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Bermuda Monetary Authority Occasional Paper

**Identifying, Assessing and Understanding
Money Laundering and Terrorism Financing
Risks within the Insurance Sector**

Bermuda Case Study



Foreword

The Bermuda Monetary Authority (the Authority or BMA) is committed to combatting money laundering (ML), terrorist financing (TF), and to support regional and global efforts in this regard. The Authority's work on anti-money laundering and countering the financing of terrorism (AML/CFT) is part of Bermuda's contribution to the global effort led by the Heads of G20 Nations working through the Financial Action Task Force (FATF) and the FATF Style Regional Bodies (FSRBs). Since the implementation of Bermuda's Proceeds of Crime Act in 1997 and subsequent relevant legislation, the BMA has significantly enhanced its AML/CFT supervisory framework with the objective of building a robust regime that meets or exceeds international standards.

Bermuda is an international financial centre that predominantly specialises in catastrophe reinsurance and is host to the third largest reinsurance market. It is also the largest domicile in the world for limited purpose insurers (captives) and the leading jurisdiction for the issuance of insurance-linked securities (ILS). Thus, the BMA has a significant global role as a leading regulator and supervisor of Bermuda's insurance market.

To this end, the BMA has prepared this occasional paper articulating Bermuda's AML/CFT risk-based supervisory approach for the insurance sector. A primary objective behind sharing the BMA's experience is to contribute to the growing body of knowledge, examining practice developments on identification, assessment and monitoring ML and TF risks in the insurance sector. The paper also hopes to assist the work of other insurance supervisors who are developing – or considering – a framework for identifying, assessing and understanding ML/TF risks within the insurance sector using a risk-based approach. We believe the information in this paper will be valuable to other supervisors in analysing the ML/TF risks in their insurance sector, and developing their AML/CFT supervisory strategies and action plans.

While the BMA believes its AML/ATF risk framework for the insurance sector is robust, it also acknowledges there is a continued need to monitor developments in the sector and to make any further enhancements as required. Accordingly, the BMA reviews, challenges and reassesses its processes on a continuous basis to ensure that it remains effective and relevant.



Craig Swan
Managing Director, Supervision (Insurance)

BMA Occasional Paper

The BMA publishes Occasional Papers to profile the research and analytic underpinnings of its activities. The content of this paper is the result of the analysis carried out by BMA staff. The preparation of this paper was overseen by Leo Mucheriwa, Assistant Director within the Financial Stability Department at the BMA.¹

About Bermuda Monetary Authority

The Authority was established by statute in 1969. Its role has evolved over the years to meet the changing needs in the financial services sector. Today it supervises, regulates and inspects financial institutions operating in the jurisdiction. It also issues Bermuda's national currency, manages exchange control transactions, assists other authorities with the detection and prevention of financial crime, and advises Government on banking and other financial and monetary matters.

The Authority develops risk-based financial regulations that it applies to the supervision of Bermuda's banks, trust companies, investment businesses, investment funds, fund administrators, money service businesses, corporate service providers and insurance companies. It also regulates the Bermuda Stock Exchange.

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¹ The paper follows an interpretive methodology and makes use of documentary and analytic autoethnography research methods. It drew heavily from a detailed review of the relevant BMA regulations and guidelines, supplemented by discussions with several members of the BMA senior management team.

Contents

Foreword	2
Table of Acronyms	5
1. Introduction	6
2. Background Information	7
2.1 Basis of the Supervisory Framework.....	7
2.2 Overview of Bermuda Insurance Sector.....	8
2.3 The Concept of Risk-Based Approach.....	10
3. Identifying ML/TF Risk	12
3.1 Relevant Standards	12
3.2 Global Perspective on AML/CFT.....	13
3.3. The National Risk Assessment and the Sectoral Level Analysis.....	13
3.3 Licensing data (Market Entry).....	15
3.4 AML/CFT Statutory Annual Filings.....	15
3.5 Other Sources of Information.....	16
4. Assessing ML/TF Risk	16
4.1 Inherent Risk	17
4.2 Control Effectiveness.....	19
4.3 Residual Risk.....	22
5. Monitoring ML/TF Risk.....	26
6. Remediation and Enforcement	27
7. The BMA Outreach Efforts	28
7.1 Outreach to Insurers	28
7.2 Outreach to Other Competent Authorities	29
8. Ongoing Review of the AML/CFT Framework	30
9. Non-life Insurance and Reinsurance Subsector	31
10. Conclusion	33
Appendix I: Selected FATF Definitions	35
Appendix II: Insurance risk factors	38
Appendix III: BMA Insurance Licensing Process.....	43
Appendix IV: The BMA’s Minimum Criteria for Registration	46

Table of Acronyms

AML/CFT	Anti-Money Laundering and Countering the Financing of Terrorism
ALC	Assessment and Licensing Committee
BMA	Bermuda Monetary Authority
BNIs	Bearer Negotiable Instruments
CDD	Customer Due Diligence
CEO	Chief Executive Officer
DNFBP	Designated Non-Financial Business or Profession
ESA	European Supervisory Authorities
EU	European Union
FATF	Financial Action Task Force
FIs	Financial Institutions
FIA	Financial intelligence Agency
FSRBs	FATF-style regional bodies
IAIS	International Association of Insurance Supervisors
ICP	Insurance Core Principle
IFC	International Financial Centre
ILAC	Insurance Licensing Advisory Committee
IMF	International Monetary Fund
ML	Money Laundering
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures
NRA	National Risk Assessment
NAMLC	National Ant-Money Laundering Committee
RBA	Risk-Based Approach
SAR	Suspicious Activity Report
SPI	Special Purpose Insurers
TAG	Technical Advisory Group
TF	Terrorist Financing

1. Introduction

Following the publication of the revised FATF Recommendations in 2012² and the subsequent revision of the AML/CFT standards in the Insurance Core Principles by the International Association of Insurance Supervisors (IAIS) in 2013, the BMA undertook a comprehensive process of enhancing its overall AML/CFT insurance supervisory framework. Both the FATF and the IAIS place significant emphasis on a risk-based approach (RBA) to combatting ML and TF.

This paper articulates, at a high-level, the BMA's AML/CFT risk-based supervisory approach for the Bermuda insurance sector. The BMA's supervisory framework allows it to more effectively prioritise its resources by focusing its supervisory efforts on insurance entities and/or insurance subsectors of higher risk. The primary objective of the paper is to contribute to the growing body of knowledge, examining practice developments on identification, assessment and monitoring ML and TF risks in the insurance sector and to engage in dialogue with other insurance supervisors who are developing – or considering – a AML/CFT RBA framework³. While the focus is primarily on the insurance sector, the RBA described in this paper can also be broadly applied to other financial institutions (FIs) outside the insurance sector⁴.

The remainder of this paper is structured as follows: section 2 gives a brief overview of the basis of the BMA supervisory framework, the Bermuda insurance sector and the concept of a risk-based approach; sections 3 to 5 describe the BMA's processes for identifying, assessing and monitoring ML/TF risk; section 6 describes the BMA's approach to remediation and enforcement; section 7 summarises the BMA's outreach efforts; section 8 discusses how the BMA reviews its supervisory framework to ensure it stays relevant and effective; section 9 describes the BMA's approach to the non-life insurance and reinsurance subsector; and section 10 is a conclusion.

² The FATF is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The mandate of the FATF is to set standards and to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation, and other related threats to the integrity of the international financial system.

³ The assessment of the effectiveness of the BMA and or Bermuda's AML/CFT framework is beyond the scope of this paper.

⁴ Financial Institutions as defined by FATF in its glossary of the [FATF Recommendations](#).

2. Background Information

2.1 Basis of the Supervisory Framework

The BMA's AML/CFT supervisory framework for the insurance sector was formulated largely in line with the provisions of: (i) the FATF Recommendations, in particular Recommendations 1 and 26; (ii) the IAIS' ICPs, especially ICP 22; and (iii) the Risk-Based Supervisory Guidelines jointly published by the European Supervisory Authorities (ESA)⁵ as required by Directive (EU) 2015/849 of the European Parliament and of the European Council. A brief overview of each provision is given below.

FATF Recommendations

The revised FATF Recommendations sought to strengthen the existing AML/CFT requirements and to facilitate a more flexible approach which is driven primarily by a strong focus on areas with relatively more risk. The FATF Recommendations also endeavour to address new and emerging threats such as the financing of proliferation of weapons of mass destruction. Recommendation 1 requires countries to identify, assess and understand the ML/TF risks they are exposed to, and to subsequently implement mitigating measures which are commensurate with these risks. Recommendation 1 is central to the effective implementation of the other FATF recommendations.

Specific to financial sector supervisors, Recommendation 26 addresses the regulation and supervision of financial institutions. It requires supervisors to adopt a RBA when regulating and supervising FIs – the frequency, intensity and resourcing of the supervision (on-site inspections and off-site monitoring) of the FIs should be dictated by the level of ML/TF risks.

IAIS Standards

ICP 22 requires insurance supervisors to apply a RBA to its AML/CFT supervisory system and to also ensure that insurers have a risk-driven approach to ML/TF. IAIS requires supervisors to apply the standard, at a minimum, to the supervision of life insurance (including intermediaries that place life insurance) and other investment-related insurance. The insurance supervisors are required to

⁵ ESA consist of three Authorities i.e. European Insurance and Occupational Pensions Authority (EIOPA) for insurance and occupational pensions, European Banking Association (EBA) for banking and European Securities and Markets Authority (ESMA) for securities.

consider if the standard should be extended, in part or in full, to the non-life insurance and reinsurance subsectors⁶.

The standard also makes a distinction between the requirements of an AML/CFT designated competent authority and a non-designated competent authority: at a minimum, the latter must be aware of and have an understanding of the ML/TF risks faced by the insurance sector it supervises, and have appropriate mechanisms to communicate and cooperate with other relevant authorities (domestic and international).

European Supervisory Authorities Joint Guide

In 2016⁷, the ESA published risk-based supervisory guidelines⁸ to help supervisors perform risk-based ML/TF assessments. The guidelines highlight the key characteristics of a RBA. The ultimate objective of the guidelines is to ensure that there is, among supervisors, a common understanding of and consistent approach to the application of risk-based AML/CFT supervision. The guidelines broadly describe the RBA as a four-step cycle, i.e. (i) risk identification; (ii) risk assessment; (iii) allocation of supervisory resources; and (iv) monitoring and follow up actions.

Bermuda received full Solvency II⁹ equivalence from the European Commission in November 2015 and closely aligns its AML/CFT supervisory framework with the EU directive.

In addition to the above, the BMA insurance supervisory framework is also informed by and takes into consideration other relevant guidance published by other international organisations, including the World Bank, the International Monetary Fund (IMF) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL).

2.2 Overview of Bermuda Insurance Sector

Bermuda is an international financial centre (IFC)¹⁰ that predominantly specialises in the niche of catastrophe reinsurance, and is host to the third largest reinsurance market and the largest limited

⁶ Other ICPs which are relevant to AML/CFT include Principles 1, 3, 11, 21, 23 and 25.

⁷ The preliminary report was published in 2013.

⁸ [ESA guidelines](#).

⁹ Solvency II is an EU legislative that governs the prudential regime for insurance and reinsurance undertakings in the European Union.

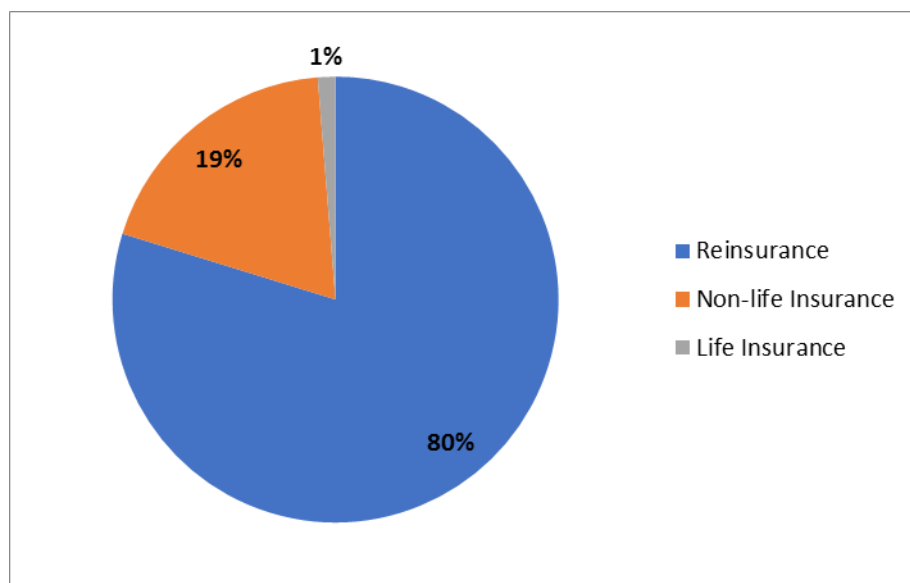
¹⁰ An IFC “*is a country or jurisdiction that provides financial services to non-residents on a scale that is incommensurate with the size and the financing of its domestic economy*” - Zoromé, A. (2007), IMF.

purpose insurer (captive¹¹) domicile in the world. Bermuda is also the leading jurisdiction for insurance-linked securities (ILS)¹².

The insurance market is by far the largest subsector of the financial services sector in Bermuda. With total assets of US\$764 billion in 2017¹³, the insurance industry in Bermuda accounted for approximately 80% of the total assets in the financial services sector. Trends in the Bermuda financial services sector are heavily driven by trends in the insurance sector, in particular those related to the reinsurance of natural and man-made catastrophes e.g. Hurricane Andrew in 1992, the Northridge, California earthquake in 1994, the September 11 attacks in 2001, Hurricanes Katrina, Wilma and Rita in 2005, Hurricane Ike in 2008 and more recently, Hurricane Matthew in 2016 and Hurricanes Harvey, Irma and Maria in 2017. After these large catastrophes, the Bermuda reinsurance market played a key role in recapitalising the global insurance sector.

The chart below shows the breakdown of 2017 gross written premium in these categories.

Figure 1 – Gross Written Premium By line of Business



Source: BMA annual filings

¹¹ The IAIS has defined a captive insurer as “an insurance or reinsurance entity created and owned, directly or indirectly, by one or more industrial, commercial or financial entities, the purpose of which is to provide insurance or reinsurance cover for risks of the entity or entities to which it belongs, or for entities connected to those entities and only a small part if any of its risk exposure is related to providing insurance or reinsurance to other parties.” – IAIS Application Paper on the Regulation and Supervision of Captive Insurers, 2015.

¹² As at end of Q2-2017, Bermuda has the largest share of the global SPIs (i.e. 76.1% of total outstanding Insurance Linked Securities capacity).

¹³ The BMAs Annual Report, 2016.

For the purposes of AML/CFT, the Bermuda insurance sector is divided into two broad segments: the life insurance (long-term business) subsector, and the non-life insurance and reinsurance subsector.

The life insurance subsector is comprised of insurers and intermediaries underwriting or placing direct life insurance and other investment-related insurance as well as all insurance managers (both those covering life and non-life), and is within the full scope of AML/CFT regulation. The decision to include all insurance managers, irrespective of whether they handle direct life or investment related insurance, was recently taken in recognition of the crucial role they play in the management of insurance entities and providing corporate services, acting as point of contact between the regulator and the managed insurance entity.

The non-life insurance and reinsurance subsector is comprised of insurers who underwrite general business and all reinsurance entities, and does not fall within the scope of AML/CFT^{14,15}. The decision not to include the non-life insurance and reinsurance subsector from the AML/CFT regulation was informed by a detailed risk assessment carried out on the subsector. The assessment concluded overall that the subsector had low vulnerability to ML/TF risk. Nevertheless, this does not mean the subsector is immune to ML/TF risk. The exercise helped the BMA to identify and achieve a better understanding of the subsectors' exposure or potential exposure to ML/TF risks. Section 9 of this paper highlights, in general, some of the inherent vulnerabilities within this subsector and the controls the BMA has in place that help to further minimise the exposure of the subsector to ML/TF risks.

The following sections through Section 8 of this paper address the detailed RBA for the Bermuda life insurance subsector.

2.3 The Concept of Risk-Based Approach

The concept of RBA is central to the overall implementation of the FATF Recommendations and ICP 22. The FATF defines RBA to mean that “*countries, competent authorities and financial institutions are expected to identify, assess and understand the ML/TF risks to which they are*

¹⁴ While the non-life insurance and reinsurance subsector does not fall under the scope of AML/CFT regulations, under the Bermuda Proceeds of Crime Act (POCA), there is a requirement for all insurance entities to have the appropriate procedures and practices in place to report any suspicious activities on AML/CFT related issues to the Financial Intelligence Agency (FIA) and to comply with sanctions regulation.

¹⁵ For a more detailed definition of life insurance (long-term business) and general business please refer to the Bermuda Insurance Act <http://www.bermulaws.bm/laws/Consolidated%20Laws/Insurance%20Act%201978.pdf>.

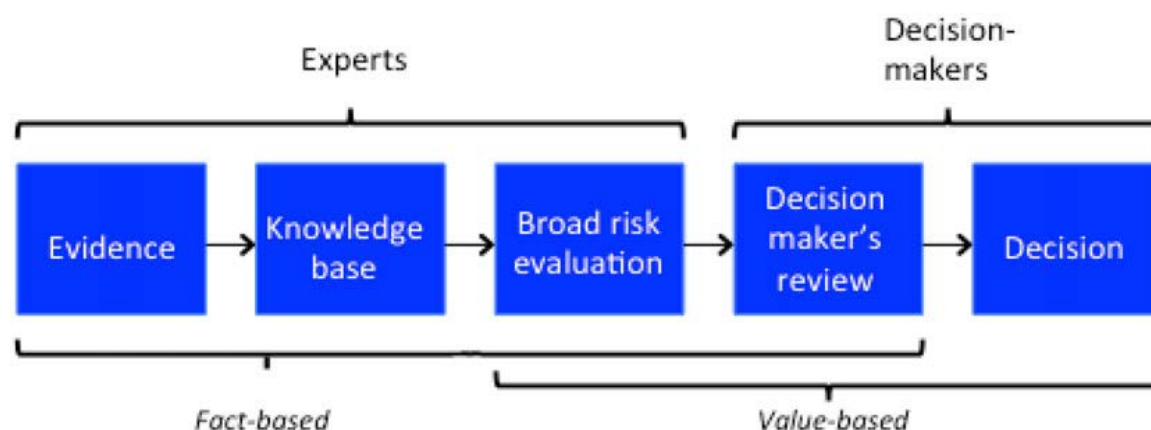
exposed and take AML/CFT measures commensurate to those risks in order to mitigate them effectively”. Accordingly, one first needs to define what an ML/TF risk is and develop an appropriate mechanism to analyse and measure such risks.

Holton (2004) defines risk as an “*exposure to a proposition of which one is uncertain*”. Keywords in this definition are ‘exposure’ and ‘uncertain’. In the context of risk, exposure means the state of being exposed (vulnerable) to contact with something (threat) that is likely to cause damage or danger, and uncertain means an unknown outcome (consequence). Specific to ML/TF, the FATF sees risk as a function of these three factors i.e. threat, vulnerability and consequence¹⁶.

Taking appropriate measures to mitigate identified risks requires a methodology to analyse and measure that risk first. The FATF refers to this process (for analysing and measuring risk) as ‘risk assessment’ and broadly divides it into three stages i.e. identification, analysis and evaluation. According to the FATF, the ‘analysis’ stage is central to the risk assessment process. The goal at this stage is to “*analyse the identified risks in order to understand their nature, sources, likelihood and consequences in order to assign some sort of relative value or importance to each of the risks*”¹⁷. Therefore, the determination of appropriate measures for managing and/or mitigating risk should be informed by the results of the analysis.

The entire ML/TF risk assessment process (from identifying risk to taking appropriate measures to mitigate such risk) can best be summarised using Hansson and Aven’s risk assessment and management model below.

Figure 2 - Hansson and Aven’s risk assessment and management model



Source: Hansson S.O., Aven T. *Is risk analysis scientific?* Risk Analysis, 34 (7) (2014)

¹⁶ The FATF definition of threat, vulnerability and consequence is provided in Appendix I.

¹⁷ FATF Guidance – National Money Laundering and Terrorist Financing Risk Assessment, p 24, February 2013.

The first stage of the ML/TF risk assessment is ‘identification’, which is represented by the first two boxes, i.e. evidence and knowledge base. This stage will involve data and information gathering (evidence) in order to develop an inventory (knowledge base) of the potential ML/TF risk factors. The second stage is ‘analysis’, represented by the third box, i.e. broad risk evaluation. This stage will involve examining the risks identified in the first stage in order to gain a deeper understanding of their likelihood and consequences. ‘Evaluation’, the third stage represented by the last two boxes, i.e. decision maker’s review and decision, involves making decisions in line with other external information, such as the availability of resources, on the type and level of measures and priority that will be appropriate to prevent or reduce such risk.

In line with Hansson and Aven’s risk assessment and management model above, the risk assessment process should be supported by appropriate and reliable evidence (fact-based) and carried out by people who are capable of understanding and interpreting that evidence (experts). The main purpose of identifying and analysing risk is to be able to effectively manage such risk. The effective management of risk entails making decisions (by decision-makers) in the light of the results that come from the analysis, and taking into consideration other non-objective (value-based) information such as reputational implications or impact on other public policies on any actions taken.

3. Identifying ML/TF Risk

ICP 22 requires supervisors to have a “*thorough and comprehensive understanding of the ML[TF] risks to which insurers are exposed*”. Having a comprehensive understanding¹⁸ of ML/TF risk entails identifying the inherent risks that potentially could directly or indirectly emanate from and/or affect the insurers. The BMA’s approach to identifying ML/TF risk involves gathering and analysing relevant information, on a risk-sensitive basis, from various sources. A brief overview of each of these sources of information is given below. Although discussed separately, these various sources of information can be reviewed in parallel, and some of these sources of information are interlinked and/or overlap with one another.

3.1 Relevant Standards

As discussed in section 2 above, the BMA’s AML/CFT framework is aligned with the revised FATF Recommendations, the IAIS standards on AML/CFT and the ESA’s risk-based supervision. Broadly,

¹⁸ For the purpose of this paper, understanding of ML/TF risk prior to its assessment refers to the ability to comprehend fully the identified risk, while understanding of ML/TF risk subsequent to its assessment refers to the discernment of the impact or harm that ML/TF may cause.

the standards define and identify sectors, and/or activities considered more vulnerable to ML/TF, and as a result should be given more focus. For example, ICP 22 highlights features that may make insurance products/services more susceptible to ML/TF.

Understanding the requirements of the standards helps to ensure all relevant areas and activities have been taken into consideration, and that the BMA's supervisory framework is in line with international standards.

3.2 Global Perspective on AML/CFT

Once there is an understanding of the standards' requirements and expectations, the BMA conducts an extensive review of international best practices on the effective implementation of regulatory and supervisory measures for combating ML/TF. This entails reviewing various guidance, typologies and trends from international organisations such as the World Bank, the IMF, MONEYVAL and a range of academic research. In addition, the BMA considers how other countries have approached and implemented their risk-based supervisory frameworks and, where applicable, how complete and effective these supervisory frameworks are by reviewing the FATF mutual evaluation reports¹⁹.

In reviewing various guidance, typologies, trends and/or other countries' regimes, the BMA focuses on areas relevant to the insurance industry in Bermuda, as well as countries with insurance sectors or financial industry structures that closely mirror Bermuda's, e.g. other International Financial Centres (IFCs). As part of this exercise, the BMA also identifies areas or activities that might be unique to the Bermuda insurance sector and determines if these areas and/or activities make the sector more or less vulnerable to ML/TF risk e.g. the relatively large size of Bermuda's international insurance sector.

3.3 The National Risk Assessment and the Sectoral Level Analysis

Bermuda conducts a National ML/TF Risk Assessment (NRA) every three years and the BMA conducts a sector-level assessment of those sectors which they are responsible for supervising annually, including the insurance sector. The results of the NRA, as well as the sectoral-level risk assessment, are used by the BMA to inform the risk-based supervisory approach across all stages of the AML/CFT supervisory cycle.

¹⁹ The FATF regularly conducts peer reviews (mutual evaluations) on its members to assess their level of compliance with the Recommendations and makes recommendations of areas that need approval.

The results from Bermuda's NRA are an important element in identifying and understanding the insurance sector's ML/TF risks as they give a broader overview of the threats and vulnerabilities at national and sectoral level²⁰. Working Groups (WGs) are specifically established for carrying out the NRA and comprised representatives from various government agencies, including judicial/legal, law enforcement/intelligence, asset recovery, regulator/supervisor of the private sector and border management/control activities²¹. The WGs are set up, managed and coordinated by the National Anti-Money-Laundering Committee (NAMLC)²².

The NRA exercise took into consideration the input/views from the private sector. The involvement of the private sector in carrying out the NRA ensures a comprehensive assessment of Bermuda's ML/TF risks since, to a large extent, the private sector provides the first line of defence in detecting and combatting ML/TF.

The findings from the NRA subsequently inform the design and implementation of Bermuda's AML/CFT supervisory regime. Specific to the insurance sector, the NRA findings help the BMA to tailor its supervisory framework to areas and/or activities where specific AML/CFT vulnerabilities have been identified and or are considered to be high.

The sector-level analysis conducted by the BMA informs the NRA with respect to the ML/TF risks posed by the insurance sector in Bermuda. The sector-level assessments takes into consideration the inherent risk (i.e. customers, the nature of products/services, geography and distribution channels) and the general AML/CFT controls across the sector. The assessment based on these criteria, informs the sectoral vulnerability risk ratings of the insurance sector. Additionally, this risk profile is complemented by the World Bank tool which is leveraged to quantify the risk ratings.

²⁰ The FATF does not mandate countries to carry out an NRA; however, Recommendation 1 requires countries to identify assess and understand the ML/TF risks within their jurisdiction, and to take appropriate action including designating an authority or mechanism to coordinate actions to assess risks, and apply resources (based on a RBA) aimed at ensuring the risks are mitigated effectively.

²¹ To ensure a comprehensive and well-informed perspective from each agency, members of the WGs are selected based on various criteria which included seniority and a robust overall understanding of the responsibilities of the agency, its functions and powers, including how it operates and interacts with other agencies at both technical and strategic levels. In addition, members of the WG were expected to have a good understanding of ML/TF matters.

²² NAMLC is responsible for advising the Bermuda government on the detection and prevention of ML/TF and proliferation financing (PF) in Bermuda, and the development of a national plan for those purposes; the development of policies to combat ML/TF/PF; and Bermuda's participation in the global AML/CFT effort.

3.3 Licensing data (Market Entry)

All insurance entities are required to be licensed by the BMA before they can conduct business in Bermuda. While the primary objective of licensing, from an ML/TF perspective, is to ensure criminals are prevented from owning and/or controlling insurance entities, intelligence gained from the BMA's licensing process contributes to the overall identification and understanding of ML/TF risks.

The BMA has a vigorous and comprehensive system of licensing and registration, which includes the following procedures: conducting fit and proper tests (including background checks on all beneficial owners and/or controllers); applying risk-based customer due diligence on all beneficial owners and/or controllers; and assessing the insurer's business plan, governance arrangements and AML/CFT policies and procedures – see Appendix III for a detailed outline of the BMA's licensing process.

The information obtained from the vetting of beneficiary owners and/or the insurers' business plans helps the BMA to identify any potential ML/TF risks for the entity that might emanate as a result of new (or increasing) exposure to certain geographical areas, products and or deliverable channels which might be more susceptible to ML/TF.

3.4 AML/CFT Statutory Annual Filings

All AML/CFT regulated insurers are required to file an AML/CFT return as part of their annual statutory filing. The annual return requires an insurer to provide a range of information which includes the insurer's customer type, the products and services it offers, geographic distribution of its customers and/or beneficiary owners, and channels of distribution. The insurer is also required to provide information with regard to the controls it has in place, which include corporate governance structure, internal controls, AML/CFT policies & procedures, employees' level of experience, integrity, training and AML/CFT knowledge, and other measures taken by the insurer to monitor and/or reduce its ML/TF risk exposure. The information obtained from the annual returns helps the BMA to identify and achieve a better understanding of each individual insurer's exposure or potential exposure to ML/TF risks.

The annual return is embedded within the insurance prudential statutory return. This has two main advantages: (i) it allows both the AML/CFT and prudential supervisors to have a holistic view of the

insurers' risks - ML/TF risks should not be looked at in isolation of other entity risks such as governance and market conduct; and (ii) it eliminates any duplication of information and reduces the burden on insurers since they will only be required to file a single statutory return²³. In addition, asking insurers to integrate their AML/CFT and prudential filings should ensure that ML/TF risk is intrinsic to the insurer's universal risk management and prioritisation framework.

3.5 Other Sources of Information

In addition to the above, the BMA's understanding of ML/TF risks is further enhanced and refined through some of the information obtained from insurers' on-site and off-site results (both prudential and AML/CFT), insurers' independent AML/CFT audit reports, enforcement actions, and information from other local competent and law enforcement authorities. Each one of these sources of information will be discussed in detail in the chapters to follow.

The process for identifying and understanding ML/TF risks is not a one-off event and neither should it only be carried out at the beginning of the supervisory framework. The BMA acknowledges ML/TF risks evolve with time; therefore, its process for identifying and understanding risk is dynamic, and embedded at every stage of the supervisory lifecycle. This process is continuously reviewed, challenged and reassessed to ensure it remains relevant and effective.

4. Assessing ML/TF Risk

The assessment of risk provides the basis for a risk-sensitive application of AML/CFT measures taken by the BMA. The assessment results enable the BMA to better prioritise its supervisory activities and proportionately allocate supervisory resources to areas gauged to present higher ML/TF risk.

The BMA implemented a formal process for assessing ML/TF risk within the insurance sector by developing an ML/TF Risk Assessment Model (the Model) - which is an analytical tool that provides

²³ The integration of the AML/CFT and prudential statutory filings was not difficult for the BMA since both AML/CFT and prudential supervision falls under the remit of the BMA. In other jurisdictions, the AML/CFT and prudential responsibilities might fall under different competent authorities which will make it difficult to combine the filings. In such cases, and in line with ICP 22 requirements, the competent authority should put in place appropriate mechanisms to communicate, cooperate and share information with other relevant authorities.

a formal and systematic process for assessing the level of ML/TF risk in a consistent way across all insurers²⁴.

In assessing the level of risk for each insurer, the Model begins with determining the insurer's inherent risk, which is driven by the nature and complexity of the insurer's customers (policyholders and beneficiaries), products and services, delivery channels and geographic exposure. The Model further looks at the quality of controls an insurer has in place, which includes the insurer's corporate governance arrangements and the functioning of its internal policies, oversight and control functions. The Model also takes into consideration other objective and non-objective factors such as the size of the insurer in comparison to the sector, previous AML/CFT and prudential on-site and off-site results, enforcement actions and subject matter experts' opinions (e.g. AML/CFT and prudential supervisors, and the Financial Intelligence Agency (FIA)²⁵).

The data used by the Model is drawn primarily from the annual statutory filings (described above) and supplemented by other various reports such as the NRA report, licensing data, on-site and off-site reports and the insurer's ML/TF independent audit report. Each of the main data elements assessed by the model is briefly described below.

4.1 Inherent Risk

Customers Risk

An insurer's customer risk is the most important risk factor that arises as a result of occasional transactions and business relationships established with policyholders and beneficiaries. In assessing the insurer's customer portfolio risk level, the BMA uses the insurer's own customer risk rating results.

Insurers are required to risk rate their customers using the criteria stipulated by the BMA²⁶. Broadly, when risk rating customers, the BMA requires insurers to take into consideration characteristics that generally present an inherently higher degree of risk such as policyholders with complex structures, domestic and international Politically Exposed Persons (PEPs), policyholders and/or beneficiaries with a connection to jurisdictions considered to be high risk or whether customers are related or unrelated to the insurer.

²⁴ The BMA applies the same approach to the other sectors it regulates i.e. banks, trust companies, investment businesses, investment funds, fund administrators, money service businesses and corporate service providers.

²⁵ In Bermuda, the Financial Intelligence Unit (FIU) is called the Financial Intelligence Agency (FIA).

²⁶ The criteria for assessing and risk rating customer's risk are set in the BMA [guidance notes](#).

The reliance on the insurer's own risk rating when assessing the level of the insurer's customer risk profile poses the risk of asymmetry in the integrity of the data being used. However, this risk is alleviated by the requirement for an insurer to engage an independent auditor, at least annually, to carry out an independent audit. The independent audit assesses the implementation, integrity and effectiveness of the insurer's AML/CFT policies, procedures and controls. Among other things, the independent auditor is required to evaluate the insurer's customer risk-rating methodology to ensure it is effective and consistent with the BMA requirements. A copy of the audit report is provided to the BMA. A detailed description of the independent audit requirements is provided in section 5 below.

In addition and as part of the data quality checks, the insurer's own customer risk assessment is reviewed for consistency with other additional data provided by the insurer, such as the number of international PEPs or customers from high-risk jurisdiction.

Products and Services Risk

Products and Services risk arises as a result of the products and services an insurer offers to its clients. Certain insurance products and services are more inherently vulnerable to ML/TF than others. Therefore, as part of the assessment of the insurer's universal ML/TF risk, the BMA Model considers the vulnerability of each individual product or services offered by the insurer. Insurance products offered by Bermuda life insurers are broken down into 22 different sub-categories. Each product is assigned a risk-weighting based on the potential ML/TF risk the product might pose, taking into consideration the volume and value of policies underwritten by the insurer for that product.

Geographic Exposure Risk

The risk inherent in geographic exposure is the risk arising as a result of where the insurer's policyholders and/or beneficiaries are from, reside and/or are incorporated. Since Bermuda is an IFC, insurance entities are potentially exposed to high cross-border customer geographic risk; therefore, the insurer's geographic footprint is an essential element in assessing the level of ML/TF vulnerability.

In assessing the insurer's geographic exposure, the BMA identifies the country of residence of the insurer's policyholders and beneficiaries, taking into consideration the volume and value of policies (and transactions) underwritten by the insurer from those countries. The BMA also considers if the presence of PEPs from those countries in the insurer's portfolio can exacerbate the insurer's

exposure to ML/TF risk. The countries are grouped into 22 segments (zones), and each zone is assigned a risk-weight based on the Basel AML Index, developed by the Basel Institute on Governance²⁷ and any other factors the BMA might consider relevant.

Some of the elements taken into account when assessing geographic exposure risk may also overlap with some of the components included under insurer's customer risk (e.g. PEPs) and product and services (e.g. value and volume of policies). When reviewing and assessing this information, the BMA takes reasonable measures to minimise any duplication.

Channel of Distribution Risk

The channels used by the insurer to conduct business with its customers can help or hinder the ability of the insurer to fully determine the identity of its customer or understand their activities. Therefore, the risk inherent in the channels of distribution an insurer uses is the risk that arises as a result of how an insurer interfaces with its customers, both when acquiring new business, and when providing products and services to its existing customers.

In assessing this risk, the BMA Model considers the means used by the insurer to conduct business with its customers, e.g. direct, via related intermediary or unrelated intermediary (e.g. brokers and agents), and the means used by the insurer to communicate with its customers, e.g. face to face or via intermediaries. Channels of distributions that encourage less direct and frequent interaction of the insurer with its customers turn to pose more risk compared to those that foster direct, and more frequent interaction between the insurer and its customers.

Appendix II provides a non-exhaustive list of the inherent risk factors set out in the BMA guidance notes which insurers are required to take into consideration when assessing their risk level²⁸.

4.2 Control Effectiveness

After considering an insurer's ML/TF inherent risk, the BMA Model takes into account the existence and effectiveness of the controls an insurer has in place to monitor and mitigate its inherent risk,

²⁷ The Basel Institute on Governance is an independent not-for-profit Associated Institute of the University of Basel that works with the public and private sectors to counter corruption and other financial crimes, and to improve the quality of governance. The Basel Institute on Governance uses a composite methodology to develop its AML index, which takes into account ML/TF risk, corruption risk, financial transparency & standards, public transparency & accountability, and political and legal risk presented by each country.

²⁸ The IAIS (2013) Application Paper of Combating Money Laundering and Terrorist Financing also provides a list of some of the factors that insurers should consider when creating a risk profile of its customers.

including: corporate governance structure, internal controls, policies and procedures, staff integrity, training and knowledge, ongoing monitoring and other measures taken by the insurer to reduce its ML/TF risk exposure.

Corporate Governance Structure

The BMA requires every insurer to establish and maintain a sound corporate governance framework, which provides for appropriate oversight of the insurer's business, and adequately recognises and protects the interests of policyholders. The framework should have regard for international best practice in effective corporate governance. When assessing the corporate governance structure of the insurer, the BMA takes into consideration the following:

- the composition, experience and qualification of the board, and the role of the board and senior management in AML/CFT issues;
- the board and senior management oversight of the insurer's AML/CFT programme;
- the role of audit and compliance committees in AML/CFT issues;
- the compliance ethics culture of the insurer and relationship with supervisors (previous non-compliance regulatory issues);
- whether the board and/or senior management monitors compliance with corporate governance regulations and guidelines; and
- the extent of the board and senior management's engagement in decision-making processes, and if they take full ownership of the AML/CFT risk management framework of the insurer.

Internal Controls (including Ongoing Monitoring)

The insurer is expected to establish and maintain risk sensitive internal controls processes that are adequate and proportional to the identified and assessed risks. When assessing the insurer's internal controls, the BMA will consider among other things whether:

- the implemented internal controls processes took into consideration the nature, scale and complexity of the insurer, including its customer, geographical connections, products, services and delivery channels;
- the insurer has appropriate monitoring arrangements in place to ensure the established controls are being carried out effectively and remain proportional to evolving risk factors;
- the insurer has appointed and appropriately empowered a qualified Compliance Officer at the managerial level to oversee the establishment, maintenance and effectiveness of its AML/CFT policies, procedures and controls;

- the insurer has an appropriate mechanism in place to report suspicious activities. This will include appointing a Reporting Officer responsible for receiving suspicious activity disclosures and authorised to make final determinations on whether disclosures should be reported to the FIA;
- the insurer conducts independent testing of its AML/CFT compliance on a regular basis; and
- the insurer has appropriate management information and record keeping systems in place.

Policy and Procedures

Effective AML/CFT policies and procedures provide a framework of direction to the insurer and its employees, and will identify specific individuals and functions responsible for implementing particular aspects of these policies and procedures. When assessing the policy and procedures, the BMA will consider whether the insurer has a formal and documented AML/CFT policy statement which clearly stipulates how it will carry out its AML/CFT responsibilities including, among other things:

- the culture and values adopted by the insurer to prevent and detect financial crime;
- the insurer’s process of ensuring policies, procedures and controls are appropriately designed and implemented;
- the insurer’s methodology for assessing the ML/TF risks it faces and how these risks are to be managed;
- the insurer’s commitment to training employees on an ongoing and risk-sensitive basis with regards to ML/TF risk, relevant regulations and their obligations;
- the insurer’s commitment to fully identify, understand and appropriately vet its customers, both at the time of acceptance and throughout the business relationship; and
- whether policy and procedures are tailored to the circumstances of the insurer.

Staff Integrity, Training and Knowledge

Employees are a key component of the insurer’s AML/CFT compliance programme. Therefore, the BMA expects an insurer to have appropriate policies and procedures for ensuring all relevant employees²⁹ act with integrity, and know and understand their AML/CFT duties and responsibilities. In assessing the calibre of the insurer’s staff, the BMA takes into consideration, among others, the following;

²⁹ The BMA defines “relevant employees” as employees who at any time in the course of their duties have or may have access to any information which may be relevant in determining whether funds or assets are the proceeds of crime, or that a person is involved in ML or TF; or employees who at any time play a role in implementing and monitoring compliance with AML/CFT requirements.

- the insurer’s process for hiring employees, which should include procedures for: checking employee references; verifying employee’s employment history, qualifications and professional memberships; and checking if the employee has any criminal convictions or regulatory action taken by the former employer or other relevant professional bodies;
- whether the insurer has developed and implemented an appropriate and ongoing AML/CFT training programme to ensure all relevant employees are aware of their AML/CFT obligations (including awareness of the latest ML/TF schemes and typologies) and understand how to properly discharge their duties. Training should be tailored to the AML/CFT policies, procedures and controls that relate to employees’ specific job functions;
- whether the insurer’s employees are trained to identify and report suspicious activity related to the proceeds of crime and/or ML/TF. This will include assessing the number and quality of Suspicious Activity Reports (SARs) filed by the insurer.

The Model will also take into consideration other arrangements the insurer might have in place that enhance or curtail its control environment, such as whether the insurer is listed on a stock exchange or whether the insurer is registered with GoAML³⁰.

4.3 Residual Risk

Once the Model has quantified the insurer’s inherent ML/TF risk, and counterbalances it with the effectiveness of the controls in place to reduce such risk, the Model determines the insurer’s residual risk - which is basically the level of risk that remains after taking mitigation measures into consideration. Irrespective of the effectiveness of the controls in place, there will always be some residual ML/TF risk the insurer has to manage. The BMA will further adjust the insurer’s residual risk by other objective and non-objective information available that may influence the insurer’s level of ML/TF risk.

Exposure Level

The exposure level adjustment is built upon the basis that the size of the insurer directly correlates with the level of ML/TF it is exposed to in light of the insurer’s volume and/or size of activities. Larger insurance entities can also be systemically important institutions that can adversely impact the stability of the sector if major ML/TF events were to occur with downstream effects on the reputation of Bermuda.

³⁰ GoAML is a software solution, used by FIA, which was developed by the United Nations to allow for all reporting entities to file SARs online via a secure portal.

In assessing the exposure level of the insurer, the Model takes into consideration the insurer's balance sheet size, and its level of activities determined by the insurer's gross written premium and claims paid.

Other Variables

The risk assessment Model also allows the BMA to manually override any initial risk score generated by the Model. This enables the BMA to adjust for other factors or information not reflected in the Model to arrive at a risk rating the BMA believes is more reflective of the actual level of risk represented by a particular insurer. The rationale for any manual adjustment performed is documented in detail with supporting evidence.

Other variables may include an insurer's previous on-site and off-site results, relevant findings from prudential supervisory reviews, intelligence from other relevant agencies such as the FIA, results from the insurer's ML/TF independent audits, pending enforcement actions and/or the AML/CFT subject matter experts' opinions (e.g. AML/CFT and prudential supervisors).

In addition, and to facilitate comparison of the insurance entities with other AML/CFT regulated entities outside the insurance sector, the BMA applies a sectoral adjustment to reflect the risk inherent within the sector as a whole. The sectorial adjustment factor is largely based on the NRA and sector-level analysis results described in section 3.3. above.

After taking into consideration all the factors described above, the BMA Model derives the insurer's ML/TF final risk score broadly classified as low, medium or high risk. These results constitute the basis for further actions taken by the BMA, and enable the BMA to give priority and allocate more supervisory resources to insurance entities of higher ML/TF risk, and determine the frequency, scope and intensity of periodic assessments (including off-site monitoring and on-site reviews) of an insurer's ML/TF risk.

A summary of the factors discussed above that are taken into account by the Model to determine the insurer's overall ML/TF risk level are provided in Figure 3 below and can be expressed using the equation below:

$$ERS = (IR - CE) \times EL \pm OV$$

Whereby:

ERS = Entity Risk Score

IR = Inherent Risk

CE = Control Effectiveness

EL = Exposure Level

OV = Other Variables

And **IR - CE = RR (Residual Risk)**

The weight allocated to each factor is determined based on the importance/materiality of that factor in assessing the overall ML/TF risk of the insurer. The determination of the importance/materiality of each factor is generally constructed using the non-objective input from the appropriate subject matter experts.

Figure 3 – A summary of key factors the BMA takes into account in determining the insurer’s ML/TF risk level.

	Insurer's ML/TF risk score, on a scale from 1 (low risk) to 10 (high risk)	Weighting of each section towards the entity's total ERS
Inherent Risk	The inherent risk represents 100% of an entity's initial AML/ATF risk	
Customer Risk		X%
Insurer's customer portfolio risk level		
Products and Services Risk		X%
The different types of products and services offered by the insurer		
Geographic Exposure		X%
The country of residence of the insurer's policyholders and beneficiaries taking into consideration the volume and value of policies (and transactions) underwriting by the insurer from those countries		
The country of residence of the PEPs in the insurer's client base		
Channels of Distribution		X%
Differentiation according to how the entity conducts business with its clients (e.g. directly or through intermediary arrangements)		
Total Inherent Risk		100%
Quality of Mitigants	max. reduction of risk by X%	
Corporate Governance		max. reduction by X%
The composition, experience and qualification of the board and the role of the board and senior management in AML/CFT issues		
Board and senior management oversight of the insurer's AML/CFT programme;		
Role of audit and compliance committees in AML/CFT issues		
Management information systems and AML/CFT		
Compliance ethics culture of the organization and relationship with supervisors (regulatory history issues)		
Whether the board and or senior management monitors compliance with corporate governance regulations and guidelines		
The extend of the board and senior management's engagement in decision making processes and if they take full ownership of AML/CFT risk management framework of the insurer		
Internal Controls and On-going Monitoring		max. reduction by X%
Whether the implemented internal controls processes took into consideration the nature, scale and complexity of the insurer including its customer, geographical connections, products, services, and delivery channels.		
Whether the insurer has appropriate monitoring arrangements in place to ensure the established controls are being carried out effectively and remain proportional to evolving risk factors		
Whether the insurer has appointed (and empowered) a qualified Compliance Officer at the managerial level to oversee the establishment, maintenance and effectiveness of its AML/CFT policies, procedures and controls		
Whether the insurer has appropriate mechanism in place to report suspicious activities.		
Whether the insurer conducts independent testing of its AML/CFT compliance on a regular basis		
Whether the insurer has appropriate management information and record keeping systems in place		
Policy and Procedures		max. reduction by X%
The culture and values that have been adopted by the insurer to prevent and detect financial crime		
The insurer's process of ensuring that the policies, procedures and controls are appropriately designed and implemented		
The insurer's methodology for assessing the ML/TF risks that it faces, and how these risks are to be managed		
The insurer's commitment to train employees on an on-going and risk-sensitive manner with regards to ML/TF risk, relevant regulations and their obligations		
The insurer's commitment, including its customer due diligence process, to fully identify, understand and appropriately vet its customers, both at the time of acceptance and throughout the business relationship		
Whether the board monitors compliance with corporate governance regulations and guidelines		
Internal Controls		max. reduction by X%
Whether the entity is registered with GoAML (the portal through which entities are required to file SARs with the FIA)		
Whether or not the entity has AML/ATF policies and procedures in place that are specific to its industry		
The frequency with which the entity's policies and procedures are reviewed		
The actions the entity undertakes when recruiting staff		
Whether policy and procedures are tailored to the circumstances of the insurer		
Staff integrity, training and knowledge		max. reduction by X%
The insurer's process for hiring employees includes all the appropriate checks		
Whether the insurer has develop and implement an appropriate and on-going AML/CFT training programme to ensure that all relevant employees are aware of their AML/CFT obligations.		
Whether the insurer's employees are trained to identify and report suspicious activity related to proceeds of crime, ML/TF		
Exposure Level / Impact	adjustment ranging from X% to X%, depending on the size of the insurer	
Adjustment based on the insurer's balance sheet size and its level of activities determined by the insurer's gross written premium and claims paid.		x%
Other Variables	max. reduction of risk by X%	
Independent Audit report		
AML onsite/offsite review		
Prudential onsite/offsite review		
Any other relevant information		
Total Risk before Sectorial Charge		
Sectorial Charge	derived from National Risk Assessment	
National Risk Assessment Results		
Insurer's final risk score		X%

5. Monitoring ML/TF Risk

The results from the Model serve as the primary input in the development of the BMA's AML/CFT insurance supervisory plan. The BMA supervisory plan is twofold: the AML/CFT supervisory strategy; and the AML/CFT supervisory plan.

AML/CFT Supervisory Strategy

The AML/CFT supervisory strategy lays out the BMA's long-term plan (three to five years) for effectively supervising the insurance sector at a macro-level. The supervisory strategy is primarily driven by the national, sectoral and entity-level risk assessment results, and is reviewed on a regular basis to ensure it stays relevant. The supervisory strategy focuses on addressing the AML/CFT supervisory issues of the insurance sector as a whole. Some of the issues that are dealt with as part of the supervisory strategy include:

- defining the AML/CFT strategic direction, including opportunities and challenges ahead, to ensure the BMA meets its supervisory mandate;
- setting plans for addressing any gaps in the AML/CFT regime and for enhancing the AML/CFT supervisory framework;
- setting plans for fostering collaboration with all relevant stakeholders e.g. industry, and other local and international competent and law enforcement authorities; and,
- setting plans for addressing any resource limitations and/or addressing any staff training needs.

AML/CFT Supervisory Plan

The AML/CFT supervisory plan sets out the supervisory plan at a micro-level for the next 12 to 18 months and is reviewed on a regular basis to ensure it stays relevant. The results from the Model serve as a primary input to the supervisory plan, and in determining the frequency and intensity of the supervision for each individual insurer. Priority is given to areas of higher risk either at the level of the individual insurer or a particular insurance subsector. The precise scope of supervision, including the supervisory tools to be deployed, is tailored to the individual insurer, taking into account its overall risk assessment results and other relevant information. The BMA utilises a range of supervisory tools which include:

- **On-site inspection** – On-site inspections ranges from full scope to limited/targeted scope, and are carried out to examine the insurer's business, and its compliance with the applicable AML/CFT regulatory and supervisory requirements in line with its risk profile. Given the risk-based approach, on-site inspections are typically carried out on high-risk insurers. The

scope, frequency and intensity of the on-site inspection depend on the risk profile of the insurer, which would have been determined from the risk assessment Model.

- **Off-site monitoring** – Off-site monitoring is conducted throughout the year. Off-site monitoring primarily focuses on analysing the insurers’ AML statutory filings, risk assessment results, AML/CFT independent audit reports and prudential data and/or results. The off-site monitoring also helps in identifying any systemic patterns of potential risks within an insurer or the sector as a whole.
- **Thematic Reviews** – Thematic reviews are usually used to assess a specific risk across the entire sector, e.g. any systemic patterns of potential risk identified from the on-site inspection or off-site monitoring. Thematic reviews can also be used to identify and understand key emerging or contemporary ML/TF risk within the sector.
- **On-site visit** – On-site visits are generally conducted to discuss any supervisory issues of interest, collect additional data, and/or raise awareness and communicate supervisory expectations, or as a follow-up for any low-risk issues arising from off-site inspections and/or off-site monitoring.
- **Independent ML/TF Audit** – All insurers are required to engage an independent auditor, at least annually, to carry out an independent audit of the insurer’s AML/CFT policies, procedures and controls. Whilst the BMA has the ultimate responsibility for ensuring all insurers are in compliance with the relevant regulations, the independent audit helps in confirming the insurers’ AML/CFT controls (especially those regarded to be low risk, hence less frequently on-sited by the BMA) are reviewed and challenged by a third party on a regular basis. The BMA will also independently review the independent audit report and assess if the results are consistent with other information available to the BMA.

6. Remediation and Enforcement

The ultimate objective of BMA’s supervision is to ensure all insurers operate in a sound and prudent manner in compliance with the relevant regulations, and in line with their AML/CFT risk profile. However, there are circumstances when the BMA has to exercise its power to compel compliance or penalise an insurer for non-compliance.

The BMA does not intend to apply its enforcement powers to address every issue of non-compliance. Where a breach has been identified, depending on its gravity, culpability and/or urgency, the BMA will consider whether, given all of the circumstances, the issue can be resolved by bringing it to the

attention of the insurer or if the matter should be referred for the consideration of enforcement action. The BMA has a range of remediation and enforcement tools, which include:

- bringing the failure to the attention of the entity concerned;
- sending a warning notice;
- the imposition of directions, restrictions and conditions;
- the imposition of a civil penalty;
- injunctions;
- public censure;
- objections to controllers;
- prohibition orders against individual directors and officers;
- revocation of licence;
- winding up; and
- referral to the Police.

When selecting which tool to use, the BMA takes into consideration the severity of the deficiency identified and whether the tool will be effective in discouraging non-compliance in the future. The BMA endeavours to apply all its remediation and enforcement tools in a consistent way. In addition, all enforcement actions are published to inform the public, maximise the deterrent effect of enforcement actions and to ensure transparency.

7. BMA Outreach Efforts

7.1 Outreach to Insurers

The BMA has put in place several outreach programmes which facilitate the sharing of information with insurers to promote awareness and/or the exchange of ideas to effectively identify and manage any ML/TF risk within the sector. The BMA also uses these outreach programmes to communicate its expectation of AML/CFT compliance from insurers. The programmes include:

- **Quarterly bilateral meetings** – The BMA meets regularly with the insurance subsector industry representative to share information on any key developments within the AML/CFT arena.
- **Workshops** – The BMA conducts workshops with insurers to share information such as the NRA results or any key AML/CFT projects and initiatives.
- **Publications** – As part of sharing information with the industry, the BMA has several publications which include AML/CFT guidance notes, the annual business plan, the annual

report, quarterly publications and regular press releases to announce any ad hoc important notifications.

- **Consultation on policy development** - Before developing any new policy, the BMA carries out extensive consultation with the industry to seek its input which will be taken into account when developing the policy.

7.2 Outreach to Other Competent Authorities

Similar to the outreach programmes for the industry, the BMA also recognises the importance of collaborating and sharing information on a regular basis with other competent and law enforcement authorities to promote strong AML/CFT compliance practices. The BMA collaborates and shares information with other competent and law enforcement authorities through various platforms.

The main committee structure in Bermuda is the Office of the National Anti-Money Laundering Committee (NAMLC) which comprise the senior representatives of the competent and other government agencies involved in combatting ML and TF risk. NAMLC meets at least quarterly and provides strategic direction to the development of Bermuda's AML/CTF framework and oversight to the three main sub-groups:

- **Bermuda Supervisory Forum** – The BMA is a member of the Bermuda supervisory forum, which is made up of representatives from all Bermuda supervisory bodies and is overseen by the NAMLC. The forum is mandated to facilitate communication of potential supervisory issues, provide guidance and discuss trends across the relevant industry sectors.
- **Bermuda Operational Working Group** – The BMA is a member of the Bermuda Operational Working Group, also under the NAMLC, which is made up of representatives from all Bermuda enforcement bodies, and mandated to discuss specific ML/TF cases and facilitate communication of enforcement issues across the relevant industry sectors.
- **The Bermuda Legislative Committee** – The BMA is also a member of the Bermuda Legislative Committee, also under the NAMLC, which is made up of representatives from various government and non-government institutions to facilitate communication and coordinate national ML/TF legislation.

In addition, the BMA has Memorandums of Understanding with various relevant agencies that formalise the process, procedures, protocols and circumstances for sharing information on ML/TF related issues.

8. Ongoing Review of the AML/CFT Framework

The BMA reviews, challenges and reassess its AML/CFT supervisory framework continuously to ensure that it remains effective and relevant. The ongoing review of the framework primarily serves two purposes: (i) to check if the current framework is effective; and (ii) to assess any emerging and/or new ML/TF risk.

The immediate primary objective of the BMA's AML/CFT supervisory framework is to provide a formal and systematic process for supervising insurers to ensure they are fully compliant with the relevant AML/CFT Regulations, and capable of combatting ML/TF³¹. The supervisory framework is reviewed on a regular basis to confirm it is working appropriately and, as intended, in line with its immediate primary objective. The validation of the AML/CFT supervisory framework for effectiveness includes, among other things:

- assessing if there are any improvements in previously identified gaps via follow-up on-site/off-site reviews and enforcement actions;
- assessing the NRA results or sectoral assessment results to determine if the overall sectoral residual risk is improving;
- comparing the framework's ML/TF risk assessment results with the AML/CFT and prudential supervisors' experience, judgment and expectations; and
- assessing the results from mutual evaluations assessments.

In addition, and recognising ML/TF risks evolve with time, the BMA reviews its supervisory framework to ensure it remains relevant. The assessment of the AML/CFT supervisory framework to ensure it remains relevant includes, among other things:

- assessing potential new ML/TF risks that might be presented by new insurers, and/or new insurance products and services in the market;
- reviewing the NRA or sectoral assessment results for any new ML/TF risks including new trends;

³¹ The BMA's overall mission is to protect and enhance Bermuda's reputation and position as a leading IFC by acting in the public interest to promote financial stability, and to provide effective and efficient supervision and regulation.

- reviewing SARs trends and analyses performed by the FIA to take account of emerging trends or new typologies; and
- holding ongoing discussions and sharing information with the insurers on any emerging and/or new ML/TF risk or other related trends the BMA should be concerned about.

Any gaps and/or areas of improvement identified through the ongoing review process will automatically trigger the first stage of the supervisory cycle, i.e. the identification, assessment and understanding of the ML/TF risks.

9. Non-life Insurance and Reinsurance Subsector

Generally, the non-life insurance and reinsurance subsector is regarded as having low ML/TF risk because of the nature of the products underwritten by entities within this subsector, e.g. no cash surrender values and no payouts are made upon maturity of the policies. However, this does not necessarily mean the subsector is immune to ML/TF risk. At the global level, the non-life insurance and reinsurance subsector has become more innovative over the last few years and now offers some exotic products, complicated in nature, which can make the sector more attractive to money launderers³².

Also, some non-life and reinsurance products might have some of the features listed in Appendix II, which makes them vulnerable to ML/TF risk. In addition, ML/TF risks for the non-life insurance and reinsurance subsector can be amplified by: (i) the lack of general awareness that non-life and or reinsurance products can also be attractive to ML/TF; (ii) policies being sold by non-insurance professionals with no in-depth knowledge of ML/TF risks posed by insurance products; and (iii) low level of reported ML/TF cases from the subsector which can make it difficult, due to limited empirical evidence, for law enforcement and intelligence agencies to fully assess the level of risk within the subsector.

Specific to TF, the potential threat to this subsector is primarily in the form of cyber-attacks and or kidnapping for ransom with the intention of financing terrorism activities.

³² Insurance-linked securities (ILS) is an example of an insurance product that can be susceptible to ML/TF risk depending on the structure and the type of underlying investors that participate in such arrangements. ILS refer to financial instruments (i.e. debt or equity securities) that bear insurance risk. These securities can be issued by non-life insurance and reinsurance entities. The ML/TF vulnerabilities of these structures can particularly be associated with the secondary offerings of securities especially where the type of investors include high income private investors, high net worth private investors and/or sophisticated private investors.

The IAIS requires insurance supervisors to consider if ICP 22 should be extended, in part or in full, to the non-life insurance and reinsurance subsectors. An empirical assessment, including the identification and understanding of the level of ML/TF risk within the subsector, helps to formulate an objective opinion in determining if the standard should be applied and to what extent.

In Bermuda, the risk assessment process for this subsector follows the same approach used for assessing ML/TF risk within the life insurance subsector which is described in detail in sections 2.3 to 8 above. Broadly, in assessing the subsector, the BMA considers and analyse the subsector's inherent risk (customer type, the products and services it offers, geographic distribution of its customers and/or beneficiary owners, and channels of distribution). The BMA also evaluated the controls that the insurers within this subsector have in place, which include corporate governance structures, internal controls, employees' level of experience, integrity, training and AML/CFT knowledge, and other measures taken by the subsector to monitor and/or reduce its ML/TF risk exposure. Furthermore, the BMA took into consideration the size and relevance of the subsector to the Bermuda financial sector.

However, since this subsector was assessed to have a medium-low inherent ML vulnerability and low TF risk³³, it was not included within the scope of AML/CFT regulations. Thus, the non-life insurance and reinsurance entities are not necessarily required to have internal controls that are specific to AML/CFT³⁴. Lack of specific AML/CFT controls can increase the exposure of this subsector to ML/TF risk. The BMA implemented several measures that directly and or indirectly mitigate ML/TF risk within the non-life insurance and reinsurance subsector. These measures include, among others:

- a vigorous and comprehensive system of licencing non-life insurance and reinsurance entities which includes applying risk-based due diligence on all individual shareholders, directors, officers, authorised signatories and all other individuals who will control, manage and/or direct the management of the entity;
- a requirement for all non-life insurance and reinsurance entities to have appropriate procedures and practices in place to report any suspicious activities on AML/CFT related issues to the FIA;

³³ *“Although the ML vulnerability of general re/insurance is generally considered low, given the relatively large size and diverse international customer base, the risk rating for Bermuda has been assessed as medium-low”*- The assessment of Bermuda's National Money Laundering and Terrorist Financing Risk report, 2018, Government of Bermuda, NAMLC

³⁴ While the non-life insurance and reinsurance subsector does not fall under the full scope of AML/CFT regulations, under the Bermuda POCA Act, there is a requirement for all insurance entities to have the appropriate procedures and practices in place to report any suspicious activities on AML/CFT related issues to the FIA, and to comply with sanctions regulation.

- a requirement for all non-life insurance and reinsurance entities to comply with the code of conduct. The code of conduct establishes standards for corporate governance, risk management, governance mechanisms, outsourcing, and market discipline and disclosure;
- a requirement for all non-life insurance and reinsurance entities to comply with the sanctions regulation. The regulation requires all insurers to implement sanctions compliance systems and controls that include: an assessment of the institution's sanctions risks, due diligence and screening to ensure compliance with the sanctions restrictions, staff awareness and training in sanctions-related matters, appropriate record keeping, and an ongoing review of the effectiveness of the sanctions compliance procedures;
- all non-life insurance and reinsurance entities are required, on an ongoing basis, to comply with the minimum criteria for registration, as stipulated in Bermuda Insurance Act Schedule (see Appendix IV). The minimum criteria includes fit and proper tests of all key persons on a regular basis, corporate governance and conducting business in a prudential manner; and
- periodically (every three to five years), the BMA carries out a comprehensive empirical risk assessment on the subsector to determine if there are any new emerging areas, products and or processes that might increase the level ML/TF risk within the subsector.

10. Conclusion

The primary objective of the paper was to highlight the BMA's approach in identifying, assessing and understanding ML/TF risks within the Bermuda insurance sector in line with the FATF Recommendations and the relevant IAIS' ICPs, especially ICP 22.

The process for identifying and assessing ML/TF risks is not a one-off event. ML/TF risk evolves with time; therefore, the process should be undertaken on a regular basis. Also, ML/TF risks should not be looked at in isolation from other entity risks such as prudential, governance and market conduct. The involvement of the private sector and other competent and law enforcement authorities, including sharing of information, is valuable in building a complete picture of the ML/TF risks within the insurance sector.

The FATF Recommendations and ICP 22 do not prescribe the methodology that supervisors should use to identify and assess their ML/TF risk; instead, they provide guidance on the principles that supervisors should take into consideration when carrying out these activities. Thus, the FATF

Recommendations and ICP 22 are not crystal balls – there is a need to use judgment to align and tailor the standards to the supervisors’ insurance market.

Appendix I: Selected FATF Definitions³⁵

Beneficial owner

Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

- (i) Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control.
- (ii) This definition should also apply to beneficial owner of a beneficiary under a life or other investment linked insurance policy.

Beneficiary

In the context of life insurance or another investment-linked insurance policy, a beneficiary is the natural or legal person, or a legal arrangement, or category of persons, who will be paid the policy proceeds when/if an insured event occurs, which is covered by the policy.

Competent authorities

Competent authorities refer to all public authorities with designated responsibilities for combating money laundering and/or terrorist financing. In particular, this includes the FIA; authorities who have the function of investigating and/or prosecuting money laundering, associated predicate offences and terrorist financing, and seizing/freezing and confiscating criminal assets; authorities receiving reports on cross-border transportation of currency and Bearer-Negotiable Instrument (BNIs); and authorities that have AML/CFT supervisory or monitoring responsibilities aimed at ensuring compliance by financial institutions and Designated non-financial businesses and professions (DNFBPs) with AML/CFT requirements.

Consequence

Consequence refers to the impact or harm that ML or TF may cause, and includes the effect of the underlying criminal and terrorist activity on financial systems and institutions, as well as the economy and society more generally. The consequences of ML or TF may be short or long term in nature and also relate to populations, specific communities, the business environment, or

³⁵ All the definitions in Appendix I were extracted from the Glossary of the FATF Recommendations and the National Money Laundering and Terrorist Financing Risk Assessment - FATF Guidance, February 2013.

national and international interests, as well as the reputation and attractiveness of a country's financial sector.

International Organisations

International organisations are entities established by formal political agreements between their member States that have the status of international treaties. Their existence is recognised by law in their member countries and they are not treated as resident institutional units of the countries in which they are located. Examples of international organisations include: the United Nations and affiliated international organisations such as the International Maritime Organisation; regional international organisations such as the Council of Europe, institutions of the European Union, the Organization for Security and Co-operation in Europe and the Organization of American States; military international organisations such as the North Atlantic Treaty Organization; and economic organisations such as the World Trade Organisation or the Association of Southeast Asian Nations, etc.

Politically Exposed Persons (PEPs)

Foreign PEPs are individuals who are or have been entrusted with prominent public functions by a foreign country, for example, Heads of State, senior politicians, senior government officers, judicial or military officials, senior executives of state-owned corporations and important political party officials.

Domestic PEPs are individuals who are or have been entrusted domestically with prominent public functions, for example, Heads of State, senior politicians, senior government officers, judicial or military officials, senior executives of state-owned corporations and important political party officials.

Persons who are or have been entrusted with a prominent function by an international organisation refers to members of senior management, i.e. directors, deputy directors and members of the board or equivalent functions.

Risk

Risk can be seen as a function of three factors: threat, vulnerability and consequence. An ML/TF risk assessment is a product or process based on a methodology, agreed by those parties involved, that attempts to identify, analyse and understand ML/TF risks, and serves as a first step

in addressing them. Ideally, a risk assessment involves making judgments about threats, vulnerabilities and consequences.

Threat

A threat is a person or group of people, object or activity with the potential to cause harm to, for example, the state, society, the economy, etc. In the ML/TF context, this includes criminals, terrorist groups and their facilitators, their funds, as well as past, present and future ML or TF activities

Vulnerabilities

The concept of vulnerabilities as used in risk assessment comprises those things that can be exploited by the threat or that may support or facilitate its activities. In the ML/TF risk assessment context, examples of vulnerabilities may include factors such as weaknesses in AML/CFT systems or controls, or certain features of a country. They may also include the features of a particular sector, or a financial product or type of service that make them attractive for ML or TF purposes.

Appendix II: Insurance risk factors³⁶

Insurers are required to consider the following non-exhaustive list of risk factors addressing customers, products, services, transactions, delivery channels, third party service providers and geographic connections, in order to fully assess the ML/TF risks associated with a particular insurance business relationship.

Customer risk

Factors include but are not limited to:

- the lack of readily apparent connection or relationship between the applicant or policyholder, and the beneficiaries. The economic nature of a life insurance policy is a mechanism for the policyholder to benefit a beneficiary. Insurers should ascertain policyholder's reasons for wanting to benefit a beneficiary with whom he or she seemingly has no connection;
- frequent and unexplained changes to the beneficiaries;
- attempts to remove all existing beneficiaries and add new beneficiaries. Although this may be a legitimate action, the insurer should ensure that any reasons given for such changes are reasonable;
- requests to add a third party as a new beneficiary, particularly where the insurer receives the nomination after the death of the policyholder;
- situations in which it is difficult to identify the individual beneficiaries of a life insurance contract. This includes situations where identification is hindered because a beneficiary is a legal person, trust or another type of legal arrangement;
- any unexplained relationship between an applicant or policyholder, and the controllers;
- unjustified delays in the production of identity documents or other requested information;
- a customer who is unwilling or unable to provide satisfactory information to verify the source of wealth or source of funds;
- the involvement of a PEP in the business relationship;
- the unexplained and illogical use of corporate structures, express trusts, nominee shares or the use of bearer negotiable instruments;
- any change in the nature or amount of insurance coverage inconsistent with a customer's needs, and sources of wealth and funds as recorded in the customer's profile;
- levels of assets, coverage or transactions exceeding what a reasonable person would expect of a customer with a similar profile;

³⁶ Extracted from the BMA AML-ATF guidance note, 2016

- sudden and unexplained deposits, withdrawals, contractual changes or lifestyle changes;
- significant or repeated overpayments of policy premiums after which the policyholder requests reimbursement to him- or herself or to a third party;
- lack of concern by the applicant or policyholder over charges or costs for early surrender;
- undue interest by the applicant or policyholder in early payout options;
- a policyholder seeks to borrow the maximum cash value of a single premium policy, soon after paying for the policy;
- the unexplained use of a power of attorney or other third party mandate;
- apparent collusion between a customer and an intermediary or insurance company employee;
- requests for multiple policies to be taken out for premiums slightly below the limits set for applying simplified due diligence measures;
- a customer accepting highly unfavourable terms unrelated to his or her health or age;
- a customer offering to pay extraordinary fees for unusual services, or for services that would not ordinarily warrant such a premium; and
- requests for no correspondence to go to the policyholder.

Products and services risk

Factors include but are not limited to:

- investment-linked insurance policies;
- single premium life insurance policies that store value;
- insurance policies that permit one or more acceleration payments or lump sum top-offs;
- insurance products that can be used as collateral;
- insurance policies that contain an early surrender clause;
- insurance policies that allow a transfer of benefits without the knowledge of the insurer until such time that a claim is made; and
- insurance policies that have been transferred to an endowment fund or via a viatical arrangement.

Transaction risk

Factors include but are not limited to:

- an insurance business relationship that, once established, receives cash payments or payments from multiple sources;

- cash or bearer instrument transactions in circumstances where such a transaction would normally be made by cheque, banker's draft or wire transfer;
- the use of an insurance policy as a bearer asset;
- a lump sum top-up to an existing life insurance or annuity contract;
- overpayment of a premium, particularly when followed by a request for a refund;
- early or frequent claims under a general insurance policy, particularly where the claims amounts are below the premium amount;
- payment by a means which allows for anonymity of the transaction;
- payment of a premium in one currency, followed by a request for repayment in a different currency;
- requests for payments to accounts that are not in the name of the policyholder or beneficiary;
- payments received from an account that is not in the name of the applicant or policyholder;
- requests for prepayment of benefits;
- requests for early surrender, including the exercise of any right under a cooling off or cancellation provision, which would result in a payment being made to the customer, particularly where such requests result in economic penalty to the customer;
- the unusual use of an insurance policy as collateral;
- insurance customers requesting payments to or from overseas locations with instructions for payment to be made in cash;
- insurance customers requesting payments to or from third parties seemingly unconnected with the insurance business relationship;
- assignments of insurance benefits via a viatical arrangement;
- transfers of insurance benefits to an endowment fund;
- transactions within an insurance business relationship that have no apparent legitimate business, tax or legal purpose;
- transactions of a size or volume that exceeds what a reasonable person would expect of a customer with a similar profile, or given the nature and stated purpose of the insurance business relationship; and
- transactions that the insurer cannot fully explain and document.

Delivery channel risk

Factors include but are not limited to:

- non face-to-face relationships with insurance customers;

- any request to carry out significant transactions using cash or using any payment or value transfer method such as a bearer instrument that obscures the identity of any of the parties to the transaction;
- the involvement of intermediaries or third party service providers that do not apply AML/CFT measures at least equivalent to those in Bermuda;
- apparent collusion between a customer and any director, manager or employee of an intermediary, insurance company or reinsurance company;
- an intermediary accepting extraordinary fees for unusual services or for services that would not ordinarily warrant such a premium; and
- a sudden change in the volume of business connected with an intermediary.

Third party risk

Factors include but are not limited to:

- the involvement of any person in carrying out any AML/CFT function in relation to insurance business, including reliance upon, or outsourcing to, any person that has not been sufficiently reviewed for compliance with the applicable regulations;
- any unexplained relationship between an applicant or policyholder and any controller, beneficiary or other third party;
- requests to add a third party as a new beneficiary, particularly where the insurer receives the nomination after the death of the policyholder; and
- the involvement of a recently-established intermediary, insurance company or reinsurance company, particularly where the background of the entity does not appear to be particularly transparent.

Geographic risk

Factors include but are not limited to:

- an insurance business relationship established with funds originating from foreign banks in high-risk jurisdictions;
- an applicant, policyholder, beneficial owner of an applicant or policyholder, controller, beneficiary, intermediary or any other person connected with the business relationship who is a resident in, or citizen of, a high-risk jurisdiction;
- an insurance business transaction to or from a high-risk jurisdiction;
- an insurance business transaction linked to business in or through a high-risk jurisdiction;

- insurance business involving persons or transactions with a material connection to jurisdiction, entity, person, or activity that is a target of an applicable international sanction; and
- an insurance business relationship or transaction for which an insurer's ability to conduct full customer due diligence (CDD) may be impeded by a jurisdiction's confidentiality, secrecy, privacy or data protection restrictions.

Appendix III: BMA Insurance Licensing Process

Introduction

The BMA established a committee in 2007 to consider applications for licensing of financial services businesses seeking to operate in or from within Bermuda.

The role and function of the Committee

Under the BMA Act, the functions and powers of the BMA are delegated to the Chief Executive Officer (the CEO) by the Board of Directors by virtue of the Resolution on the Delegation of the BMA Functions. The committee makes recommendations to the CEO on whether the application should be approved or not, and the CEO is responsible for making the decisions on whether the applications are approved or not. The committee consists of a Chairperson, who is ordinarily a member of the BMA Executive, and includes a multi-disciplinary panel with relevant expertise (a minimum of four (4) senior managers) drawn from the relevant Departments within the BMA.

While the committee ordinarily does not consult with technical experts outside of the Authority for these reviews, it does have the ability to call on, when required, further technical expertise from the industry.

Insurance Application Requirements

i. General Requirements

A detailed, comprehensive Insurance Application must be submitted for the licensure of an entity under the Act and must include the following documents:

- A cover letter providing an executive summary of the application, and highlighting how the minimum licensing criteria (per the Schedule to Act)³⁷ for the relevant class or category of insurance business being applied for is satisfied; in cases where required documentation has not been provided by the applicant, a written explanation for the said omission(s) is required.
- Constitutional documents; i.e. copies of the Memorandum of Association, Certificate of Incorporation or Registration Permit (if applicable and available) or Pre-incorporation forms, if not yet incorporated.
- A business plan, including the following:
 - Detailed information on the business purpose for licensing in Bermuda, outlining the rationale for Bermuda as the chosen jurisdiction;

³⁷ The minimum criteria include fit and proper test of all key persons on a regular basis, corporate governance and conducting business in prudential manner.

- Ownership of the entity, including identification of the ultimate parent and other relevant details of group organisational structures;
 - Details of the Board of Directors and senior management;
 - Capitalisation amount and source(s) of funding;
 - Type(s) of business to be conducted, noting limits and net retentions as applicable;
 - Draft copies of all related reinsurance and service provider agreements; and
 - Any other relevant information.
- Pro forma income statements and balance sheets, prepared on a five-year statutory financial basis, demonstrating the relevant minimum solvency margin and liquidity ratio will be maintained at all times.
 - Support for the assumptions used to compile the aforementioned financial statements, including where applicable, an actuarial feasibility study supporting the projected loss reserves.
 - Where available and applicable, copies of letters of intent from both the ceding and/or reinsurance companies with whom the (re)insurer plans to conduct insurance business.
 - Any applicant proposing to write direct long-term business must provide a copy of its Anti-Money Laundering and Anti-Terrorism Financing policies and procedures.
 - Information in respect of corporate shareholders/owners, including:
 - Most recent audited financial statements;
 - Copies of regulatory filings, if applicable; and
 - Background information.
 - Information in respect of individual shareholders/owners, including:
 - Personal declaration forms (to be completed by the respective individual as opposed to the company representative);
 - Questions that are answered in the affirmative should be accompanied by a written statement of findings, including any relevant information discovered in the assessment of the fitness and propriety of individuals;
 - Bank references (for owners of commercial class insurers); and
 - Net worth statements (for individual owners) with any foreign currency denominated amounts converted into Bermuda Dollars or United States Dollars.
 - Information on the board of directors, senior management and/or key functionaries, including curriculum vitae.

- Acceptance letters from applicable service providers (i.e. approved auditor, loss reserves specialist, approved actuary, principal representative and/or insurance manager, as applicable). Please note that we will require unconditional acceptance letters from all service providers at the time of registration.

ii. Additional Requirements

In addition to the General Requirements noted above, the following information is required for each category of company proposing to be registered:-

- Applicants for continuation of an overseas operation from a foreign jurisdiction into Bermuda must provide:
 - A Certificate of Good Standing from the relevant regulatory authority in the foreign jurisdiction;
 - Contact information for the regulatory authority in the relevant foreign jurisdiction, including contact person name/title, organisation name/address, e-mail address and telephone contact details; and
 - Copies of the most recent statutory financial statements and/or any other relevant financial information evidencing compliance of the applicant with the capital, solvency and liquidity requirements of the foreign jurisdiction.
- Applicants for the establishment of a new branch operation in Bermuda must provide:
 - A Certificate of Good Standing from the relevant regulatory authority in the foreign jurisdiction;
 - Contact information for the regulatory authority in the relevant foreign jurisdiction, including contact person name/title, organisation name/address, e-mail address and telephone contact details;
 - Copy of Permit for the branch to operate as an Overseas Company (under Sections 133 to 134 of the Companies Act 1981) from the Bermuda Registrar of Companies, if available at the time of application; and
 - Copies of the most recent financial statements of the parent company and/or any other relevant financial information supporting the ongoing ability of the parent company to fund the obligations of the applicant if necessary.

Appendix IV: The BMA's Minimum Criteria for Registration

Insurance Act 1978 - Schedule³⁸

- Every person who is, or is to be, a controller or officer of a registered person is a fit and proper person to perform functions in relation to any activity carried on by the registered person.
- In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his/her probity, to his/her competence and soundness of judgement for fulfilling the responsibilities of that position, to the diligence with which he/she is fulfilling or likely to fulfil those responsibilities, and to whether the interests of clients or potential clients of the registered person are, or are likely to be, in any way threatened by his/her holding that position.
- Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he/she has—
 - a) committed an offence involving fraud or other dishonesty or violence;
 - b) contravened any provision made by or under any enactment appearing to the BMA to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services, or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
 - c) engaged in any business practices appearing to the BMA to be deceitful or oppressive or otherwise improper (whether lawful or not), or which otherwise reflect discredit on his/her method of conducting business; and
 - d) engaged in or has been associated with any other business practices or otherwise conducted himself/herself in such a way as to cast doubt on his/her competence and soundness of judgement.

Corporate Governance

- Insurers shall implement corporate governance policies and processes as the BMA considers appropriate given the nature, size, complexity and risk profile of the insurer.

Business to be Directed by at Least Two Individuals

- If a body corporate, at least two individuals shall effectively direct the business of the registered person.

³⁸ Appendix IV was extracted from the Act Schedule.

Composition of Board of Directors

- If a body corporate, the directors shall include such number (if any) of directors without executive responsibility for the management of its business as the registered person considers appropriate having regard to the circumstances of the registered person, and the nature and scale of its operations; subject to the power of the BMA, to review and require the addition of non-executive directors as it may deem appropriate.

Business to be Conducted in Prudent Manner

- The registered person conducts, or in the case of a registered person which is not yet carrying on business, will conduct its business in a prudent manner. In determining whether a registered person is conducting its business in a prudent manner, the BMA shall take into account any failure by the registered person to comply with the provisions of—
 - a) this Act [Bermuda Insurance Act 1978];
 - b) any other law, including provisions of the law pertaining to anti-money laundering and anti-financing of terrorism as provided in the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;
 - c) the code of conduct; and
 - d) international sanctions in force in Bermuda.
- A registered person that is an insurer shall not be regarded as conducting its business in a prudent manner unless it maintains, or as the case may be, will maintain sufficient capital to enable it to meet its insurance obligations given the size, business mix, complexity and risk-profile of its business.
- An insurance manager shall not be regarded as conducting his business in a prudent manner unless he maintains or, as the case may be, will maintain sufficient indemnity insurance cover to enable him to meet his business obligations given the nature, scale and complexity of his business.
- A registered person shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate accounting, and other records of its business and adequate systems of control of its business and records.
- Those records and systems shall not be regarded as adequate unless they are such as to enable the business of the registered person to be prudently managed, and the registered person to comply with the duties imposed on it by or under this Act or other provision of law; and in determining whether those systems are adequate, the BMA shall have regard to the nature and scale of its

operations, and the functions and responsibilities in respect of them of any such directors of the registered person as are mentioned in paragraph 3. Subparagraphs (2) to (4) are without prejudice to the generality of subparagraph (1).

Consolidated Supervision

- The position of the registered person within the structure of any group to which it may belong shall be such that it will not obstruct the conduct of effective consolidated supervision.

Integrity and Skill

- The business of the registered person is or, in the case of a registered person which is not yet carrying on business, will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.