



BERMUDA MONETARY AUTHORITY

GUIDANCE NOTE

ROLE OF THE APPROVED AUDITOR

**FOR CLASS 1, 2, 3, A, B AND
SPECIAL PURPOSE INSURERS**

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I. INTRODUCTION

1. This Guidance Note describes the role of the approved auditor for Bermuda registered Class 1, Class 2, Class 3, Class A, Class B and Special Purpose insurers in relation to the Insurance Act 1978, as amended (the “Act”) and the Regulations¹ promulgated thereunder, and sets the expectations and responsibilities with respect to that role. This Guidance Note also provides directions on the approval process and the criteria upon which the Bermuda Monetary Authority (the Authority) will assess its approval.
2. The Authority recognises 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 registered insurers², and policyholders. It seeks, therefore, to ensure that insurers and their auditors have a good understanding of the legislative requirements and of the Authority’s approach in implementing and ensuring compliance with the Act.
3. The approved auditor, as defined under section 16 of the Act, is integral to the Bermuda insurance supervisory model. The primary role of the approved auditor of an insurer is to express an independent opinion as to whether the statutory financial statements are free of material misstatements, and along with the statutory financial returns, comply with the Act.
4. The legislative summary in this paper is not intended to be a substitute for the provisions of the Act. For that reason, the reader is advised to refer to the provisions of the Act and not to rely solely on the interpretations contained in this Guidance.
5. The Authority’s Guidance Note is of general application and seeks to take account of the diversity of insurers that are covered under the Act and Regulations. Its application will depend on the nature, scale, and complexity of a particular insurer.
6. This Guidance Note reflects the minimum standard that the Authority expects insurers and approved auditors to observe at all times. In relation to information contained within this Guidance Note, the Authority encourages readers to seek further clarification from the Authority when in doubt, to ensure complete compliance with the Act and Regulations.

¹ “Regulations” refer to the Insurance Accounts Regulations 1980, as amended, and the Insurance Returns and Solvency Regulations 1980 as amended.

² “Registered insurer” refers to an insurer or reinsurer registered by the Authority, under section 4 of the Act, to carry on insurance business in or from within Bermuda; hereupon, in this Guidance Note, to be referred to as “insurer.”

7. From time to time there may be a need for revision to this Guidance Note. If this does occur, any material changes in the Guidance Note will be published, generally through the issue of a revised version.

II. APPLICATION

8. This Guidance Note is applicable to Class 1, 2, 3, A, B and Special Purpose insurers and auditors approved by the Authority as the approved auditor of an insurer.

III. APPOINTMENT OF APPROVED AUDITOR

9. In accordance with subsection 16(1) of the Act, every insurer must appoint an auditor³ approved by the Authority to audit its statutory financial statements.
10. If an insurer fails to appoint an approved auditor, or at any time fails to fill a vacancy for an approved auditor, under subsection 16(7) of the Act, the Authority may appoint an approved auditor for the insurer and fix the remuneration to be paid by that insurer, if not previously agreed by the insurer and the auditor, within 14 days.

IV. NOTIFICATION PRIOR TO REGISTRATION OR DETERMINATION

11. Prior to registration the insurer is required to notify the Authority, in writing, of its proposed auditor. The Authority will consider appropriate notice to have been given, when the name of the candidate for auditor is included in the pre-incorporation document (Form 1B), with an accompanying letter from the auditor to the insurer provisionally accepting their proposed engagement as auditor for the purposes of the Act.
12. If there is any change in the information provided in the notice, referred to in paragraph 11 above, regarding the proposed auditor, the insurer is required, under section 8 of the Act, to provide written notice to the Authority within 14 days of the change.

³ “Auditor” as defined in the Act, means either (a) a person entitled to practice as a public accountant in Bermuda; or (b) a person who has qualified as an accountant by examination of one of the Institutes of Chartered Accountants of England and Wales, Ireland and Scotland or the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants; or (c) a person recognised by the Authority as an auditor.

V. CRITERIA FOR APPROVAL

13. Prior to approving a natural person or firm of accountants for the role of the approved auditor for an insurer, the Authority will generally assess the proposed auditor using the following criteria.
 - a. Fit and proper to fulfil the role;
 - b. Independent of the insurer; and
 - c. A letter of undertaking from the proposed auditor that it will perform its function in accordance with the Insurance Act 1978 and related regulations (the “Act”) and Generally Accepted Auditing Standards (GAAS) recognized by the Authority.

Fitness and Propriety

14. The auditor is deemed to be a fit person to perform the role of the approved auditor where its qualifications, experience, resources and skills are commensurate with the nature, scale, and complexity of the insurer’s business.
15. The auditor is deemed to be a proper person to perform the role of the approved auditor where that person is of high integrity. In assessing integrity the Authority takes into consideration:
 - a. Whether the person has contravened any provision of law designed to protect members of the public against financial loss;
 - b. Whether the person has been involved in any deceitful or improper business practices; and
 - c. Whether the person has been refused admission, censured or disqualified by a relevant professional or regulatory body.
16. In the case of an auditor of the statutory financial statements of a Bermuda registered insurer, a person will generally be considered a fit and proper person if the person is ordinarily resident in Bermuda and a member in good standing with the CPA Bermuda.

Independence

17. An auditor must be independent of the insurer for which he has been appointed the approved auditor. Under subsection 16(6) the Act, no person having an interest in any insurer other than that of an insured, and no officer, servant, or agent of any insurer, would be eligible for appointment as an approved auditor for that insurer. Furthermore, 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 should cease and resign as the approved auditor.

18. In interpreting the requirements of subsection 16(6) of the Act, the Authority would look to the definition of independence within the meaning of the Rules of Professional Conduct of CPA Bermuda, which determines the auditor's independence in terms of the Auditor's objectivity. The rules provide that members of CPA Bermuda 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.
19. An insurer should provide information, in accordance with the reasonable requests of the Authority, to demonstrate that its candidate for 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.

VI. CONFIRMATION OF APPROVAL

20. If the proposed auditor is approved, the Authority will provide written confirmation of its approval to the insurer.

VII. ACCEPTANCE OF AN ENGAGEMENT

21. Prior to accepting an appointment as the approved auditor, the Authority expects the auditor to be satisfied that the scale and complexity of the insurer and 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.

VIII. DISQUALIFICATION

22. Approval of an auditor for an insurer may be revoked, if the Authority is satisfied that the approved auditor is no longer a fit and proper person to fulfil the role.
23. The Authority will not revoke its approval of an auditor without first notifying the approved auditor and the insurer of its intention to do so.
24. If at any time an insurer becomes aware that the approved auditor of the insurer is not independent, or no longer meets the fit and proper criteria, the insurer must take timely steps to ensure that an independent, fit and proper auditor is appointed.

IX. CHANGE IN APPROVED AUDITOR

25. Where there is to be a change in the approved auditor, the insurer must obtain prior approval from the Authority before appointing a new auditor.
26. If an insurer proposes to remove an approved auditor before the expiration of his term of office, or proposes to replace an approved auditor with a different auditor at the expiration of his term of office, the insurer must give written notice to the Authority.
27. The approved auditor of an insurer must give written notice to the Authority if he resigns before the expiration of his term of office, or becomes aware that he will be replaced, or he intends not to seek to be re-appointed.
28. Before the Authority approves the appointment of a new auditor for an insurer as part of the approval process the Authority will require a written explanation from the insurer for the change in the approved auditor and, where applicable, written explanation from the previous approved auditor of the reasons for the cessation of his appointment.

X. RIGHT TO INFORMATION

29. The Authority expects that an insurer will make the necessary arrangements to enable the approved auditor to perform his role. These arrangements would normally include ensuring that the approved auditor is fully informed of the Authority's requirements for the insurer, such as any conditions on its Certificate of Registration or any directions given by the Authority under section 56 of the Act (accounting modification provisions). In addition, the insurer should ensure that its approved auditor has access to all relevant data and people that it reasonably believes are necessary to fulfill its obligations. This includes giving its auditor a right of access to its accounting and other records, in whatever form they are held. In complying with this the insurer should ensure that any suppliers under a material outsourcing arrangement (e.g. claims management, information technology support) give the approved auditor the same rights of access.

XI. AUDITOR'S EXAMINATION

30. The Authority expects the approved auditor to conduct its audit in accordance with generally accepted auditing standards (GAAS) for Canada, the United Kingdom, the United States of America, International Standards on Auditing or such GAAS as the Authority may recognise.

XII. RELIANCE ON SPECIALISTS

31. When the approved auditor uses the work of a specialist, such as an actuary or loss reserve specialist, as audit evidence in the performance of its examination of an insurer, in accordance with the Act, the Authority expects this reliance to be in compliance with the aforementioned GAAS.

XIII. AUDIT REQUIREMENT

Requirement for Audited Statutory Financial Statements

32. Pursuant to sections 15 and 17A of the Act, an insurer must prepare statutory financial statements for each financial year that are audited by the approved auditor, unless the insurer has obtained an exemption from the Authority.

Requirement for Statutory Financial Returns

33. Every Class 1, 2, 3, A, B, and Special Purpose insurer is required to file a statutory financial return at the time it files its statutory financial statements with the Authority.

Approved Auditor's Report

34. The approved auditor is to prepare an auditor's report for the statutory financial statements to be included with the statutory financial return filed by the insurer.⁴ For Class 1, Class 2, Class 3, Class A, Class B insurers and Special Purpose insurers, this report is to be in the form prescribed in section 7 of the Insurance Returns and Solvency Regulations 1980 (IRASR), and is to be signed by the approved auditor and addressed to the Authority.
35. In its report the approved auditor is required to confirm that he has carried out an examination of the insurer's statutory financial statements in accordance with GAAS. The report should state the applicable jurisdiction for the GAAS applied.
36. The approved auditor is further required to express an opinion on the following:
 - a. Whether the statutory financial statements have been prepared in accordance with the requirements of the Act and applicable regulations insofar as such provisions relate to accounting and financial reporting matters;

⁴ For Class 1, Class 2, Class 3, Class A, Class B insurers and Special Purpose insurers, the Insurance Returns and Solvency Regulations 1980 7(1)(a) currently provides that report is to be prepared in accordance with accepted auditing standards;

- b. For Class 1, Class 2, Class 3, Class A, Class B insurers and Special Purpose insurers whether the Solvency Certificate complies with the criteria of the IRASR; and
 - c. Whether it was reasonable for the persons signing such solvency certificate to have arrived at the opinions expressed in the certificate, insofar as the opinions relate to accounting and financial matters.
37. Where the auditor deems it to be appropriate to include a material modification of his report on the insurer's statutory financial statements and in particular, a material qualification or a denial of opinion, or the statement of an adverse opinion or becomes aware of any fact or matter which is likely to be of material significance for the discharge, in relation to the insurer, the approved auditor should give written notice of such matters to the Authority as soon as possible.
38. If the following events were to occur in relation to the audit, an auditor is to qualify his report and include his observations, whether of fact or opinion, as he considers necessary, for bringing the nature and effect of the qualification to the attention of the Authority. These events may include:
- a. There were deficiencies in the audit consisting of:
 - (i) Inability of the auditor to obtain essential information; or
 - (ii) Restrictions on the scope of the audit;
 - b. The auditor disagrees with a valuation that may have a material adverse impact on the statutory financial statements;
 - c. In some respect or respects the statutory financial statements or the certificates of solvency do not in the auditor's opinion comply with the requirements of the Act or any applicable Regulations;
 - d. The auditor considered an opinion or opinions expressed in a solvency certificate unreasonable; and
 - e. The auditor considered that there was a significant doubt as to the insurer's ability to continue as a going concern.

XIV. COMMUNICATION OF CERTAIN MATTERS WITH THE AUTHORITY

39. When an approved auditor makes a material modification of his report on an insurer's statutory financial statements and in particular, a material qualification or a denial of his opinion, or a statement of adverse opinion, the approved auditor

of the insurer must give written notice to the Authority and provide the Authority with a copy of the report as soon as possible.

40. Under subsection 16A(1)(e) of the Act, an approved auditor must give written notice to the Authority if he becomes aware of any fact or matter which is likely to be of material significance for the discharge, in relation to the insurer, of the Authority's functions under the Act. In the context of an audit such facts or matters may include, but are not limited to the following:

- a. Identifies a material misstatement in the insurer's statutory financial statements resulting from fraud, error or illegal acts or the consequences of them; or
- b. Concludes that there is substantial doubt as to the ability of the insurer to continue as a going concern for a period of one year from the balance sheet date; or
- c. Identifies adjustments to the insurer's financial statements, which individually or in aggregate, indicates to him that the previous year's audited annual financial statements, were materially misstated; or
- d. Identifies a material weakness⁵ in internal control or material conflicts of interest during the conduct of normal audit procedures; or
- e. Has material unresolved disagreements with management pertaining to the application of statutory reporting.

41. Under section 16A(3) of the Act, no duty to which an approved auditor of an insurer may be subject shall be regarded as contravened by reason of his communicating in good faith with the Authority, whether or not in response to a request made by the Authority, any information or opinion on a matter which is relevant to any function of the Authority under the Act. This applies to any matter of which an approved auditor of an insurer becomes aware in his capacity as auditor and which relates to the business or affairs of the insurer or any affiliate of the insurer.

XV. ACCESS TO INFORMATION AND REPORTS

⁵ A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis (PCAOB Auditing Standard No. 5).

42. The Authority, using the powers under section 20A of the Bermuda Monetary Authority Act 1969, will conduct routine prudential meetings and visits with insurers. In order to verify information for regulatory purposes, the Authority may send a letter to the approved auditor of the insurer requesting the auditor to confirm that the auditor will cooperate with the Authority in its inspection process in accordance with 29A(i)(b) of the Act, by providing access to the auditor's working papers and being able to discuss relevant matters with the Authority. The Authority expects that the approved auditor will write to the insurer to confirm that the insurer understands his obligation to cooperate with the Authority. The approved auditor should send the signed cooperation letter back to the Authority.
43. With respect to any information obtained from the Approved Auditor's working papers, the Authority will comply with the confidentiality sections of the Act.

If there are any questions about this, or other guidance from the Authority,

please email info@bma.bm.