

3.2. Insurance (Amendment) Bill 2017 – Second Reading approved

Mr Cannan to move:

That the Insurance (Amendment) Bill 2017 be read a second time.

The Speaker: Next is the Insurance (Amendment) Bill 2017 for Second Reading. I call on Mr Cannan.

Mr Cannan: Mr Speaker, the Insurance (Amendment) Bill 2017 amends the Insurance Act 2008 to enable the implementation of an enhanced regulatory framework for insurance business carried in or from the Island, which is both appropriate and proportionate to the Island's significant insurance sector and consistent with relevant international standards. This is for the purpose of maintaining the Island's reputation as a well-regulated and responsible jurisdiction. The enhanced framework will, for the most part, be implemented by secondary legislation enabled through the overarching provisions contained in the Insurance (Amendment) Bill 2017.

I will refer now to the Insurance (Amendment) Bill 2017 as 'the Bill' and the Insurance Act 2008 as 'the Act' from now on. I will also refer to the Isle of Man Financial Services Authority as 'the Authority' and any references to regulated entities should be understood to include insurers, insurance managers and insurance intermediaries.

This Bill has 64 clauses in 10 Parts as well as 3 schedules. Part 1 of the Bill is introductory, providing for the short title, commencement, expiry and interpretation, it includes clauses 1 to 4. Part 2 includes clauses 5 to 10 and deals with the capital requirements of insurers and the consequences of breaching capital thresholds. Part 3 includes clauses 11 and 12 and deals with the transfer of business by insurers. Part 4 includes clause 13 and introduces new provisions in relation to the supervision of an insurance group. Part 5 includes clauses 14 to 27 and introduces a number of new and amended provisions in respect of financial risk and governance. Part 6 includes clauses 28 to 31 and introduces amendments in respect of the authorisation of insurers. Part 7 includes clauses 32 to 39 and introduces amendments in respect of the registration of insurance managers and insurance intermediaries. Part 8 includes clauses 40 to 42 and introduces new powers in respect of the fit and proper status of persons. Part 9 includes clauses 43 to 46 and introduces new remedial and investigation powers. Part 10 includes clauses 47 to 64 and introduces a number of miscellaneous and minor provisions which include Schedules 1, 2 and 3.

The principal reason for proposing the Bill is to provide for the implementation of an enhanced regulatory regime which reflects relevant international standards in insurance regulation while taking account of the nature of the Island's insurance industry.

In addition, in light of the fact that the Insurance Act 2008 was a consolidation of legislation rather than a full revision, a number of other amendments are proposed with the following effects: they clarify and update existing provisions where necessary, they enable the Authority to be more flexible and responsive to the need for change and to deal with *ad hoc* situations, they enhance the Authority's power to deal with fit and proper matters and also provide consistency in this respect with the Financial Services Act 2008. They have reduced the administrative burden in certain areas and they address any anomalies. I will discuss each of these areas in turn.

The overarching purpose of the Bill is to enable the implementation of a robust and up-to-date regulatory framework for insurance business on the Isle of Man, which reflects relevant international standards and the Island's desire to comply with those as far as possible in a way that is proportionate to the Island's insurance industry. The Bill provides the enabling powers to develop this framework which will be implemented for the most part by secondary legislation.

Most changes have arisen from a self-assessment exercise carried out by the Authority against the insurance core principles which are issued by the International Association of Insurance

Supervisors, the international standards setting body for insurance, and also Solvency II, the European standard. An underlying aim of all such international standards is to improve policy holder protection and the robustness of insurers and insurance markets.

Changes identified from the self-assessment exercise include: amended capital requirements for insurers to enable the implementation of a risk based capital regime in clauses 5 to 10. New provisions to enable the implementation of a group supervision regime in clause 13, new provisions to enable the Authority to make regulations in order to require an insurer carrying on non-long-term business, where it is considered appropriate to its business, to have actuarial expertise or to have access to such expertise in clause 16. The requirement for auditors to report to the Authority in clauses 18 and 20, the introduction of a new notifiable role, the principal control officer, in clauses 21 to 23, new remedial powers for the appointment of a receiver or a business manager in clause 43, the widening of the offence in respect of providing false statements to the Authority to apply also to misleading statements in clause 52, amendments to the definition of 'controller' in clause 56 and the power to require an insurer to publish information about itself which will be prescribed in regulation in clause 57.

Clarifications and updates have arisen as a result of feedback provided by the industry since the Act was last updated as well as the Authority's own regulatory and supervisory experience. Changes are in the areas of: the transfer of long-term insurance business in clause 11 – this is in respect of authorised insurers as those insurers which are based in other jurisdictions and have branch operations on the Island. Regarding the latter, the amended provisions provide for a discretionary court process.

The transfer of non-long-term business in clause 12 and clarification regarding the extent to which the provisions applying to long-term business may be amended when applied to non-long-term business by regulation; the regulations applying to insurance managers and intermediaries, especially in the area of accounts and audit in clauses 15 and 19; notification requirements for company secretaries in clauses 24 to 25 and explicit overarching governance requirement in clauses 26 and 27; the requirements in respect of authorisation and registration in clauses 28 to 30 and 32 to 34, including a new requirement for insurance intermediaries to be legal entities; provisions for the winding up of insurance managers and intermediaries in clause 38; the definition of 'insurance intermediary' in clause 39; provisions governing public statements in clause 41; the Authority's residual power to make and impose requirements on regulated entities and an explicit statement that the Authority may require a regulated entity to refrain from taking action as well as to take action in clause 44.

The Authority's power to require a regulated entity to appoint an independent expert in clause 45; gateways enabling the disclosure of restricted information by the Authority in clause 46; the power for the Authority to set out regulations; a framework for the charging of fees which relate to exceptional work that the Authority may have to carry out for an individual regulated entity in clause 49; the keeping of electronic registers by the Authority in clause 50; the interpretation of insurance linked security transactions as contracts of insurance in clauses 51 and 54.

The definition of a 'manager' in clause 21, 'senior manager' in clause 48 and 'holding company' in clause 53; exemptions applying to regulated entities by regulation and clarification that conditions may be attached to an exemption in clause 57 and the ability of the Authority to exercise discretion in matters specified in regulations in clause 57. The desired ability for the Authority to be flexible and responsive is provided in clauses 14 and 15 which enable the Authority to agree different timescales for the submission of information by regulated entities where it is not practical to adhere to the specified timescales or where it is necessary to address a specific supervisory matter and to set out the form of notification to the Authority outside of regulations. This enables forms to be tailored more easily to notifications from different types of parties.

In clauses 57 and 58, which enable primary legislation to be amended by regulation, this will enable the Authority to respond more quickly to the need for change. However importantly any change will not come into operation until they have been approved by Tynwald and in clause 57,

which enables the Authority to apply provisions of the Act to partnerships and other types of legal entities by regulation.

Amendments which enhance the Authority's ability to deal with fit and proper matters include the power to impose a prohibition and the power to issue a warning notice in clause 40. Clause 42 extends the power relating to the granting of injunctions on the application of the Authority to also apply to the contravention or possible contravention of a prohibition. The powers in respect of prohibitions and warning notices are consistent with existing powers in the Financial Services Act 2008 and provide an additional tool for the purpose of policy holder protection.

Efficiencies are introduced by the removal of the requirement for insurance intermediaries to re-register annually in clause 35 and the transfer of functions from the three existing tribunals to the Financial Services Tribunal in clause 55. In addition, the changes already outlined in respect of the Authority's desire to be more flexible and responsive, and those which provide consistency with the Financial Services Act 2008 also contribute towards greater efficiency.

Anomalies arising from changes made in other legislation, such as the Interpretation Act 2015 have been addressed in clauses 59 to 62; and an anomaly in the Act in respect of provisions governing the operation of branch operations on the Island has been addressed in clause 47.

Finally, a number of ancillary changes have also been made which add weight to the existing policyholder protection measures. These include: a new offence, where an existing offence under the Act is committed with the consent of, connivance of, or is attributable to neglect on the part of an actuary in clause 17; the power for the Authority to require an insurer to take measures to ensure that all its obligations have been fulfilled prior to its surrendering its authorisation in clause 31 and a similar power in respect of insurance managers and intermediaries in clause 36; and the extension of the Authority's power in respect of discretions governing the location of assets held by an insurer to apply to insurance managers and intermediaries in clause 37.

I can tell the House this Bill has been the subject of wide consultation and all feedback has been carefully reviewed and addressed. The provisions of the Bill will be brought into operation by appointed day orders at such time as the underlying secondary legislation has been consulted on and is also ready to come into operation. The framework as a whole – that is the primary and the secondary legislation – is likely to result in the requirement for some additional resources for the Authority to administer the updated framework and for the insurance sector to demonstrate compliance.

Notwithstanding the resource implications, the implementation of an updated framework for insurance business is vital for compliance with international standards to provide an appropriate environment in which business can thrive and policyholders' interests are appropriately protected.

Mr Speaker, I beg to move that the Insurance (Amendment) Bill 2017 be now read for a second time.

The Speaker: Hon. Member for Middle, Mr Shimmins.

Mr Shimmins: Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: Don't all rush at once!

In that case, then, the question is that the Insurance (Amendment) Bill 2017 be read for a second time. Those in favour, say aye; those against, no. The ayes have it. The ayes have it.