



BERMUDA

INSURANCE (PRUDENTIAL STANDARDS) (CLASS 4 AND CLASS 3B SOLVENCY  
REQUIREMENT) RULES 2008

BR 83 / 2008

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SCHEDULES

In exercise of the powers conferred upon the Bermuda Monetary Authority by section 6A of the Insurance Act 1978, the following Order is made—

Citation and commencement

1 These Rules may be cited as the Insurance (Prudential Standards) (Class 4 and Class 3B Solvency Requirement) Rules 2008 and shall come into operation on the 31st day of December 2008.

*[Rule 1 amended by BR 94 / 2010 para. 2 effective 31 December 2010]*

Interpretation

2 In this Order—

“Act” means the Insurance Act 1978;

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- “approved internal capital model” means a model approved under paragraph 5;
- “available statutory capital and surplus” *[revoked]*
- “available statutory economic capital and surplus” means the amount shown in Line 40 of Form 1EBS as set out in these Rules;
- “BSCR model” means the Bermuda Solvency Capital Requirement model established in accordance with paragraph 4 and Schedule I;
- “business continuity risk” includes a risk of an event that threatens or disrupts an insurer’s continuous operations;
- “business processes risk” includes a risk of errors arising from data entry, data processing, or application design;
- “catastrophe risk” means the risk of a single catastrophic event or series of catastrophic events that lead to a significant deviation in actual claims from the total expected claims;
- “compliance risk” includes a risk of legal or regulatory breaches or both;
- “concentration risk” means the risk of exposure to losses associated with inadequate diversification of portfolios of assets or obligations;
- “credit risk” includes the risk of loss arising from an insurer’s inability to collect funds from debtors;
- “currency risk” means the risk of losses resulting from movements in foreign currency exchange risks;
- “distribution channel risk” includes a risk of disruption to an insurer’s distribution channel arising from employment of inexperienced or incapable brokers or agents.
- “double or multiple gearing” means the same capital being used towards satisfying regulatory capital requirements in two or more entities;
- “ECR” means the enhanced capital requirement within the meaning of 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 policy holder 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” *[revoked]*
- “Form 1EBS” means Schedule XIV Class 4 and Class 3B Statutory Economic Balance Sheet set out in these Rules;

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“fraud risk” includes a risk of misappropriation of assets, information theft, forgery or fraudulent claims;

“group” means any two or more bodies, whether corporate or unincorporated, that are in association, and two bodies are deemed to be in association if one of them has control of the other or both are under the control of the same person or persons;

“group risk” means any risk of any kind, arising from membership of a group;

“human resources (‘HR’) risk” includes a risk of employment of unethical staff, inexperienced or incapable staff, failure to train or retain experienced staff, and failure to adequately communicate with staff;

“information technology (‘IT’) risk” includes a risk of unauthorized access to systems and data, data loss, utility disruptions, software and hardware failures, and inability to access information systems;

“interest rate risk” means the risk that asset values are adversely affected by changes in current interest rates;

“legal risk” means the risk arising from (a) an insurer’s failure to comply with statutory or regulatory obligations; or (b) failure to comply with its bye-laws; or (c) failure to comply with any contractual agreement;

“liquidity risk” means (a) the risk arising from an insurer’s inability to meet its obligations as they fall due or (b) an insurer’s inability to meet such obligations except at excessive cost;

“market risk” means the risk arising from fluctuations in values of, or income from, assets or in interest rates or exchange rates;

“material intra-group transaction” means—

- (a) an intra-group transaction where the total value is greater than or equal to 5% of the insurer’s available capital and surplus;
- (b) a series of linked intra-group transactions that have a cumulative value that is greater than or equal to 10% of the insurer’s available capital and surplus; or
- (c) an intra-group transaction where the qualitative risk characteristics of an intra-group transaction are assessed as high risk (including liquidity and solvency risk implications) and may adversely impact existing policyholders even though the quantitative impact remains unknown;

“materialised” for the purposes of paragraph 6AB means transactions that have come into existence since the last financial return filed by the insurer with the Authority;

“operational risk” means the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, including legal risk;

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“outsourcing risk” includes a risk of mis-communication of responsibilities in relation to outsourcing, breach of outsource service agreements or entering into inappropriate outsource service agreements.

“premium risk” means the risk that premium is insufficient to meet future obligations;

“relevant year” in relation to an insurer, means its financial year; and

“reputational risk” includes risk of adverse publicity regarding an insurer’s business practices and associations;

“reserve risk” means the risk that an insurer’s technical provisions would be insufficient to satisfy its obligations;

“strategic risk” means the risk of an insurer’s inability to implement appropriate business plans and strategies, make decisions, allocate resources, or adapt to changes in the business environment;

“Tail Value-at-Risk” means the conditional average potential given that the loss outcome exceeds a given threshold;

“unaffiliated” means a body that is not a member of a group of which the insurer is a member.

*[Rule 2 amended by BR 79 / 2009 para. 3 effective 31 December 2009; Rule 2 amended by BR 94 / 2010 para. 3 effective 31 December 2010; Rule 2 definitions "double or multiple gearing", "interest rate risk" and "material intra-group transaction" inserted by BR 74 / 2011 rule 2 effective 31 December 2011; Rule 2 amended and definitions "group", "materialised" and "unaffiliated" inserted by BR 91 / 2012 para. 2 effective 1 January 2013; Rule 2 definitions "available statutory capital and surplus" and "Form 1A" revoked, "reserve risk" amended and "available statutory economic capital and surplus", "currency risk" and "Form 1EBS" inserted by BR 59 / 2015 rule 2 effective 1 January 2016]*

ECR

3 (1) An insurer’s ECR shall be calculated at the end of its relevant year by reference to the following—

- (a) the BSCR model; or
- (b) an approved internal capital model,

provided that the ECR shall at all times be an amount equal to, or exceeding, the margin of solvency (within the meaning of section 6 of the Act).

(2) The ECR applicable to an insurer shall be the ECR as calculated—

- (a) at the end of its most recent relevant year; or
- (b) the ECR calculated after an adjustment has been made by the Authority under section 6D and has not otherwise been suspended under section 44A (4) of the Act,

whichever is later.

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(3) Every Class 3B or Class 4 insurer shall maintain available statutory economic capital and surplus to an amount that is equal to or exceeds the value of the ECR.

*[Rule 3 paragraph (3) amended by BR 94 / 2010 para. 4 effective 31 December 2010; Rule 3 subparagraph (2)(b) revoked and replaced by BR 74 / 2011 rule 3 effective 31 December 2011; Rule 3 paragraph (3) amended by BR 59 / 2015 rule 3 effective 1 January 2016]*

BSCR model

4 Schedule I (which establishes the BSCR) has effect.

Approved internal capital model

5 (1) A Class 3B or Class 4 insurer may apply to the Authority for approval to use an internal capital model in substitution for the BSCR model (“approved internal capital model”).

(2) Where the Authority is satisfied, having regard to subparagraph (3) that it is appropriate to do so, it may approve the internal capital model and may make its approval subject to conditions.

(3) In considering an application for approval of an internal capital model the Authority shall have regard to the following matters—

- (a) the appropriateness of the internal capital model for the determination of the insurer’s capital requirement;
- (b) the extent to which the internal capital model has been integrated into the insurer’s risk management program; and
- (c) the appropriateness of controls applicable to the creation and maintenance of the insurer’s internal capital model.

(4) The Authority shall serve notice on the insurer of the following matters—

- (a) its decision to approve its internal capital model; or
- (b) its decision to not approve its internal capital model and the reason for its decision.

(5) An insurer served with a notice under subparagraph (4)(b) may, within a period of 28 days from the date of the notice, make written representations to the Authority; and where such representations have been made, the Authority shall take them into account in deciding whether to confirm its decision not to approve its internal capital model.

(6) The Authority may revoke the approval given under subparagraph (2) if satisfied that the insurer has breached a condition of the approval, or where the approved internal capital model is deemed by the Authority no longer appropriate for the determination of the ECR.

(7) The Authority shall serve notice to the insurer of its proposal to revoke its approval of the insurer’s internal capital model and the reasons for its proposal.

(8) An insurer served with a notice under subparagraph (7) may, within a period of 28 days from the date of the notice, make written representations to the Authority; and

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where such representations have been made, the Authority shall take them into account in deciding whether to revoke its approval.

*[Rule 5 paragraph (1) amended by BR 94 / 2010 para. 5 effective 31 December 2010; Rule 5 paragraph (6) amended by BR 74 / 2011 rule 4 effective 31 December 2011]*

Capital and solvency return

6 (1) Schedules II, IIA, III, IIIA, IV, IVC, V, VI, IX, X, XI, XII, XIV, XV, XVI and XVII have effect.

(2) Every Class 3B or Class 4 insurer shall make a capital and solvency return to the Authority in accordance with Schedules I, II, IIA, III, IIIA, IV, IVC, V, VI, IX, X, XI, XII, XIV and XV.

(2A) A capital and solvency return shall comprise the following—

- (a) both an electronic version and a printed version of the BSCR model;
- (b) printed versions of the returns prescribed in Schedules II, IIA, III, IIIA, IV, IVC, V, VI, IX, X, XI, XII, XVI and XVII; and
- (c) where applicable, a printed copy of an approved internal capital model.

(3) An insurer shall, on or before its filing date, furnish the Authority with its capital and solvency return.

(3A) An insurer shall, at the time of furnishing its capital and solvency return in accordance with subparagraph (3), also file with the Authority an opinion of its loss reserve specialist, which takes into account its technical provisions calculated in accordance with Line 19 of Form 1EBS and Schedule XV.

(4) An insurer shall keep a copy of its capital and solvency return at its principal office for a period of five years beginning with its filing date, and shall produce it to the Authority if so directed by it on or before a date specified in the direction.

(5) *[Revoked by BR 74 / 2011 rule 5]*

*[Rule 6 amended by BR 79 / 2009 para. 4 effective 31 December 2009; Rule 6 amended by BR 94 / 2010 para. 6 effective 31 December 2010; Rule 6 paragraph (5) revoked by BR 74 / 2011 rule 5 effective 31 December 2011; Rule 6 paragraphs (1), (2) and (2A)(b) amended by BR 112 / 2013 rule 2 effective 1 January 2014; Rule 6 paragraphs (1), (2) and (2A)(b) amended and paragraph (3A) inserted by BR 59 / 2015 rule 4 effective 1 January 2016; Rule 6 paragraphs (1) and (2A)(b) amended by BR 11 / 2016 rule 2 effective 15 March 2016]*

Declaration of capital and solvency returns

6A Every capital and solvency return made by an insurer under paragraph 6 shall be accompanied with a declaration signed by—

- (a) two directors of the insurer, one of which may be the chief executive; and
- (b) either the chief risk officer of the insurer, or the chief financial officer of the insurer,

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declaring that to the best of their knowledge and belief, the return fairly represents the financial condition of the insurer in all material respects.

*[Rule 6A inserted by BR 79/2009 s.5 effective 31 December 2009; Rule 6A revoked and replaced by BR 91 / 2012 para. 3 effective 1 January 2013]*

6AB Quarterly financial return

6AB (1) Every insurer, where the insurer is not a member of a group for which the Authority is the group supervisor, shall prepare and file quarterly financial returns with the Authority on or before the last day in the months of May, August and November of every year.

- (2) An insurer's quarterly financial returns shall comprise the following—
- (a) quarterly unaudited financial statements in respect of its business for each financial quarter, such statements should be the most recent produced by the insurer, and must not reflect a financial position that exceeds two months; and
  - (b) intra-group transactions that the insurer is a party to and the insurer's risk concentrations which include—
    - (i) details of material intra-group transactions that have materialised since the most recent quarterly or annual financial returns prepared and filed as the case may be, with the Authority by the insurer including (where applicable)—
      - (A) exposure value (face value or market value, if the latter is available);
      - (B) counterparties involved including where they are located;
      - (C) summary details of the transactions including purpose, terms and transaction costs;
      - (D) duration of the transaction; and
      - (E) performance triggers;
    - (ii) details surrounding all intra-group reinsurance and retrocession arrangements, and other intra-group risk transfer insurance business arrangements that have materialised since the most recent quarterly or annual financial returns prepared and filed as the case may be, with the Authority by the insurer including—
      - (A) aggregated values of the exposure limits (gross and net) by counterparties broken down by counterparty rating;
      - (B) aggregated premium flows between counterparties (gross and net); and

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- (C) the proportion of the insurer's insurance business exposure covered by internal reinsurance, retrocession and other risk transfer insurance business arrangements;
- (iii) details of the ten largest exposures to unaffiliated counterparties and any other unaffiliated counterparty exposures or series of linked unaffiliated counterparty exposures exceeding 10% of the insurer's statutory capital and surplus, including—
  - (A) name of unaffiliated counterparty, including where the counterparty is located;
  - (B) exposure values (face value or market value, if the latter is available); and
  - (C) transaction type.
- (3) Quarterly unaudited financial statements shall minimally include a balance sheet and income statement.
- (4) The information required to be included in the quarterly unaudited financial statements shall be information calculated to fulfil (in addition to any other purposes for which these Rules may require) the following purposes—
  - (a) to give as early a warning as possible to any person examining the said statements (whether by way of notice of the observance or non-observance by the insurer of any ECR, or in any other way) of any financial or operational difficulties into which the insurer's business has fallen or might appear likely to fall; and
  - (b) to provide the basis on which the Authority or any other authority may in good time take action under the Act or any other statutory provision to exercise any statutory power available to it for the safeguarding of any element of the public interest involved in or affected by the insurer's business.
- (5) In the exercise of its powers under section 6C of the Act, and without prejudice to the generality of that section, the Authority may direct that an insurer be exempt from filing the information required to be filed or modify the requirements under subparagraph (1) where—
  - (a) the insurer is able to file with the Authority relevant information that is filed with the Group Supervisor of the group for which the insurer is a member that would satisfy the filing requirements under subparagraph (1) and with the timelines as directed under that subparagraph; or
  - (b) the Authority is able to obtain relevant information from the Group Supervisor of the group for which the insurer is a member pertaining to the information required to be filed under subparagraph (1) and within the timelines as directed under that subparagraph.

*[Rule 6AB inserted by BR 74 / 2011 para. 6 effective 31 December 2011; Rule 6AB amended by BR 91 / 2012 para. 4 effective 1 January 2013]*



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Offences

6B *[Revoked by 2012 : 22]*

*[Rule 6B revoked by 2012 : 22 s.23 effective 1 August 2012]*

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SCHEDULES

*[The Schedules to these Rules have been omitted. They are available for inspection at the offices of the  
Bermuda Monetary Authority or on the website [www.bma.bm](http://www.bma.bm).]*

Made this 19th day of December, 2008

Alan Richardson  
Chairman  
Bermuda Monetary Authority

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*[Amended by:*

BR 79 / 2009

BR 94 / 2010

BR 74 / 2011

2012 : 22

BR 91 / 2012

BR 112 / 2013

BR 92 / 2014

BR 59 / 2015

BR 11 / 2016]