



BERMUDA MONETARY AUTHORITY

GUIDANCE NOTES

ASSESSMENT OF SHAREHOLDER CONTROLLERS & CONTROLLERS

SEPTEMBER 2014

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I. INTRODUCTION

1. The objective of this Guidance Note is to set out and describe the process and criteria the Bermuda Monetary Authority (the Authority) uses to assess shareholder controllers and controllers pursuant to the Minimum Criteria for Registration under the Insurance Act 1978 (the Act) as well as the notifications as set out in Sections 30D, 30E and 30J of the Act. The Guidance Note is intended to provide information on the application of these provisions of the Act and to set out the minimum documentation and information requirements for making such notifications to the Authority.
2. The Authority recognises the need for clarity on the scope and implementation of these provisions of the Act 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 Authority's requirements and approaches in implementing these provisions of the Act.
3. While the Authority aims to provide clarity in its approach, this Guidance is not intended to be exhaustive. The Authority, through this Guidance, hereby sets out its understanding of the legal provisions affecting the assessment of shareholder controllers and controllers and provides its minimum documentation and information requirements to assist with such assessment.
4. 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 need for revision of the Guidance Notes from time to time. Material changes in Guidance will be published, generally through issuing a revised version.

II. LEGISLATIVE OVERVIEW - SHAREHOLDER CONTROLLERS & CONTROLLERS

5. Section 1A (3) to (6) of the Act provides for the broad meaning of a controller, which is defined as including a director, secretary or senior executive and shareholder controller. Shareholder controller pertains to a holder of 10% or more of the shares in a registered person¹ carrying voting rights or where the holder is entitled to exercise or control 10% or more of the voting power, or where the holder has significant influence over the management of the registered person.

¹ For the purposes of this Guidance, a person means a person or an entity

6. Every person who is, or is to be, a shareholder controller or controller of a registered person is to be a fit and proper person to hold their particular position. Sections 30D, 30E and 30J of the Act provide for notifications to be made to the Authority that allow it to fairly assess the fitness and propriety of shareholder controllers and controllers.
7. Section 30D and 30E of the Act require that notification be made to the Authority by a shareholder or a prospective shareholder of new or increased control in an insurer² where the new or increased control is at levels of 10%, 20%, 33% and 50%. The new or increased control in an insurer can be obtained through either:
 - a. A transfer of shares, which occurs when an existing shareholder transfers part or all of its shareholding to a new or existing shareholder; or
 - b. An allotment of shares, which occurs when there is a new issuance of shares to a new or existing shareholder.
8. New or increased control by a shareholder or prospective shareholder can take place at any level of ownership in the insurer; that is, direct, intermediate or ultimate level of shareholding. Irrespective of where the new or increased control occurs, notification to the Authority will be made by the shareholder or prospective shareholder in accordance with the provisions of Section 30D and 30E.
9. Section 30J of the Act requires that notification be made to the Authority by the registered person of changes to controllers of that insurer (where controller includes shareholder controller per the meaning given in Section 1(A) of Act)
10. The remaining sections in this Guidance are intended to provide additional detail on Sections 30D, 30E, 30J, as well as the Authority's enforcement powers under Sections 30F, 30G, 30H, 30I and 32 of the Act to provide clarity regarding the Authority's approach to assessing fitness and propriety as well as the documentation and information required to complete such assessments.

² For the purposes of this Guidance, an insurer means an insurer or reinsurer as registered under the Act

III. SECTION 30D REQUIREMENTS – PRIVATE COMPANIES

11. Notification to the Authority under Section 30D of the Act is for shareholders or prospective shareholders of an insurer whose shares or the shares of its parent company are not traded on any stock exchange, and thus the shares in the insurer are privately held. Specifically, the Act requires that no person to whom this section of the Act applies shall become a 10%, 20%, 33% or 50% shareholder controller unless the Authority has been notified in writing stating that the person intends to become such a controller of the insurer and either that the Authority has, (within 45 days) notified the person in writing that there is no objection to their becoming such controller or that period has expired without either consent or objection.
12. If the Authority has an objection to the person becoming a controller through new or increased control in the insurer, the Authority must serve a written objection to the person within a period of 45 days of receipt of the written notification. Any concerns that the Authority has regarding the person becoming a controller will be specified in its written notice of objection. Any objection will be preceded by a preliminary notice setting out the concerns of the Authority and allowing a period of 28 days for the insurer to respond, before a decision is made whether to issue a notice of objection.
13. Where the Authority has no objection, a written notice stating such may be given to the person or the time period simply lapses with no notice of objection being issued. In both cases, the Authority could be deemed to have indicated that it has no objection to the person becoming a shareholder controller as a result of the change or increase in control.

Notification Requirements Under Section 30D

14. Section 30D(3) states that notification to the Authority shall contain such information as the Authority may direct, and after receipt and review of such information, the Authority may require additional information or documents. In cases where additional information is required, the time between requesting additional information or documentation and the receipt of the information or documentation shall be added to the Authority's 45 day response time.

15. The Authority appreciates that insurers have varying risk profiles arising from the nature, scale and complexity of their business. It also appreciates that insurers with higher risk profiles may be required to submit more information or documentation for review. At a minimum and based on an insurer's nature, scale and complexity, the format for the notification should be a written application to the Authority that includes the following:
- a. Letter/Executive Summary detailing:
 - i. Current ownership/shareholding structure;
 - ii. Proposed ownership/shareholding structure;
 - iii. Outline of where in the ownership/shareholding structure the change or increase in shareholder control will occur, and specify amount/percentage of such shareholding;
 - iv. Explanation of how the change or increase in shareholder control; will occur and estimated transaction date; and
 - v. Actual request for no objection to the shareholder controller.
 - b. Support for new shareholder:
 - i. If a person – a completed personal declaration form (for details see paragraph 24 – 26 outlining Exchange Control Act 1972 provisions and paragraph 35) and statement of net worth;
 - ii. If an entity - identification of its owners and ultimate beneficial owners and the entity's audited financial statements or its parent's;
 - iii. If a trust – copy of trust deeds and/or information on beneficiary/ies, trustee and/or settlor of the trust;
 - iv. If a partnership – information on the general partner/s including structure of the general partner/s;
 - v. If part of wider group restructuring involving a regulated entity in another jurisdiction – a group structure chart and contact details of the overseas regulator.
 - c. Details of whether or not the change or increase in shareholder control may affect Class of registration of the insurer. (If a material change may be triggered as a result of the change in shareholder controller, a separate notification must be made to the Authority in accordance with Section 30JA and B of the Act.)
 - d. Applicable application fee

IV. SECTION 30E REQUIREMENTS – PUBLIC COMPANIES

16. Notification to the Authority under Section 30E of the Act applies to a shareholder of an insurer whose shares or the shares of its parent company, if any, are traded on any stock exchange recognised by the Authority, and thus the shares in the insurer are publically held. Specifically, the Act requires that not later than 45 days after a person to whom this section of the Act applies becomes a 10%, 20% 33% or 50% shareholder controller of the insurer, that person shall serve on the Authority a notice in writing stating that they have become such a controller.
17. The Authority recognises the provision of free transferability of shares where there is the existence of regulation or vetting by another acceptable regulatory body, coupled with the recognition of the serious practical difficulties that would result from seeking to apply a prior approval regime in such circumstances.
18. Stock exchanges generally recognised by the Authority will be those that are listed as “Appointed Stock Exchanges” in the Companies Act 1981 (the Companies Act). As such, only high quality exchanges are specifically recognised for this purpose. Any applicant can contact the Authority at corporateauthorisations@bma.bm to discuss the admissibility of any stock exchange not listed in the “Appointed Stock Exchanges” listing in the Companies Act.

Notification Requirements Under Section 30E

19. Notification to the Authority under Section 30E should be in a similar format as required under Section 30D. The Authority will review and provide its acknowledgement of receipt of such notification. The Authority may also seek additional information or documents if required.
20. Where it is determined that a new shareholder of a registered insurer is not a fit and proper person to be such controller of an insurer, the Authority can exercise its power to object to the controller in accordance with Section 30H of the Act.
21. Where it is determined that a stock exchange will not be recognised by the Authority, the applicant is to make notification to the Authority pursuant to Section 30D where the Authority will then have 45 days to provide its objection.

V. ADDITIONAL SHAREHOLDER REQUIREMENTS – EXCHANGE CONTROL ACT 1972 AND EXCHANGE CONTROL REGULATIONS 1973

22. In line with the Shareholder Controller assessment requirements under the Act there are also the requirements under the Exchange Control Act 1972 and Exchange Control Regulations 1973 (the Exchange Control Act).

23. The Exchange Control Act establishes the Authority as the Controller of Foreign Exchange. All transfers of equity securities (to or from non-residents as defined under the Exchange Control Act) of a Bermuda Exempted Company must have the prior approval/permission of the Authority.

Share Transfer Applications

24. Share transfer requests to the Authority for Exchange Control approval/permission will include the following information:
- a. Names of Transferor and Transferee;
 - b. Type of share class and/or description of securities convertible into, or giving rights to acquire ordinary/equity shares;
 - c. Date the transfer is to be effected;
 - d. Details of beneficial ownership information of the new shareholder, which is to include direct, intermediate and ultimate ownership; and
 - e. Personal Declaration form to be completed by individuals proposing to hold equity security interests of 10% or more in the Bermuda Exempted Company.

General Permission Policy

25. Where a share transfer application involves the issue and transfer of equity securities of an insurer from/to non-residents while such equity securities are listed on the “Appointed Stock Exchanges” listing in the Companies Act, the policy of General Permission will be granted for such share transfers. The Exchange Control Act provisions recognise the provision of free transferability of shares where there is the existence of regulation or vetting by another acceptable regulatory body, coupled with the recognition of the serious practical difficulties that would result from seeking to apply a prior approval regime in such circumstances. Share transfers involving general permissions should include the same information as described above for all other share transfer applications.
26. Where an Exchange Control approval/permission is required for a shareholder controller notification under the Act, applicants are encouraged to file the Exchange Control application and the 30D or 30E notifications simultaneously to the Authority.

VI. SECTION 30J REQUIREMENTS - CONTROLLER CHANGES

27. In addition to the requirement of the shareholder controller to make notification to the Authority as outlined in Section 30D and 30E of the Act, Section 30J requires that the registered person notify the Authority of any changes in controllers of any type. Commercial insurers (Class 3A Class 3B, Class 4, Class C, Class D and Class E) are required to notify the Authority no later than 45 days after becoming aware of any person who has become or has ceased to become a controller of the insurer.
28. Class 1, Class 2, Class 3, Class A, Class B and Special Purpose Insurers are required to file any changes to their controllers at the same time that they file their annual financial statements as required under Section 17 of the Act.

Notification Requirements – Controller Changes

29. Notification of controller changes to the Authority should include the following:
- a. The full names of the new/incoming controller and outgoing controller (if applicable);
 - b. Position to be held;
 - c. Effective date of new/incoming controller and date outgoing controller ceased his position (if applicable); and
 - d. Completed personal declaration form for new/incoming controller.
30. The Authority will review and acknowledge receipt of such notification. The Authority may also seek additional information or documents if required.
31. Where it is determined that a new controller of a registered insurer is not a fit and proper person to be such controller of an insurer, the Authority can exercise its power to object to the controller in accordance with Section 30H of the Act.

VII. ASSESSMENT OF FITNESS & PROPRIETY

32. The Insurance Act 1978 Statement of Principles (Insurance Act SOPs) (see Appendix) sets out the Minimum Criteria for Registration under the Act. Before a person may be registered under the Act, the Authority must be satisfied that all of the minimum criteria for registration (as set out in the Schedule to the Act) are, or are capable of being fulfilled by the applicant on an ongoing basis.

33. Specifically, the assessment criteria for establishing the fitness and propriety of shareholder controllers/controllers under the Act are set out in Part 2 of the Insurance Act SOPs. While the assessment of fitness and propriety of each shareholder controller/controller will be considered on its own merits, the Authority may take into account all relevant matters including, but not limited to, those set out in Part 2 of the Insurance Act SOPs.
34. As part of the application review process for shareholder controller and controller notifications, the Authority will carefully review the request and complete due diligence checks including, but not limited to, the following:
- a. Personal conduct;
 - b. Previous criminal activity;
 - c. Previous sanctions from other regulatory bodies; and
 - d. The overall risk to the jurisdiction.
35. For individuals, enhanced vetting will be conducted based on the information filled out in the personal declarations forms. Information in these forms includes the following:
- a. Jurisdiction in which the person or entity resides;
 - b. Complete full names;
 - c. Known by other names;
 - d. Any previous names;
 - e. Name of spouse;
 - f. Complete residential address/telephone number;
 - g. Country of citizenship;
 - h. Date of birth;
 - i. Place of birth;
 - j. Occupation;
 - k. Passport Number;
 - l. Gender; and
 - m. Present employer including name and address.
36. In addition, the personal declaration form of each individual controller requires them to respond to the following:
- a. Is the individual an undischarged bankrupt?
 - b. Have they ever been convicted of a criminal offence?
 - c. Has fraud or dishonesty been proved against the individual in any civil proceedings?
 - d. Have they ever been the subject of a judicial or other official enquiry?
 - e. Have they or any entity that they have been associated with, ever been refused or had revoked a license, permit or other authorisation to provide insurance business to the public in any jurisdiction?

- f. Have they ever been the subject of an investigation, proceeding or other enquiry by a self-regulatory organisation of which they are or were a member?
 - g. Are they a member in good standing of a self-regulatory organisation; and
 - h. Have they or any entity that they have been associated with, ever been refused or had revoked a license, permit or other authorisation to conduct insurance business in any jurisdiction?
37. The information received in the application, as well as from the personal declaration forms, is used to check international search databases which assist with fitness and propriety confirmation.
38. Where applicable, the Authority may also (in the case of a corporate entity) review the most recent audited financial statements and the personal net worth statements (in the case of an individual) of a potential shareholder controller. The Authority may also request any additional information necessary to complete the vetting and approval process.
39. In order to confirm that the controller is currently conducting or had conducted business in a sound and prudent manner in other jurisdictions, and was not subject to any regulatory actions, the Authority may liaise with the relevant regulator in such other jurisdictions.
40. While any evidence of relevant past misconduct needs to be taken into consideration, the Authority recognises the lapse of time, and a person's subsequent conduct are factors which may be relevant in assessing whether the person is now fit and proper for a particular position.

VII. ENFORCEMENT POWERS - CONTROLLERS - SECTIONS 30F, 30G, 30H, 30I AND 32 OF THE ACT

Powers to Object to Section 30D - New/Increased Control Notifications

41. With respect to Section 30D notifications under the Act, Section 30F of the Act provides the Authority with the power to object to new or increased control. The Authority may serve a notice of objection if it **fails to** find that the following conditions are met:
- a. The person concerned is a fit and proper person to become a controller;
 - b. The interests of policyholders or potential policyholders of the insurer would not be threatened by that person becoming a controller; and
 - c. The person's likely influence on the insurer is such that the minimum criteria would continue to be fulfilled.

42. As part of due process, before the Authority serves its notice of objection, the Authority issues a preliminary written notice, which provides the reasons for the objection. The Authority then allows the controller to make written representation within 28 days.

Powers to Object as a Result of Failure to Notify

43. If under Section 30D, a person assumes the position of shareholder controller without notifying the Authority, then under Section 30G, the Authority may serve notice of objection. Where the Authority serves its notice of objection and the person proceeds to assume, or continue the position as controller, the person is guilty of an offence and is liable upon conviction to fines or imprisonment as prescribed by Section 30G (6)-(7) of the Act.

Powers to Object to an Existing Controller

44. Similarly, when a controller is no longer deemed to be fit and proper, Section 30H also provides the Authority with the powers to serve a written notice of objection. Consistent with the due process in Section 30F, the Authority will issue a preliminary notice of objection, in which the controller has a period of 28 days to make written representation. Where the Authority serves its notice of objection and the person continues to be a controller, the person is guilty of an offence and is liable upon conviction to fines or imprisonment as prescribed by 30H (6)-(7) of the Act.

Powers to Restrict the Sale of Shares

45. Section 30I provides the Authority with powers to place restrictions on the sale of shares when a person becomes a controller or continues to be a controller after being served with a notice of objection from the Authority. The Authority then has the powers to enforce the following:
- a. Restriction of any transfer of, or agreement to transfer the shares;
 - b. Prohibition on the exercise of voting rights with respect to the shares;
 - c. Prohibition on the further issuance of shares to the controller or pursuant to any offer made to their holder; and
 - d. Prohibition (except in liquidation) on the payment of any sums due from the insurer on the shares whether in respect of capital, dividends or otherwise.

Powers to Provide Directions

46. In accordance with Section 32(1)(d), if it appears to the Authority that the minimum criteria is not or has not been fulfilled, or may not or may not have been fulfilled, the Authority may give the insurer such directions as may be required in order to safeguard the insurer's policyholders or potential policyholders. This would include directing the undertaking to remove a person holding the position of controller in accordance with section 32(2)(j) of the Act.

General Enforcement Powers

47. Section 32D of the Act provides that every person who fails to comply with any requirement under the Act, or contravenes any prohibition imposed under the Act, shall be liable to a fine as prescribed in the Act. Failure to make the notifications required by Section 30D, or comply with a Notice of Objection under Section 30G or 30H, may expose an individual shareholder to the risk of a civil penalty.
48. Section 32L of the Act empowers the Authority to seek injunctions from the Supreme Court against any person contravening a requirement under the Act and the Court may make such Orders as the Court considers appropriate.

APPENDIX 1

PERSONAL DECLARATION FORM

PERSONAL DECLARATION

Name of Entity in connection with which this declaration is being completed:			
Surname:			
Complete forename(s):			
Known by other name(s):			
Any previous name(s):			
Name of Spouse:			
Residential Address: (P.O. Box <u>not</u> acceptable)			
Country of Citizenship		Passport No:	
		Valid Driver's Licence	
	Date & Place of issue:		
Date of Birth:	Day:	Month:	Year: Gender:
Place of Birth:	City:	Country:	
Occupation:			
Present Employer & Address			

1. A separate declaration must be completed and signed by each individual proposing to have a beneficial interest of 10% or more in a company to be registered. In respect of partnerships, a declaration is to be completed by the general partner(s), where the general partner is an individual.

2. Questions must be completed by each individual proposing to have a beneficial interest of 10% or more in a company to be registered.

IF THE ANSWER TO ANY OF THE FOLLOWING QUESTIONS IS YES PLEASE PROVIDE DETAILS IN WRITING IN RESPECT OF THAT ANSWER.

- | | | Yes | No |
|-----|--|--------------------------|--------------------------|
| 1. | Do you have any interest in any company or partnership registered or formed in Bermuda? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. | Have you ever been refused consent to register a company or form a partnership in Bermuda? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. | Are you or have you ever been an undischarged bankrupt? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. | Have you ever been convicted of a criminal offence involving fraud or dishonesty? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. | Has fraud or dishonesty been proven against you in any civil proceedings? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. | Have you ever been the subject of a judicial or other official enquiry? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. | Have you or any entity that you have been associated with, ever been refused or had revoked a licence, permit or other authorisation to provide investment business to the public in any jurisdiction? | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. | Are you a member in good standing of a self regulatory organisation? | <input type="checkbox"/> | <input type="checkbox"/> |
| 8a. | If yes, name the organisation(s): | | |
| 9. | Have you ever been the subject of investigation, proceeding or other enquiry by a self regulatory organisation of which you are or were a member? | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. | Have you or any entity that you have been associated with, ever been refused or had revoked a licence, permit or other authorisation to conduct investment business in any jurisdiction? | <input type="checkbox"/> | <input type="checkbox"/> |

I hereby certify that the information in this Declaration is true to the best of my information, knowledge and belief.

Signed: _____

Dated: _____

APPENDIX 2

INSURANCE ACT 1978 – STATEMENT OF PRINCIPLES

THE BERMUDA MONETARY AUTHORITY

Insurance Act 1978

Statement of Principles

June 2007

Statement of Principles

The Insurance Act

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Pursuant to Section 2A

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Insurance Act 1978

Section 2A: Statement of Principles

Introduction

The Statement of Principles ('the Principles') is made pursuant to section 2A of the Insurance Act 1978 ('the Act') which requires the Bermuda Monetary Authority ('the Authority') to publish in such manner as it thinks fit a Statement of Principles in accordance with which it is acting or proposing to act:

- (a) in interpreting the minimum criteria for registration specified in the Schedule to the Act and the grounds for cancellation of registration contained in Part VIII of the Act;
- (b) in exercising its powers to register or cancel the registration of a registered person;
- (c) in exercising its powers to grant or impose conditions on a registered person, and;
- (d) in exercising its power to obtain information, reports and to require production of documents.

These Principles are of general application and seek to take account of the wide diversity of registered persons that may be licensed under the Act, as well as relevant institutional and market developments. There is likely to be a need for the Principles to be revised from time to time. Where the Authority makes a material change to the Principles, section 2A(2) of the Act requires that the change is published or a revised version of the Principles issued in the same manner as their initial publication.

PART 1 Explanation for the Statement of Principles

1.1. The Principles are relevant to the Authority's decisions on whether to register a person, to cancel the registration of a registered person, to impose conditions upon a registration, or to give directions. The Authority's interpretation of the minimum licensing criteria in the Schedule to the Act and of the grounds for cancellation in sections 41 and 42 of the Act, together with the principles underlying the exercise of its powers, encapsulate the main standards and considerations to which the Authority has regard in conducting its supervision of registered persons. The function of insurance supervision includes monitoring the ongoing compliance of registered persons with these standards and identifying any threats to the interests of policyholders. If the Authority has concerns, it considers what steps to take in order to protect policyholders and potential policyholders. Where appropriate, it seeks remedial action by persuasion and

encouragement. However, if the Authority considers that its powers are exercisable and should be exercised in the interests of policyholders and potential policyholders, it may take formal action to impose conditions on the registration of a registered person or to give directions and, ultimately, to cancel the registration.

1.2 Part 2 of the Principles considers the interpretation of each of the minimum criteria to register a person in the Schedule to the Act. In interpreting and applying the minimum criteria to registered persons, the Authority has regard to factors such as the size, nature, complexity and risk profile of their business in assessing the relevance and, hence, the weight that should attach to different elements of the criteria. For example, the Authority recognizes that insurers which only insure or reinsure the risks of their owners pose less risk to the public than those conducting a wider business, and consequently, that its application of certain aspects of the Principles can properly take account of such differences. Similarly, there will frequently be distinctions between the governance and other arrangements in place whereby registered persons that operate as managed businesses ensure that their operations are conducted in a prudent manner, as compared with those in place within an insurer that operates with its own staff and systems.

1.3 Part 3 of the Principles sets out the considerations relevant to the Authority's exercise of its discretion for registration. Part 4 considers the interpretation of the various grounds for the cancellation of a registration in sections 41 and 42 of the Act. Part 5 sets out the principles underlying the exercise of the Authority's discretion to revoke or impose conditions on a registration and to intervene in emergency situations. Part 6 sets out the principles underlying the exercise of the Authority's power to obtain information and reports, and to require the production of documents.

PART 2 Minimum Criteria for Registration

Introduction

2.1.a Before a person may be registered under the Act, the Authority must be satisfied that all of the minimum criteria for registration (set out in the Schedule to the Act) are, or are capable of being, fulfilled by the applicant on an ongoing basis. Once registered all registered persons are subject to the Authority's continuing supervision and regulation.

2.1.b While the Act sets out in broad terms the criteria which must be fulfilled by registered persons, these criteria are interpreted and applied in the context of the particular circumstances of individual entities, and having regard to arrangements and developments in the insurance sector generally. In addition to reviewing returns and other data received from registered insurers, the Authority's supervision involves the use of on-site compliance visits, consistent with the risk-based framework applied by the Authority to insurers, and discussions with their directors and senior management as necessary. Through these means the Authority seeks to satisfy itself that registered persons continue to conduct business prudently and in accordance with all relevant criteria.

2.1.c This part of the Principles sets out the Authority's interpretation of these criteria.

2.2 **Controllers and Officers**

2.2.a. This paragraph provides that every person who is, or is to be, a controller, or officer of a registered person is to be a fit and proper person to hold his particular position. With regard to an individual who is, or is to be, a controller or officer (which terms are defined as including a director, secretary or senior executive) the relevant considerations include whether the person has relevant experience, sufficient skills, knowledge and soundness of judgment properly to undertake and fulfill the particular duties and responsibilities of his office. The standards required in these respects vary considerably, depending on the particular role that is (to be) performed by the person concerned. Thus, a person may be fit and proper for one position but not be fit and proper for a position involving different responsibilities and duties. For example, the role of a director appointed by the owners of a captive insurer to represent their interests will typically involve quite different skill-sets from those of persons with prime responsibility for conducting the affairs of a commercial insurer. The diligence with which a controller or officer is fulfilling or is likely to fulfill their duties and responsibilities is also considered, so that the Authority can assess whether the person does or will devote sufficient time and attention to them.

2.2.b. The Authority sees the standards as being particularly high in the case of those persons taking on key executive responsibilities for the conduct of a registered person's affairs, while still having appropriate regard to the nature and scale of the particular business. In this regard, the definition of 'controller' includes both a managing director and a chief executive of a registered person (or of another company of which it is a subsidiary). Where a registered person does not appoint a person as managing director or chief executive, regard must be had to the operational roles of the appointed officers of the registered person in determining whether or not a person is to be regarded as a managing director or chief executive. However, the Authority also recognizes that, in the case of a managed business, there may be no person filling the role of managing director or chief executive. In such a case, there may be no officer of the registered person who is a controller within the meaning of section 1A(3) (a) or (b) of the Act who is subject to the notification requirement in section 30J of the Act.

2.2.c In assessing whether a person has the relevant competence, soundness of judgment and diligence, the Authority considers whether the person has had experience of similar responsibilities previously, their record in fulfilling them and, where appropriate, whether the person has appropriate qualifications and training. As to soundness of judgment the Authority looks to, inter alia, the degree of balance, rationality and maturity demonstrated in the person's previous conduct and decision-taking.

2.2.d. The probity of the person concerned is very important; it is essential that a person with responsibility for the conduct of insurance business is of high integrity. In contrast to the fitness elements of this criterion which reflects an individual judgment relating to

the particular position that the person holds or is to hold, the judgment of probity reflects much more of a common standard, applicable irrespective of the particular position held.

2.2.e. Specifically, the Authority takes into account the person's reputation and character. It considers, *inter alia*, whether the person has a criminal record; convictions for fraud or other dishonesty would clearly be particularly relevant. The Authority also gives particular weight to whether the person has contravened any provision of insurance, banking, investment or other legislation designed to protect members of the public against financial loss, due to dishonesty, incompetence or malpractice. In addition, it considers whether the person has been involved in any business practices appearing to the Authority to be deceitful or oppressive or improper or which otherwise reflect discredit on his method of conducting business. In addition to compliance with statutory provisions, the Authority also considers a person's record of compliance with various non-statutory codes insofar as they may be relevant to the registration criteria and to the interests of policyholders and potential policyholders.

2.2.f. The Authority also takes into consideration whether the person has been censured or disqualified by professional or regulatory bodies, e.g. the Chartered Property Casualty Underwriters, Casualty Actuarial Society, The Institute of Chartered Accountants of Bermuda, or corresponding bodies in other jurisdictions. Those who have been censured are unlikely to be acceptable.

2.2.g. While any evidence of relevant past misconduct needs to be taken into consideration, the Authority recognizes that passage of time and a person's subsequent conduct are factors which may be relevant in assessing whether the person is now fit and proper for a particular position.

2.2 h The Authority has continuing regard to the performance of controllers and officers in the exercise of their duties. Imprudence in the conduct of the business of the registered person or actions which have threatened without necessarily having damaged the interests of policyholders or potential policyholders will reflect adversely on the competence and soundness of judgment of those responsible. Similarly, failure by a controller or officer to conduct the business of the registered person with integrity and professional skills will reflect adversely on their probity and/or competence and/or soundness of judgment. This applies whether the matters of concern have arisen from the way the persons responsible have acted or from their failure to act in an appropriate manner. The Authority takes a cumulative approach in assessing the significance of such actions or omissions – that is, it may determine that a person does not fulfill the criterion on the basis of several instances of such conduct which, if taken individually, may not lead to that conclusion.

Shareholder controllers

2.2.i. Shareholder controllers may hold a wide variety of positions in relation to a registered person, and the application of the fit and proper criterion takes account of this.

The key consideration is the likely or actual impact on the interests of policyholders of a person holding his particular position as controller. This is viewed in the context of the circumstances of the individual case, and of the specific position held. The general presumption is that the greater the influence on the registered person, the higher the threshold will be for the controller to fulfill the criterion. Thus, for example, higher standards will generally be required of a shareholder controller owning, say, 33 or 50 per cent of the shares of a registered person compared with a shareholder controller owning 10 per cent.

2.2.j. In considering the application of the criterion to shareholder controllers or persons proposing to become such controllers, the Authority has regard to two main considerations.

2.2.k. First, it considers what influence the shareholder controller has or is likely to have on the conduct of the affairs of the registered person. If he does, or is likely to, exercise a close control over the business, the Authority would look for evidence that he has the probity and soundness of judgment and relevant knowledge and skills for managing the affairs of a registered person. On the other hand, if the shareholder controller does not, or is not likely to, influence the directors and management of the registered person in relation to the detailed conduct of the business, it would not be necessary to require such a level of relevant qualities and experience. The Authority also has regard in this context to whether there could be conflicts of interest arising from the influence of the shareholder on the registered person. This could, for example, arise from the closeness of his links with another person.

2.2.l The second consideration is whether the financial position, reputation or conduct of the shareholder controller or prospective shareholder controller has damaged or is likely to damage the registered person through an association which undermines confidence in that registered person. For example, if a holding company, or a major shareholder, were to suffer financial problems it could lead to adverse publicity, a downgrade by an independent credit assessment agency and difficulties in raising new equity from other shareholders or potential shareholders. Generally, the higher the shareholding the greater the risk arising through association if the shareholder encounters financial difficulties. The risk of association is not, however, confined to financial weakness; publicity about illegal or unethical conduct by a holding company or another member of the group may also damage confidence in the registered person.

2.3 Business to be directed by at least two individuals

2.3.a This criterion, sometimes known as the ‘four eyes’ requirement, provides that at least two individuals must effectively direct the business of the registered person. The Authority normally expects that these individuals will be either executive directors or persons to whom the board has delegated executive powers and who report directly to the board.

2.3.b The Authority requires that at least two independent minds be applied to both the formulation and implementation of the policies of the registered person. The Authority does not regard it as sufficient for one of the two individuals to make some, albeit significant, decisions relating only to a few aspects of the business – each must play a part in the decision-making process on all significant decisions. They are not expected to duplicate each other’s position but both must demonstrate the qualities and application to influence strategy, day-to-day policy and their implementation, and both must actually do so in practice. Where there are more than two individuals directing the business, it is not necessary for all these individuals to be involved in all decisions relating to the determination of strategy and general direction - but at least two individuals must be involved in all such decisions. Both persons’ judgments must be engaged in order that major errors leading to difficulties for the registered person, can be avoided. Similarly, both persons must have sufficient experience and knowledge of the business and the necessary personal qualities to detect and resist any imprudence, dishonesty or other irregularities by the other person. Thus, where a single individual, whether a senior executive, or otherwise, is particularly dominant in the management of a registered person, it will raise doubts about the fulfillment of this criterion.

2.4 Composition of board of directors

2.4.a Paragraph 3 of the Minimum Criteria provides that the directors of a registered person, which is a body corporate, shall include such number (if any) of directors without executive responsibility for the management of its business as it considers appropriate having regard to the circumstances and the nature and scale of operations. As part of its oversight of registered persons, the Authority assesses the composition, role and effectiveness of the boards of registered persons, including through its on-site review program. This forms part of its overall assessment of corporate governance and the high level control environment.

2.4.b. The Authority considers that non-executive directors (who may, in particular cases, be appointed to eg a holding company board, rather than directly to that of the registered person itself) can play a valuable role in bringing an outsider’s independent perspective to the running of the business and in questioning the approach of the executive directors and other management. The Authority sees non-executive directors as having, in particular, an important role as members of a board audit committee or, where no such committee exists, in performing the role that such a committee would otherwise perform.

2.5 Business to be conducted in prudent manner

2.5.a Paragraph 4 of the Minimum Criteria provides that registered persons must conduct their business in a prudent manner. Sub-paragraphs (2) to (4) set out a number of specific requirements in that regard, each of which must be fulfilled before a registered person may be regarded as conducting its business in a prudent manner in terms of the paragraph. These identify, in particular, the need: to ensure compliance with the Act and

with other relevant provisions of law; and to maintain adequate accounting and other records of its business and adequate systems of control of its business and records.

In that regard, the Authority also views the role of the principal representative required by section 8 of the Act as providing important reassurance of the prudent management of registered persons through ongoing monitoring of compliance and a specific duty to report certain matters to the Authority pursuant to section 8A of the Act.

2.5.b. The Authority does not regard a registered person's records and systems as adequate unless they are such as to enable the business to be prudently managed and the registered person to comply with the duties imposed on it by or under the Act or by other relevant provision of law (eg where appropriate, the Proceeds of Crime Act and related Regulations). In other words, the records and systems must be such that the registered person is able to fulfill the various other elements of the prudent conduct criterion and to identify threats to the interests of policyholders and potential policyholders. They should also be sufficient to enable the registered person to comply with the applicable notification and reporting requirements under the Act. Thus, delays in providing information or inaccuracies in the information provided will call into question the fulfillment of the requirement.

2.5.c The nature and scope of the particular records and systems which a registered person should maintain should be commensurate with its needs and particular circumstances, so that its business can be conducted without endangering its policyholders and potential policyholders. In judging whether an institution's records and systems are adequate, the Authority has regard to its size, to the nature of its business, to the manner in which the business is structured, organized and managed, and to the nature, volume and complexity of its transactions. The requirement applies to all aspects of a registered person's business, whether on or off balance sheet, and whether undertaken as a principal or as an agent.

2.5.d However, the Act makes it clear that the specific requirements set out in subparagraphs (2) to (4) are not exhaustive. The Authority takes into account a range of other considerations in assessing whether a registered person is prudently run. These include for example, the management and corporate governance arrangements for the overall control and direction of the business; its general strategy and objectives; its policies on underwriting, reserving and claims payments, as well as for the control of credit, liquidity, and operational risks; and its recruitment arrangements and training to ensure that the registered person has an adequate number of experienced and skilled staff in order to carry out its various activities in a prudent manner.

2.5.e. In the case of registered persons that are managed by third parties (e.g. captive insurers), the Authority must be satisfied that the manager has arrangements in place such as to ensure the prudent conduct of the business of the registered person including with regard to its governance, control, compliance and record-keeping.

2.6 Consolidated supervision

2.6.a. Paragraph 5 of the Minimum Criteria requires that the Authority be satisfied, in the case of companies which are members of wider groups or have ownership links with other entities that the structures and relationships are not such as to obstruct the conduct of effective consolidated supervision. The Authority therefore needs to be able to undertake an overall evaluation – both quantitative and qualitative – of the strength of a group to which a registered person belongs. The objective, however, is to supervise the registered person as part of its group, and not to supervise all companies in the group. While the Authority has historically maintained its primary focus on the supervision of registered persons, it has increasing regard additionally to the group consolidated position, in light of international standards now set for insurance supervision.

2.6.b. In order to conduct such monitoring and assessment, the Authority needs access to information relating to other parts of the group and to other connected entities. And where there are obstacles to transparency as a result of the particular structure adopted or the location of parts of the group, the Authority needs to satisfy itself that adequate information can be obtained and that the structure and relationships are not such as to cause any other risks to the interests of the registered person's policyholders and potential policyholders.

2.7 Integrity and skill

2.7.a. Paragraph 6 of the Minimum Criteria is concerned with the manner in which the business of the registered person is carried on and is distinct from the question of whether its senior executives and controllers are fit and proper persons. It covers the business standards that the registered person observes, and whether, overall, it has sufficient personnel with professional skills appropriate to the nature and scale of its activities and having the adequate knowledge, skill and experience necessary for the prudent management and conduct of its business.

2.7.b. The integrity element of the criterion requires the registered person to observe high ethical standards in carrying on its business. Criminal offences or other breaches of statute by a registered person will obviously call into question the fulfillment of this criterion. Particularly relevant are contraventions of any provision made by or under enactments, whether in Bermuda or elsewhere, designed to protect policyholders against financial loss due to dishonesty, incompetence or malpractice. Doubts may also be raised if the registered person fails to comply with recognized standards of conduct such as those embodied in various codes of conduct. The Authority would have regard to the seriousness of the breach of the code, to whether the breach was deliberate or an unintentional and unusual occurrence, and otherwise to the interests of policyholders.

2.7.c. Professional skills cover the general skills which the registered person should have in conducting its business, for example, in relation to underwriting, accounting, risk analysis, establishing and operating systems of internal controls, ensuring compliance with legal and supervisory requirements, and in the standard of the various financial

services provided to customers. The level of skills required will vary according to the individual case, depending on the nature and scale of the registered person's activities.

2.7.d. The Authority would expect a registered person to have a sufficient number of employees to carry out the range and scale of its business. The Authority, in determining whether a business has sufficient personnel, will take into account human resources that the registered person may draw on through other arrangements, e.g. outsourcing, secondments, third party management, or other similar arrangements.

PART 3 Principles relating to the Granting of Registration

3.1. In order to register an applicant under section 4 or 10 of the Act, the Authority needs to be satisfied that all of the Minimum Criteria for registration set out in the Schedule are met. In addition, the Authority needs to be satisfied as to the ability and willingness of the applicant to maintain compliance with the minimum criteria together with all other requirements of the Act, including such conditions as may be imposed under the registration. In order to be so satisfied, the applicant and/ or other relevant parties must first have provided all the appropriate information requested by the Authority in connection with the application. Even where it is satisfied that the criteria are or can be met, the Authority retains the discretion to decline to register a person – notably if it sees reason to doubt that the criteria will be met on a continuing basis or if it considers that for any reason there might be significant threats to the interests of policyholders or potential policyholders. The Authority also considers in exercising its discretion, whether it is likely that it will receive adequate information from the registered person and relevant connected parties in order to enable it to monitor the fulfillment of the criteria and to identify potential threats to its policyholders. Finally, section 12 of the Act provides specific discretion for the Authority to decline registration where it concludes that registration would not be in the public interest.

PART 4 Grounds for Cancellation of Registration and the Imposition of Conditions or Directions

4.1.a. Part VIII of the Act sets out the Authority's powers to cancel a registration. This section gives guidance on the Authority's interpretation of the grounds in sections 41 and 42 of the Act.

4.1.b The grounds upon which the Authority may take action are widely drawn, enabling it to exercise its powers before a threat to policyholders becomes great or immediate. As a result, the Authority is able to act, where necessary, before the deterioration in a registered person's condition is such that there is a serious likelihood that policyholders will suffer loss. When its powers become so exercisable, the Act gives

the Authority wide discretion in determining the action it feels appropriate to safeguard the interests of policyholders. In particular, it may cancel the registration, impose conditions on the registration or take some other action. The Principles relating to the Authority's exercise of this discretion are described in Part 5.

4.1.c The grounds upon which the Authority may cancel a registration, other than upon the request of the person concerned, are set out in section 41(1)(b) of the Act (in the case of insurers) and in section 42(1)(b) (for insurance managers, brokers, agents and salesmen). The grounds are essentially identical in each case, although the Authority naturally has regard to the specific nature and circumstances of different businesses in determining whether grounds for action exist and, if so, whether its powers should be exercised. The following sub-paragraphs describe the Authority's approach with regard to both sections 41 and 42.

4.1.d The grounds include the supply of false, misleading or inaccurate information by or on behalf of a registered person of information for the purpose of any provision of the Act or regulations. The simple provision of inaccurate information renders the power exercisable. However, in practice, the Authority would not consider exercising its powers unless the inaccuracy was material or symptomatic of wider prudential concerns.

4.1.e Further grounds relate to circumstances in which business has not commenced within a period of two years following registration. The same applies where a registered person has ceased to carry on registerable business or has persistently failed to pay fees properly due pursuant to the Act. In the latter case, a single omission to make timely payment would not lead to formal action. The Authority would look for evidence of a pattern of delinquency. Further, the sections provide grounds where a registered person has failed to comply with a condition attached to its registration or with any requirement made of it under the Act or related regulations, or where a person has been convicted of any offence under the Act or regulations. Again, while a simple breach of a condition or any such conviction provides the requisite grounds, the Authority would consider the gravity and circumstances relating to the breach or offence in question before determining whether or not it is appropriate to exercise its powers.

4.1.f Finally, the sections provide grounds for cancellation in circumstances in which the Authority is of the view that the business of a registered person has not been conducted in accordance with sound insurance principles, or where any of the minimum criteria is not or has not been fulfilled, or may not be or may not have been fulfilled in respect of the registered person. With regard to sound insurance principles, the Authority has regard to the standards and practices in general use within the relevant business sectors at the current time. As regards breaches of the minimum criteria, the provisions represent a relatively low threshold. For example, the Authority would consider that a criterion 'may not be fulfilled' in circumstances where the evidence available raised a material doubt about whether a criterion is or has been fulfilled.

4.1.g Sections 4 and 10 of the Act provide powers for the Authority to impose conditions in connection with the grant of registration. These powers are used routinely

to impose ab initio conditions, generally of a nature to restrict the business that may be conducted in a way that is consistent with the business plan submitted by an applicant or which reflects subsequent discussion with the applicant in the course of the application process. However, the Act also provides for the Authority to be able subsequently to add, to amend or to delete any such conditions. Such additions, amendments or deletions normally reflect changes in the business of the registered person or reflect a change in his status (for example where a solvent company decides to enter into run-off).

4.1.h Where the Authority itself seeks to intervene directly in the business of a registered person on prudential considerations, it generally uses the specific powers contained in section 32 of the Act, often following use of the section 30 powers of investigation. The grounds for formal action relate to circumstances in which: it appears to the Authority that the business of an insurer is being so conducted as to create a significant risk of the registered person becoming insolvent; a registered person is in breach of a provision of the Act or related regulations or of a condition imposed on its registration; that the minimum criteria are not or have not been fulfilled, or may not have been fulfilled in respect of a registered person; or that a person has become a controller of any description of a registered insurer in contravention of the Act or remains such a controller after having been served with notice of objection. The Authority views these grounds as being of broad application. Section 32(2) then provides for the Authority to be able to intervene through imposing on the registered person such directions as appear to it to be desirable for safeguarding the interests of clients and potential clients. The power to give directions is extremely wide-ranging and includes requiring the cessation of writing new business, the imposition of limits on aggregate premiums written, the prohibition of the making of investments of a specified class or of specified transactions, the prohibition or restriction of dividend payments, and the removal of controllers or officers.

PART 5 Principles Relating to Restriction of a Licence or Deregistration

5.1.a Where its powers of formal intervention are exercisable, the Authority seeks, in deciding on the appropriate course of action, to act in the interests of policyholders and potential policyholders of a registered person wherever relevant. As noted above, the Authority's formal intervention powers become exercisable in a wide variety of circumstances and a range of alternative courses of formal action are open to the Authority. Where the Authority has sufficient confidence in a registered person and its management, it is always open to it to seek remedial action by informal means, notably through persuasion and agreement regarding the steps to be taken to return it to compliance. Wherever possible, the Authority seeks to proceed in this manner. Where the Authority is satisfied that prompt and adequate remedial action will be put into effect, thereby protecting the interests of policyholders, it is generally reluctant to enforce formal conditions or to cancel a registration. However, where the prudential concerns are serious or where the Authority feels unable to rely on the registered person to take the appropriate remedial action in a timely manner, formal action is taken.

5.1.b Where the Authority has significant concerns about a registered insurer, it may make use of its power in section 30 of the Act to appoint an inspector to investigate the insurer's affairs and to establish the facts. In certain cases, it may also feel it desirable at that stage to impose conditions under section 4 of the Act as a holding measure while the relevant information is obtained and evaluated. Once the relevant facts are to hand, the Authority determines whether further formal action is required. Such action may typically involve the imposition of new conditions to restrict the business or the use of the powers of direction in section 32 of the Act. However, where the interests of policyholders and potential policyholders are seriously at risk, the Authority may conclude that it is necessary to cancel a registration and to apply for a winding up.

5.1.c Where formal supervisory intervention holds out good prospects of achieving successful remedial action within an acceptable time-scale, the Authority will not normally wish to cancel a registration. The Authority has to balance the interests of existing policyholders or other clients, for whom it may be desirable to allow the registration to continue rather than to precipitate a cessation of business. Insofar as is consistent with the interests of policyholders, the Authority will always seek to explore fully the prospects of remedial action. If, however, the financial position of the registered person is weak or is deteriorating rapidly, the scope for such a solution may be limited, and a cancellation of the registration and winding up may be pursued.

5.1.d The provisions in sections 41(2) and 42(2) of the Act with regard to the cancellation of a registration provide that where the Authority concludes that its powers are exercisable and should be exercised, it must first serve notice of its intention to act. A registered person then has a period within which it can make representations, which the Authority must consider before issuing a final notice regarding the action to be taken. Where a registered person remains aggrieved by the Authority's decision, it then has certain rights of appeal under Section 44A; similar rights of appeal apply where the Authority requires the removal of a controller or officer pursuant to section 32 (2)(j).

5.1.e The circumstances in which the imposition of conditions or the giving of directions rather than cancellation of a registration is likely to be appropriate are where the Authority considers that such restrictions or directions may provide effective underpinning to a registered person's efforts to remedy the situation, and that there is a reasonable prospect that all the relevant criteria will be fulfilled again within a reasonable period. In such cases, the Authority must, therefore, look for a sound and viable program for swift remedial action. Alternatively, it may similarly proceed by the imposition of conditions or directions where it is satisfied that an insurer who is looking to cease writing business will be able to run off its business in an orderly manner.

PART 6 Power to Obtain Information, Reports and to Require Production of Documents

6.1.a Prudential supervision involves the receipt and analysis of regular financial and other information from registered persons. Insurers are, in particular, required under the Act to provide the Authority with a statutory financial return as prescribed. The Authority also maintains under review the possible need for additional information to be obtained from insurers in particular cases. Where appropriate, the statutory financial return is supplemented with additional reporting requirements, reflecting the particular scope or nature of the business of an insurer or of a group to which it belongs. Similarly, additional and more frequent reporting is frequently required where specific concerns may arise with regard to an insurer or potential threats to the interest of policyholders.

6.1.b In many cases, these additional reports are requested from insurers and provided on an entirely voluntary basis. This is, for example, the case with management information and other material that is typically sought from registered persons ahead of the Authority's routine on-site compliance review visits. In addition, however, the Act provides the Authority with specific powers in section 29A to obtain, by notice served on a registered person, such information as it may reasonably require on matters likely to be material to the performance of the Authority's functions under the Act; to require a registered person to provide the Authority with copies of published and unpublished reports on such matters; and to require a registered person to appoint a professional person to prepare a report on such a matter. These provisions are reinforced with a specific power in section 29B for the Authority to require production of such information and documents from a registered person or from any other person who may be holding them.

6.1.c When necessary, the Authority makes use of the formal powers available to it – notably where it has material concerns about the accuracy or completeness of information provided by the registered person. With regard to the power to commission reports from a professional person (typically from the auditor of a registered person, from another audit firm or from an independent actuary), as far as possible the Authority looks to liaise closely and agree with the registered person the nature and scope of any report that is deemed necessary.

6.1.d The Authority would not expect to have recourse to the power in section 29B of the Act to require production of documents or information other than in most exceptional circumstances. Its scope enables the Authority to obtain relevant documents in the possession of persons other than the registered person, including from entities within the group to which a registered person may belong. Use would normally reflect cases in which serious concerns arise with regard to the operations of a registered person or of companies or other entities with which it is linked.