

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.