



BERMUDA

INSURANCE (PRUDENTIAL STANDARDS) (CLASS C, CLASS D AND CLASS E
SOLVENCY REQUIREMENT) RULES 2011

BR 72 / 2011

TABLE OF CONTENTS

| | |
|---|---|
| 1 | Citation |
| 2 | Interpretation |
| 3 | ECR |
| 4 | BSCR models |
| 5 | Approved internal capital model |
| 6 | Capital and solvency return |
| 7 | Declaration of capital and solvency returns |
| 8 | Offences |
| 9 | Commencement |

SCHEDULES

The Bermuda Monetary Authority, in exercise of the powers conferred by section 6A of the Insurance Act 1978, makes the following Rules—

Citation

1 These Rules may be cited as the Insurance (Prudential Standards) (Class C, Class D and Class E Solvency Requirement) Rules 2011.

[Title and Paragraph 1 amended by BR 90 / 2012 paras. 2 and 3 respectively effective 1 January 2013]

Interpretation

2 In these Rules—

“Act” means the Insurance Act 1978;

INSURANCE (PRUDENTIAL STANDARDS) (CLASS C, CLASS D AND CLASS E SOLVENCY REQUIREMENT) RULES 2011

- “accident and health insurance” means an insurance that pays a benefit or benefits in the event of the person insured incurring an insured injury, illness or infirmity;
- “annuity” means insurance that provides savings or income benefits during the lifetime of the person insured or some limited period thereafter;
- “approved internal capital model” means an internal capital 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 4EBS as set out in these Rules;
- “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;
- “Class E BSCR model” means the Bermuda Solvency Capital Requirement model established in accordance with paragraph 4 and Schedule I which is applicable to all Class E insurers;
- “compliance risk” includes a risk of legal or regulatory breaches or both;
- “credit risk” includes the risk of loss arising from an insurer’s inability to collect funds from debtors;
- “critical illness insurance” means a form of accident and health insurance that pays a benefit if the person insured incurs a predefined major illness or injury;
- “currency risk” means the risk of losses resulting from movements in foreign currency exchange risks;
- “disability income insurance” means a form of accident and health insurance that pays a benefit for a fixed period of time during disability;
- “distribution channel risk” includes a risk of disruption to an insurer’s distribution channel arising from employment of inexperienced or incapable brokers or agents;
- “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;

INSURANCE (PRUDENTIAL STANDARDS) (CLASS C, CLASS D AND CLASS E SOLVENCY REQUIREMENT) RULES 2011

“Form 4” *[revoked]*

“Form 4EBS” means Schedule XIV Class C, Class D and Class E Statutory Economic Balance Sheet set out in these Rules;

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

“group life, health and disability insurance” means insurance that is issued to insureds through a group arrangement such as through an employer or association;

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

“human resources (or “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 (or “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;

“insurance rate risk” means the risk of fluctuations or deterioration in the experience affecting the cost of benefits payable to policyholders or impacting upon the amounts held to provide for policyholder obligations;

“interest risk” means the risk that relates to asset values being adversely affected by changes in current interest rates;

“legal risk” means the risk arising from an insurer’s failure to—

- (a) comply with statutory or regulatory obligations;
- (b) comply with its bye-laws; or
- (c) comply with any contractual agreement;

“life insurance” means insurance of risks on the mortality (risk of death) of the life insured; and term insurance, whole life insurance, and universal life insurance are construed accordingly;

“liquidity risk” means—

- (a) the risk that may arise when the realizable value of assets may be insufficient to meet an insurer’s obligations to policyholders at a point in time; or
- (b) an insurer’s inability to meet such obligations except at excessive cost;

“longevity risk” means the risk of fluctuations or improvements in mortality that cause benefits to be paid for longer than expected;

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

INSURANCE (PRUDENTIAL STANDARDS) (CLASS C, CLASS D AND CLASS E SOLVENCY REQUIREMENT) RULES 2011

- “morbidity risk” means the risk of fluctuations or deterioration of morbidity experience causing increased claims on accident and health insurance coverages;
- “mortality risk” means the risk of fluctuations or deterioration of mortality experience causing increased claims on life insurance coverages;
- “operational risk” means the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, including legal risk;
- “outsourcing risk” includes a risk of miscommunication of responsibilities in relation to outsourcing, breach of outsource service agreements, or entering into inappropriate outsource service agreements;
- “relevant year” in relation to an insurer, means its financial year;
- “reputational risk” includes risk of adverse publicity regarding an insurer’s business practices and associations;
- “stop loss insurance risk” means the risk that arises when total claims experience deteriorates or is more volatile than expected, thereby increasing the likelihood and amount by which actual claims experience exceeds a predefined level;
- “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 (or “TVaR”)” means the conditional average potential given that the loss outcome exceeds a given threshold;
- “variable annuity guarantees” means insurance that provides a minimum investment performance guarantee on variable annuities.

[Paragraph 2 definitions “available statutory capital and surplus” and “Form 4” revoked and “available statutory economic capital and surplus”, “currency risk” and “Form 4EBS” inserted by BR 58 / 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 Class C, Class D or Class E 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 minimum margin of solvency (as provided in section 6 of the Act).

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

- (a) the ECR as calculated at the end of its most recent relevant year; or

INSURANCE (PRUDENTIAL STANDARDS) (CLASS C, CLASS D AND CLASS E SOLVENCY REQUIREMENT) RULES 2011

- (b) the ECR calculated after an adjustment has been made by the Authority under section 6D of the Act and has not been otherwise suspended under section 44A(4) of the Act,

whichever is later.

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

(4) Available statutory economic capital and surplus is determined by calculating the total statutory capital and surplus reported on Form 4EBS, Line 40.

(5) Notwithstanding subparagraph (4), the ECR shall be phased in over a period of three years as follows—

- (a) the applicable ECR for the financial year ending 2013 shall be 50% of the amount determined by Schedule I or an approved internal capital model;
- (b) the applicable ECR for the financial year ending 2014 shall be 75% of the amount determined by Schedule I or an approved internal capital model; and
- (c) the applicable ECR for the financial year ending 2015 and beyond shall be the full amount determined by Schedule I or an approved internal capital model.

[Paragraph 3 amended by BR 90 / 2012 para. 4 effective 1 January 2013; subparagraph (3) amended and subparagraph (4) revoked and replaced by BR 58 / 2015 rule 3 effective 1 January 2016]

BSCR models

4 The Class C, Class D and Class E BSCR models, set out in Schedule I, have effect.

[Paragraph 4 revoked and replaced by BR 90 / 2012 para. 5 effective 1 January 2013]

Approved internal capital model

5 (1) An insurer may apply to the Authority for approval of an internal capital model to be used in substitution of the Class C, Class D or Class E BSCR 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.

INSURANCE (PRUDENTIAL STANDARDS) (CLASS C, CLASS D AND CLASS E SOLVENCY REQUIREMENT) RULES 2011

- (4) The Authority shall serve notice on an insurer of the following matters—
- (a) its decision to approve the internal capital model; or
 - (b) its decision to not approve the 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 the insurer's 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 on the insurer of its proposal to revoke its approval of the insurer's internal capital model and the reason 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 where such representations have been made, the Authority shall take them into account in deciding whether to revoke its approval.

[Paragraph 5(1) amended by BR 90 / 2012 para. 6 effective 1 January 2013]

Capital and solvency return

6 (1) Schedules II, IIA, IV(A), V, VI, VII, VIII, VIIIA, IX, XII, XIII, XIV, XV, XVI and XVII have effect.

(2) Every Class D and Class E insurer shall make a capital and solvency return to the Authority in accordance with Schedules I, II, IIA, IV(A), V, VI, VII, VIII, VIIIA, IX, XII, XV, XVI and XVII.

(2A) Every Class C insurer shall make a capital and solvency return in accordance with Schedules XIII, XIV and XV.

- (3) A capital and solvency return shall comprise the following—
- (a) both an electronic version and a printed version of the Class C, Class D and Class E BSCR models;
 - (b) printed versions of the returns prescribed in Schedules II, IIA, IV(A), V, VI, VII, VIII, VIIIA, IX, XII, XIII, XVI and XVII; and
 - (c) where applicable, a printed copy of an approved internal capital model.

(3A) A Class C, Class D and a Class E 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 approved actuary, which takes into account its technical provisions calculated in accordance with Line 27C of Form 4EBS and—

- (a) in accordance with Schedule XV, for a Class D and E Insurer;

INSURANCE (PRUDENTIAL STANDARDS) (CLASS C, CLASS D AND CLASS E SOLVENCY REQUIREMENT) RULES 2011

(b) in accordance with Part XV of Schedule XIII, for a Class C insurer.

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

(5) 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 the Authority on or before a date specified in the direction.

(6) In this paragraph, "filing date" has the meaning given in section 17(4) of the Act.

[Paragraph 6 amended by BR 90 / 2012 para. 7 effective 1 January 2013; subparagraphs (1), (2) and (3) (b) amended by BR 110 / 2013 para. 2 effective 1 January 2014; subparagraphs (1) and (2A) amended and subparagraph (3A) inserted by BR 58 / 2015 rule 4 effective 1 January 2016; subparagraphs (1), (2) and (3)(b) amended by BR 12 / 2016 rule 2 effective 15 March 2016]

Declaration of capital and solvency returns

7 Every capital and solvency return made by an insurer under paragraph 6 shall be accompanied with a declaration signed by two directors of the insurer and by the insurer's principal representative declaring that to the best of their knowledge and belief, the return fairly represents the financial condition of the insurer in all material respects.

Offences

8 Every person who knowingly or recklessly makes a false or misleading statement or return is guilty of an offence and is liable on summary conviction to a fine up to \$50,000.

Commencement

9 (1) These Rules come into operation on 31 December 2011.

(2) Notwithstanding subparagraph (1), no person is required to comply with paragraph 3 of these Rules until 1 January 2014.

[Paragraph 9 revoked and replaced by BR 90 / 2012 para. 8 effective 1 January 2013]

INSURANCE (PRUDENTIAL STANDARDS) (CLASS C, CLASS D AND CLASS E
SOLVENCY REQUIREMENT) RULES 2011

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*

Made this 23rd day of December 2011

Chairman
The Bermuda Monetary Authority

[Amended by:

BR 90 / 2012
BR 110 / 2013
BR 94 / 2014
BR 58 / 2015
BR 12 / 2016]