



# INSURANCE BILL

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## EXPLANATORY NOTES

*These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, R P Braidwood Esq, MHK. They do not form part of the Bill and should be read in conjunction with the Bill. They do not provide, and are not intended to provide, a comprehensive description of the matters contained in the Bill.*

### 1. Background

The Bill is promoted by the Treasury on behalf of the Insurance and Pensions Authority (“the Authority”).

The purpose of the Bill is primarily to consolidate the provisions of the Insurance Act 1986, the Insurance (Amendment) Act 1993, the Insurance (Amendment) Act 1995 and the Insurance (Amendment) Act 2004 (with the exception of those relating to insurable interest in life assurance contracts), together with the provisions of the Insurance Intermediaries (General Business) Act 1996. Some minor amendments to the existing legislation have also been made. The derivation (from existing legislation) of each clause of the Bill is shown on the face of the Bill.

The Bill has been the subject of a consultation exercise with interested parties.

### 2. Summary of the Parts of the Bill

- 2.1 **PART 1** sets out the regulatory objectives for the supervision of insurance business. It requires the Insurance and Pensions Supervisor (“the Supervisor”) to exercise his or her functions in accordance with those objectives and sets out the matters that the Supervisor shall have regard to when exercising functions under the Bill.
- 2.2 **PART 2** (and Schedule 1) deals with certain matters of administration. It requires the Authority to exercise the functions conferred on it under the Bill, and charges the Supervisor with the general administration of the Bill and the Retirement Benefits Schemes Act 2000. Schedule 1 provides for the constitution and functions of the Authority.
- 2.3 **PART 3** contains the provisions concerned with the authorisation of insurers. It requires any person carrying on, or holding itself out as carrying on, insurance business in or from the Island to be regulated, or be exempted from regulation,

under the Bill. It sets out the powers of the Supervisor to impose conditions on any authorisation (and to vary or remove those conditions), and to withdraw authorisation in respect of new contracts (whilst permitting the insurer to continue any subsisting contracts).

- 2.4 **PART 4** sets out certain ongoing requirements for authorised insurers. Schedule 2 provides a mechanism for the transfer of long-term business.
- 2.5 **PART 5** deals with foreign insurers which are regulated in their home jurisdiction to carry out one or more classes of insurance business, and who wish to establish a place of business to carry on that same business in or from the Island. The Supervisor may issue a permit to such an insurer.
- 2.6 **PART 6** is concerned with the registration of insurance managers and insurance intermediaries to enable them to carry on business in or from the Island.
- 2.7 **PART 7** deals with connected persons (directors, chief executives, auditors and managers of insurers, insurance managers and insurance intermediaries), the approval they must receive before appointment, and the sanctions available to the Supervisor in respect of their appointment.
- 2.8 **PART 8** makes provision regarding certain supervisory matters, including the location of authorised insurers' assets. It deals with the winding up of insurers (Schedule 3). It provides the Supervisor with the power make public statements and to give advice on specified matters. It also makes provision in respect of inspection and investigation (Schedule 5), and enables the Supervisor to impose a civil penalty where a person has acted in contravention of a requirement imposed under the Bill.
- 2.9 **PART 9** provides for certain special remedies. These include the ability of the Supervisor to apply to the High Court for an injunction or for a restitution order for recovery of monies. Actions for damages may also be taken by persons who have suffered loss as a result of certain contraventions of the Bill.
- 2.3 **PART 10** contains miscellaneous and supplementary measures. Provision is included to enable the transfer of domicile of certain insurers (Schedule 4). The Authority is given power to make regulations establishing compensation schemes in respect of insurers which become unable to meet their liabilities to policyholders. This Part also sets out the notification and review process for decisions made under the Bill. Restrictions are imposed on the disclosure of information (Schedule 6). Provisions are made for the payment of fees, the establishment of registers and for statutory indemnities. The IPA is given power to make regulations (including the matters referred to in Schedule 7). The Supervisor is given power to issue Guidance Notes. Part 10 also make provision for false statements and offences under the Bill. Finally, it makes financial provisions and provides definitions, amendments (Schedule 8), repeals (Schedule 9), savings and transitional measures (Schedule 10) and provides for a short title and for the commencement of the Bill.

### **3. Overview of Clauses**

- 3.1 Clause 1 sets the overall regulatory objectives of the Authority.
- 3.2 Clause 2 requires the Supervisor to exercise his or her functions in accordance with the regulatory objectives, and details the matters that the Supervisor shall have regard to when exercising functions under the Bill.
- 3.3 Clause 3 requires the Authority to exercise the functions conferred on it by the Bill and gives effect to Schedule 1 which sets out the constitution and functions of the Supervisor and Authority in greater detail.
- 3.4 Clause 4 charges the Supervisor with the general administration of the Bill and the Retirement Benefits Schemes Act 2000.
- 3.5 Clause 5 sets the requirement for any person carrying on, or holding itself out as carrying on, insurance business in or from the Island to be regulated, or exempted from regulation, under the Bill.
- 3.6 Clause 6 deals with applications for authorisation.
- 3.7 Clause 7 sets out the circumstances when authorisation will not be granted by the Supervisor. These will include failure to satisfy the Supervisor that the applicant has an appropriate level of management in the Island or has failed to appoint a registered insurance manager. It also gives the Supervisor the power to refuse authorisation where he or she does not consider the controller, chief executive or any director to be 'fit and proper'.
- 3.8 Clause 8 requires the Supervisor to make a decision to authorise or refuse any application to be an authorised insurer.
- 3.9 Clause 9 gives the Supervisor the power to impose conditions on the authorisation of an insurer (and to vary or revoke those conditions).
- 3.10 Clause 10 gives the Supervisor the power to withdraw any authorisation in respect of new contracts, whilst permitting the insurer to continue any subsisting contracts.
- 3.11 Clause 11 requires the Supervisor to give notice to the insurer if any conditions are to be imposed, varied or revoked, or the authorisation in respect of new business removed.
- 3.12 Clause 12 requires every authorised insurer to maintain a prescribed margin of solvency.
- 3.13 Clause 13 sets out the consequences of not meeting the solvency margin described in Clause 12.

- 3.14 Clause 14 sets the requirement for accounts and other supplementary information to be produced by an authorised insurer, makes provision for their form to be prescribed, and sets the timescales for their submission to the Supervisor.
- 3.15 Clause 15 requires every authorised insurer to appoint an auditor, and sets requirements to notify the Supervisor of a change to such auditor.
- 3.16 Clause 16 restricts the activities of an authorised insurer to insurance business.
- 3.17 Clause 17 requires every authorised insurer to have an appropriate level of management on the Island or to appoint a registered insurance manager.
- 3.18 Clause 18 imposes the requirement for authorised insurers carrying on long-term business to appoint a suitably qualified person to be the appointed actuary to the insurer. The actuary must be approved by the Supervisor before appointment. This clause also permits the Supervisor to remove an appointed actuary. Finally, this clause imposes conditions for when a person ceases to be an appointed actuary, and gives the Supervisor power to appoint an actuary to an insurer where an insurer has failed to make such appointment itself.
- 3.19 Clause 19 requires all assets of an insurer relating to its long-term business to be held within a specially segregated 'long-term business fund' for which accounts and records must be kept.
- 3.20 Clause 20 restricts the use of the assets which have been segregated under clause 19.
- 3.21 Clause 21 deals with the transfer of insurance business, and gives effect to Schedule 2 which sets the requirements for the transfer of long-term business.
- 3.22 Clause 22 enables the Supervisor to issue permits to foreign insurers which wish to carry on insurance business from a place of business in the Island.
- 3.23 Clause 23 imposes a requirement on any person carrying on insurance management in or from the Island to be either registered in the register of insurance managers, or exempted from registration.
- 2.24 Clause 24 permits person to act as an insurance intermediary in respect of general business (where the contract of insurance is not an investment for the purposes of the Financial Services Act 2008) provided that person is registered in the register of insurance intermediaries or exempted from registration.
- 3.25 Clause 25 sets out the requirements for a person to be registered as an insurance manager or insurance intermediary.
- 3.26 Clause 26 gives the Supervisor power to cancel the registration of an insurance manager or insurance intermediary, or to restrict the classes of business, or clients, with which they may deal.

- 3.27 Clause 27 gives the Supervisor power to petition for the winding up of an insurance manager or insurance intermediary.
- 3.28 Clause 28 clarifies the extent to which Part 7 applies to insurers, insurance managers and insurance intermediaries and enables the Authority to make regulations exempting persons from the application of Part 7.
- 3.29 Clause 29 sets out the list of persons who are considered to be ‘connected persons’ for the purposes of the Bill. This includes directors, chief executives, managers, auditors, controllers and insurance managers. It also sets out the process by which application must be made to the Supervisor for approval of a connected person prior to their taking up the role, and enables the Supervisor to impose conditions on any appointment.
- 3.30 Clause 30 requires the insurer, insurance manager or insurance intermediary to notify the Supervisor whenever a connected person ceases to hold such a role, and imposes a requirement on certain persons to notify the Supervisor themselves of the reasons for the cessation.
- 3.31 Clause 31 gives the Supervisor power to direct an authorised insurer to hold certain assets at a place of the Supervisor’s choice.
- 3.32 Clause 32 gives effect to schedule 3 in respect of insolvency and winding up. The provisions within the Schedule are comprehensive and cover all aspects of the winding up of an insurer, making special arrangements for long-term business.
- 3.33 Clause 33 gives the Supervisor a residual power to place requirements on insurers, insurance managers and insurance intermediaries (and persons involved in their management) to fulfil the regulatory objectives set out on clause 1.
- 3.34 Clause 34 provides the Supervisor with the power to publish information, or give advice, on specified matters,
- 3.35 Clause 35 enables the Supervisor to issue public statements concerning any person covered under the Bill.
- 3.36 Clause 36 gives effect to Schedule 5 in respect of inspection and investigation. This Schedule sets out the Supervisor’s powers of inspection and investigation and power to obtain information. The provisions allow the Supervisor exercise his power in certain circumstances for the assistance of other authorities. They also allow the Supervisor to require an insurer to pay the reasonable expenses incurred by the Supervisor in the course of an inspection or investigation.
- 3.37 Clause 37 provides the power for the Supervisor to impose a civil penalty where a person has acted in contravention of a requirement imposed by the Bill.
- 3.38 Clause 38 deals with the Supervisor’s ability to apply for an injunction from the High Court where a person has acted in contravention of the Bill.

- 3.39 Clause 39 gives a power to the High Court to make restitution orders, following application by the Supervisor, for recovery of monies gained as profit by persons, or lost by policyholders, through contravention of the Bill.
- 3.40 Clause 40 provides for a legal action to be taken by a person who has suffered a loss as a result of the contravention of the Bill.
- 3.41 Clause 41 limits the power to apply for restitution, or take legal action, to those activities which constitute investment business activities under the Financial Services Act 2008.
- 3.42 Clause 42 provides for the Companies (Transfer of Domicile) Act 1998 to have effect in relation to insurers which are bodies corporate subject to Schedule 4 (which sets out the modifications to the application of that Act).
- 3.43 Clause 43 re-establishes the framework for the creation of a compensation scheme in respect of insurers which become unable to meet their liabilities to policyholders. This remains basically unchanged from the original voluntary scheme dating from 1988, which was later included within the Investment Business Act 1988, but, as this relates specifically to insurance schemes, and with the replacement of the Investment Business Act 1988, it has been included within insurance-specific legislation.
- 3.44 Clause 44 imposes a requirement for written notice of decisions to be provided by the Supervisor and the Authority.
- 3.45 Clause 45 sets out the process for a review to be undertaken should any person be aggrieved by a decision of the Supervisor or Authority.
- 3.46 Clause 46 applies the provisions of Schedule 6 in respect of restrictions on disclosure of information. There are two new 'gateways' within Schedule 6 permitting disclosure of information to the Isle of Man Office of Fair Trading or any adjudicator to whom a dispute is referred to under the Financial Services Act 2008 and to the administrator of any compensation scheme established under clause 43.
- 3.47 Clause 47 gives the power to impose fees for initial authorisation or registration and on an annual basis, for authorised insurers, permit holders and insurance managers. In the case of insurance intermediaries, fees are only to be levied at registration.
- 3.48 Clause 48 requires the Supervisor to keep registers of all authorised insurers, permit holders, insurance managers and insurance intermediaries and for those registers to be publicly accessible during office hours.
- 3.49 Clause 49 excludes certain parties from liability in damages for acts or omissions in the exercise of their functions under the Bill.
- 3.50 Clause 50 gives the Authority power to make regulations in respect of certain matters (including those referred to in Schedule 7). Consultation with Treasury

and such other persons and organisations as may be affected must take place on any proposed regulations. Regulations must be laid before Tynwald as soon as practicable after they have been made and are subject to annulment at the sitting at which they are laid.

- 3.51 Clause 51 gives the Supervisor power to issue binding Guidance Notes. These must be laid before Tynwald.
- 3.52 Clause 52 requires that no person shall knowingly or recklessly make a false statement or submission to the Authority or the Supervisor.
- 3.53 Clause 53 sets out the offences which may be committed under the Bill and specifies the penalties for the commission of an offence.
- 3.54 Clause 54 defines certain words and phrases for the purpose of the Bill.
- 3.55 Clause 55 provides for the expenses incurred for the purposes of the Bill shall be defrayed by Tynwald, and that any fees payable under the Bill will become part of the General Revenue of the Island.
- 3.56 Clause 56 gives effect to Schedule 7 (which sets out the amendments to enactments which are required as a result of the Bill).
- 3.57 Clause 57 gives effect to Schedule 8 (which sets out the repeals to enactments which are required as a result of the Bill).
- 3.58 Clause 58 gives effect to Schedule 9 (which details the saving and transitional provisions required as a result of the Bill).
- 3.59 Clause 59 contains the short title of the Bill and provides for it to be brought into operation on such day as may be appointed by order by the Authority. It provides that different days may be so appointed for different provisions and purposes.