



BERMUDA MONETARY AUTHORITY

GUIDANCE NOTE ON THE ROLE OF THE DESIGNATED INSURER

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This Guidance Note relates specifically to the duties and responsibilities of the Designated Insurer appointed by the Bermuda Monetary Authority (the “Authority”) as part of the administration of the Authority’s supervision of insurance groups under the Insurance Act 1978, as amended (the “Act”) and the Insurance (Group Supervision) Rules 2011 (the “Group Supervision Rules”) and the Insurance (Prudential Standards) (Insurance Group Solvency Requirement) Rules 2011 (the “Group Prudential Rules”) (collectively, the “Group Rules”).

Introduction

1. The globalisation of financial markets has created a catalyst for the development of insurance groups, which have increased in numbers, complexity and size. Insurance groups may provide a range of insurance products and services across multiple jurisdictions.
2. Traditional supervisory frameworks where oversight is restricted to the legal entity do not consider the group structure and the interrelationships among the entities within the insurance group. Therefore, it is commonly recognised that insurance groups also need to be regulated and supervised at the insurance group level.
3. There are two primary methodologies available for insurance supervisors to influence members of an insurance group that are outside of their respective jurisdictions: the direct approach and the indirect approach. Under the direct approach, the group supervisor has the power to apply supervisory requirements directly to the parent and other entities in the insurance group, including non-regulated entities. Under the indirect approach, the group supervisor exercises its supervisory powers and addresses group risks (including the risks of non-regulated entities) through its authority over the legal entities licensed in its jurisdiction in order to achieve an outcome comparable to the direct approach.
4. The Authority has elected a hybrid approach to group supervision that combines elements of the direct and indirect approaches and uses the mechanism of the Designated Insurer to effect group supervision. The Designated Insurer is the lead insurer for the members of the insurance group operating in Bermuda.
5. The Designated Insurer has the duty to facilitate and maintain compliance by the group with the Act and the Group Rules and, thus, is integral to the Authority's framework for group supervision under the Act and the Group Rules. Moreover, the Designated Insurer acts in an "early warning" role which allows the Authority to administer its group supervision oversight in an effective and timely manner. To facilitate the fulfilment of the

duties of the Designated Insurer, the insurance group must establish organizational, governance and communications structures at the group level.

6. This Guidance Note clarifies and elaborates the role of the Designated Insurer under the Act and the Group Rules. This Guidance Note relates specifically to the appointment of the Designated Insurer, the power to compel the production of information, documents or reports, the specific duties and responsibilities of the Designated Insurer and the ability of the Authority to issue a direction to the Designated Insurer with respect to compliance by the group with the Act and the Group Rules.

7. While the Authority aims to provide clarity as to its approach in this Guidance Note, this Note cannot be exhaustive. There is likely to be a need for the guidance to be revised and developed over time as the Authority gains experience with the practical implementation of group supervision in general, and the role of the Designated Insurer in particular, and as domestic and international standards are further refined. Material changes in the guidance will be published, generally through the issuance of revised versions of this Guidance Note.

Scope of Application

8. This guidance is applicable to all insurance groups for which the Authority is the Group Supervisor and to the Designated Insurers of such groups. It is also applicable to Bermuda groups and to the Designated Insurers of Bermuda groups as described below.

9. In certain cases where the Authority is not the Group Supervisor, it may establish a Bermuda group. This generally will be the case where the Bermuda operations give rise to material risks or exposures and either: (i) the non-Bermuda Group Supervisor is not recognized by the Authority as an equivalent and competent authority, or (ii) the non-Bermuda Group Supervisor is unable to fulfil effectively its functions in the absence of a Bermuda group or has asked the Authority to establish a Bermuda group. The Authority may also establish a Bermuda group where the larger group is a conglomerate with material non-insurance operations.

10. In the event that the Authority is not the Group Supervisor and determines it necessary or advisable to establish a Bermuda group, the Authority will supervise the Bermuda group. The Authority generally will require the filing on a Bermuda group basis of the financial and solvency reports and statutory returns prescribed under the Group Rules and will apply the corporate governance, risk management and solvency standards of the Group Rules to the Bermuda group. However, where the non-Bermuda Group Supervisor of the larger group is an equivalent regulator, the Authority will entertain applications from the Designated Insurer of the Bermuda group to accept the information filed with the non-Bermuda Group Supervisor of the larger group in lieu of requiring a portion of or all of the required Bermuda group filings.

11. In determining whether the non-Bermuda Group Supervisor is an equivalent regulator, the Authority will consider whether the application of the non-Bermuda Group Supervisor's regulatory and supervisory regime and its prudential requirements would achieve regulatory and supervisory outcomes at the Bermuda group level comparable to the outcomes that would be achieved through direct application of the Group Rules.

12. In the event that the Authority is not the group supervisor and determines it necessary or advisable to establish a Bermuda group, the Authority will liaise closely with the non-Bermuda Group Supervisor and through the supervisory college mechanism to coordinate supervision, reduce or eliminate duplication where possible, facilitate the sharing of information regarding the Bermuda group and its impact on the larger group and contribute to supervisory plans and other decisions regarding the supervision of the group as a whole.

The Appointment of the Designated Insurer

13. In its effort to provide effective supervision and oversight to groups, the Authority appoints an insurance undertaking as a Designated Insurer for every group for which it is the Group Supervisor pursuant to Section 27B(5) of the Act. The Authority selects the Designated Insurer based on a comprehensive review of the company's financial position, strategic and operational importance to the group, its ability to fulfil its duties and responsibilities in an effective and efficient manner, its access to group information and data, and its management capabilities. The Act requires the Authority to notify the Designated Insurer and other insurance supervisors with supervisory responsibility for group members in writing that it is the Group Supervisor for an insurance group.

14. The appointment of the Designated Insurer by the Authority does not in any way diminish the obligations of other Bermuda-regulated entities to comply with the provisions of the Act, the Insurance Code of Conduct, and any rules, regulations or directions applicable to the company as a legal entity.

15. The Designated Insurer should appoint a group representative and advise the Director of Insurance Supervision at the Authority of such appointment in writing. The group representative should be knowledgeable about the requirements imposed on insurance groups under the Act and the Group Rules and about the company's obligations as the Designated Insurer. The group representative generally should be an officer of the Designated Insurer, which may be, but need not be, the principal representative of the Designated Insurer. The

group representative functions as an administrative point of contact for the Authority and, in this capacity, has no legal or reporting obligations to the Authority.

Power to Compel Production of Information, Documents or Reports from the Designated Insurer

16. Under Sections 29A and 29B of the Act, the Authority has broad powers to obtain information and reports and require the production of documents from registered persons or designated insurers or parent, subsidiary or related companies thereof. Among these powers, the Authority may by notice in writing require that the Designated Insurer provide to the Authority (or such person acting on behalf of the Authority as specified in the notice) at times or at such intervals or in respect of such periods as may be so specified such information, documents or reports as the Authority may reasonably require with respect to matters that are likely to be material to the performance of group functions under the Act or the Group Rules. This power to compel production includes the ability to take copies or extracts of any documents and to require the Designated Insurer to provide an explanation of them. However, this power shall be exercised in due recognition of the Authority's obligation to maintain the secrecy of information coming into its possession in accordance with Section 31 of the Bermuda Monetary Authority Act and restrictions on disclosure of information under Section 52 of the Act.

Specific Duties and Responsibilities of the Designated Insurer

17. The Designated Insurer has several reporting obligations to the Authority including providing information on (i) the financial condition of the group, (ii) compliance by the group with the Act and the Group Rules, including capital and solvency standards, and (iii) any material change that might impact that status, including changes to the information required to complete a register of groups. All reporting obligations imposed on the Designated Insurer shall be fulfilled by providing the Authority with the relevant notice and information in writing strictly within the timeframes imposed under the Act or the Group Rules. The Authority may request such further information as may be required in its sole discretion to understand fully the reported event and its impact upon the group.

18. The Designated Insurer may fulfil its reporting obligations by providing the Authority with a copy (either in electronic version or hard copy) of a filing with a competent authority in an equivalent jurisdiction within the meaning of Section 27A of the Act, an appointed stock exchange within the meaning of the Companies Act 1981 or the United States Securities and Exchange Commission, provided that such filing contains the information and is made within the timeframe required by the Act or the Group Rules and subject to the power of the Authority to request additional or clarifying information with respect to such filings.

19. The Designated Insurer must facilitate the establishment of group internal audit, risk management, compliance and actuarial functions that meet the requirements of the Group Rules.

20. The Group Supervision Rules require the establishment of a risk management function that is responsible for developing and maintaining appropriate enterprise-wide strategies and policies for identifying, measuring, monitoring, controlling and reporting in a timely manner the group's reasonably foreseeable material risks. The risk management function must be supported by a risk management and internal controls framework and management information and reporting systems. The Insurance Code of Conduct requires the establishment of a risk management function and risk management and internal controls framework at the legal entity level. To the extent that the group has a centralised risk management function, the Authority may conclude on a company-by-company basis that the performance of the risk management function by the Designated Insurer for the group satisfies the requirements of the Insurance Code of Conduct with respect to the Designated Insurer as a solo legal entity.

21. Similarly, the Group Supervision Rules require the establishment of a compliance function to identify, measure, monitor, control, report and mitigate compliance risks across the group. The Insurance Code of Conduct requires the establishment of a similar function at the legal entity level. To the extent that the group has a centralized compliance function, the Authority may conclude on a company-by-company basis that the performance of the

compliance function by the Designated Insurer for the group satisfies the requirements of the Insurance Code of Conduct with respect to the Designated Insurer as a solo legal entity.

Material Changes

22. It is essential to the exercise of the Authority's Group supervision that it be made aware in advance of any material changes to group structure, activities or risk profile. Material changes are defined in Section 30JA of the Act. If a member of the group is regulated by a competent authority in an equivalent jurisdiction within the meaning of Section 27A of the Act, the Designated Insurer must advise the Authority in writing within 90 days of such member (i) amalgamating with or acquiring another firm, (ii) engaging in non-insurance business or activities that are not ancillary to the business of the insurer, or (iii) engaging in unrelated retail business (each a material change). If the member is not so regulated, the Designated Insurer must advise the Authority in writing at least 14 days prior to such member of the group effecting a material change.

Changes to the Register

23. Section 27B(7) of the Act requires the Authority to maintain a register of every insurance group for which it is the Group Supervisor and for which it has appointed a Designated Insurer. The Designated Insurer must immediately notify the Authority in writing of any change to the following particulars entered in the register in respect of an insurance group:

- a. the name and address of the Designated Insurer for the insurance group;
- b. the name and address of every company that is a member of the insurance group falling within the scope of group supervision;
- c. the name and address of the principal representative or other group representative of the insurance group in Bermuda;
- d. the name and address of other competent authorities supervising other companies that are members of the insurance group; and
- e. the name and address of the insurance group auditors.

24. Under Section 30J of the Act, the Designated Insurer must notify the Authority in writing within 45 days of the date it becomes aware that any person has become or ceased to become an officer of the parent company (head) of the insurance group, specifying the dates on which the person became or ceased to be an officer. For purposes of this Guidance Note, an officer means a director, chief executive or senior executive performing duties of underwriting, actuarial, risk management, compliance, internal audit, and finance or investment matters.

Specified Events

25. Paragraph 29 of the Group Supervision Rules requires that the Designated Insurer must immediately notify the Authority in writing, including a detailed account upon the occurrence of any of the following events:

- Upon reaching a view that there is a likelihood of insolvency of the insurance group or any company that is a member of the group for which the Designated Insurer acts; or
- Upon coming into knowledge or having reason to believe that:

The group or any company that is a member of the group has failed to comply substantially with a requirement imposed upon it by or under the Act or the Group Rules, including requirements related to its solvency position, governance and risk management, or supervisory reporting and disclosures;

The failure by the Designated Insurer to comply with or to facilitate compliance by the group to enable the Designated Insurer to comply with a direction given to the Designated Insurer in respect of the group or any of its members;

Any member of the group has been convicted of a criminal offense whether in Bermuda or abroad;

Any company that is a member of the group outside of Bermuda is in material breach of any statutory requirements that could lead to supervisory or enforcement actions by a host supervisor; or

A significant loss is reasonably likely to cause the group to be unable to comply with the enhanced capital requirement applicable to it.

26. In the event that the notification of any event under Paragraph 29 of the Group Supervision Rules refers to a significant loss that is likely to cause the insurance group to be unable to comply with the enhanced capital requirement applicable to it, within 45 days of notifying the Authority of such event, the Designated Insurer must furnish the Authority with a capital and solvency return that reflects an enhanced capital requirement that has been prepared using post-loss data and unaudited interim statutory financial statements in relation to such period as the Authority may require, together with a declaration of solvency in respect of those statements.

27. The Authority recognizes that a group may conduct business operations in more than one jurisdiction and that legal entities within the group operating in other regulatory jurisdictions are required to comply with the requirements of those jurisdictions. Where a Designated Insurer becomes aware that the requirements of another jurisdiction are in conflict with the Act or the Group Rules, and such conflict impairs the group's ability to comply with the Act or the Group Rules, the Designated Insurer shall inform the Authority in writing within 14 days pursuant to Paragraph 29 of the Group Supervision Rules. The Designated Insurer may request in writing an exemption from or modification to the Rules for good cause shown having regard for the obligations of the Designated Insurer and group towards their policyholders and provided that such exemption or modification would not, in the opinion of the Authority, hinder its role as Group Supervisor.

28. Where the Authority becomes aware of a conflict between the Act, the Group Rules or any direction imposed on the Designated Insurer and the requirements of another jurisdiction, the Authority shall assess the impact of the conflict on the group's ability to comply with the Act or the Group Rules. The Authority may engage in discussion with the competent authorities of affected jurisdictions in order to resolve or mitigate the impact of such conflict and may, if deemed appropriate, make a modification under the Act.

Appointment of Approved Auditor and Actuary

29. Under Section 16 of the Act, the Designated Insurer shall ensure that the group appoint an auditor approved by the Authority to audit the financial statements of the group. Under Section 8B(6) of the Act, the Designated Insurer shall ensure that the group appoint an actuary approved by the Authority to assess the appropriateness and reasonableness of methodologies and assumptions relating to obligations to policyholders and appropriate reserves against those obligations.

30. The Designated Insurer shall notify the Authority immediately in writing in the event of the removal or replacement of a group auditor or actuary before the expiration of its term or contract, and such notice shall identify the successor expert. The notice of removal or replacement should contain an explanation of the reasons thereof and a statement by the outgoing expert as to whether the removal or replacement reflects a material disagreement as to the financial condition or loss exposure of the group. If the removal or replacement of the expert does reflect a material disagreement, the Authority will conduct a thorough investigation into the circumstances surrounding the disagreement before approving a successor expert.

Duties and Obligations Related to the Financial Condition of the Group

31. Paragraph 18 of the Group Supervision Rules requires that an insurance group perform a group solvency self-assessment (“GSSA”) that, at a minimum, has regard for all foreseeable material risks, including investment/market, liquidity, concentration, credit, operational and insurance underwriting risks. The GSSA shall be performed at least annually and the output of the GSSA shall be reflected on Schedule IX to the Group Prudential Rules or such other forms as may be prescribed by the Authority for such purpose. The output of the GSSA should provide a determination of both the quality and quantity of the capital required to adequately cover material risks and to support the group’s insurance activities.

32. The Designated Insurer shall submit to the Authority annual audited consolidated financial statements of the parent company of the group in the form and containing the information prescribed by the Paragraph 23 of the Group Supervision Rules. The group financial statements shall be filed within five months after the end of the financial year or such longer period, not exceeding eight months, as the Authority may allow (the “filing date”).

33. The Designated Insurer shall submit to the Authority no later than the filing date annual statutory financial statements of the parent company of the group in the form and containing the information prescribed by the Paragraph 24 of the Group Supervision Rules. The statutory financial statements serve as data inputs into Schedule I of the Group Prudential Rules.

34. The Designated Insurer shall submit to the Authority no later than the filing date an annual group statutory financial return in the form and containing the information prescribed by Paragraph 25 of the Group Supervision Rules.

35. The Designated Insurer shall submit to the Authority no later than the filing date the annual capital and solvency return in the form and containing the information prescribed by Paragraph 6 of the Group Prudential Rules.

36. The returns referenced in Paragraphs 31 through 35 of this Guidance Note shall be accompanied by a declaration signed by one director, the chief executive officer and the chief financial or chief risk officer of the parent company declaring that, to the best of their knowledge and belief, the return fairly represents the financial condition of the insurance group in all material respects. The parent board should review the returns in a meeting in which the chief executive and chief financial officers are available to respond to questions and challenges. The Designated Insurer shall keep a copy of the group’s returns and the minutes of the meeting at which the returns are reviewed by the board at its principal office for a period of five years and make such returns and minutes available to the Authority upon request.

37. The Designated Insurer shall submit to the Authority quarterly unaudited financial returns in respect of the group in the form and containing the information prescribed by Paragraph 9 of the Group Prudential Rules. The group quarterly financial returns shall be filed on or before the last day of May, August and November of each year.

Issuance of Directions to the Designated Insurer

38. The Designated Insurer has the duty to facilitate and maintain compliance by the group with the Act and the Group Rules. Where obligations are imposed on the group, or in the event of breaches of the Act or the Group Rules, or otherwise to safeguard the interests of policyholders or potential policyholders of the group, the Authority may issue a direction to the Designated Insurer as a means to compel the group to perform the obligations or to remediate the breach. Those directions include but are not limited to those specified in paragraphs (a) to (h) and (j) of Section 32(2) of the Insurance Act.

39. If the Authority proposes to issue a direction to the Designated Insurer, it will first give a warning notice to the Designated Insurer unless the Authority considers that the direction should be given as a matter of urgency. The warning notice will state the details of the proposed action and the reasons therefor and provide for a period of 14 days during which the Designated Insurer may make representations to the Authority. If after giving a warning notice and considering any representations made by the Designated Insurer, the Authority decides to issue a direction, it will provide the Designated Insurer with a decision notice and advise the Designated Insurer of its rights of appeal. If the Authority issues a direction as a matter of urgency, it shall be subject to the right of immediate appeal.
