BERMUDA MONETARY AUTHORITY

14th November, 2014

Dear Stakeholders:

**Re: Insurance Amendment Act 2014**

The Bermuda Monetary Authority ("the Authority") would like to thank stakeholders for their continued support of our key initiatives. On 1st October, 2014, the Authority published for consultation, the Insurance Amendment Act 2014 ("the Bill") which proposed amendments to the Insurance Act 1978 ("the Act") and supporting Regulations. The Authority is committed to ensuring the effective operation of Bermuda's regulatory regime as well as being aligned with international standards.

The Authority received comments on the Bill which we summarise below along with our responses:

**Section 15A – Declaration of Compliance**

Stakeholders indicated that the proposed legislative drafting was not workable as it asked the insurer to declare that it has complied with the requirements as well as failed to comply with the requirements. The Authority has taken on board this comment and suggested changes to the draft provision as follows:

*15A (1) Every insurer shall at the time of filing its statutory financial statements under section 17, also deliver to the Authority a declaration in such form, and with such content as may be prescribed; declaring whether or not that the insurer has, with respect to the preceding financial year—*

> *(a) complied with all requirements of the minimum criteria applicable to it;*
> *(b) complied with minimum margin of solvency as at its financial year end;*
> *(c) complied with applicable enhanced capital requirements as at its financial year end; and*
> *(d) where a licence is issued by the Authority subject to limitations, restrictions or conditions; that such limitations, restrictions or conditions have been observed."*

## Sections 30JA and 30JB – Material Changes

The Authority proposed to amend Section 30JA(1)(a) of the Act to allow any transaction relating to a scheme of arrangement under Section 99 of the Companies Act 1981 to be constituted as a material change under Section 30JA. We received comments where it was suggested that the word "material" be included as to qualify that such transactions be a material transaction relating to a scheme of arrangement. It should be noted that Section 99 of the Companies Act 1981, which forms part of the general category of "Arrangements, Reconstructions, Amalgamations and Mergers refers to arrangements made between creditors and the company which involves the Bermuda courts. We believe that these arrangements are sufficiently important that the Authority should be notified of such transactions affecting our insurers. Inserting the word "material" may not necessarily segregate those transactions from those that would not be material since these transactions, by their very nature, are of material importance to the Authority.

We received a comment concerning the proposed change in Section 30JB(4)(b) from 14 days to 30 days and appreciate that certain transactions are very sensitive and may require the Authority to respond as quickly as possible. It is not the intention of the Authority that this time period will be needed to assess and approve every material change; however, there are certain transactions whose complexities may warrant the additional time to make a proper assessment. We acknowledge our stakeholders' concerns and will endeavour to provide a timely response on these transactions.

## Sections 32(1) Powers of Intervention

The Authority received comments concerning the use of the term "obligations to policyholders" and requested clarity on whether the term should be focused on pecuniary obligations rather than less important non-financial obligations. An insurer's obligations to its policyholders are contractual in nature and go beyond its financial commitments. The new provision under Section 32(1) of the Act relates to the gravity of a situation where the insurer's business is conducted in such a manner that it lends to a significant risk it will be unable to meet its policyholder obligations. The Authority may exercise this provision and issue the appropriate directions where it has determined that the matter is egregious enough to necessitate intervention and that the interests of policyholders need to be protected. These matters can be financial or non-financial in nature. Under Section 44A of the Act, an insurer can appeal the Authority's decision to impose a particular direction to a tribunal if it believes such a decision was excessive.

Stakeholders queried the circumstances where an insurer may be unable to meet its obligations to policyholders apart from the risk of insolvency. There are circumstances which may affect an insurer's ability to meet its obligations to policyholders, though such circumstances may not necessarily suggest that the insurer may be at risk of becoming insolvent.  An example is where the insurer may be experiencing problems with liquidity and may be unable to pay claims at the time they become due; such instances may require the Authority to exercise Section 32 of the Act in order to safeguard policyholder's interests.

**Minimum Criteria for Registration – Schedule to the Act**

Stakeholders required clarification on the term "non-executive directors" and to "confirm that either a registered person's group senior management or group executives who do not have day-to-day management responsibilities of the registered person would be considered as an 'eligible' non-executive director on the regulated person's board."  The Authority may consider group executives who do not have day-to-day management responsibilities as non-executives on an insurer's board; however, the Authority has the responsibility to review the overall board composition to ensure that the corporate governance structure is appropriate given the insurer's risk profile.

The Authority would like to thank stakeholders for their comments on the Bill, 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