

BERMUDA MONETARY AUTHORITY

INSURANCE DEPARTMENT

GUIDANCE NOTE #5

**FIT AND PROPER CRITERIA AND APPROVAL
PROCESS FOR THE APPROVED AUDITOR**

MARCH 2005

GUIDANCE NOTE: FIT AND PROPER CRITERIA AND APPROVAL PROCESS FOR THE APPROVED AUDITOR

Introduction

- 1 The role of the Approved Auditor is integral to the Bermuda insurance supervisory model. The Approved Auditor's primary role is to express an independent and objective opinion on whether the statutory financial statements are free of material misstatements and whether the statutory financial returns comply with certain criteria established in the Insurance Act. This reliance on the Approved Auditor requires that the Authority exercise a degree of oversight over the fitness and propriety of each Approved Auditor and the effectiveness of the functioning of the Approved Auditor in the required role. This Guidance describes the fit and proper criteria and the approval process to become the Approved Auditor of a regulated insurer as determined by the Authority. The Guidance Notes are intended to provide information on the application of the Insurance Act and corresponding regulations.
- 2 The Bermuda Monetary Authority (the "Authority") recognizes the need for clarity as to the scope and implementation of the provisions of the Act ¹ if the regulatory system is to command the confidence of insurers and policyholders. It seeks, therefore, to ensure that those operating in Bermuda have a good understanding of the nature of the requirements and of the Authority's approach in implementing the Act.
- 3 While the Authority aims to provide clarity as to its approach, this Guidance is not intended to be exhaustive. The Authority, through the Guidance, hereby sets out its understanding of the legal provisions affecting the fit and proper criteria and the approval process for the Approved Auditor, and to provide additional information about the Authority's regulatory approach and expectations for these matters. ² Interpretation of statutes is ultimately a matter for the Bermuda courts. (The applicable sections of the Act are shown in brackets.) ³

¹ The insurance legislation is comprised of the Insurance Act 1978 (as amended by the Insurance Amendment Acts, 1981, 1983, 1985, 1995, 1998 and 2001) and the regulations promulgated under that Act (the "Regulations"). The Regulations are the Insurance Accounts Regulations 1980 (as amended by The Insurance Accounts Amendment Regulations 1981, 1985 and 1989) and the Insurance Returns and Solvency Regulations 1980 (as amended by The Insurance Returns and Solvency Amendment Regulations 1981, 1985 and 1989). References herein to the "Act" are to the Insurance Act 1978 (as amended) and the Regulations.

² The legislative summary in this Guideline is not intended to be a substitute for provisions of the Act. The reader is advised to refer to the provisions of the Act and not to rely on the interpretation of those provisions contained in this Guideline.

³ "IA" means the Insurance Act 1978. "IAR" means the Insurance Accounts Regulations 1980. "IRASR" refers to the Insurance Returns and Solvency Regulations 1980.

- 4 Other guidance issued by the Authority may contain additional information on the role of the Approved Auditor.
- 5 The Authority's guidance is of general application and seeks to take account of the wide diversity of institutions that may be licensed under the Act. There may be a need for revision of the Guidance Notes from time to time. Material changes in the Guidance will be published, generally through the issue of a revised version.
- 6 Guidance should be understood as reflecting the minimum standard that the Authority expects insurers and Approved Auditors to observe at all times. For references in these Guidance Notes with respect to the changes in legislation contained in the Insurance Amendment Act 2004 insurers and Approved Auditors must take immediate steps to ensure they are in compliance with the Act. In relation to other matters contained in the Guidance Notes, the Authority encourages insurers to come into compliance as soon as possible and, in any event, not later than 31st December 2005 or a later date as may be agreed with the Authority in a particular case.

Application

- 7 This guidance applies to all insurers registered under the Act and to all auditors approved by the Authority as the independent auditor of the insurer.

Fitness and Propriety of the Approved Auditor

- 8 Prior to appointing a candidate for Approved Auditor, the Authority expects the insurer to consider whether its candidate meets the eligibility criteria of the Authority and whether the candidate is fit and proper to fulfill its role. This requires that the auditor possesses the appropriate integrity, competency, resources, qualifications and experience commensurate with the nature, scale and complexity of the insurer's business and the requirements and standards of the Act. The insurer should have regard to whether its proposed Approved Auditor possesses or has access to appropriate specialist skill, for example actuarial expertise. Additionally, the Authority expects the insurer to take timely steps to ensure that the auditor that it appoints is independent of the insurer. As appropriate, the insurer should seek confirmation from the auditor.
- 9 If an insurer becomes aware at any time that its Approved Auditor is not independent of the insurer, or that it no longer meets the eligibility and fit and proper criteria, the insurer must take timely steps to ensure that it has an independent, and/or fit and proper auditor.
- 10 An insurer should provide information, in accordance with the reasonable requests of the Authority, to demonstrate that its candidate for Approved Auditor is independent and/or meets the eligibility and fit and proper criteria, or in the

case of an incumbent Approved Auditor, that the Approved Auditor continues to be independent and to meet the eligibility and fit and proper criteria.

Acceptance of an Engagement

- 11 Prior to accepting an appointment as the Approved Auditor, the Authority expects the Approved Auditor to be satisfied that, given the scale and complexity of the insurer, the examination of the insurer pursuant to the Act is within the collective professional expertise and proficiency of the Auditor and other persons performing the engagement.

Criteria for Approval

- 12 Prior to approving a natural person or a firm of accountants as the Approved Auditor, the Authority would assess whether the Approved Auditor is fit and proper to fulfill its role. Fit and proper criteria would include whether the Approved Auditor is independent and, whether commensurate with the nature, scale and complexity of the insurer's business and the requirements and standards of the Act, the Approved Auditor possesses the appropriate integrity, competency, resources, qualifications and experience. Additional criteria could include whether the proposed Approved Auditor possesses or has access to appropriate specialist skill (e.g. actuarial expertise).
- 13 A person (either a natural person or a firm of accountants) will generally be considered a fit and proper person if the person is:
- i) a member in good standing of the Institute of Chartered Accountants of Bermuda ("ICAB")
 - ii) ordinarily resident in Bermuda, and
 - iii) independent of the insurer.

Professional Standards

- 14 Members of ICAB are subject to ICAB's Rules of Professional Conduct. Among other matters these rules require the Approved Auditor to conduct himself at all times in a manner which maintains the good reputation of the profession⁴ and its ability to serve the public interest, to perform professional services with integrity and due care⁵, and when the member is in general practice, to perform professional services in accordance with generally accepted standards of practice

⁴ Rule 201.1

⁵ Rule 202

of the profession ⁶. Additionally, a member is to maintain his professional competence by keeping informed of, and complying with, developments in professional standards ⁷ and has a duty to avoid conflicts of interest in respect of a client's affairs. ⁸

- 15 In addition, all practicing members of ICAB are subject to a review of their quality controls by ICAB.

Independence

- 16 The Authority expects the Approved Auditor to be independent with respect to the insurer within the meaning of the Rules of Professional Conduct of ICAB.
- 17 ICAB's Rules of Professional Conduct determines the auditor's independence in terms of the Auditor's objectivity. The rules provide that members of ICAB who perform assurance or specified auditing procedures engagements shall be and remain free of any influence, interest or relationship, in respect of the client's affairs, which impairs the member's professional judgment or objectivity or which, in the view of a reasonable observer, would impair the member's professional judgment or objectivity.
- 18 No person having an interest in any insurer otherwise than as an insured, and no officer, servant or agent of any insurer, shall be eligible for appointment as an approved auditor for that insurer; and any person appointed as an approved auditor to any insurer who subsequently acquires such interest or becomes an officer, servant or agent of that insurer shall cease to be an approved auditor (IA 16(6)).

Approval Process for Approved Auditor

- 19 Before the Authority will approve the appointment of an Approved Auditor for a given insurer, as part of the approval process the Authority will require the following information:
- If applicable, a written explanation from the previous Approved Auditor of the reasons for the cessation of his appointment.
 - If applicable, a written explanation from the insurer for the change in the Approved Auditor.
 - A Letter of Undertaking from the new candidate for Approved Auditor.

⁶ Rule 206

⁷ Rule 203.1

⁸ Rule 210

Letter of Confirmation

- 20 The Authority will, upon approval of the candidate, issue a letter to the insurer confirming the Authority's approval of the insurer's candidate for Approved Auditor.

End of guidance note.

If you have questions on this or other guidance from the Insurance Department please email info@bma.bm . Please put "Insurance Guidance" in the title of your email.