BERMUDA

INSURANCE (ELIGIBLE CAPITAL) RULES 2012

BR 62 / 2012

The Bermuda Monetary Authority, in exercise of the power conferred by section 6A(1) of the Insurance Act 1978, makes the following Rules:

Citation

1 These Rules may be cited as the Insurance (Eligible Capital) Rules 2012.

Interpretation

2 (1) In these Rules—

"the Act" means the Insurance Act 1978;

"available statutory capital and surplus" has the meaning given in section 1(1) of the Act;

"capital instrument" means a financial instrument that is—

(a) admitted for the purpose of calculating an insurer's total statutory capital and surplus pursuant to Form 8, Line 3 of the Regulations; or

(b) approved as other fixed capital pursuant to Form 8, Line 1(c) of the Regulations;

"ECR" means the "enhanced capital requirement" as defined in section 1(1) of the Act;

"encumbered assets" means assets held for security or as collateral against a liability or contingent liability of the insurer or other person, or any other use restriction, excluding encumbered assets for policyholder obligations of the insurer;

"encumbered assets for policyholder obligations" means the total assets held for security or as collateral or otherwise restricted to meet the liabilities to the policyholders of the insurer in the event of a loss;

"Form 1A" means Form 1A of Schedule I to the Regulations;

"Form 4" means Form 4 of Schedule I to the Regulations;

"Form 6" means Form 6 of Schedule I to the Regulations;

"Form 8" means Form 8 of Schedule I to the Regulations;

"maturity" means the first contractual opportunity for the insurer to repay or redeem the capital instrument, unless it is mandatory that the insurer repay or redeem the instrument with the issuance of an instrument of equal or higher quality;

"minimum margin of solvency" has the meaning given in section 1(1) of the Act;

"Regulations" means the Insurance Accounts Regulations 1980;

"tier 1 ancillary capital", in relation to an insurer's available statutory capital and surplus, is comprised of the matters set out in subparagraph (2);

"tier 1 basic capital", in relation to an insurer's available statutory capital and surplus, is comprised of the matters set out in subparagraph (3);

"tier 1 capital" means the aggregate sum of tier 1 basic capital and tier 1 ancillary capital;

"tier 2 ancillary capital", in relation to an insurer's available statutory capital and surplus, is comprised of the matters set out in subparagraph (4);

"tier 2 basic capital", in relation to an insurer's available statutory capital and surplus, is comprised of the matters set out in subparagraph (5);

"tier 2 capital" means the aggregate sum of tier 2 basic capital and tier 2 ancillary capital;

"tier 3 ancillary capital" is comprised of the matters set out in subparagraph (6);

"tier 3 basic capital" is comprised of the matters set out in subparagraph (7);

"tier 3 capital" means the aggregate sum of tier 3 basic capital and tier 3 ancillary capital;

"total statutory capital and surplus" means the total statutory capital and surplus of the insurer as calculated in accordance with Form 8, Line 3.

(2) Tier 1 ancillary capital is comprised of the matters set out in clause (a) and excludes the matters set out in clause (b)—

(a) capital instruments approved by the Authority as other fixed capital pursuant to Form 8, Line 1(c) that—

(i) are capable of absorbing losses in a going concern either by way of write downs of the principal amount or until losses cease, or mandatory conversion to common stock when losses accumulate;

(ii) have the highest level of subordination in a winding-up;

(iii) are paid-up or called;

(iv) are undated or have an estimated maturity of not less than 10 years from the date of issuance;

(v) are non-redeemable or settled only with the issuance of an instrument of equal or higher quality;

(vi) are free of incentives to redeem;

(vii) have a coupon payment on the instrument which, upon breach (or if it would cause a breach) in the ECR, is cancellable or deferrable indefinitely;

(viii) are unencumbered;

(ix) do not contain terms or conditions designed to accelerate or induce an insurer's insolvency; and

(x) do not give rise to a right of set off against an insurer's claims and obligations to an investor or creditor;

(b) the matters excluded are capital instruments that are included in tier 1 basic capital, tier 2 basic capital, tier 2 ancillary capital, tier 3 basic capital, and tier 3 ancillary capital.

(3) Tier 1 basic capital is comprised of the matters set out in clauses (a), (b) and (c) and excludes the matters set out in clause (d)—

(a) statutory surplus as set out in Form 8, Line 2(h) subject to the following—

(i) plus any adjustments to an insurer's total statutory capital and surplus made by the Authority in accordance with section 6D of the Act, or under Rules made under section 6A of the Act;

(ii) where the value of encumbered assets for policyholder obligations exceeds the higher of subsubclauses (A) and (B) and where there are encumbered assets for policyholder obligations which would not be available to meet the obligations of any policyholder in a going concern, less the difference between the value of the encumbered assets for policyholder obligations and the higher of—

(A) the value of policyholder obligations of the insurer for which the assets have been held and calculated in accordance with Form 1A, Lines 16, 17(a) and 18 for Class 3A, Class 3B, and Class 4 insurers; and Form 4, Line 27(a) for Class E insurers; and Form 6 Lines 16, 17(a), 18 and 27(a) for composites; and

(B) the value of the capital requirement applicable to the encumbered assets for policyholder obligations of that insurer; and

(iii) where the value of the encumbered assets exceeds the value reflected in Form 1A, Form 4, or Form 6 arising from the relative liability or contingent liability for which the encumbered assets are held, the excess must be deducted;

(b) capital stock as set out in Form 8, Line 1(a)(i) and contributed surplus as set out in Form 8, Line 1(b), excluding preference shares;

(c) capital instruments as set out in Form 8, Line 1(a)(ii) not requiring an approval to be admitted for the purpose of calculating an insurer's total statutory capital and surplus pursuant to Form 8, Line 3 that—

(i) are capable of absorbing losses in a going concern either by way of write downs of the principal amount or until losses cease, or mandatory conversion to common stock when losses accumulate;

(ii) have the highest level of subordination in a winding-up;

(iii) are paid-up or called;

(iv) are undated or have an estimated maturity of not less than 10 years from the date of issuance;

(v) are non-redeemable or settled only with the issuance of an instrument of equal or higher quality;

(vi) are free of incentives to redeem;

(vii) have a coupon payment on the instrument which, upon breach (or if it would cause a breach) in the ECR, is cancellable or deferrable indefinitely;

(viii) are unencumbered;

(ix) do not contain terms or conditions designed to accelerate or induce an insurer's insolvency; and

(x) do not give rise to a right of set off against an insurer's claims and obligations to an investor or creditor;

(d) the matters excluded are capital instruments and other amounts that are included in tier 1 ancillary capital, tier 2 basic capital, tier 2 ancillary capital, tier 3 basic capital, and tier 3 ancillary capital.

(4) Tier 2 ancillary capital is comprised of the matters set out in clauses (a) and (b) and excludes the matters set out in clause (c)—

(a) capital instruments approved by the Authority as other fixed capital pursuant to Form 8, Line 1(c) that would otherwise qualify for tier 1 ancillary capital or tier 1 basic capital instruments but are callable on demand and are unpaid;

(b) capital instruments approved by the Authority as other fixed capital pursuant to Form 8 Line 1(c) that—

(i) are subordinated to policyholder obligations in a winding-up;

(ii) are undated or have an estimated maturity of not less than five years from the date of issuance;

(iii) are non-redeemable if the ECR is breached or settled only with the issuance of an instrument of equal or higher quality;

(iv) are free of incentives to redeem;

(v) have a coupon payment which is deferrable indefinitely when the ECR is breached;

(vi) are unencumbered;

(vii) do not contain terms or conditions designed to accelerate or induce an insurer's insolvency; and

(viii) do not give rise to a right of set off against an insurer's claims and obligations to the investor or creditor;

(c) the matters excluded are capital instruments that are included in tier 1 ancillary capital, tier 1 basic capital, tier 2 basic capital, tier 3 basic capital, and tier 3 ancillary capital.

(5) Tier 2 basic capital is comprised of the matters set out in clauses (a) and (b) and excludes the matters set out in clause (c)—

(a) capital instruments as set out in Form 8, line 1(a)(ii) not requiring an approval to be admitted for the purpose of calculating an insurer's total statutory capital and surplus pursuant to Form 8, line 3 that—

(i) are capable of absorbing moderate levels of losses on a going concern, including suspension of coupon payments if the ECR is breached;

(ii) are subordinated to policyholder obligations in a winding-up;

(iii) are undated or have an estimated maturity of not less than five years from the date of issuance;

(iv) are non-redeemable if the ECR is breached or settled only with the issuance of an instrument of equal or higher quality;

(v) are free of incentives to redeem;

(vi) have a coupon payment which is deferrable indefinitely when the ECR is breached;

(vii) are unencumbered;

(viii) do not contain terms or conditions designed to accelerate or induce an insurer's insolvency; and

(ix) do not give rise to a right of set off against an insurer's claims and obligations to an investor or creditor;

(b) the value deducted pursuant to subparagraph (3)(a)(ii);

(c) the matters excluded are capital instruments and other amounts that are included as tier 1 ancillary capital, tier 1 basic capital, tier 2 ancillary capital, tier 3 basic capital, and tier 3 ancillary capital.

(6) Tier 3 ancillary capital is comprised of the matters set out in clause (a) and excludes the matters set out in clause (b)—

(a) capital instruments approved by the Authority as other fixed capital pursuant to Form 8 Line 1(c) that—

(i) are subordinated to policyholder obligations in a winding-up;

(ii) are unencumbered;

(iii) are undated or have a maturity of not less than three years from the date of issuance;

(iv) do not contain terms or conditions designed to accelerate or induce an insurer's insolvency;

(v) do not give rise to a right of set off against an insurer's claims and obligations to the investor or creditor;

(vi) are non-redeemable if the ECR is breached or settled only with the issuance of an instrument of equal or higher quality;

(vii) have a coupon payment on the instrument which, upon breach (or if it would cause a breach) in the minimum margin of solvency, is cancellable or deferrable indefinitely;

(b) the matters excluded are capital instruments that are included in tier 1 ancillary capital, tier 1 basic capital, tier 2 ancillary capital, tier 2 basic capital, and tier 3 basic capital.

(7) Tier 3 basic capital is comprised of the matters set out in clause (a) and excludes the matters set out in clause (b)—

(a) capital instruments as set out in Form 8, Line 1(a)(ii) not requiring an approval to be admitted in calculating an insurer's total statutory capital and surplus pursuant to Form 8 Line 3 that—

(i) are subordinated to policyholder obligations in a winding-up;

(ii) are unencumbered;

(iii) are undated or have a maturity of not less than three years from the date of issuance;

(iv) are non-redeemable if the ECR is breached or settled only with the issuance of an instrument of equal or higher quality;

(v) do not contain terms or conditions designed to accelerate or induce an insurer's insolvency;

(vi) do not give rise to a right of set off against an insurer's claims and obligations to the investor or creditor; and

(vii) have a coupon payment on the instrument which, upon breach (or if it would cause a breach) in the minimum margin of solvency, is cancellable or deferrable indefinitely;

(b) the matters excluded are capital instruments and other amounts that are included in tier 1 ancillary capital, tier 1 basic capital, tier 2 ancillary capital, tier 2 basic capital, and tier 3 ancillary capital.

(8) For the purposes of these Rules, "the capital requirement applicable to the encumbered assets for policyholder obligations" means the following—

(a) the capital requirement is equal to the contribution of the pledged assets to the ECR, multiplied by the quotient of the minimum margin of solvency, divided by the ECR, when determining whether an insurer's available statutory capital and surplus meets its minimum margin of solvency; and

(b) the capital requirement is equal to the contribution of the pledged assets to the ECR, when determining whether an insurer's available statutory capital and surplus meets its ECR.

(9) For the purposes of these Rules, provided the capital instruments meet all other requirements of subparagraphs (2) to (7), as applicable—

(a) tier 1 capital and tier 2 capital may include capital instruments that do not satisfy the requirement that the coupon payment on the instrument would be cancellable or deferrable indefinitely upon breach (or if it would cause a breach) in the ECR until 1 January 2024; or

(b) tier 3 capital may include capital instruments that do not satisfy the requirement that the coupon payment on the instrument would be cancellable or deferrable indefinitely upon breach (or if it would cause a breach) in the minimum margin of solvency until 1 January 2024.

Available Statutory Capital and Surplus

3 (1) Every Class 3A, Class 3B, Class 4 and Class E insurer shall maintain available statutory capital and surplus of an amount that is equal to or exceeds the value of its minimum margin of solvency in accordance with subparagraph (2).

(2) For the purposes of subparagraph (1), the available statutory capital and surplus is an amount equal to the sum of the following amounts—

(a) an amount of the insurer's tier 1 capital which shall be not less than 80% of the value of the insurer's minimum margin of solvency; and

(b) an amount of the insurer's tier 2 capital which shall be not more than 25% of the amount of clause (a).

(3) Every Class 3A, Class 3B, Class 4 and Class E insurer shall maintain available statutory capital and surplus of an amount that is equal to or exceeds the value of its ECR in accordance with subparagraph (4) or (5).

(4) In the case of a Class 3B and Class 4 insurer, the available statutory capital and surplus shall be equal to the sum of the following amounts—

(a) an amount of the insurer's tier 1 capital which shall be not less than 60% of the value of the insurer's ECR;

(b) an amount of the insurer's tier 2 capital which shall not be more than 66.67% of the amount of clause (a); and

(c) an amount of the insurer's tier 3 capital which shall not be more than 17.65% of the aggregate sum of clauses (a) and (b) to the extent that the aggregate sum of clause (b) and this clause (c) do not exceed 66.67% of the amount of clause (a).

(5) In the case of a Class 3A and Class E insurer, the available statutory capital and surplus shall be equal to the sum of the following amounts—

(a) an amount of the insurer's tier 1 capital which shall be not less than 50% of the value of the insurer's ECR;

(b) an amount of the insurer's tier 2 capital which shall not be more than the amount of subparagraph (a); and

(c) an amount of the insurer's tier 3 capital which shall not be more than 17.65% of the aggregate of clauses (a) and (b) to the extent that the aggregate sum of clause (b) and this clause (c) do not exceed the amount of clause (a).

Commencement

4 These Rules come into operation on 1 January 2013.

Made this 4th day of June 2012

Chairman
The Bermuda Monetary Authority