

BERMUDA MONETARY AUTHORITY
INSURANCE DEPARTMENT

GUIDANCE NOTE #2

**APPOINTMENT, ROLE AND QUALIFICATIONS OF
THE INSPECTOR**

MARCH 2005

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Introduction

- 1 The Inspector, appointed pursuant to Section 30 (“Inspector” or “Section 30 Inspector”) of the Act ¹ is an important supervisory tool in the Bermuda insurance supervisory framework. This Note sets out guidance on the appointment and role of the Inspector. 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 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 appointment, the role and the qualifications of an Inspector appointed pursuant to Section 30 of the Act and to provide additional information about the Authority’s regulatory approach and expectations regarding these matters. ² However, interpretation of statutes is ultimately a matter for the Bermuda courts. (The applicable sections of the Act are shown in brackets.) ³
- 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 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.
- 5 Guidance should be understood as reflecting the minimum standard that the Authority expects insurers and Inspectors 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 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

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.

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.

Appointment of the Section 30 Inspector

- 6 Where the Authority is satisfied that an investigation of the affairs of an insurer is required in the interest of policyholders, or of persons who may become policyholders, the Authority may appoint an Inspector to investigate the affairs, or any part of the affairs, of an insurer (IA 30(1)) (“Section 30 inspection”). Additionally, where a Class 4 insurer has failed to file its statutory financial statements or return within 3 months of its filing date, the Authority may appoint an Inspector to investigate the affairs of the Class 4 insurer (IA 18A(5)).
- 7 In this guidance, any insurer, in relation to whose affairs an Inspector has been appointed, may be referred to as an “insurer under investigation”.
- 8 This power to appoint an Inspector is a remedial one that is to be used as required. Section 30 inspections are apart from the routine on-site examination process or “prudential visits”. The prudential visits, which may be carried out pursuant to Section 29A, are to supplement the regular off-site monitoring process carried out by the Authority and are an additional means of evaluating the risk profile of an insurer.
- 9 Fact-finding, reporting, and evaluation are the most critical aspect of the inspection activities. The purpose of a Section 30 inspection is to develop information to assist the Authority in its evaluation of the financial condition, solvency and regulatory compliance of the insurer under investigation. The scope of a Section 30 inspection may reflect the risk profile of the insurer, and may cover all areas of an insurer’s affairs – a so-called “full scale review”. The inspection may also be on a focused basis, targeting specific issues or concerns that, for example, may have arisen as a result of a prudential visit or the off-site review process.
- 10 Examples of instances where an Inspector may be appointed for a risk-focused review include, but are not limited to: where the Authority requires a report on aspects of an insurer’s systems and controls during a specified period, where specific concerns arise (for example because of past evidence of serious control lapses), or where there may be a need for a more specialized or technical report (e.g. into an institution’s computer systems). Periodically, the Authority may appoint an Inspector to certify the accuracy of a particular prudential return (or of parts of a particular return) previously submitted to the Authority. Material concerns about the accuracy or timeliness of an insurer’s prudential reporting may, in turn, lead to the commissioning of further reporting accountant work - for example, assessing the quality of its management information systems.

Instruction Letter

- 11 When the Authority decides to appoint an Inspector to investigate the affairs of an insurer, it will draw up an instruction letter that would usually address the following matters, when relevant and significant:
- the objective and nature of the engagement;
 - the respective responsibilities of the Authority and the Inspector;
 - the nature, timing and extent of the Inspector's work;
 - the nature of the Inspector's report, if any; and any other work to be delivered;
 - responsibility for the payment of the costs of the inspection;
 - the Inspector's responsibilities such as objectivity, due care, confidentiality, and exchange of information and documentation.
- 12 The instruction letter will be discussed with the Inspector and the insurer under investigation before being finalized. Ultimately, however, the decision on scope rests with the Authority. When finalized, the Authority will write formally to the Inspector, with a copy to the insurer, requiring the work to be commissioned and stipulating the deadlines to be met.

Right to Information

- 13 Any insurer under investigation, and any past or present officer, employee or insurance manager of such an insurer, is to produce to the Inspector, on request, all books, records and documents relating to the insurer under investigation which are in its or his custody or control and, otherwise, to give to the Inspector all assistance in connection with the investigation which it or he is reasonably able to give (IA 30(2)).
- 14 In investigating the affairs of an insurer under inspection, an Inspector may examine under oath any past or present officer, employee, or insurance manager of the insurer under investigation in relation to its business, and, for that purpose, may administer an oath accordingly (IA 30(3)(a)). If the Inspector thinks that it necessary for the purposes of his investigation to examine under oath a person who is not a past or present officer, employee, or insurance manager of the insurer under investigation, the Inspector may make application to the Court to examine that person. If it thinks fit, the Court may order that person to attend and be examined on oath before the Court on any matter relevant to the investigation (IA 30(3)(b)).

Inspector's Reports

- 15 The Inspector may be required to report, from time to time, to the Authority and shall on the completion of his investigation report to the Authority (IA 30(4)). Any reports and working papers produced pursuant to a Section 30 inspection are the property of the Authority, and no other person shall be informed of the nature or contents of the report, except for a copy of the final report which will be provided by the inspector to the insurer under investigation (IA 30(4)). Additionally the Inspector shall not disclose to any person, other than the Authority, any information received by him as a result of the performance of his role (IA 52(1)).
- 16 Any report prepared by the Inspector should include an outline of the steps undertaken in fulfilling the scope of the work set out in the instruction letter. If applicable, this should include a brief statement as to the procedure, an outline of key tests conducted and of the extent of testing. The report should detail any exceptions found during the review and set out the risks run by the institution in not correcting the particular weakness or deficiency identified. If included in the scope of the assignment, the Inspector should include recommendations and suggestions for actions to ensure compliance with the Act and best practice, and directions for minimizing risks.
- 17 Where the Authority considers it necessary to reach agreement with the insurer on the facts and conclusions in the report, the Authority may discuss any preliminary or final reports, or any facts or conclusions contained therein, with the insurer. At the discretion of the Authority a copy of the report may be forwarded to the insurer.

Confidentiality

- 18 Any investigation under section 30 shall be held in private.
- 19 The Authority shall generally not disclose any information received pursuant to a Section 30 inspection⁴, exceptions include:
- if the consent for disclosure is received from the person to whom the information relates or from whom the information was received (IA 52(1));
 - if the information is or has already been made available to the public (IA 52(2));
 - if the disclosure of information is for the purpose of enabling or assisting a Section 30 Inspector to carry out an inspection (IA 52(2));
 - if the disclosure of the information is necessary for the Authority to discharge its functions under the Act (IA 52A), for an authority in a country or territory outside Bermuda to exercise functions corresponding to the functions of the Authority under

⁴ The Authority shall not generally disclose any information received, directly or indirectly, pursuant to the Act. Sections 52A, 52C and 52C describe some specific exceptions. The disclosure of information in contravention of section 52(1) is an offence under the Act.

the Act (IA 52B(2)), or for the Minister of Finance or any other authority in Bermuda to discharge its regulatory functions (IA 52B(1)); or,

- if the disclosure of information is with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under the Act or any other Act or, in connection with any other proceedings arising out of this Act (IA 52(5)).

Qualifications of the Inspector

- 20 Whether the role of Inspector is performed by staff of the Authority or by other suitably qualified specialists, an inspection is an important supervisory tool. This reliance on the Inspector requires that the Authority exercise a degree of oversight over the fitness and propriety of each Inspector and the effectiveness of the functioning of the Inspector in the required role.
- 21 Inspections need to be conducted by skilled people that can evaluate and analyze the information obtained during the inspection. The Authority will provide guidance on the scope and procedures for the inspection. However, Inspectors will need to use their investigative and technical skills when forming views about the information they obtain.
- 22 When appointing an Inspector, the Authority will consider whether the person is suitably qualified for the role (IA 30(1)). This requires that the Authority consider whether the Inspector is fit and proper to fulfill the intended role. With due regard to the size and complexity of the insurer under investigation, criteria to assess the fitness and propriety of an Inspector include qualifications, professional proficiency, appropriate practical experience and updated knowledge on developments within its professions, and membership in professional bodies. In addition, the Authority will take into account potential or existing conflicts of interests, and the need for specialized skills.

Expenses Payable by Insurer

- 23 The expenses entailed by an inspector are payable by the company to the Authority unless otherwise directed by the Authority (IA 30(5)).

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.