BMA
BERMUDA MONETARY AUTHORITY

13th November 2015

Dear Stakeholders:

Re: Amendments to be made to the Implementation of Bermuda's Reporting Regime for Commercial Insurers and Insurance Groups

The Bermuda Monetary Authority (the Authority or BMA) would like to thank stakeholders for their continued support in furthering the development of the Bermuda insurance regulatory framework. The Authority appreciates the feedback received and is committed to working closely with its stakeholders to ensure that the regulatory regime is effective and aligned with international standards.

The refinements identified in the recent Consultation Paper on the Implementation of Bermuda's Reporting Regime for Commercial Insurers and Insurance Groups are the result of extensive dialogue with industry representatives.

The Authority will be responding separately to each submission, but outlined below are our responses to the more significant comments received.

FILING REQUIREMENTS

1. **The Authority was asked to confirm if the Economic Balance Sheet (EBS) trial run submission could be delayed to six months after the submission deadline (i.e. 31st December 2015 year-end due 30th June 2016)?**

The Authority considers that the trial run in 2016 is a vital part of its preparations for the implementation of the new regime, both from an internal processes perspective as well as to ensure that insurers are 'on track' to make their first live submissions in 2017. If amendments to the legislation are required based on the outcomes of the trial run, these amendments will need to be consulted on no later than July 2016 to be effective for the 2016 year-end. Thus it is essential that the filings for the year ended 31st December 2015 (including the mandatory EBS trial run) be made by the statutory filing deadlines. The Authority will do as much as possible to automate the Return to avoid duplication between the trial run and the actual filings. Insurers that have concerns about being able to file the EBS trial run submission by the required deadline should contact the Authority to discuss the possibility of a time extension.

2. **The Authority was requested to allow insurers flexibility in the methods or processes by which future errors/restatements of any GAAPS[1] / SFS[2] items will be handled, especially in the case that items are not material to the EBS/BSCR solvency position (i.e. GAAPS which require restatement of prior periods or condensed GAAP's). Can insurers report error corrections through the current year Capital and Surplus report and be allowed the flexibility to facilitate the reconciliation and audit of the prudential filters between GAAPS and SFS and the further reconciliation of SFS to EBS? Would insurers also communicate their policies in the notes to the financial statements or through a specific request to the Authority?**

Errors in prior year GAAPS and condensed GAAPS should be addressed based on the rules of the insurer's specific GAAP. Usually, the accounting rules will require restatement of prior period financials.

For the SFS and EBS these errors should be corrected through the current year Capital and Surplus report. A note disclosure should be included in the SFS which should state the effect of the error on prior year capital and surplus.

3. **The Authority was asked to confirm that comparative figures will not be required for the SFS, GAAPS or EBS financial statements for the 2015 year-end.**

The Authority will not be requiring insurers to include prior year comparatives in the 2016 SFS, EBS, or the condensed GAAPS. The Authority will require prior year comparatives for the full GAAP statements.

4. **Under the proposed rules, what are the requirements for dual license entities with regard to producing separate schedules for Long-Term business and general business? The current requirement is to provide a separate balance sheet and income statement for each in the SFS.**

Separate general business and Long-Term unconsolidated balance sheets and income statements will be required for the dual-licensed insurers. The consolidated SFS will be on a combined basis.

5. **The Authority was asked to confirm that the commercial[3] insurer[4]'s quarterly reporting basis pursuant to the terms of the Insurance (Prudential Standards)(Class 4 and 3B Solvency Requirement) Rules 2008 has not changed.**

There is no change expected to the commercial insurer's quarterly reporting requirements. The Authority will not require EBS filings to be included in quarterly filings.

[1] The term "GAAPS" refers to "additional GAAP financial statements"
[2] The term "SFS" refers to "Statutory Financial Statements"
[3] Commercial insurers are Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurers.
[4] The terms "insurers" include both insurers and reinsurers, and "insurance" includes reinsurance.

6. **The Authority was asked to confirm whether the commercial insurers which are not accepting new business will have the same reporting requirements.**

Commercial insurers that are not accepting new business will have the same filing requirements as ongoing commercial insurers. However, upon application for filing exemption, the Authority will review insurers on a case-by-case basis for exemptions for filing.

II. A. GAAP FINANCIAL STATEMENTS – SECTION 17A OF THE INSURANCE ACT

7. **The Authority was requested to disclose the basis for providing exemptions from publication of financial statements, e.g. where "the respective insurer would still be required to provide its policyholders with access to its audited GAAPS upon request". Also the Authority was asked to clarify with respect to the term "policyholders" for reinsurers, if the Authority will look at the immediate cedants or the primary policy holders. The Authority was also asked to confirm if exemption from disclosure will be provided based on matters pertaining to competitive disadvantage for the insurer or insurance group or where the insurer or insurance group has contractual obligations with its policyholders or counterparties to keep information confidential. Further, will the Authority confirm that for any financial statements, additional criteria, in particular companies only writing affiliate reinsurance, be recognised as grounds for exemption from publication?**

All insurers will be required to file GAAPS or condensed GAAPS, which will be published as required under Section 17A of the Act. Competitive disadvantage and contractual obligations between policyholders and an insurer will be grounds for making an application for exemption (Note: there cannot be an exemption from the full Capital Management section of the Financial Condition Report). Classes C, D and 3A insurers have the option of preparing condensed GAAPS while upon approval Class 4, Class 3B and Class E insurers will be allowed to prepare condensed GAAPs for publishing.

The Authority will, in very rare circumstances, exempt an insurer from having their GAAPS published and will review requests on a case-by-case basis. For reinsurers, the Authority will consider the primary policyholders, in cases where not open market (and whether these policyholders have access to relevant financial information) in assessing whether to exempt the reinsurer from having its GAAP financial statements published.

8. **Is the GAAP requirement expected to apply to run-off insurers who already complete a modified BSCR filing? Should insurers include GAAPS in their annual 6C application?**

Where a run-off insurer has a section 56 Direction allowing the insurer to complete a modified filing, this Direction will continue to apply to the new SFS. These exemptions will continue to be provided on a case-by-case basis upon application. Where exemptions are granted, there still may be a requirement to publish a Declaration of Compliance or Capital Management section of the Financial Condition Report.

9. **The Authority was asked to confirm that insurers that submit audited condensed GAAPS will have those statements published.**

The condensed GAAPs will be published.

10. **Upon approval, can Class 3B, Class 4 and Class E insurers be allowed to submit the condensed GAAP instead of full GAAP financial statement?**

Class 3B, Class 4 and Class E insurers, upon application, will be allowed on a case-by-case basis to prepare condensed GAAPS for publication in place of full GAAP financial statements. As part of the application, the insurers will need to provide an explanation and or reasons for not having their full GAAPs published.

11. **The Authority was asked to confirm if a Class 3A, Class C, or Class D insurer chooses to file full GAAP financial statements, the insurer will be relieved of the requirement to produce condensed GAAPS.**

The condensed GAAPs are provided as an option for Class 3A, Class C and Class D insurers that do not currently prepare full GAAP financial statements, and therefore to the extent that a Class 3A, Class C or Class D insurer currently produces full GAAP financial statement, they will not need to prepare the condensed GAAPs.

II. B. i. b. LONG-TERM BUSINESS INSURANCE RESERVES

12. **Can the Authority confirm that Long-Term and dual insurers are not subject to calculate technical provisions on its long-term business until the 2018 financial year?**

The Authority previously advised that the 2018 transitional period for Long-Term and dual insurers is no longer applicable. All insurers must calculate their technical provisions both on a general and Long-Term business for the 2016 year-end filings.

13. **In the calculation of Technical Provisions, guidance states that an insurer may, subject to Authority approval, use alternative risk-free rates in the calculation of technical provisions. Is it therefore allowable for technical provisions, as calculated by European subsidiaries for Solvency II, to be used directly in the BMA calculation, for those subsidiaries? On the other hand, if the technical provisions values are not used exactly, but instead recalculated using BMA provided risk-free rates, will there be a requirement to produce reconciliation?**

The Authority will permit insurers to use the Solvency II discount rates for their technical provisions calculation without the need for any prior approval, but this should be for appropriate business reasons, and there should be an expectation of maintaining the approach in future years. There would be no need to provide regular reconciliations of the technical provisions on the Solvency II rates to those on the Authority's rates, although this may be requested in the first year or from time to time for information purposes.

It may also be possible for an insurer to use the entire Solvency II basis for their technical provisions in limited circumstances, and subject to prior approval by the Authority. In these cases the Authority would need to gain comfort that the Solvency II rules, including for example qualification for use of the Matching Adjustment, have been appropriately complied with and implemented – this is likely to require that the technical provisions will form a part of the group regulatory submission to a European regulator, or have been subject to audit. There would still need to be an Opinion provided on the technical provisions as set out in Schedule XV of the relevant Insurance Prudential Standards Rules.

14. **Currently insurers are required to prepare a single SFS which includes actuarially computed reserves deemed adequate and subject to audit. Can the Authority confirm that the proposed amendment is to require insurers to calculate a GAAP reserve which is subject to audit and then calculate a different SFS reserve?**

The insurer will need to determine the reserves for the GAAP Statements or condensed GAAP Statements and auditors will be reviewing these as part of the GAAP audit. These reserves will be permitted for the SFS. An insurer only needs to recalculate a reserve specifically for the SFS if it desires to hold a higher reserve for statutory purposes.

15. **Can the Authority confirm the process for which a section 56 and 6C applications are to be granted with regards to adjustments to the statutory financial statements that are not consistent with GAAP reporting (i.e. reserve valuation)?**

The Authority does not expect there to be any change to the existing application process.

II. B. i. c. PRUDENTIAL FILTERS

16. **During the Authority's industry meeting, it was proposed the inclusion of a prudential filter of requiring quoted and unquoted investments be valued at fair value in the SFS even in cases where GAAP might allow amortised cost. Is this the Authority's final positon?**

Based on market feedback, the Authority will not require the quoted and unquoted investments to be calculated at fair market value in the statutory financial statements where they are carried at other than fair value in the Insurer's GAAP financial statements.

The Authority would like to note that the market value of quoted and unquoted investments will be required to be disclosed in the GAAP financial statements/condensed general purpose financial statements and to be reported in the EBS.

II. B. ii. UNCONSOLIDATED SFS

17. **The Authority was asked to confirm that commercial insurers with no subsidiaries could submit one set of statutory financial statements.**

The Authority confirms that in instances where the insurer does not have any subsidiaries, the insurer only has to prepare the unconsolidated statutory financial statements, and in the notes to the statutory financial statements, the insurer needs to disclose it does not have any subsidiaries.

II. B. iii. TREATMENT OF INVESTMENT IN AFFILIATES FOR CONSOLIDATED SFS

18. **It is noted that in the Consultation Paper that in cases of amalgamations during the year, the surviving entity should report the combined pro-forma income statement for the whole year. This is different from the GAAP rules which include an acquired entity from the date of acquisition. Confirm that this is the Authority's final position.**

This requirement has been removed in the final legislation considering the difficulties companies and auditors might have in completing this; however, the pro-forma combined information might still be requested from insurers on a case-by-case basis as part of the Authority's prudential review of the insurer.

II. B. iv. INSURANCE RISK TRANSFER AND SCHEDULE OF DEPOSIT ACCOUNTING

19. **Can the Authority confirm its position when insurers have entered into remote risk structured reinsurance transactions which do not qualify for reinsurance accounting for GAAP, but do meet the definition of reinsurance for their US cedants in their statutory reporting (NAIC basis)? Would this require a formal 6C application?**

The Authority may consider this on a case-by-case basis, upon application under Section 6C of the Act.

II. B. v. SEGREGATED ACCOUNT COMPANIES

20. **Can the Authority confirm that the proposed reporting regime for segregated account companies would apply regardless of whether a commercial insurer has the benefit of segregated accounts pursuant to a private Act of the Bermuda legislature or the Segregated Accounts Companies Act 2000? Further the framework would benefit from better definition of "recourse." Specifically, in cases where the "general account" of a legal entity is making a guarantee with respect to the performance of a separate account (e.g., a minimum death benefit guarantee), provided that the legal entity is holding a general account reserve for**

such guarantees, the separate account assets and liabilities should not be consolidated.

The consultation process raised a number of issues relating to accounting for segregated accounts. Based on these issues, the Authority has decided to delay the implementation of the proposals relating to segregated accounts to allow time to more comprehensively study the issues raised. The Authority expects to issue a policy document on segregated accounts in the future. In the meantime, insurers should apply a consolidated accounting treatment and only roll the balances up on lines 13 and 37 upon making application to, and receiving approval from, the Authority – for example where the policyholder contractually bears all the risk.

D. APPROVED AUDITORS

In the Consultation Paper, the Authority proposed to legislate the requirement that the insurer's approved auditor be based in Bermuda. This has been a long-standing internal policy outlined in paragraph 19 of the Guidance Note on "Role of Approved Auditor" (as it relates to statutory financial statements). However, after consultation the Authority has decided not to legislate this requirement. The Authority will retain the same internal policy in relation to the statutory financial statements.

In addition, the Authority has revised the requirement for audit working papers to be maintained in Bermuda. This requirement is now restricted to statutory financial statements, where there will be a Bermuda-based Approved Auditor. In addition, the scope of the working papers is those that that the Approved Auditor relied upon for providing assurance on the SFS.

The audit work papers which will be held in Bermuda include any memoranda or other materials that an Approved Auditor uses in placing reliance on work completed by an overseas office or affiliated member to form the audit opinion. Additional information or work papers completed by overseas offices or affiliated/member Audit firms may be requested by the Authority. Any such request will be made through the Approved Auditor, and will be subject to the Approved Auditor's ability to obtain the documentation. The Authority understands that these documents or work papers may be held overseas by overseas offices or affiliated members that completed the Audit work.

21. **Can the Authority confirm the required audit assurance for the statutory filing as insurers are required to provide general/condensed purpose financial statements, consolidated statutory statements and unconsolidated statutory statements?**

The Authority would require auditors to provide two opinions, one for the GAAP or condensed general purpose financial statements, and another opinion on the statutory financial statements.

Since the SFS will be based on the GAAP and/or condensed GAAP schedules, the Authority's expectation, which is also supported by our discussions with the Bermuda CPA, is that the auditors will be able to rely on the work performed in the audit of the

GAAP financial statements and the assessment of the prudential filters applied to the GAAP numbers.

22. Can the Authority make a provision for the use of non-Bermuda based audit firms to be used in unique circumstances?

As noted above, the Authority does not intend to approve non-Bermuda based auditors for the SFS as is the current internal policy; however, the Authority will entertain such Approved Auditor applications for GAAPs and Condensed GAAPs. In the case of the SFS, the Approved Auditor may place reliance upon the work performed by overseas auditors.

E. CAPITAL AND SOLVENCY RETURN – REGULATORY DISCLOSURES

23. Can the Authority confirm that Class C insurers are required to provide details of Outsourcing Arrangements?

The Authority would like to confirm that Class 3A, Class 3B, Class 4, Class C, Class D and Class E insurers are required to comply with the proposed requirements of Outsourcing Arrangements.

The Authority would like to thank stakeholders for their comments on the Implementation of Bermuda's Reporting Regime for Commercial Insurers and Insurance Groups Consultation Paper. The Authority is committed to working with industry and other stakeholders to ensure that the regime is appropriate for the Bermuda market.

Please feel free to contact the Authority at riskanalytics@bma.bm if you have any questions.

Yours sincerely,

The Bermuda Monetary Authority