



## **INSURANCE (AMENDMENT) BILL 2017**

### **EXPLANATORY NOTES**

*These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, the Treasury Minister, Mr A L Cannan, MHK*

#### **1. INTRODUCTION**

- 1.1 These explanatory notes relate to the Insurance (Amendment) Bill 2017 ("the Bill"). The Bill is promoted by the Treasury on behalf of the Isle of Man Financial Services Authority ("the Authority"). These notes have been prepared by the Authority in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
- 1.2 The notes need to be read in conjunction with the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

#### **2. BACKGROUND**

- 2.1 This Bill, which is promoted by the Treasury on behalf of the Authority, contains amendments to the Insurance Act 2008 ("the principal Act") which provides for the supervision and regulation of insurers, insurance managers and general insurance intermediaries by the Authority.
- 2.2 The purpose of the Bill is primarily to extend the existing enabling provisions of the principal Act although it does also introduce some new requirements. Such amendments are necessary to enable the implementation of an enhanced regulatory framework for insurance business carried on in or from the Island which is consistent with international standards, for the purpose of maintaining the Island's reputation as a well-regulated and responsible jurisdiction. The detailed framework will be implemented by secondary legislation and will be subject to public consultation.
- 2.3 The Bill transfers the functions of three tribunals to the Financial Services Tribunal; these are the Collective Investment Schemes Tribunal, the Retirement Benefits Schemes Tribunal and the Insurance Tribunal. As a result minor and consequential changes are made to the principal Act, the Legal Aid Act 1986, the Retirement Benefits Schemes Act 2000, the Tribunals Act 2006, the Collective Investment Schemes Act 2008, the Financial Services Act 2008 and the Designated Businesses (Registrations and Oversight) Act 2015.

- 2.4 The Bill repeals certain provisions in the principal Act as well as a small number of provisions in the Legal Aid Act 1986, the Retirement Benefits Schemes Act 2000, the Tribunals Act 2006, the Collective Investment Schemes Act 2008, the Financial Services Act 2008 and the Interpretation Act 2015.
- 2.5 Current estimates are that certain provisions of this Bill will come into operation on 1st January 2018 with the remainder on 30th June 2018. Transitional arrangements will be discussed with industry and may influence the above in some areas.
- 2.6 The Bill is considered to be compliant with the Human Rights Act 2001.

### **3. STRUCTURE OF THE BILL**

The Bill is structured as follows –

- 3.1 **Part 1** of the Bill is introductory, providing for the short title, commencement, expiry and interpretation.
- 3.2 **Part 2** of the Bill (clauses 5 to 10) amends the Bill by introducing new and amended sections in respect of the capital requirements applying to an insurer.
- 3.3 **Part 3** of the Bill (clauses 11 and 12) clarifies provisions regarding the transfer of long term insurance business and provides discretionary powers to the Authority regarding the need for a court process where the transfer involves an insurer carrying on insurance in accordance with the laws of another country. The regulation making powers for the transfer of non-long term insurance business are also extended.
- 3.4 **Part 4** of the Bill (clause 13) introduces new provisions to enable the Authority to implement a group supervision framework where an insurance group exists and where it would be appropriate for the Authority to be the supervisor of the overall group.
- 3.5 **Part 5** of the Bill (clauses 14 to 27) introduces a number of new or amended provisions in respect of accounting requirements, the requirement for an actuary and the appointment and duty of auditors. In addition, a new role of “principal control officer” which must be notified to the Authority is introduced and the company secretary is included in the roles which must be notified to the Authority. Finally, a new overarching corporate governance requirement is introduced.
- 3.6 **Part 6** of the Bill (clauses 28 to 31) introduces amendments in respect of the authorisation of insurers and introduces a new provision in respect of the surrender of an authorisation.
- 3.7 **Part 7** of the Bill (clauses 32 to 39) introduces amendments in respect of the registration of insurance managers and insurance intermediaries and introduces a new provision in respect of the cancellation of a registration of an insurance manager or insurance intermediary. It extends certain powers of the Authority which are currently only in respect of insurers to insurance managers and insurance intermediaries.
- 3.8 **Part 8** of the Bill (clauses 40 to 42) introduces new powers for the Authority to impose prohibitions on individuals where it appears to the Authority that he or she is not fit and proper. Additionally it introduces the power to issue warning notices to individuals where there are concerns about an individual’s fit and proper status.
- 3.9 **Part 9** of the Bill (clauses 43 to 46) introduces new powers in respect of the appointment of a receiver or business manager, makes a presentational change in relation to the Authority’s

power to impose residual requirements under section 33 and also clarifies the Authority's investigation powers.

- 3.10 **Part 10** of the Bill (clauses 47 to 64) introduces a number of miscellaneous provisions which include Schedule 1 ((transitional arrangements) (tribunals)), Schedule 2 (minor and consequential amendments) and Schedule 3 (repeals).

## **4. CLAUSE BY CLAUSE NOTES**

### **4.1 Part 1 – Introductory**

- 4.1.1 The Bill makes a number of amendments to the principal Act. Inter alia, it introduces new provisions in relation to: capital requirements (solvency levels) to be maintained by authorised insurers; the transfer of insurance business; the duty of auditors to make disclosures to the Authority; corporate governance; the establishment and supervision of insurance groups; a new notifiable role, "principal control officer"; prohibitions and warning notices; the appointment of receivers and business managers; fees; and new matters in respect of which regulations may be made.

The purpose of the amendments is to provide the enabling provisions for the development of an updated framework for the regulation of insurance entities which is consistent with international standards and proportionate to the Island's industry.

- 4.1.2 **Clause 1** gives the resulting Act its short title of the "Insurance (Amendment) Act 2017".
- 4.1.3 **Clause 2** provides for its commencement to be on a day or days appointed by order by the Authority. An appointed day order may include consequential, incidental, transitional and saving provisions as considered necessary.
- 4.1.4 **Clause 3** provides for the resulting Act to expire on the day after its promulgation or on the day after the last provision is brought into operation. As the Authority expects that requirements will be brought in by one or more Appointed Day Orders the latter will apply.
- 4.1.5 **Clause 4** states that references to "the principal Act" mean the "Insurance Act 2008".

### **4.2 Part 2 - Capital requirements**

#### ***Capital requirements***

- 4.2.1 The following clauses set out provisions which are necessary for the implementation of a risk based capital framework. These provisions will not come into operation until the secondary legislation which sets out the technical specification for the calculation of capital requirements also comes into operation. This is currently estimated to be 30th June 2018 which should provide insurers with sufficient preparation time. Transitional arrangements may be appropriate for certain sectors of the market. Prior to that date insurers will have carried out a programme of quantitative impact studies and so will be familiar with the requirements.
- 4.2.2 **Clauses 5 and 6** deal with the solvency of authorised insurers and substitute the existing section 12 of the principal Act by a new provision and insert new sections 12A to 12D into the

principal Act. The substituted section 12 requires an authorised insurer to establish and maintain 2 capital requirements (a minimum capital requirement ("MCR") below which no insurer will be regarded as viable to operate effectively, and a solvency capital requirement ("SCR") above which, on a routine basis, supervisory intervention in relation to solvency requirements will not be expected) and to hold capital resources to meet those requirements.

The new section 12A requires an authorised insurer to refrain from paying a dividend or making a distribution to anyone other than a policyholder where to do so would cause the insurer to breach the SCR or where the amount of the dividend or distribution would cause this to occur.

The new section 12B requires an insurer to inform the Authority where an insurer's capital resources fall below either of the capital requirements maintained under section 12 or where the insurer becomes aware of a substantial risk of this occurring within the next 3 months.

Section 12C sets out the Authority's powers where the insurer's capital resources fall below the MCR. Under this provision the Authority may either require the insurer to submit a scheme under section 13 or else it may present a petition for the winding up of the insurer under paragraph 4 of Schedule 3.

The new section 12D sets out the Authority's powers where an insurer's capital resources fall below the SCR. In these circumstances the Authority may either require the insurer to submit a scheme under section 13 or else withdraw the insurer's authorisation to accept new business under section 10.

A number of consequential changes are made throughout the principal Act as a result of the above.

4.2.3 **Clause 7** deals with the consequences of not complying with capital requirements and amends section 13 of the principal Act.

The amendment made by subsection (2) requires an insurer to submit a short-term financial scheme to the Authority for the purpose of enabling the insurer to restore compliance with the MCR or SCR.

The amendment made by subsection (3) of the clause changes the existing requirement for an insurer to submit a scheme within 30 days of a request by the Authority to a requirement to submit such a scheme within 30 days where the scheme is to address a breach of the MCR, or within 60 days where the scheme is to address a breach of the SCR.

There are also powers conferred upon the Authority to give directions to an insurer about the scheme and a requirement for the insurer to give effect to the scheme within a timeframe (3 months in the case of breach of the MCR and 6 months in the case of breach of the SCR).

If the insurer does not submit a scheme or fails to give effect to a scheme there are sanctions provided. In the case of a failure to give effect to a scheme to address a breach of the MCR the insurer is deemed to be unable to pay its debts and may be wound up, and in the case of failure to give effect to a scheme to address a breach of the SCR the Authority may withdraw the insurer's authorisation to accept new business.

A consequential change is made to section 53(1) which provides for failure to abide by a direction made by the Authority in respect of the timing of modifications being proposed and the implementation of the scheme to be an offence.

### ***Abolition of long-term business fund***

4.2.4 **Clauses 8 and 9** are connected. Clause 8 repeals section 19 and clause 9 repeals section 20 of the principal Act. These changes also take place in conjunction with amendments to Schedule 3 made by clause 10, and are the result of the new capital framework which does not include the concept of a long-term business fund.

A number of consequential changes are made as a result of the abolition of the long-term business fund and the repeal of sections 19 and 20.

The abolition of the long-term business fund is part of the new risk based capital framework referred to above. This feature of the new framework was explored in detail with long-term insurers and the removal was specifically agreed with them on the basis that equal protection to that previously provided by the long-term business fund is provided by the new framework. The repeal of these provisions will take effect at the same time as the new capital provisions come into operation which is currently estimated to be 30<sup>th</sup> June 2018.

### ***Insurer's assets in winding up***

4.2.5 **Clause 10** makes a number of amendments to Schedule 3 to the principal Act both as a consequence of the new risk based capital framework, including the abolition of the long term business fund, and to provide equal protection to the policyholders of non-long term insurers as that provided to the policyholders of long term insurers in a winding up situation. Changes are as follows:

- Restrictions on the use of assets supporting technical provisions in a winding up situation apply to non-long term insurers as well as long term insurers, and the prohibition on long term insurers being wound up voluntarily is also extended to non-long term insurers.
- An insurer's capital is divided into 2 amounts in the event of a winding up. Assets classified as "technical provisions" are available for distribution to policyholders. Assets apart from these may be distributed to the insurer's shareholders.

A number of consequential changes are also made.

The above changes will come into operation at the same time as the new capital provisions which is currently estimated to be 30<sup>th</sup> June 2018.

## **4.3 Part 3 - Transfer of insurance business**

### ***Long-term business***

4.3.1 **Clause 11** makes amendments to Schedule 2 to the principal Act. The effect of these is to clarify that long-term insurance business carried on by authorised insurers is capable of transfer only to other authorised insurers and that court sanction for any such transfer is mandatory rather than permissive.

The provisions also require that where a transfer involves insurers carrying on insurance business in accordance with the laws of another country and one of those insurers has a branch operation on the Island, the Authority must be notified of the intention to make a transfer and the Authority then has a discretion to direct the matter to go to court. This will enable the Authority to take account of transfers which may already be subject to a court process in another jurisdiction such as the UK, and determine whether in such cases a court process on Island is necessary.

A further change requires that the independent actuary making the report in respect of the transfer must be approved by the Authority. This is to avoid any doubt that the Authority is able to exercise judgement if it is not clear whether the actuary is truly independent or is otherwise not considered to be an appropriate appointment.

Further amendments provide for failure to comply with directions made by the Authority in relation to the above to be an offence.

The above changes are capable of coming into effect at any time. The current estimate is that they will come into operation on 1<sup>st</sup> January 2018.

### ***Non-long-term business***

4.3.2 **Clause 12** amends section 21 in order to insert the words “exceptions and adaptations” into the provision (which deals with the transfer of non-long-term business). This allows regulations to make different provision to that made in Schedule 2 when applied to this type of business and clarifies the extent to which different provisions may be applied.

This change may come into operation at any time. The current estimate is that it will come into operation on 1<sup>st</sup> January 2018.

## **4.4 Part 4 - Group supervision**

4.4.1 **Clause 13** inserts a new Part 4A (new sections 21A to 21I) into the principal Act. This provides for the putting in place of arrangements for group supervision of insurers.

The new sections provide the Authority with enabling powers to introduce a new framework for the supervision of insurance groups where it is deemed appropriate for the Authority to be the group supervisor. Although the Authority already participates in group supervision arrangements under existing powers, it does not have the authority to act as group supervisor under the existing Act.

These new powers reflect the focus of current international standards on the potential impact of group entities on an insurer’s policyholders and the need for at least one supervisor of insurers in an insurance group to have an understanding of the business strategy, financial position, legal and regulatory position and the risk exposure of the group as a whole. This is with the aim of recognising potential areas of concern and taking appropriate action promptly and ultimately for the benefit and protection of policyholders.

The provisions for group supervision provide the Authority with a certain amount of discretion in determining whether it is the group supervisor and identifying the scope of the insurance group. This is to ensure that group supervision can be applied in a proportionate and practicable way.

It should be noted that much of the detail of the group supervision framework will be set out in regulations and guidance. These new provisions set out the high level framework in primary legislation to provide context and enabling powers in respect of the regulations and guidance which will follow.

Section 21A is an interpretation provision for the new Part.

Section 21B defines the term “insurance group” for the purposes of the Part.

Section 21C confers power upon the Authority to determine whether it is appropriate for the Authority to be the group supervisor of a group of companies. In exercising this power the Authority must take into account the matters set out in section 21C(3).

Further powers are given to the Authority by the new sections 21D, 21E and 21F to exclude a company from, or include a company within, a group, or to withdraw from its role as group supervisor.

The functions of a group supervisor are set out in section 21G.

A power to make regulations in relation to group supervision is provided by section 21H and section 21I requires the appointment of an actuary to an insurance group which carries on long-term business.

As a result of the introduction of the above new provisions, section 47 (fees) is also amended to authorise the Authority to charge an annual fee for the registration of a designated insurer of an insurance group.

The above provisions provide new powers to the Authority including the power to impose requirements on insurers via regulations. A key requirement is the calculation of a group solvency requirement and so the current estimate for implementation of group requirements is in line with the estimates for capital provisions i.e. 30<sup>th</sup> June 2018. Given that the powers in the principal Act only truly take effect when the underlying framework comes into operation, the intention is to bring those powers into operation at the same time.

## **4.5 Part 5 - Financial risk and governance**

### ***Accounts***

4.5.1 **Clause 14** amends section 14 to allow more latitude in relation to the time for submission of accounts by an authorised insurer to the Authority. This is to deal with one-off situations and the current estimate is that this will come into operation on 1<sup>st</sup> January 2018.

4.5.2 **Clause 15** inserts section 27A into the principal Act. It provides for systems of accounting to apply to insurance managers and intermediaries and for copies of accounts together with other material to be produced to the Authority at such time or times as the Authority may require. This is in line with requirements in respect of authorised insurers.

Consequential provisions are made following the introduction of section 27A including providing that failure to comply with those requirements is an offence.

The provisions inserted by clause 15 formalise in primary legislation requirements which are currently implemented by other means. They are not dependent on other provisions coming into operation and it is estimated that they will come into operation on 1<sup>st</sup> January 2018.

### ***Actuaries***

4.5.3 **Clause 16** amends section 18 of the principal Act in order to update a reference to the professional body for actuaries and to allow modifications to be made by regulation to the provision in the case of authorised insurers who carry on non-long term business. The Authority's view, in line with international standards, is that it may be appropriate to require certain non-long term insurers to have actuarial expertise and this is an enabling provision for regulations to be made should this be agreed. Any proposals will be consulted on with industry.

4.5.4 **Clause 17** creates 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. This reflects the important nature of the role of the actuary.

It is currently estimated that the above provisions will come into operation on 30<sup>th</sup> June 2018.

### ***Auditors***

4.5.5 **Clause 18** inserts a new section 15A into the principal Act. This provision requires an auditor, who becomes aware that an authorised insurer may be in contravention of the Act or any direction or requirement imposed under the Act, and that this contravention may be of material significance in relation to the Authority's functions under the Act, to report the matter in writing to the Authority.

Consequential provisions make failure to comply with the above provisions an offence. This also applies to the new provisions inserted by clause 20 (see below) in respect of registered insurance managers and intermediaries.

4.5.6 **Clause 19** inserts a new section 27B into the principal Act. This requires registered insurance managers and intermediaries to appoint auditors and requires the Authority to be notified where a decision is taken not to re-appoint an existing auditor. This is in line with requirements for authorised insurers.

4.5.7 **Clause 20** inserts a new section 27C into the principal Act. This has the same effect for registered managers and intermediaries as section 15A (inserted by clause 18) has for authorised insurers. It requires an auditor to report any breaches of the Act or of directions or requirements made under it to the Authority, and absolves the auditor for culpability for breach of any professional or other duty in these circumstances.

It is currently estimated that the above provisions in respect of auditors will come into operation on 30<sup>th</sup> June 2018.

### ***Principal control officers***

4.5.8 **Clause 21** makes a number of amendments to section 29 of the principal Act. It inserts a reference to "principal control officer" into the section. The effect of this is to require written notice to be served on the Authority by an insurer appointing a principal control officer which is the person responsible for internal control functions such as internal audit, compliance and risk management.

By section 53(2)(e)(iii) it is an offence not to comply with directions made by the Authority under section 29(2) or (3).

The individuals performing such roles are key individuals and as such it is important for the Authority to ensure that they are fit and proper. The current estimate is that this requirement, together with those related requirements made by clauses 22 and 23 below, will come into operation on 1<sup>st</sup> January 2018.

### ***Notice period (all roles)***

In addition, when referring to the notice period for the appointment of all persons under section 29, the current facility vested in the Authority to substitute a shorter period than 28 days is amended to allow the Authority to substitute a shorter or longer period and in respect of the form of the notice, "prescribed" is replaced by "determined by the Authority" to enable the forms to be varied depending on the circumstances.

This is to deal with situations where it is not always practical to comply with existing notice requirements and where setting out the form of notification in regulations is not the most appropriate way of obtaining the information required. The above provisions may come into operation at any time and the intention is that they should do so on 1<sup>st</sup> January 2018.

4.5.9 **Clause 22** amends section 30 of the principal Act and requires a notice to be served where a principal control officer ceases to be appointed to that role.

A number of consequential amendments are made as a result of the above.

4.5.10 **Clause 23** inserts a definition of the expression "principal control officer" into section 54 of the principal Act (interpretation). The term is defined as "an individual working for or on behalf of an insurer, who controls the exercise of functions on behalf of that insurer in relation to risk management, internal audit, internal control or regulatory compliance". This is consequential upon the changes introduced by clause 21.

### ***Company secretaries***

4.5.11 **Clause 24** makes a number of amendments to section 29 of the principal Act. It inserts a reference to "company secretary" into the section. The effect of the amendments is similar to those made by clause 21 in relation to principal control officers. A notice is required to be served on the Authority when a person is appointed to the role.

4.5.12 **Clause 25** amends section 30 of the principal Act in relation to "company secretary" in ways similar to the changes made by clause 22 in relation to principal control officers. A notice is required to be served on the Authority when a person ceases to be appointed to the role.

A number of consequential amendments are made as a result of the above.

This clarifies and highlights an existing requirement for an authorised insurer and also applies the requirement to registered insurance managers and insurance intermediaries. The intention is that this requirement will come into operation on 1st January 2018.

### ***Corporate governance***

4.5.13 **Clauses 26 and 27** deal with corporate governance. They impose requirements upon authorised insurers and registered insurance managers and insurance intermediaries to establish, implement and maintain corporate governance frameworks. These are regimes designed to ensure that the organisation is soundly and prudently managed.

This provides an explicit overarching provision supporting more detailed governance requirements which already exist in secondary legislation and reflects the increased focus in more recent times on the importance of good governance. The intention is that this will come into effect on 1st January 2018.

## **4.6 Part 6 - Authorisation of insurers**

### ***Authorisation***

4.6.1 **Clause 28** makes a presentational change to the wording of section 5 of the principal Act in respect of the authorisation of insurers.

4.6.2 **Clause 29** amends section 6 of the principal Act in order to dispense with the requirement to detail in regulations the information to be sent to the Authority in respect of an application for authorisation as an authorised insurer. Under the new regime, the Authority has more latitude

and may simply require the information. In addition provision is made for the Authority to permit a person other than the applicant to provide the relevant information.

- 4.6.3 **Clause 30** amends section 7 of the principal Act. The provision expands the categories of person who must satisfy the Authority about their fitness and propriety, allows the Authority to require an applicant for authorisation to give an undertaking about future conduct, and makes an amendment to paragraph (b) of the section in order to allow the Authority to require those who manage an applicant for authorisation to have adequate knowledge of the insurance business in question.

A consequential amendment provides for failure to comply with the terms of the undertaking to be an offence.

The current estimate is that the above provisions will come into effect on 1st January 2018.

### ***Surrender of authorisation***

- 4.6.4 **Clause 31** inserts a new section 10A into the principal Act. This provision allows the Authority to impose requirements on an authorised insurer in relation to the discontinuation of its business where that insurer proposes to surrender its authorisation. This is to ensure that an insurer makes appropriate arrangements in respect of any existing liabilities to policyholders before its authorisation can be surrendered.

The current estimate is that the above provisions will come into effect on 1st January 2018.

## **4.7 Part 7 – Insurance Managers and Intermediaries**

### ***Registration***

- 4.7.1 **Clauses 32 and 33** make changes of a presentational nature to sections 23 and 24 of the principal Act. They relate to insurance managers and insurance intermediaries and correspond to the changes made in relation to authorised insurers by Clause 28.

- 4.7.2 **Clause 34** amends section 25 of the principal Act by allowing a person other than an applicant for registration as an insurance manager or insurance intermediary to provide documents and information where this is agreed by the Authority; by requiring an applicant for registration to be a body corporate; and by requiring an applicant for registration to have a manager with an adequate knowledge of the applicant's business. Additionally, the Authority may require an applicant for registration to give an undertaking in relation to its business.

A consequential amendment provides for failure to comply with the terms of the undertaking to be an offence.

- 4.7.3 **Clause 35** repeals subsection (7) of section 26. This amendment removes the requirement for a registered insurance intermediary to re-register annually which is in line with other persons regulated by the Authority.

The current estimate is that the above provisions will come into effect on 1st January 2018.

### ***Cancellation of registration***

- 4.7.4 **Clause 36** inserts a new section 26A into the principal Act. This is a provision analogous to section 10A (inserted by clause 31). The provision allows the Authority to impose requirements on a registered insurance manager or insurance intermediary in relation to the discontinuation of its business where such a person proposes to cancel its registration.

This is to ensure that insurance managers or insurance intermediaries make appropriate arrangements for their clients before their registration can be cancelled.

The current estimate is that the above provisions will come into effect on 1st January 2018.

### ***Ancillary***

4.7.5 **Clause 37** amends section 31 of the principal Act. The effect of the amendment is to allow the Authority to direct an insurance manager or insurance intermediary to maintain specified assets in the Island or keep them in a bank and prohibit them from being removed without the consent of the Authority. This power currently only applies to authorised insurers.

A number of consequential provisions are made as a result of the above.

4.7.6 **Clause 38** adds a new subsection (3) to section 27 of the principal Act. This provides that in any proceedings to wind up an insurance manager or intermediary evidence that the company was insolvent at the close of the period to which the last produced accounts relate is evidence that the company is unable to pay its debts until the contrary is proved. This is in line with provisions for authorised insurers.

4.7.7 **Clause 39** amends section 54(1) of the principal Act by substituting the definition of "insurance intermediary". The new definition requires that intermediation as a regulated activity must be for remuneration and exclude unpaid arrangements such as an individual or a company that provides an introduction but performs no work preparatory to the conclusion of a contract. The new definition makes the reference to a written contract being in place with an insurer unnecessary and so this has been removed.

The current estimate is that the above provisions will come into effect on 1st January 2018.

## **4.8 Part 8 – Prohibitions and warning notices**

4.8.1 **Clause 40** inserts a new group of sections into the principal Act (sections 29A to 29E) making provision for the imposition by the Authority of prohibition notices and the issue of warning notices.

### ***Prohibitions***

These provisions are in line with powers provided by the Financial Services Act 2008 and extend the Authority's powers where there are concerns about an individual's fitness and propriety in relation to a regulated entity.

Section 29A provides for the Authority to impose a prohibition notice where it appears to the Authority that any individual is not a fit and proper person to perform any function in relation to an activity carried on by a person to whom the Part applies. The prohibition prevents an individual from performing any function specified in the prohibition either generally or in relation to a particular person. The Authority must give the individual in question the opportunity to make representations before imposing the prohibition. A person commits an offence if the person employs an individual who is the subject of the prohibition to perform a prohibited function.

Section 29B sets out the procedure for imposing the prohibition and specifies the information that must be set out in the notice.

Section 29C requires the Authority to provide a statement of reasons to the individual prohibited and allows the prohibition to be varied or revoked.

Section 29D requires the Authority to maintain and publish a list of prohibitions.

This new power may apply to any individual, in contrast to the existing section 29 direction power which may only apply to persons in “vettable” roles (directors, controllers, managers etc). It will enable staff at any level to be prevented from performing functions connected with regulated entities if they have, for example, committed theft in a connected business. The new provisions aim to prohibit, where appropriate, non-vetted staff from performing functions related to a regulated activity and thereby to enhance public protection. The flexibility of the prohibitions provisions will enable any prohibitions to be tailored to specific situations, rather than apply bluntly to all situations, as is the case with current section 29 powers. There will be no adverse impact on individuals who are fit and proper.

### ***Warning notices***

Section 29E permits the Authority to serve a written warning notice on a person who is or has been an actuary to an insurer, a director, chief executive, company secretary, controller, manager or principal control officer of a person to whom the Part applies. A warning notice is a notice stating that the Authority has grounds to believe that the activities specified in the notice are prejudicial to the individual in question’s fitness and propriety and may specify action to be taken by that person. A warning notice may be issued where a situation is perhaps not so serious as to justify actions under section 29 and/or section 29A (Prohibitions) but where there are concerns and where remedial action is deemed necessary.

- 4.8.2 **Clause 41** amends section 35 of the principal Act and is consequential upon the introduction of prohibition notices in clause 30. It provides a power for the Authority to issue a public statement in cases where a person is in contravention of a prohibition and also clarifies the wording of subsection (3) of section 35.
- 4.8.3 **Clause 42** amends section 38 of the principal Act. This is consequential upon the introduction of prohibition notices in clause 40. The amended provision confers powers upon the High Court to grant an injunction where a person has contravened the terms of a prohibition.

The current estimate is that all of the above provisions will come into effect on 1st January 2018.

## **4.9 Part 9 – Remedies and Investigations (Ancillary powers)**

### ***Remedies***

- 4.9.1 **Clause 43** inserts new sections 39A and 39B into the principal Act. Section 39A confers power upon the High Court to appoint a person as receiver of an authorised insurer, registered insurance manager or insurance intermediary at the behest of the Authority. Section 39B confers power upon the Authority to make an order prescribing circumstances in which the Authority may apply to the High Court for the appointment of a person as a business manager to carry on the affairs of an authorised insurer or registered insurance manager or insurance intermediary. This provides additional powers to the Authority to deal with regulated entities which are in distress and to ensure that policyholders and customers of those entities are fairly treated.

A consequential change is made by paragraph 1(7)(c) of Schedule 2 to insert a new definition of the term “prescribed” into section 54(1) of the principal Act. The new definition’s purpose is to take account of the introduction of orders in the new section 39B.

- 4.9.2 **Clause 44** amends section 33 of the principal Act (Residual power to impose requirements). It makes a presentational change to the section in order to clarify that the Authority has the power to require a person it regulates to refrain from taking an action as well as to take an action where necessary to fulfil the regulatory objectives.

### ***Investigation***

- 4.9.3 **Clause 45** inserts a new paragraph 1A into Schedule 5 to the principal Act. The new provision allows the Authority to appoint an independent expert to investigate persons mentioned in paragraph 1 on its behalf and to make a report. For these purposes the expert may be authorised to exercise the Authority’s powers under the Schedule. This recognises more formally the Authority’s ongoing use of requiring information to be provided by independent experts.
- 4.9.4 **Clause 46** amends Schedule 6 to the principal Act. It adds additional persons to whom the Authority is entitled to make disclosures of restricted information to enable such persons to perform their functions. The additional persons are the Department of Economic Development, the Isle of Man Gambling Supervision Commission, the Collector of Customs and Excise and the Pensions Ombudsman or a Deputy Pensions Ombudsman.

The current estimate is that all of the provisions in Part 9 will come into effect on 1st January 2018.

## **4.10 Part 10 – Miscellaneous**

### ***Foreign insurers***

- 4.10.1 **Clause 47** amends section 22 of the principal Act in order to allow insurers who are based in jurisdictions other than the Island to carry on non-insurance business in those jurisdictions. This clarifies what happens in practice.

### ***Senior manager***

- 4.10.2 **Clause 48** amends the definition of “senior manager” in section 37 of the principal Act. It broadens the definition in that it now covers an individual working for or on behalf of the person concerned whereas previously it referred only to an employee of the person. This reflects common situations where individuals may be employed by a group company rather than by the regulated entity.

### ***Fees***

- 4.10.3 **Clause 49** amends section 47 of the principal Act in relation to fees. An annual fee is introduced for registration as a registered insurance intermediary which is consequential on the removal of the requirement for a registered insurance intermediary to re-register annually in clause 35.

Additionally, a new power is introduced to allow the Authority to make regulations in relation to fees which relate to exceptional work that may have to be carried out by it. The framework for this has not yet been developed but will be subject to full consultation with industry. The Authority is replaced by the Treasury in so far as suing for an unpaid fee is concerned.

## ***Registers***

4.10.4 **Clause 50** amends section 48 of the principal Act in order to permit the registers of authorised insurers, permit holders, insurance managers and insurance intermediaries to be kept electronically and to permit the holding of records in relation to former persons as well as current persons. Provision is also made to have copies of a register supplied in legible form in certain circumstances. This reflects current practices.

## ***Status of insurance contracts***

4.10.5 **Clause 51** inserts a new section 48A into the principal Act. This provision clarifies the fact that contracts of insurance are not to be regarded as void or unenforceable by reason of section 40 of the Gaming, Betting and Lotteries Act 1988. The need for this clarification arose from the implementation of the framework for Insurance Special Purpose Vehicles which came into force in March 2015. There was some ambiguity as to whether a non-indemnity triggered insurance-linked security could be considered akin to a wager and thus possibly regarded as void or unenforceable under the Gaming, Betting and Lotteries Act 1988.

## ***False or misleading statements***

4.10.6 **Clause 52** amends section 52 of the principal Act. It widens the category of statements whose inclusion in a book or document attracts criminal sanctions. Now misleading statements as well as false statements are caught.

## ***Holding company***

4.10.7 **Clause 53** inserts a definition of the term "holding company" into section 54(1) of the principal Act.

## ***Insurance business***

4.10.8 **Clause 54** amends the definition of the term "insurance business" in section 54(1) of the principal Act. It adds a new paragraph (f) in order to allow the Authority discretion to prescribe particular contracts for this purpose by means of regulations. This power is included in connection with developing further the Authority's framework for Insurance Special Purpose Vehicles in order to allow purely non-indemnity triggered contracts to be considered as insurance business within that framework.

## ***Abolition of tribunals and transfer of functions***

4.10.9 **Clause 55** abolishes the Collective Investment Schemes Tribunal, the Retirement Benefit Schemes Tribunal and the Insurance Tribunal and transfers their functions to the Financial Services Tribunal. It has to be read in conjunction with Schedule 1 (Transitional Arrangements (Tribunals)) which makes transitional arrangements in connection with the transfer.

This is a consequence of the merger of the former Financial Supervision Commission and the Insurance and Pensions Authority to establish the Isle of Man Financial Services Authority on 1<sup>st</sup> November 2015.

## ***Controller***

4.10.10 **Clause 56** inserts a new definition of the term "controller" into section 54(1). The level of shareholding which a person is required to possess in order to be classified as a controller is reduced from 15% to 10% and the definition now includes persons who have the power to appoint directors in relation to the relevant company and persons who are able (either alone or in conjunction with others) to exercise significant influence over the management of the

company by virtue of a shareholding or entitlement to control voting. This is in line with insurers in European Union member states.

### ***Regulations***

4.10.11 **Clauses 57 and 58** concern regulation making powers and amend Schedule 7 to, and section 50 of, the principal Act. The following new powers are conferred.

- To amend the principal Act itself by means of regulations;

Where it is proposed to exercise the power to amend the principal Act this is subject to the approval of Tynwald. Section 50 of the principal Act is amended in order to achieve this and clause 58(2) prevents amendments to the procedural mechanism (i.e. the obtaining of prior Tynwald approval) being made by means of regulations.

- To make an exemption from provisions of the principal Act subject to conditions;
- To permit the Authority to exercise a discretion in respect of any matter specified in the regulations;

It is recognised that the nature of the regulation and supervision of regulated entities is such that the power to exercise discretion within regulations is required. Any such regulations will clearly set out the circumstances in which discretion may be exercised.

- To modify the application of the Act to partnerships and other legal entities; and
- To require insurers to publish such information as may be prescribed.

A requirement of relevant international standards is that insurers publish certain information about themselves such as their financial position and governance and controls. Proposals in this area have not yet been formulated but will be subject to public consultation in due course.

### ***Minor amendments***

4.10.12 **Clauses 59 and 60** amend the definition of "person" in the principal Act and the Financial Services Act 2008 so that it includes a body of persons, corporate or unincorporated. This is to address an amendment which will be made when the Interpretation Act 2015 comes into operation which does not include an unincorporated body in references to persons generally.

4.10.13 **Clause 61** amends Schedule 4 to the principal Act so that any references to "the Department" in the Companies (Transfer of Domiciles) Act 1998 should be construed as references to the "Authority". This clarifies provisions in Schedule 4 in respect of the Authority's role and addresses a situation inadvertently created by the implementation of the Transfer of Functions (New Departments) (No 2) Order in 2010.

4.10.14 **Clause 62** amends section 105 of the Interpretation Act 2015 for technical reasons.

### ***Supplemental***

4.10.15 **Clause 63** introduces Schedule 2 (minor and consequential amendments). Part 1 of Schedule 2 makes a number of minor and consequential amendments to the principal Act. Part 2 amends the Legal Aid Act 1986, the Retirement Benefits Schemes Act 2000, the Tribunals Act 2006, the Collective Schemes Act 2008, the Financial Services Act 2008, the Designated Businesses (Registrations and Oversight) Act 2015 and the principal Act as a consequence of the transfer of functions referred to in clause 55 to the Financial Services Tribunal.

4.10.16 **Clause 64** introduces Schedule 3 which repeals a number of provisions in the principal Act as well as in the Legal Aid Act 1986, the Retirement Benefits Schemes Act 2000, the Tribunals Act 2006, the Collective Investment Schemes Act 2008, the Financial Services Act 2008 and the Interpretation Act 2015.

The current estimate is that all of the above provisions under Part 10 (Miscellaneous) will come into operation on 1st January 2018.