

BERMUDA MONETARY AUTHORITY

INSURANCE DEPARTMENT

GUIDANCE NOTE #8

**APPOINTMENT AND DUTIES OF THE INSURANCE
MANAGER**

MARCH 2005

GUIDANCE NOTE: APPOINTMENT AND DUTIES OF THE INSURANCE MANAGER

Introduction

- 1 The role of the Insurance Manager is integral to the Bermuda insurance supervisory framework. This Note sets out guidance on the duties of the Insurance Manager. 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 Act¹ if the regulatory system is to command the confidence of both 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, the Guidance is not intended to be exhaustive. The Authority, through the Guidance, hereby sets out its understanding of the legal provisions affecting the appointment and the role of the Insurance Manager and provides additional information about the Authority’s regulatory approach and expectations regarding 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
- 4 Other guidelines issued by the Authority contain additional information related to the Insurance Manager.
- 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 Insurance Managers 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 Insurance Managers must take immediate steps to ensure they are in

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.

compliance with the Act. In relation to other matters contained in the Guidance Notes, the Authority encourages Insurance Managers 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.

Definitions

- 7 An **insurance manager** is “a person who, not being an employee of any insurer, holds himself out as manager in relation to one of more insurers, whether or not the functions performed by him as such go beyond the keeping of insurance business accounts and records.” (IA 1(1))

Registration of an Insurance Manager

- 8 No person shall act as an insurance manager in or from Bermuda unless he is registered for that purpose by the Authority. (IA 9(1))
- 9 Every application for registration as an insurance manager shall be in such form, shall contain such information and shall be accompanied by such documents⁴ as the Authority requires. (IA 10(2))

Suitability of the Insurance Manager

- 10 In considering an application for registration as an Insurance Manager, the Authority will consider whether the person is fit and proper for the role, including whether the person has knowledge of the insurance business of the insurer it will manage adequate to enable it or him to act in the capacity. (IA 11)
- 11 If an Insurance Manager becomes aware at any time that it no longer meets the eligibility and fit and proper criteria, the Insurance Manager must take timely steps to ensure that it informs the Authority.
- 12 An Insurance Manager should provide information, in accordance with the reasonable requests of the Authority, to demonstrate that it meets the eligibility and fit and proper criteria.

Cancellation of Registration

- 13 The Authority may cancel the registration of an insurance manager: (IA 42(1))
- (a) at the request of the insurance manager; or
 - (b) upon any one or more of the following grounds:

⁴ Applications for an Insurance Managers license are filed with a Form 3, which lists the information required.

- (i) that materially false, misleading or inaccurate information was supplied by the insurance manager or on his behalf for the purposes of any provision of the Act;
- (ii) that two years have elapsed since the insurance manager's registration, and the insurance manager has not commenced to carry on business;
- (iii) that the insurance manager has ceased to carry on business;
- (iv) that the insurance manager has persistently failed to pay fees due under the Act;
- (v) that the insurance manager has not complied with a condition attached to his registration or with a requirement made of him under the Act or the regulations;
- (vi) that the insurance manager has been convicted of an offence against a provision of the Act;
- (vii) that the insurance manager has been convicted by a court (whether in Bermuda or elsewhere) of an offence involving fraud or dishonesty; or
- (vii) that in the opinion of the Authority, the insurance manager has not been carrying on business in accordance with sound insurance principles.

- 14 Before it cancels the registration of an insurance manager, the Authority shall give the insurance manager notice in writing of the grounds on which it purposes to cancel the registration, and shall afford the insurance manager an opportunity to make an objection in writing within 30 days after receipt of the notice. The Authority shall take into consideration any such objection and, if it decides to cancel the registration, cause the order of cancellation to be served on the insurance manager. (IA 42(2))
- 15 The cancellation of the registration of the insurance manager shall take effect twenty-one days after the date of service, or on a later date if so specified in the cancellation order. (IA 42(2))

Appointment of an Insurance Manager

- 16 Prior to accepting an appointment as the Insurance Manager, the Authority expects the Insurance Manager to be satisfied that, given the scale and complexity of the insurer, the management of the insurer pursuant to the Act is within the professional expertise and proficiency of the Insurance Manager.
- 17 An insurer is not required to appoint an Insurance Manager and can instead be self-managed.

Appointment of Insurance Manager at Time of Registration of the Insurer

- 18 If applicable, at the time of registration, an insurer is to notify the Authority, in writing, of the appointment of its insurance manager, including the particulars of the insurance manager. (IA 8(2(b)))

Change in the Insurance Manager

- 19 If there is a change in the insurer's Insurance Manager, within fourteen days, the insurer shall provide written notice to the Authority of the change (IA 8(3))

Duties of the Insurance Manager

- 20 An Insurance Manager shall maintain an accurate list of all insurers for which he acts as Insurance Manager and provide the Authority with a copy of that list if the Authority provides a written request for it. (IA 28)
- 21 Where the Authority appoints an inspector to investigate the affairs of an insurer, it is the duty of any past or present insurance manager of such an insurer, 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. In addition, the insurance manager is 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))

Management Information

- 22 The Authority expects that an Insurance Manager, in conjunction with the insurer, will allow the Principal Representative to undertake its duties pursuant to the Act on an efficient and effective basis. These arrangements would normally include ensuring that the Principal Representative has access to the accounts and records maintained by the Insurance Manager. This information should be both timely and accurate, and supported by complete and accessible records. The Insurance Manager should make arrangements with the insurer to ensure that the information held by the Manager is updated in a timely manner.
- 23 Further to paragraph 22, the Authority expects the Insurance Manager to maintain adequate books and records in Bermuda, which are to be available to the Principal Representative. These records would include:
- all sums of money received and expended by the insurer and the matters in respect of which the receipt and expenditure takes place;
 - all premiums and claims relating to the insurer; and,
 - the assets, liabilities and equity of the insurer.

Contractual Arrangements between the Insurance Manager and the Insurer

- 24 There should be a formal agreement (“management agreement”) between the insurance manager and the insurer. The management agreement will describe and govern the relationship between the parties and set out the respective functions, duties and responsibilities.

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.