

AS AMENDED BY THE HOUSE OF ASSEMBLY

A BILL

entitled

INSURANCE AMENDMENT ACT 2022

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SCHEDULE 1

Insurance Accounts Regulations 1980

SCHEDULE 2

Bermuda Monetary Authority Act 1969

WHEREAS it is expedient to amend the Insurance Act 1978, to provide for Class IILT insurers as a new class of insurer subject to the Authority's regulatory powers; to provide enhancements relating to the Authority's regulatory powers for innovative intermediaries; to make consequential amendments to the Bermuda Monetary Authority Act 1969 and the Insurance Accounts Regulations 1980 and to provide for matters related and connected to the foregoing;

Be it enacted by The King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Insurance Act 1978 (the "principal Act"), may be cited as the Insurance Amendment Act 2022.

Amends section 1

2 Section 1(1) of the principal Act is amended in the definition of "Class A", "Class B", "Class C", "Class D" and "Class E" in relation to an insurer carrying on long-term business" by inserting after "Class B", the words "Class IILT, Class ILT,".

Amends section 2

3 Section 2(1) of the principal Act is amended by deleting "or salesmen" and substituting the words ", salesmen and insurance marketplace providers".

Amends section 4

4 Section 4 of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (b), by inserting after "Class B," the words "Class IILT,";

(ii) in paragraph (c), by inserting after "Class B," the words "Class IILT,";

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(b) in subsection (6), by deleting the period at the end of paragraph (c) and substituting a semicolon and by inserting after paragraph (c) the following new paragraphs—

“(d) register a Class IGB as a Class 1, Class 2, Class 3, Class 3A, Class IIGB, Class 3B or Class 4 insurer where it proposes to carry on general business;

(e) register a Class ILT as a Class A, Class B, Class C, Class IILT, Class D or Class E insurer where it proposes to carry on long-term business.”.

Amends section 4EA

5 Section 4EA (1) of the principal Act is amended by inserting after “Class B,” the words “Class IILT,”.

Amends section 4ED

6 Section 4ED of the principal Act is amended by deleting “or Class B” and substituting the words “, Class B or Class IILT”.

Amends section 4EE

7 Section 4EE of the principal Act is amended by inserting after “Class B” the words “, Class IILT”.

Amends section 4EF

8 Section 4EF of the principal Act is amended by deleting “or Class B” and substituting the words “, Class B or Class IILT”.

Inserts section 4EJ

9 The principal Act is amended by inserting after section “4EI” the following new section—

“Class IILT

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

Amends section 4F

10 Section 4F(1) of the principal Act is amended—

(a) in the first line, by inserting after “4EH” the words “, and 4EJ”;

(b) in the definition of “total assets” by inserting before “Class C” the words “Class IILT,”.

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Amends section 6

11 Section 6 of the principal Act is amended in—

- (a) subsection (1), by inserting after “Class B,” the words “Class IILT,”;
- (b) subsection (1A), by inserting after “Class B” the words “, Class IILT” in the two instances where it occurs;
- (c) subsection (4), by inserting after “Class 4,” the words “Class IILT,”;
- (d) subsection (5), by inserting after “Class 4,” the words “Class IILT,” in the two instances where it occurs.

Amends section 6C

12 Section 6C of the principal Act is amended in—

- (a) subsection (1), by inserting after “designated insurer” the words “, innovative intermediary” in the two instances where it occurs;
- (b) subsection (3A), by deleting “or insurance marketplace provider” and substituting the words “, insurance marketplace provider or innovative intermediary”;
- (c) subsection (4), by inserting before “insurance manager” the words “innovative insurer, innovative intermediary,”;
- (d) subsection (5), by inserting after “designated insurer” the words “, innovative intermediary”.

Amends section 6E

13 Section 6E of the principal Act is amended—

- (a) in the section heading by inserting after “innovative insurers” the words “innovative intermediaries, Class IIGB insurers or Class IILT insurers”;
- (b) in subsection (1), by deleting “an innovative insurer’s registration requirements” and substituting the words “the registration requirements of innovative insurers, innovative intermediaries, Class IIGB insurers and Class IILT insurers”.
- (c) in subsections (2), (3) and (4) by inserting after “innovative insurer” the words “innovative intermediary, Class IIGB insurer or Class IILT insurer”.
- (d) in subsection (5) by—
 - (i) inserting after “innovative insurer” the words “innovative intermediary, Class IIGB insurer or Class IILT insurer”;
 - (ii) deleting “innovative insurer’s risk profile” and substituting “risk profile of the innovative insurer, innovative intermediary, Class IIGB insurer and Class IILT insurer”.

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Amends section 7

14 Section 7(1) of the principal Act is amended—

- (a) in paragraph (g) by inserting after “Class A” the words “or Class IILT ”;
- (b) by repealing paragraph (k) and substituting the following—

“(k) as an innovative insurer is not less than \$50,000 and not more than \$1,000,000 based on the nature, scale and complexity of the insurance business.”.

Amends section 8

15 Section 8(1) of the principal Act is amended by inserting after “agent” the words “, innovative insurer, innovative intermediary” .

Amends section 8C

16 Section 8C of the principal Act is amended—

- (a) in the section heading by inserting after “Class 4,” the words “Class IILT,”;
- (b) in subsections (1) and (5) by inserting after “Class 4,” the words “Class IILT,”.

Amends section 9

17 Section 9 of the principal Act is amended in subsection (1) by inserting after “insurance marketplace provider” the words “, innovative intermediary” .

Amends section 10

18 Section 10 of the principal Act is amended—

- (a) in subsection (1), by inserting after “insurance marketplace provider” the words “, innovative intermediary”;
- (b) by inserting after subsection (2) the following new subsections—

“(3) The Authority may at any time, whether or not on an application made by an insurance manager, broker, agent, insurance marketplace provider, innovative intermediary or salesman, add to, vary or delete any conditions imposed under subsection (1).

(4) Before the Authority exercises its powers under subsection (3) in relation to an insurance manager, broker, agent, insurance marketplace provider, innovative intermediary or salesman, who has not made an application under that subsection, the Authority shall give notice to the insurance manager, broker, agent, insurance marketplace provider, innovative intermediary or salesman and shall take into account any written representations made by the insurance manager, broker, agent, insurance marketplace provider, innovative intermediary or salesman within such period as may be specified in the notice.

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(5) On application made to the Authority under subsection (1), the Authority may, where it determines it appropriate to do so, register an insurance manager, broker, agent, insurance marketplace provider, innovative intermediary or salesman in a different class.”.

Amends section 11

19 Section 11 of the principal Act is amended by inserting after “insurance marketplace provider” the words “, innovative intermediary,”.

Amends section 13

20 Section 13(3) of the principal Act is amended by deleting the period at the end of paragraph (c) and substituting a semicolon and inserting after paragraph (c) the following new paragraph—

“(d) the date the registration terminates, in the case of an innovative intermediary or innovative insurer.”.

Amends section 14

21 Section 14 of the principal Act is amended in subsection (1)(ab)—

- (a) in subparagraph (i) by deleting “10(1),” and substituting “10(1), (3) and (5),”;
- (b) in subparagraph (v) by deleting “s. 41(1)(a)” and substituting “sections 41(1)(a) and 42(1)(a)”.

Amends section 15

22 Section 15(1) of the principal Act is amended by inserting after “insurer” the words “, other than an innovative insurer or an innovative intermediary,”.

Amends section 17

23 Section 17 of the principal Act is amended by repealing subsection (4)(b) and substituting the following—

“(b) in the case of a Class 3A, Class IIGB, Collateralized Insurer, Class 3B, Special Purpose Insurer, or Class 4 insurer or a Class C, Class IILT, Class D or Class E insurer, four months after the end of the financial year to which the statements relate (or such longer period, not exceeding seven months, as the Authority may allow in the case of that insurer on an application made to it for that purpose).”.

Amends section 18A

24 Section 18A of the principal Act is amended by repealing subsection (2)(b) and substituting the following—

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“(b) \$1,000, in the case of a breach by a Class 3A, Class IIGB, Collateralized Insurer, Special Purpose Insurer, Class IILT, Class C, or Class D insurer; or”.

Amends section 18C

25 Section 18C(1) of the principal Act is amended by inserting after “Class B,” the words “Class IILT,”.

Amends section 24

26 Section 24 of the principal Act is amended by repealing subsections (5B) and (5C) and substituting the following—

“(5B) No insurer, to which this section applies, shall transfer assets from the long-term business fund to the general business fund without prior written approval of the Authority, and the Authority shall grant such approval only where the insurer has demonstrated, when requesting the approval, that following such transfer, the insurer shall continue to meet its minimum margin of solvency requirements with respect to its long-term business.

(5C) No insurer, to which this section applies, shall transfer assets from the general business fund to the long-term business fund without prior written approval of the Authority, and the Authority shall grant such approval only where the insurer has demonstrated, when requesting the approval, that following such transfer, the insurer shall continue to meet its minimum margin of solvency requirements and liquidity ratios with respect to its general business.”.

Amends section 26

27 Section 26 of the principal Act is amended—

(a) in subsection (1) by deleting “, Class B and Class IILT,” and substituting the words “and Class B”;

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

“(1B) Every Class IILT insurer shall appoint an individual approved by the Authority under subsection (3) who is qualified to assess the adequacy of long-term insurance reserves.”.

Amends section 27

28 Section 27 of the principal Act is amended in—

(a) subsection (1) by deleting “, Class B and Class IILT” and substituting “and Class B,”;

(b) subsection (1A) by inserting before “Class C” the words “Class IILT,”.

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Amends section 29

29 Section 29 of the principal Act is amended by inserting after “salesman” the words “, innovative intermediary,”—

- (a) in the section heading; and
- (b) in the two instances where it occurs in the section.

Amends section 30CA

30 Section 30CA of the principal Act is amended—

- (a) in the section heading and subsections (1) and (2), by deleting “or insurance marketplace provider” and substituting the words “, insurance marketplace provider or innovative intermediary”;
- (b) by inserting after subsection (4) the following new subsections—

“(5) For the purposes of this section, “officer” in relation to an insurance marketplace provider, means a director, chief executive, or a senior executive performing the duties of compliance, internal audit, finance, risk management, information technology or information security.

(6) For the purposes of this section, “officer” in relation to an insurance manager, broker or agent, means a director, chief executive, or a senior executive performing the duties of compliance, internal audit, finance or risk management.”.

Amends section 30EA

31 Section 30EA of the principal Act is amended by inserting after “Class 4,” the words “innovative insurer, Class IILT,” in the two instances where it occurs.

Amends section 30J

32 Section 30J of the principal Act is amended by—

- (a) repealing subsections (5) and (7)(b);
- (b) repealing subsection (7)(c) and substituting the following—

“(c) in relation to an innovative insurer, means a director, chief executive or senior executive performing the duties of underwriting, actuarial, risk management, investment, internal audit, finance, compliance, information technology or information security.”.

Amends section 30JE

33 Section 30JE of the principal Act is amended—

- (a) in the section heading, by inserting after “managers” the words “, innovative intermediaries”;

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- (b) in subsections (1) through (5), by inserting after “agent” the words “, innovative intermediary”;
- (c) in subsection (3), by deleting the period at the end of paragraph (c) and substituting a semicolon and inserting after paragraph (c) the following new paragraph—
 - “(d) amalgamation with, acquisition of or merger with another firm.”.

Amends section 30JEA

34 Section 30JEA of the principal Act is amended by repealing subsection (3).

Amends section 31AA

35 Section 31AA(1)(b) of the principal Act is amended—

- (a) in subparagraph (iii), by deleting “general business solvency certificate” and substituting the words “declaration of compliance”;
- (b) by repealing subparagraph (v).

Amends section 31B

36 Section 31B(1) of the principal Act is amended by inserting after “Class 4,” the words “Class IILT,”.

Amends section 31C

37 Section 31C(1) of the principal Act is amended by inserting after “Class 3B,” the words “Class IILT,”.

Amends section 32

38 Section 32(4)(ba) of the principal Act is amended by inserting after “Class 4,” the words “Class IILT,”.

Amends section 32D

39 Section 32D(1) of the principal Act is amended by deleting “and 18A” and substituting “, 15A(6), 18A and 30CA(4)”.

Amends section 42

40 Section 42 of the principal Act is amended—

- (a) in the section heading, by inserting after “salesmen” the words “, innovative intermediaries”;
- (b) in subsection (1), by inserting after “salesman” the words “, innovative intermediary” in the two instances where it occurs;
- (c) in subsection (3), by inserting after “salesman” the words “, innovative intermediary”.

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Consequential amendments

41 (1) Schedule 1, which makes consequential amendments to the Insurance Accounts Regulations 1980, has effect.

(2) Schedule 2 which makes consequential amendments to the Bermuda Monetary Authority Act 1969 has effect.

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SCHEDULE 1

(section 42)

INSURANCE ACCOUNTS REGULATIONS 1980

Amends regulation 5

1 Regulation 5 of the Insurance Accounts Regulations 1980 is amended by deleting “, Class B insurer or ILT insurer” and substituting the words “or Class B insurer”.

Amends Schedule I

2 Schedule I to the Insurance Accounts Regulations 1980 is amended in the heading “Form 1A” by deleting “Class 3 insurer or IGB insurer” and substituting “or Class 3 insurer”.

SCHEDULE 2

(section 42)

BERMUDA MONETARY AUTHORITY ACT 1969

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

- (a) in paragraph 3, by inserting after subparagraph (g) the new subparagraph (h) as follows—

“	(h)	a Class IILT insurer where total assets are expected to:	
		(A) not exceed \$150 million	\$25,000
		(B) exceed \$150 million but not exceed \$350 million	\$28,000
		(C) exceed \$350 million but not exceed \$2 billion	\$31,000
		(D) exceed \$2 billion but not exceed \$5 billion	\$61,000
		(E) exceed \$5 billion but not exceed \$10 billion	\$65,000
		(F) exceed \$10 billion	\$100,000”;

- (b) in paragraph 7, by inserting after subparagraph (h) the new subparagraph (i) as follows—

“	(i)	a Class IILT insurer where total assets are expected to:	
		(A) not exceed \$150 million	\$25,000
		(B) exceed \$150 million but not exceed \$350 million	\$28,000
		(C) exceed \$350 million but not exceed \$2 billion	\$31,000
		(D) exceed \$2 billion but not exceed \$5 billion	\$61,000
		(E) exceed \$5 billion but not exceed \$10 billion	\$65,000
		(F) exceed \$10 billion	\$100,000”.

INSURANCE AMENDMENT BILL 2022

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Insurance Act 1978 (the “principal Act”) to provide for Class IILT insurers as a new class of insurer subject to the Authority's regulatory powers; to provide enhancements relating to the Authority's regulatory powers for innovative intermediaries; to make consequential amendments to the Bermuda Monetary Authority Act 1969 and the Insurance Accounts Regulations 1980 and to provide for matters related and connected to the foregoing.

Clause 1 provides a citation for this Bill.

Clause 2 amends the principal Act in section 1 in the definition of “Class A”, “Class B”, “Class C”, “Class D” and “Class E” in relation to an insurer carrying on long-term business”, to include the new class of “Class IILT insurer”.

Clause 3 amends the principal Act in section 2 to extend the regulatory powers of the Authority over insurance marketplace providers.

Clause 4 amends the principal Act in section 4 to cause the registration requirements under that section to also apply to the Class IILT insurer class.

Clause 5 amends the principal Act in section 4EA to enable the Authority to determine if a body corporate should be registered as a Class IILT insurer.

Clause 6 amends the principal Act in section 4ED to include Class IILT insurers among the class of insurers to which the section does not apply.

Clause 7 amends the principal Act in section 4EE to include Class IILT insurers among the class of insurers to which the section does not apply.

Clause 8 amends the principal Act in section 4EF to include Class IILT insurers among the class of insurers to which the section does not apply.

Clause 9 amends the principal Act to insert section 4EJ to provide that a body corporate intending to carry on long-term business in an innovative manner may be registrable as a Class IILT insurer.

Clause 10 amends the principal Act in section 4F to cause the definition of “total assets” to apply to a Class IILT insurer.

Clause 11 amends the principal Act in section 6 to cause further registration obligations under that section to apply to a Class IILT insurer.

Clause 12 amends the principal Act in section 6C to cause the requirements under that section relating to modification or exemption of prudential technical standards to apply to innovative intermediaries.

Clause 13 amends the principal Act in section 6E to cause the requirements under that section relating to adjustment of registration requirements to apply to innovative insurers, innovative intermediaries, Class IIGB insurers and Class IILT insurers.

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Clause 14 amends the principal Act in section 7 to provide for the minimum paid up share capital of a Class IILT insurer.

Clause 15 amends the principal Act in section 8 to cause the requirements relating to a principal office to apply to innovative insurers and innovative intermediaries.

Clause 16 amends the principal Act in section 8C to cause the requirements relating to the maintenance of a head office in Bermuda to apply to Class IILT insurers.

Clause 17 amends the principal Act in section 9 to cause the requirements relating to the need to be registered to apply to innovative intermediaries.

Clause 18 amends the principal Act in section 10 to include innovative intermediaries amongst insurers that may be registered by the Authority under that section. The clause further amends the section to permit the Authority to add, vary or delete any conditions imposed on an insurance manager, broker, agent, insurance marketplace provider, innovative intermediary or salesman.

Clause 19 amends the principal Act in section 11 to cause the requirements relating to factors to be considered by the Authority prior to registration, to also apply to innovative intermediaries.

Clause 20 amends the principal Act in section 13(3) to require a certificate of registration issued in relation to innovative insurers and innovative intermediaries to specify the registration termination date.

Clause 21 amends the principal Act in section 14 to empower the Authority to prescribe under the Act a fee for the addition, variation or deletion of any conditions imposed on an insurance manager, broker, agent, insurance marketplace provider or salesman.

Clause 22 amends the principal Act in section 15 to clarify that innovative insurers and innovative intermediaries are not required to file statutory financial statements as such classes of insurers are in a sandbox under such licence.

Clause 23 amends the principal Act in section 17(4)(b) to provide for a revised list of insurers that are required to prepare, keep or file statutory financial statements, and "innovative insurers" are excluded from this list of insurers. The clause further amends section 17(4)(b) to cause the provision to apply to "Class IILT insurers".

Clause 24 amends the principal Act in section 18A(2)(b) to introduce a civil penalty of \$1,000 for non-compliance by Class IILT insurers, in respect of filing obligations under sections 17 and 18.

Clause 25 amends the principal Act in section 18C to require Class IILT insurers to keep certain records in Bermuda, similarly to other insurer classes.

Clause 26 amends the principal Act in section 24 to clarify the manner in which transfer of assets should occur in relation to the long-term business fund and the general business fund by insurers to which the section applies.

Clause 27 amends the principal Act in section 26 to make specific provision to require Class IILT insurers to only appoint persons qualified to assess long-term insurance reserves that are approved by the Authority.

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Clause 28 amends the principal Act in section 27 to impose on Class IILT insurers the requirement of filing an actuarial certificate of long-term business liabilities at the time of filing statutory financial statements.

Clause 29 amends the principal Act in section 29 to impose on innovative intermediaries the requirements under that section in relation to contracts of insurance where an innovative insurer has authority to act.

Clause 30 amends the principal Act in section 30CA to require innovative intermediaries to notify the Authority of a change in shareholder controller.

Clause 31 amends the principal Act in section 30EA to require innovative insurers and Class IILT insurers to notify the Authority of the shareholder controllers' disposal of shares in private and public companies.

Clause 32 amends the principal Act in section 30J to remove the requirement for registered brokers, agents and insurance marketplace providers to file with the Authority a list of every person who has become or has ceased to be an officer or shareholder controller of that person in the previous year. The clause further provides for the definition of "officer" in relation to an innovative insurer.

Clause 33 amends the principal Act in section 30JE to impose on innovative intermediaries the requirement to notify the Authority of certain events, such as a failure by the insurance manager, broker, agent or insurance marketplace provider to comply with a condition imposed upon it by the Authority.

Clause 34 amends the principal Act by repealing section 30JEA(3).

Clause 35 amends the principal Act in section 31AA to require insurance groups and commercial insurers to submit an updated declaration of compliance when failing to comply with the enhanced capital requirement.

Clause 36 amends the principal Act in section 31B to impose a restriction on dividend payments exceeding 25% of total statutory capital, on Class IILT insurers.

Clause 37 amends the principal Act in section 31C to impose an obligation on Class IILT insurers to seek approval of the Authority prior to the reduction of 15% or more of its total statutory capital.

Clause 38 amends the principal Act in section 32(4)(ba) to extend the Authority's powers of intervention to Class IILT insurers.

Clause 39 amends the principal Act in section 32D to exclude the penalties imposed under sections 15A(6) and 30CA(4) from the application of section 32D.

Clause 40 amends the principal Act in section 42 to extend the Authority's powers to cancel the registration of an insurer in certain circumstances to innovative intermediaries.

Clause 41 provides for consequential amendments to the Insurance Accounts Regulations 1980 and the Fourth Schedule to the Bermuda Monetary Authority Act 1969.