial statements and file these statements with the BMA together with a statutory financial return. The rules for preparing these statements for captives are set out in the Insurance Accounts Regulations 1980 and include a uniform format of the balance sheet, income statement, statement of capital and surplus and rules for valuation of assets and determination of liabilities. The statutory financial statements are not required to be prepared in accordance with GAAP.

The statutory financial return includes, among other matters, the statutory financial statements themselves, a report of the approved independent auditor on the statutory financial statements, the opinion of the loss reserve specialist, a business solvency certificate and a declaration of statutory ratios. The business solvency certificate and declaration of statutory ratios must each be signed by at least two directors of the insurer (of whom one must be a director resident in Bermuda if the insurer has a Bermuda resident director) and the insurer's principal representative in Bermuda. In signing the business solvency certificate, the directors and the principal representative are required to state whether the business solvency margin and (for general business insurers) the Minimum Liquidity Ratio have been met. Further, the auditor is required to state whether, in the auditor's opinion, it was reasonable for the directors to so certify and whether the declaration of statutory ratios complies with the requirements of the Insurance Returns and Solvency Regulations 1980.

The statutory financial statements and the statutory financial returns do not form a part of any public file in Bermuda for members of the public to examine.

Commercial Insurers

Annual Financial Statements. Each Collateralized Insurer, Class IIGB, Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer is required to prepare and submit, on an annual basis, financial statements which have been prepared under generally accepted accounting principles or international financial reporting standards ("**GAAP financial statements**") and audited statutory financial statements.

The insurer's annual GAAP financial statements and the auditor's report thereon, and the statutory financial statements are required to be filed with the BMA within four months from the end of the relevant financial year (unless specifically extended with the approval of the BMA).

The Insurance Act prescribes rules for the preparation and substance of statutory financial statements (which include, in statutory form, a balance sheet, an income statement, a statement of capital and

surplus and notes thereto). The statutory financial statements include detailed information and analysis regarding premiums, claims, reinsurance and investments of the insurer.

The statutory financial statements do not form a part of the public records maintained by the BMA but the GAAP financial statements are available for public inspection.

Declaration of Compliance. At the time of filing its statutory financial statements, an insurer is also required to deliver to the BMA a declaration of compliance, in such form and with such content as may be prescribed by the BMA, declaring whether or not the insurer has, with respect to the preceding financial year (i) complied with all requirements of the minimum criteria applicable to it; (ii) complied with the Minimum Solvency Margin as at its financial year end; (iii) complied with the applicable ECR as at its financial year end; (iv) complied with applicable conditions, directions and restrictions imposed on, or approvals granted to, the insurer; and (v) complied with the Minimum Liquidity Ratio for general business (if applicable) as at its financial year end. The declaration of compliance is required to be signed by two directors of the insurer and if the insurer has failed to comply with any of the requirements referenced in (i) through (v) above or observe any limitations, restrictions or conditions imposed upon the issuance of its license, if applicable, the insurer will be required to provide the BMA with particulars of such failure in writing. Such an insurer shall be liable to civil penalty by way of a fine for failure to comply with a duty imposed on it in connection with the delivery of the declaration of compliance.

Annual Statutory Financial Return and Annual Capital and Solvency Return. Each Collateralized Insurer, Class IIGB, Class 3A, Class 3B, Class 4, Class C, Class D or Class E insurer is required to file with the BMA a statutory financial return no later than four months after its financial year end (unless specifically extended with the approval of the BMA).

The statutory financial return of a commercial insurer shall consist of (i) an insurer information sheet, (ii) an auditor's report, (iii) the statutory financial statements and (iv) notes to the statutory financial statements.

The insurer information sheet shall state, among other matters, (i) whether the general purpose financial statements of the insurer for the relevant year have been audited and an unqualified opinion issued, (ii) the minimum margin of solvency applying to the insurer and whether such margin was met, (iii) in relation to general business insurers, whether or not the Minimum Liquidity Ratio applying to the insurer for the relevant year was met and (iv) whether or not the insurer has complied with every condition attached to its certificate of registration. The insurer information sheet shall state if any of the questions identified in items (ii), (iii) or (iv) above is answered in the negative, whether or not the insurer has taken corrective action in any case and, where the insurer has taken such action, describe the action in an attached statement.

The directors are required to certify whether the Minimum Solvency Margin has been met, and the independent approved auditor is required to state whether, in its opinion, it was reasonable for the directors to make this certification.

Where the insurer's accounts have been audited for any purpose other than compliance with the Insurance Act, a statement to that effect must be filed with the statutory financial return.

In addition, each year the insurer is required to file with the BMA a capital and solvency return along with its annual statutory financial return. The prescribed form of capital and solvency return comprises the insurer's Bermuda Solvency Capital Requirement ("**BSCR**") model or an approved internal capital model in lieu thereof and various schedules thereto.

Neither the statutory financial return nor the capital and solvency return is available for public inspection.

Quarterly Financial Return. A Class 3B or Class 4 insurer, not otherwise subject to group supervision, is required to prepare and file quarterly financial returns with the BMA on or before the last day of the months of May, August and November of each year.

Public Disclosures. Pursuant to the Insurance Act, all commercial insurers and insurance groups are required to prepare and file with the BMA, and also publish on their website, a financial condition report. The BMA has the discretion to approve modifications and exemptions to the public disclosure rules, on application by the insurer if, among other things, the BMA is satisfied that the disclosure of certain information will result in a competitive disadvantage or compromise confidentiality obligations of the insurer.

Special Purpose Insurers

The Insurance Act requires every SPI to prepare annual statutory financial statements and file these statements with the BMA together with a statutory financial return. The rules for preparing these statements for captives are set out in the Insurance Accounts Regulations 1980 and include a uniform format of the balance sheet, income statement, statement of capital and surplus and rules for valuation of assets and determination of liabilities. An SPI is required, in respect of its insurance business, to prepare financial statements prepared in accordance with any one of the following generally accepted accounting principles (GAAP): (a) International Financial Reporting Standards (IFRS); (b) GAAP that apply in Bermuda, Canada, the United Kingdom or the United States of America; (c) Condensed GAAP prepared in accordance with the Insurance Accounts Rules 2016; or (d) such other GAAP as the Authority may in writing recognize. Where an SPI writes unrestricted special purpose business, the GAAP financial statements shall be audited (unless a waiver is received). Where an SPI writes restricted special purpose business, the GAAP financial statements shall be unaudited. The statutory financial statements for SPIs are then prepared by populating the respective line items of the respective forms with the corresponding line items in the SPI's GAAP financial statements. The SPI is required to file a copy of its statutory financial statements four months after the end of the financial year to which the statements relate.

An SPI is also required to file with the BMA a statutory financial return no later than four months after its financial year end (unless specifically extended). The statutory financial return includes, among other matters, the GAAP financial statements, a cover sheet, a statement of control and changes of control, a solvency certificate, an annual statutory declaration, an own-risk assessment, alternative capital arrangements report, cyber risk management report and compliance with sanctions report. The solvency certificate must be signed by at least two directors of the SPI (of whom one must be a director resident in Bermuda if the insurer has a Bermuda resident director) and the SPI's principal representative in Bermuda. In signing the solvency certificate, the directors and the principal representative are required to state, amongst other matters, whether the minimum solvency margin has been met. Further, and where

applicable, the auditor is required to state whether, in the auditor's opinion, it was reasonable for the directors to so certify.

The statutory financial statements and the statutory financial returns do not form a part of any public file in Bermuda for members of the public to examine.

9.9. Exemptions

Section 56 of the Insurance Act states that the BMA may, upon the application, or with the consent, of the insurer, issue directions (known as "**Section 56 Directions**") that certain provisions of the Insurance Act shall not apply to that insurer or shall apply to it subject to specific modifications. In general, Section 56 Directions will deal with a company's margin of solvency, solvency certificate, statutory financial statements and its statutory financial returns.

Section 57A of the Insurance Act states that the BMA may, upon receipt of an acceptable application, issue a direction (known as a "**Section 57A Direction**") that a certain qualifying contract shall be deemed a "designated investment contract" for the purposes of the Insurance Act.

A qualifying contract is one where the contract (which can be an investment, a security, an option contract, a swap contract, a derivative contract or a contract for differences) has the purpose of securing a profit or avoiding a loss (i) by reference to fluctuations in value or price of property of any description, or in an index, or other factor, specified for that purpose in the contract, or (ii) based on the happening of a particular event specified for that purpose in the contract.

A designated investment contract does not constitute a contract of insurance for any purpose under the Insurance Act. Accordingly, a party to a designated investment contract (which includes being an issuer as well as an investor) is not considered to be carrying on "insurance business" and will not therefore be required to register as an insurer under the Insurance Act solely by reason of it being a party to such contract.

9.10. Code of Conduct

All Bermuda insurers must comply with the Insurance Code of Conduct (the "**Code**") which prescribes the duties, standards, procedures and sound business principles to be complied with to ensure they implement sound corporate governance, risk management and internal controls. The BMA will assess an insurer's compliance with the Code in a proportionate manner relative to the nature, scale and complexity of its business. Failure to comply with the Code will be a factor to be taken into account by the BMA in determining whether an insurer is conducting its business in a sound and prudent manner under the Insurance Act, may result in the BMA exercising its powers of intervention and investigation (see below) and will be a factor in calculating the operational risk charge under the insurer's BSCR or approved internal model (where applicable).

A memorandum describing the requirements of the Code is available on request.

9.11. Maintenance of Records in Bermuda

Apart from being required to keep its statutory financial statements at its principal office for a period of five years, the BMA may also direct an insurer to maintain proper records of account in Bermuda with

respect to (i) all sums of money received and expended by the insurer and the matters in respect of which the receipts and expenditures take place; (ii) all premiums and claims relating to the insurer; and (iii) all assets, liabilities and equity of the insurer.

9.12. The BMA's Powers of Intervention, Obtaining Information, Reports and Documents and Providing Information to other Regulatory Authorities

The BMA may, by notice in writing served on a registered person or a Designated Insurer, require the registered person or Designated Insurer to provide such information and/or documentation as the BMA may reasonably require with respect to matters that are likely to be material to the performance of its supervisory functions under the Insurance Act. In addition, it may require such person's auditor, underwriter, accountant or any other person with relevant professional skill to prepare a report on any aspect pertaining thereto. In the case of a report, the person so appointed shall immediately give the BMA written notice of any fact or matter of which the appointed person becomes aware or which indicates to the appointed person that any condition attaching to the registration of the insurer or Designated Insurer (as the case may be) under the Insurance Act is not or has not or may not be or may not have been fulfilled and that such matters are likely to be material to the performance of its functions under the Insurance Act. If it appears to the BMA to be desirable in the interests of the clients of a registered person or relevant insurance group, the BMA may also exercise these powers in relation to subsidiaries, parent companies and other affiliates of the registered person or Designated Insurer.

If the BMA deems it necessary to protect the interests of the policyholders or potential policyholders of an insurer or insurance group, it may appoint one or more competent persons to investigate and report on the nature, conduct or state of the insurer's or the insurance group's business, or any aspect thereof, or the ownership or control of the insurer or insurance group. If the person so appointed thinks it necessary for the purposes of his investigation, he may also investigate the business of any person who is or has been at any relevant time, a member of the insurance group or of a partnership of which the person being investigated is a member. In this regard, it shall be the duty of every person who is or was a controller, officer, employee, agent, banker, auditor, accountant, barrister and attorney or insurance manager to produce to the person appointed such documentation as he may reasonably require for purposes of his investigation, and to attend and answer questions relevant to the investigation and to otherwise provide such assistance as may be necessary in connection therewith.

Where the BMA suspects that a person has failed to properly register under the Insurance Act or that a registered person or designated insurer has failed to comply with a requirement of the Insurance Act or that a person is not, or is no longer, a fit and proper person to perform functions in relation to a regulated activity, it may, by notice in writing, carry out an investigation into such person (or any other person connected thereto). In connection therewith, the BMA may require every person who is or was a controller, officer, employee, agent, banker, auditor, accountant, barrister and attorney or insurance manager to make a report and produce such documents in his care, custody and control and to attend before the BMA to answer questions relevant to the BMA's investigation and to take such actions as the BMA may direct. The BMA may also enter any premises for the purposes of carrying out its investigation and may petition the court for a warrant if it believes a person has failed to comply with a notice served on him or there are reasonable grounds for suspecting the completeness of any information or

documentation produced in response to such notice or that its directions will not be complied with or that any relevant documents would be removed, tampered with or destroyed.

If it appears to the BMA that the business of the registered insurer is being conducted in a way that there is a significant risk of the insurer becoming insolvent or being unable to meet its obligations to policyholders, or that the insurer is in breach of the Insurance Act or any conditions imposed upon its registration, or the minimum criteria stipulated in the Insurance Act is not or has not been fulfilled in respect of a registered insurer, or that a person has become a controller without providing the BMA with the appropriate notice or in contravention of a notice of objection, or the registered insurer is in breach of its ECR, or that a Designated Insurer is in breach of any provision of the Insurance Act or the regulations or rules applicable to it, the BMA may issue such directions as it deems desirable for safeguarding the interests of policyholders or potential policyholders of the insurer or the insurance group. The BMA may, among other things, direct an insurer, for itself and in its capacity as Designated Insurer of the insurance group of which it is a member, (1) not to take on any new insurance business, (2) not to vary any insurance contract if the effect would be to increase the insurer's liabilities, (3) not to make certain investments, (4) to realize certain investments, (5) to maintain in, or transfer to the custody of, a specified bank, certain assets, (6) not to declare or pay any dividends or other distributions or to restrict the making of such payments, (7) to limit its premium income, (8) not to enter into specified transactions with any specified person or persons of a specified class, (9) to provide such written particulars relating to the financial circumstances of the insurer as the BMA thinks fit, (10) (as an individual insurer only and not in its capacity as Designated Insurer) to obtain the opinion of a loss reserve specialist and submit it to the BMA and/or (11) to remove a controller or officer.

The BMA has the power to assist other regulatory authorities, including foreign insurance regulatory authorities, with their investigations involving insurance and reinsurance companies in Bermuda if it is satisfied that the assistance being requested is in connection with the discharge of regulatory responsibilities and that such cooperation is in the public interest. The grounds for disclosure by the BMA to a foreign regulatory authority without consent of the insurer are limited and the Insurance Act provides for sanctions for breach of the statutory duty of confidentiality.

10. SEGREGATED ACCOUNTS COMPANIES

An insurer wishing to operate segregated accounts may either petition the Bermuda Legislature for private legislation or it may register under either The Segregated Accounts Companies Act 2000 (the “**SAC Act**”) or the Incorporated Segregated Accounts Companies Act 2019 (the “**ISAC Act**”). The SAC Act sets out rules for governing the operation of segregated accounts and the ISAC Act sets out the rules governing the formation and operation of incorporated segregated accounts.

Pursuant to the SAC Act, a segregated accounts company (“**SAC**”) is permitted to create and operate segregated accounts. Any asset which is linked by the SAC to a segregated account shall be held by the SAC as a separate fund which is not part of the company's general account and shall be held exclusively for the benefit of the segregated account owners and any counterparty to a transaction linked to that segregated account. The assets linked to a segregated account are available only to meet liabilities to the account owners and creditors of that segregated account and are not available, and may not be used, to meet liabilities to, and shall be protected from, the general shareholders and from the creditors of the company who are not creditors with claims linked to that segregated account.

Pursuant to the ISAC Act, Bermuda law also provides for the creation of segregated accounts with separate legal personality. Incorporated segregated accounts companies (“**ISACs**”) differ from SACs in that each incorporated segregated account (“**ISA**”) is incorporated as a separate legal entity in its own right. As such, each ISA will have all of the attributes of a company, including the ability to hold assets, sue and be sued in its own name, be subject to winding up proceedings with no impact on other ISAs or the ISAC and merge or amalgamate with other ISAs of the ISAC. Due to the separate legal personality of each ISA, ISACs will have a number of advantages for certain insurance and reinsurance structures including the ability to function as an independent licensed insurer within the same ISAC and the option to obtain separate tax elections or credit ratings.

Except for those provisions which are specifically amended pursuant to the SAC Act or ISAC Act (as applicable), a SAC insurer or ISAC insurer is otherwise subject to all the provisions of the Companies Act and the Insurance Act.

11. THE ECONOMIC SUBSTANCE ACT 2018

Under the Economic Substance Act 2018 and related regulations (collectively, the “**ESA**”), each entity resident in Bermuda that carries on as a business a “relevant activity” is required to comply with the economic substance requirements under the ESA, unless resident for tax purposes in a jurisdiction outside Bermuda that is acceptable to the Registrar¹ and that is not on the EU list of non-cooperative jurisdictions for tax purposes. Engaging in insurance business in accordance with the Insurance Act constitutes a “relevant activity”.

In relation to carrying on the relevant activity of insurance, compliance with the ESA also requires compliance with requirements in the Companies Act relating to corporate governance and requirements of the Insurance Act and other instruments (including the Code) made thereunder. The Registrar will have regard to an insurer’s compliance with the Insurance Act and the Companies Act in his assessment of compliance with economic substance requirements and on the basis that an insurer complies with such requirements, it will generally be considered to operate in Bermuda with adequate substance. An insurer will be required to complete and file a declaration form, and the Registrar will also have regard to the information provided in the declaration form in making his assessment of compliance with economic substance requirements.

12. THE INVESTMENT BUSINESS ACT 2003

Pursuant to the Investment Business Act 2003 (the “**IBA**”), no person shall carry on an investment business (as defined under the IBA) in or from Bermuda unless that person is licensed under the IBA or granted an exemption from being licensed. The licensing system is operated and supervised by the BMA. There are exemptions covering the Bermuda insurance and reinsurance industry. However, it is advisable to seek advice specifically on the IBA with respect to proposed activities or transactions.

¹ An entity will not be deemed by the Registrar to be resident for tax purposes in a jurisdiction if that jurisdiction does not have a corporate tax regime and/or residency for tax purposes in such jurisdiction does not result in the entity being subject to the equivalent economic substance requirements in that jurisdiction. The Registrar has advised that such jurisdictions may include Anguilla, Bahamas, Bahrain, Barbados, British Virgin Islands, Cayman Islands, Turks and Caicos Islands and the United Arab Emirates.

13. TAXATION, GOVERNMENT FEES, STAMP DUTY AND EXCHANGE CONTROL

13.1. Taxation

At the date of this publication, Bermuda corporate income tax (CIT) applies only to certain Bermuda constituent entities that are members of Multinational Enterprise Groups with consolidated financial statements showing annual revenue of at least 750 million Euros for at least two of the last four fiscal years. For all Bermuda companies which are out of scope of CIT, there is no Bermuda income or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax payable by such Bermuda company or its shareholders, other than shareholders ordinarily resident in Bermuda.

13.2. Government Fees

All exempted insurance companies are required to pay an annual government fee based on assessable capital. For a company with share capital, the assessable capital is the aggregate of its authorized share capital and share premium account. Where the company is a mutual company, the assessable capital is the amount of the company's reserve fund.

An annual declaration is submitted each year at the time of payment of the annual government fee. This declaration states the type of business carried on by the company, the amount of its assessable capital and how the assessable capital has been calculated. In addition to the annual government fee, an insurance company is required to pay an initial registration fee and thereafter an annual insurance registration fee. There are various government fees payable regarding particular matters such as applications for directions under sections 56 and 57A of the Insurance Act. Further, fees are payable by SACs under the SAC Act and by ISACs under the ISAC Act.

Please contact Conyers for a current listing of these fees.

13.3. Stamp Duty

Generally, stamp duty is not payable by, or in respect of matters concerning, exempted companies, whether in respect of share capital or otherwise (except for Bermuda property).

13.4. Exchange Control

Bermuda's exchange control regime is governed by the Exchange Control Act 1972 and related regulations. Exempted companies are designated non-resident for exchange control purposes. The non-resident designation allows these companies to operate free of exchange control regulations and enables them to make payments of dividends, distribute capital, open and maintain foreign bank accounts and purchase securities, without reference to the exchange control authorities. Note, however, an exempted company will require the prior approval of the BMA for the issue and transfer of its shares and other securities unless such transfers satisfy the criteria set out in the general permissions issued by the BMA in June 2005 in which case details of the transfers need only be notified to the BMA.

This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

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