BERMUDA MONETARY AUTHORITY

12th June, 2015

Dear Stakeholders:

Re: Enhancements to Bermuda's Insurance and Regulatory Regime for Commercial Insurers and Insurance Groups

The Bermuda Monetary Authority (the Authority) would like to thank stakeholders for their continued support of our key initiatives. The Authority is committed to ensuring the effective operation of Bermuda's regulatory regime as well as being aligned with international standards.

On 1st April, 2015, the Authority published its consultation paper and draft legislation with the intent to enhance key aspects of the Bermuda regulatory framework for our commercial insurers and insurance groups. Additionally, the Authority met with industry stakeholders to get direct feedback on specific parts of the paper, and is appreciative of the dialogue that ensued and the support it has received regarding this initiative.

The Authority received comments on the consultation paper and draft legislative provisions, which we summarise below along with our responses:

Disposals of Shareholdings

The Authority received a comment that the requirement for shareholder controllers to notify the Authority of disposal of shareholdings from one threshold to another may be duplicative and unduly burdensome. The suggestion was made that we limit our consideration to the reduction from 50% or more to less than 50%.

The ability to review new or increased shareholder controller changes is already captured under Sections 30D and 30E of the Insurance At (1978) (the Insurance Act), however if a shareholder controller steadily decreases his shareholdings from one threshold to another, the Authority would be unable to determine if there could be potential issues arising that may cause a shareholder to dispose of his shares. If the Authority restricted its notification to under the 50% threshold, then any further decreases in shareholding, by that shareholder controller, would not be captured. The proposed Section 30EA is a notification feature that does not require the Authority's approval, and should not hamper the shareholder controller's ability to dispose of shares however, the proposed change allows the Authority to get a better understanding of the ownership structure of the insurer.

Establishment of the Head Office in Bermuda

Stakeholders indicated some concern about the requirements for a head office, as set out in the proposed Section 8C in the Bill. The main concern was with interpretation of the criteria and the application of the proportionality principle when applying the criteria. Some respondents summarised their structures and were seeking guidance on whether they would meet the requirements. Further, stakeholders queried whether the principal office could be regarded as the head office, and if there are any other exemptions provided, other than what is currently proposed and if the Authority would consider a reclassification exercise for those insurers who wish to be exempted from this requirement.

The proposed head office requirement is that all commercial insurers, except those insurers that have a permit under section 3 of the Non-Resident Insurance Undertakings Act 1967 or a permit under section 134 of the Companies Act 1981, are to establish a head office in Bermuda as demonstration that the insurer is directed and managed from Bermuda. In this regard the Authority will apply the proportionality principle when it considers the factors in determining whether the insurer, based on the nature of its business, has met the requirements. The Authority confirms the following:

- *The Authority is not considering a reclassification of its commercial insurers for this purpose at this time.*

- *The Authority is not proposing to exempt insurers, other than those stated in draft legislation.*

- *Where the insurer's principal office meets the standards required for the establishment of a head office, then the Authority will regard the principal office as the head office.*

Accordingly, the Authority will retain the current proposed legislative draft for the head office requirement. To assist industry with the implementation of these provisions the Authority will host industry meetings to discuss its approach and possibly provide guidance notes to provide clarity. The Authority encourages insurers to come in and meet with Authority representatives if they have specific concerns relating to the nature of their business and operations.

Outsourcing Arrangements governing Senior Management

The consultation paper discussed the arrangements set out in the Code and Act dealing with outsourcing. Stakeholders affirmed that retaining the option to outsource the senior executive functions to the insurance manager is important given the nature and organisational structure of many insurers. Stakeholders also indicated that the framework governing the outsourcing activity should be consistently applied across commercial insurers, taking into account proportionality.

The Authority believes that the approach to outsourcing is dependent on the nature, scale and complexity of the insurer. Accordingly, larger commercial insurers, given their higher risk profile, in principle should not outsource the senior executive functions. For commercial insurers with lower risk profiles the Authority believes that the option to outsource the senior executive roles to the insurance manager should be available however, the onus is on the board of directors to ensure that the insurance manager can effectively execute these roles prudently. Section 7 of the Insurance Code of Conduct provides guidance to insurers concerning outsourcing, and reinforces the obligation that the insurer's board must ensure that the outsourced function is exercised in a prudent manner.

The Authority will provide further guidance by strengthening this section to include conditions where the insurer should not outsource its functions. This would include where the insurer determined that risks arose after the function was outsourced. The conditions that will be added are as follows:

- *Where outsourcing may adversely affect the insurer's governance and risk management structures;*
- *Where outsourcing has increased operational risk;*
- *Where outsourcing may affect the Authority's ability to effectively supervise the insurer; and*
- *Where outsourcing adversely affects policyholder's interests.*

Public Disclosures

The comments from stakeholders were varied, though there were some commonalities. The Authority encourages companies with more specific issues to come in and discuss them. The Authority will be hosting industry meetings to discuss implementation of the disclosure requirements. Some specific concerns included the following:

- *Stakeholders felt that given the nature of their operations, they should be exempt from the public disclosures requirement, in part or wholly.*

  The Authority is aware that insurers have varying risk profiles and different organisational structures, therefore, the Authority will apply its regime in a proportional manner, taking into account these factors The public disclosures regime will be applicable to all commercial insurers; however there are provisions which allow the Authority to consider exemptions or modifications. One of the conditions the Authority may consider waiving is a legal entity Financial Condition Report (FCR) where the commercial insurer is part of an insurance group, and where the Authority is the Group Supervisor.

- *Stakeholders were concerned about disclosing certain aspects on the FCR which may create competitive disadvantage.*

  Where an insurer or insurance group believes that disclosures can result in competitive disadvantage, they must submit an application to the Authority for consideration. The Authority may consider an exemption or modification where the Authority is satisfied that disclosure of certain information will result in competitive disadvantage for the insurer or insurance group.

- *Stakeholders were concerned about disclosing certain aspects on the FCR which may be regarded as confidential.*

  Where the Authority is satisfied that disclosure of certain information may breach an insurer's or insurance group's contractual obligations with policyholders or counterparties to keep certain information confidential, it may consider an exemption or modification. An insurer or insurance group that seeks an exemption or modification must submit an application to the Authority for consideration. Where an insurer or insurance group may cite other instances where confidentiality may be an issue, they should discuss the matter with the Authority, which we will review and advise accordingly.

- *Stakeholders requested guidance on the level of detail required for the FCR.*

  The Authority intends to provide more guidance on this topic at its planned industry meetings. It is anticipated that as the Authority receives and reviews the FCRs, it will be in a better position to provide advice on this matter.

- *Stakeholders were concerned about the cost to implement the public disclosures regime.*

  The Authority recognises that as it continues to enhance its regime, there will be cost considerations as both the industry and the Authority move forward towards implementation. We are mindful of this and, we will work with stakeholders to ensure the regime is implemented effectively and efficiently. Currently, the provisions for the FCR allow the insurers or insurance group to rely on current disclosures made, that may address many of the items on the FCR. If the information contained in these other public disclosures is equivalent to what is required in the FCR, the insurer or insurance group can reference these disclosures in the FCR. This will reduce the need to duplicate information currently provided.

- *Stakeholders were concerned about the cost required to create a website to publish the FCR.*

  The Authority is not requiring stakeholders to create a website specifically to publish the FCR. The current proposals state that where insurers and insurance groups have a website, the FCR must be published on the website within 14 days of filing the FCR to the Authority. Where the insurer or insurance group does not have a website, then they shall furnish a copy of the FCR to persons within ten days of receipt of the written request.

- *Stakeholders were concerned about the timeframe to disclose the significant event especially where the required timeframe may occur before disclosing the matter to the SEC.*

  In instances where the insurer or insurance group can demonstrate that the timeframe required disclosing the significant event may be in advance of disclosures to the SEC, then the Authority may consider that the public disclosure of the significant event can be made at the same time as the disclosure to the SEC.

- *Stakeholders noted that the consultation paper stated that a significant event must be publicly disclosed ten days after the event, while the draft legislation stated 30 days.*

Notwithstanding the earlier comment regarding the publication of a significant event, we confirm that the significant event should be filed with the Authority within 14 days and made publicly available 30 days after the event.

- *Stakeholders wanted confirmation that the board of directors would determine if an event was significant for the purposes of public disclosure.*

  The Authority can confirm that the board of directors of the insurer and insurance group would make the determination as to what constitutes a significant event for the purposes of public disclosures.

- *Stakeholders wanted confirmation that the public disclosures regime will be implemented on January 1st, 2016 and*

  We confirm that the public disclosures regime for all commercial insurers and insurance groups will apply on 1st January, 2016, with the first filing occurring in 2017.

The Authority would like to thank stakeholders for their comments on the consultation paper and draft legislation, and we remain committed to working with the industry and other interested parties to ensure that results achieved are in the best interests of the Bermuda market.

Yours sincerely,

The Bermuda Monetary Authority