

BERMUDA MONETARY AUTHORITY
INSURANCE DEPARTMENT

GUIDANCE NOTE #1

ROLE OF THE PRINCIPAL REPRESENTATIVE

MARCH 2005

GUIDANCE NOTE: ROLE OF THE PRINCIPAL REPRESENTATIVE

Introduction

- 1 The role of the Principal Representative is integral to the Bermuda insurance supervisory framework. This Note sets out guidance on the role of the Principal Representative. 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 Principal Representative 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 criteria and approval process for the Principal Representative.
- 5 The Authority’s guidance is of general application and seeks to take account of the wide diversity of institutions that may be licensed under the Act. There may be a need for revision of the Guidance Notes from time to time. Material changes in the Guidance will be published, generally through the issue of a revised version.
- 6 Guidance should be understood as reflecting the minimum standard that the Authority expects insurers 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

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 examining provisions of the Act. The reader is advised to refer to the legislation 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.

relation to other matters contained in the Guidance Notes, the Authority encourages insurers to come into compliance as soon as possible and, in any event, not later than 31st December 2005 or a later date as may be agreed with the Authority in a particular case.

Requirement for a Principal Representative and a Principal Office

- 7 The Act requires every registered insurer to appoint a Principal Representative resident in Bermuda and to maintain a principal office in Bermuda. (IA 8(1)) The Principal Representative must be knowledgeable in insurance and is responsible for filing the annual Statutory Financial Return and Statutory Financial Statements, as applicable, and for the maintenance of and custody of the statutory accounting records such as are necessary for the Principal Representative to perform its role. The Principal Representative would generally be either a director, senior financial officer or manager normally resident in Bermuda, or a Bermuda registered insurance management company.
- 8 Each insurer must obtain the Authority's approval for its appointment for Principal Representative (IA 8(1A)).
- 9 The principal office can be the office of that director or manager, or the office of the management company.

Notification of the Principal Representative and the Principal Office

- 10 At the time of registration an insurer shall give notice in writing to the Authority of the location of its principal office and of the particulars of its Principal Representative (IA 8(2)).⁴ If any of this information is altered, the insurer is required to notify the Authority within fourteen days after the alteration is made (IA 8(3)).
- 11 Neither the insurer nor the Principal Representative may terminate the Principal Representative's appointment with less than thirty days' written notice to the Authority or such shorter notice as the Authority may permit (IA 8(3A)). The Authority expects that the departing Principal Representative will remain responsible until a new Principal Representative has accepted the appointment and been approved by the Authority.

Role and Duties of the Principal Representative

- 12 The Authority expects insurers to be prudently managed. While the board of directors and the senior management have the primary responsibility for the conduct and performance of the insurer, the Principal Representative acts in an "early warning" role and monitors the insurer's compliance with the Act on a continuous basis.

⁴ At the time of registration the insurer is also to give notice in writing of the prescribed particulars of its insurance manager (if it has one), its approved auditor and any other prescribed person to be engaged or employed in, or connection with, its business. (IA 8(2)(b))

- 13 The Principal Representative has the legislated duty to report certain events to the Authority (“reportable events”) (IA 8A). These reportable events include the following:
- where the Principal Representative reaches the view that there is a likelihood of the insurer becoming insolvent;
 - failure of the insurer to comply substantially with a condition imposed upon the insurer by the Authority relating to a solvency margin or a liquidity or other ratio;
 - failure of the insurer to comply with any condition imposed upon the insurer by the Authority not relating to a solvency margin or a liquidity or other ratio;
 - failure by the insurer to comply with a modified provision, or with a condition, specified in a direction given to the insurer by the Authority pursuant to the Authority’s power to modify accounting provisions in certain cases pursuant to Section 56 of the Act;
 - where an insurer is a non-resident insurance undertaking (“NRIU”), failure to comply with an order in force that is issued by the Ministry of Finance, acting on the advise of the Authority, requiring that every NRIU, or every NRIU of a class specified in the order, must:
 - maintain invested assets in Bermuda of the value and type approved in the order (IA 20(8));
 - must maintain in Bermuda approved assets of a value which is at any time equal to the whole or a specified proportion of the amount of its domestic liabilities (IA 21(5));
 - where a NRIU is required to maintain in Bermuda approved assets of a specified value, maintain these assets in Bermuda with a person approved by the Authority for the purposes of the requirements as a trustee (IA 22(5));
 - failure by the insurer to comply with a modified provision, or with a condition, specified in a direction given to the insurer by the Authority pursuant to the Authority’s power to direct that certain qualifying contracts can be designated investment contracts pursuant to Section 57A;
 - involvement of the insurer in any criminal proceedings whether in Bermuda or abroad; and,
 - the insurer's ceasing to carry on insurance business in or from within Bermuda.
- 14 The Principal Representative shall notify the Authority of any reportable events forthwith and must provide a report in writing within 14 days (IA 8A(1)). The report should include all the particulars of the case that are available to the Principle Representative.

Payment of Dividends by a Class 4 Insurer

- 15 A Class 4 insurer shall not in any financial year pay dividends that would exceed 25% of its total statutory capital and surplus for the previous financial year, unless at least 7 days before payment of those dividends, it files with the Authority an affidavit signed by at least two directors of the insurer,⁵ and by the insurer's Principal Representative. The affidavit should state that, in the opinion of those signing, declaration of those dividends has not caused the insurer to fail to meet its solvency margin, for all insurers, and its minimum liquidity ratio, for an insurer carrying on general business. (IA 31B(1))

Management Information

- 16 The Act provides that the insurer is to maintain at the principal office an accurate list of all its insurance agents in Bermuda. The insurer is to provide a copy of such list to the Authority if, at any time, the Authority makes a request in writing for the list (IA 8(4)).
- 17 The Authority expects that an insurer will make arrangements to enable 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 management information and people that the Principal Representative reasonably believes is necessary to fulfill its role. This information should be both timely and accurate, and supported by complete and accessible records.
- 18 Further to paragraph 17 the Authority expects the insurer to maintain adequate books and records in Bermuda, which are 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.
- 19 The Authority expects the Principal Representative to take all reasonable steps to fulfill its responsibilities, including being satisfied that there are no reportable events. Where the Principal Representative does not have access to sufficient information about the insurer, necessary for it to fulfill its responsibilities, the Principal Representative should contact the Authority.

⁵ One of the directors must be a director resident in Bermuda if the insurer has a director so resident.

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.