BERMUDA

Law and Practice

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1. INTRODUCTORY

1.1 Forms of Corporate/Business Organisations

The principal forms of corporate and business organisations in Bermuda are:

- exempted companies, owned by non-Bermudians and carrying on business outside Bermuda from a principal place of business in Bermuda (or within Bermuda with other exempted companies); and
- local companies requiring at least 60% ownership by Bermudians and which carry on business in Bermuda.

Both types of companies are private companies limited by shares. It is also possible to form both exempted and local limited liability companies (LLCs).

1.2 Sources of Corporate Governance Requirements

Corporate governance requirements in Bermuda are regulated by:

- statute – notably the Companies Act 1981 (the "Companies Act"), which applies to companies, and the Limited Liability Company Act 2016 (the "LLC Act"), which applies to LLCs;
- common law principles (arising from case law relating to, for example, directors' fiduciary duties);
- a company's constitutional documents, being the memorandum of association and bye-laws;
- in the case of LLCs, a limited liability company agreement; and
- in the case of companies listed on the Bermuda Stock Exchange (BSX), the BSX Listing Regulations (the "Listing Regulations").

The Bermuda Monetary Authority

Further governance requirements are established by the Bermuda Monetary Authority (BMA), the regulator of the financial services sector in Bermuda.

As the principal provider of regulatory oversight, the BMA:

- supervises, regulates and inspects financial institutions operating in or from within Bermuda conducting banking, corporate service provider, digital assets, fund administration, insurance, investment, money service or trust business;
- issues Bermuda's national currency, the Bermuda dollar (BMD) which trades at a fixed exchange rate to the United States dollar (USD), and manages exchange control transactions;
- assists other authorities in Bermuda with the detection and prevention of financial crime; and
- advises the government and public bodies on banking and other financial and monetary matters.

The BMA's principal mandate is to develop risk-based financial regulations that apply to the supervision of entities conducting banking, corporate service provider, digital assets, fund administration, insurance, investment, money service or trust business.

The Bermuda Stock Exchange

The BSX is the world's leading offshore fully electronic securities market, offering a full range of listing and trading opportunities for international and domestic issuers of equity, debt, depositary receipts, insurance-linked securities and derivative warrants.

The BSX is supervised and regulated by the BMA under the Bermuda Stock Exchange Company Act 1992 and promotes effective corporate governance standards through the Listing Regula-

tions. As a self-regulatory organisation, the BSX has the statutory authority to adopt rules governing the conduct of its trading members and listed insurers, including enforcement through disciplinary proceedings.

The BSX is a full member of the World Federation of Exchanges and acknowledged as meeting the highest regulatory operational standards. The BSX has a light but effective regulatory environment and is not bound by the European Listings Directive or the United States Securities Exchange Commission.

1.3 Corporate Governance Requirements for Companies With Publicly Traded Shares

For companies with shares that are publicly traded on the BSX, the Listing Regulations contain certain corporate governance requirements. The extent of these will depend upon the nature of the issuer. For example, in the case of a "domestic issuer", being a local company, the Listing Regulations include mandatory provisions to be included in the company's constitution (being the bye-laws) in relation to, among other things, directors' interests and casual vacancies arising on the board of directors. Such requirements do not apply to "international issuers", being exempted companies or companies incorporated outside Bermuda, but such issuers are required, in certain cases, to inform the BSX of certain decisions of the board of directors.

The Listing Regulations do require the directors of all issuers to act in the interests of the holders of securities as a whole, particularly where the public represents only a minority of the shareholders or where securities are non-voting.

Further, if the BSX considers that any contravention of the Listing Rules is due to a failure by all or any of the directors to discharge their responsibilities, it may:

- censure the relevant director(s);
- publish the fact that the directors(s) has been censured; and
- state publicly that, in its opinion, the retention of office by the director is prejudicial to the interests of investors.

2. CORPORATE GOVERNANCE CONTEXT

2.1 Key Corporate Governance Rules and Requirements

There are no official key corporate governance rules and requirements to be drawn out in Bermuda, but there are industry specific corporate governance codes (the "Industry Codes") which are issued by the BMA in its capacity as regulator.

In addition to Industry Codes, the Companies Act applies to all companies in Bermuda and codifies much of the corporate governance rules in general (with special rules for mutual funds) and, as stated, the BSX Listing Regulations provide guidance to BSX listed companies.

The following represent various Industry Codes active in Bermuda.

The Insurance Code of Conduct (the "Insurance Code")

Issued by the BMA, the Insurance Code, pursuant to the powers under Section 2BA of the Insurance Act 1978 (the "Insurance Act"), established duties, requirements and standards to be complied with by insurers registered under Section 4 of the Insurance Act, including the procedures and sound principles to be observed by such persons in respect of, among other things, governance, risk management and internal controls.

Noting that insurers have varying risk profiles arising from the nature, scale and complexity of their business, the BMA follows the principles of proportionality, with insurers with higher risk profiles requiring more comprehensive governance and risk management frameworks compared with those of a lower risk profile.

Failure to comply with provisions set out in the Insurance Code will be a factor taken into account by the BMA in determining whether an insurer is meeting its obligation to conduct its business in a sound and prudent manner. Compliance in accordance with the Insurance Code is part of the BMA's regular supervision and review process (see **6.1 Financial Reporting**).

The Insurance Sector Operational Cyber Risk Management Code of Conduct (the "Cyber Code")

The Cyber Code issued by the BMA establishes duties, requirements, standards, procedures, and principles to be complied with in relation to operational cyber-risk management for all Bermuda registered insurers, insurance managers and intermediaries.

The Insurance Manager Code of Conduct (the "IM Code")

The IM Code requires insurance managers to implement a documented corporate governance framework (including policies and processes and controls) which the BMA considers appropriate given the nature, scale, complexity and risk profile of the insurance manager. The IM Code also includes requirements and recommendations with respect to the composition of the board of an insurance manager and management of conflicts of interests. Insurance managers are expected to comply with both the letter and spirit of this Code.

The Corporate Governance Policy for Trusts (Regulation of Business Act 2011), Investment Business Act 2003 and Investment Funds Act 2006 (issued January 2014) (together the "Regulatory Acts") (the "Regulatory Acts Policy").

The Regulatory Acts Policy apply to entities licensed under the Regulatory Acts and set out nine principles and related guidance which reinforce key elements of corporate governance.

The Regulatory Acts represent the minimum statutory criterion for companies to implement internal corporate governance policies and procedures. The Regulatory Acts Policy is taken into consideration by the BMA when assessing a licensee.

Corporate Governance Policy for Banks and Deposit Companies Act 1999 (the "Banking Code")

The Banking Code applies to deposit-taking companies licensed under the Banks and Deposit Companies Act 1999 and sets out 13 principles and related guidance which reinforce key elements of corporate governance for banking entities.

Corporate Service Provider Business Act 2012

The BMA has published a Statement of Principles and Code of Practice which apply to all corporate service providers. The Code of Practice (read in conjunction with the Statement of Principles) provides guidance on the BMA's approach in interpreting the minimum criteria for licensing and the governance and risk management frameworks to be put in place by corporate service providers.

Digital Asset Business Act 2018 (the "DAB Act")

The BMA has published a Code of Practice with the objective of safeguarding Digital Asset Business (DAB) client assets by preventing fraud or misappropriation of digital assets in the issuance

of DAB licences. The Code of Practice (read in conjunction with the DAB Statement of Principles prescribed by the DAB Act) interprets the minimum licensing criteria, including ongoing monitoring and compliance obligations.

Money Service Business Act 2016 (the "MSB Act")

The BMA has published a Statement of Principles and Code of Practice under the MSB Act. The Statement of Principles is relevant to the BMA's decision on whether to licence a money service business and provides guidance to licensed undertakings on the standards required under the MSB Act and other financial services legislation, as well as the best practice in the industry.

2.2 Environmental, Social and Governance (ESG) Considerations

While there is no legal requirement for companies to report on environmental, social and governance (ESG) issues, there is a positive trend with Bermuda-based companies considering ESG challenges within their respective industries and business.

For example, the (re)insurance industry, which is Bermuda's main pillar of international business, is at the forefront of ESG awareness and actively responding to calls for responsible investment and financing. In particular, insurance-linked securities (ILS) are actively seeking ways to attract ESG-conscious investors. As ILS investment assets allow (re)insurance providers to transfer risk to the capital markets, ILS assets and ESG investment standards are becoming synonymous with the rapid expansion of the ILS sector and the opportunity for increased globally conscious investment practices.

The BSX, as the world's leading exchange for the listing of ILS, launched its "ESG Initiative" in 2019 with the aim of empowering sustainable and responsible growth for its member companies, listings and the wider community. The ESG Initiative aims to set guidelines for a company's operations that investors will use to examine prospective investments.

In April 2021, the BMA also announced the formation of a subject matter expert team focusing on innovation and climate change working throughout the licensing and supervision of innovative business model proposals to address climate change risk and the associated climate change gap. The team will also encourage ESG initiatives, including participation in the BMA's regulatory sandboxes, across the various regulated sectors.

As mentioned, while ESG considerations are not compulsory, they are becoming the rapidly accepted metric in Bermuda in qualifying as a respected global corporate citizen.

3. MANAGEMENT OF THE COMPANY

3.1 Bodies or Functions Involved in Governance and Management

Note: The responses for the remainder of this chapter relate only to Bermuda companies, not to LLCs, which have different governance structures with "members" owning interests in the LLC and "managers" having responsibility for management of the LLC.

Board of Directors

The governance and management of a company is generally the responsibility of its board of directors.

Shareholders

Where a company is limited by shares, the directors typically answer to the demands and decisions of the shareholders (see **5. Shareholders**).

3.2 Decisions Made by Particular Bodies

Directors may exercise all powers of a company other than those required by the Companies Act or expressly reserved by the shareholders in accordance with the memorandum of association and bye-laws of the company.

Decisions reserved for the shareholders by the Companies Act include:

- appointment and removal of directors (also in accordance with the bye-laws);
- changing the name of the company;
- amending the memorandum of association or bye-laws;
- approving a merger, amalgamation or scheme of arrangement in relation to the company;
- altering the company's share capital;
- approving a discontinuation to another jurisdiction; and
- winding up the company on a voluntary basis.

3.3 Decision-Making Processes

Board of Directors Meetings

The process by which the board of directors convenes and conducts board meetings and makes decisions are typically set out in the bye-laws.

Generally, decisions of the board are decided by way of a simple majority. However, the bye-laws may specify:

- matters where an increased majority or unanimous vote is needed;
- circumstances in which the consent of independent directors is necessary;
- guidance regarding the casting vote of the chairman; and
- provisions requiring a director's declaration of material interests which may prevent them from voting on particular resolutions.

A quorum must be in attendance for the entirety of the meeting. Subject to the bye-laws of a company, a director who generally declares an interest in writing or declares an interest in the business to be conducted at a meeting at first opportunity may still be counted in the quorum and vote.

As an alternative to approving matters at board meetings, written resolutions of the directors are normally permitted by bye-laws and typically require a unanimous decision. It is also a common feature of bye-laws that written resolutions are to be considered effective on the date on which the last director signs or the resolutions are signed by a specified majority of directors.

General Meetings of Shareholders

See **5.3 Shareholder Meetings**.

Virtual Meetings

As a result of COVID-19, travel restrictions and a general shift to increased use of virtual meeting platforms, unless the bye-laws otherwise provide, the Companies Act permits board meetings and general meetings of shareholders to be held electronically. However, the Companies Act requires that all persons communicating can communicate with each other simultaneously and instantaneously.

4. DIRECTORS AND OFFICERS

4.1 Board Structure

The board of directors is a unitary board structure forming one tier of both executive and non-executive directors.

4.2 Roles of Board Members

Management of the company is typically the responsibility of the board of directors. Subject to the bye-laws, directors manage the business

operation and strategies of the company and may delegate the day-to-day management of the company's business to executive officers (such as a chief executive officer or chief financial officer).

It is often the case that directors who specialise in key areas of the company, such as finance, marketing or executive management, may lend their expertise to specific management decisions of the company.

4.3 Board Composition Requirements/ Recommendations

Unless the shareholders determine otherwise, Bermuda companies are only required to have one director (an individual or legal person). The Companies Act does not restrict the number of directors, but the shareholders' reserve the right to determine the maximum number of directors at a general meeting or in accordance with the company's bye-laws.

See **5.3 Shareholder Meetings**.

Nationality and Residency Requirements

There are residency requirements for an exempted company. It must have one of the following:

- a minimum of one director, other than an alternate director, who is ordinarily resident in Bermuda;
- a secretary that is either an individual or a company that is ordinarily resident in Bermuda; or
- a resident representative appointed under the Companies Act, that is either an individual or company that is ordinarily resident in Bermuda.

There are no nationality requirements imposed on directors.

BSX Listed Companies

Listed companies must appoint authorised representatives or a sponsor to act as the primary point of contact with the BSX. Authorised representatives must be both members of the listed company's senior management and ordinarily resident in Bermuda. Exempted companies with a primary listing on another recognised stock exchange may appoint a resident representative under the Companies Act who will act at the company's sole authorised representative.

(Re)Insurers and DAB companies

Registered insurers and reinsurers are required to appoint a principal representative who is ordinarily resident in Bermuda and licensed DAB companies are required to appoint a senior representative who is ordinarily resident in Bermuda.

4.4 Appointment and Removal of Directors/Officers

Appointment of Directors and Officers

Generally, the bye-laws govern the method and procedure for appointing a director. At the first statutory meeting of the company, the first director(s) is/are elected by the shareholders and thereafter in general meeting. This will typically occur at the annual general meeting (AGM) unless the requirement for holding AGMs has been dispensed with. Where a vacancy is left unfilled at a general meeting or a vacancy arises between AGMs (for example, as a result of resignation, disqualification or death of a director), the bye-laws often empower the directors to fill the vacancy.

Removal of Directors and Officers

Similar to the appointment of a director, the bye-laws govern the circumstances in which a director must vacate their office. In addition, the shareholders, by an ordinary resolution passed at a special general meeting (SGM), may effect the removal. Removal in this way is subject to

the relevant director receiving at least 14 days' notice of the meeting and also being entitled to be heard at the meeting.

See **5.3 Shareholder Meetings**.

4.5 Rules/Requirements Concerning Independence of Directors

There is no requirement in the Companies Act for companies to have independent directors.

Non-executive directors generally have the same duties as executive directors and are subject to the same potential liabilities. However, the courts may recognise their more limited involvement in determining the extent of any liability which may arise.

For rules and requirements surrounding the duties of directors and officers to disclose any conflicts or potential conflicts, see **4.8 Consequences and Enforcement of Breach of Directors' Duties**.

4.6 Legal Duties of Directors/Officers

Statute

The Companies Act prescribes the legal duties of directors and officers of a company. In exercising their powers and discharging their duties to the shareholders and company, directors must:

- act honestly and in good faith with a view to the best interests of the company; and
- exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Common Law Rules

At common law, directors and officers owe fiduciary duties and duties of skill and care to the company.

The fiduciary duty is to act in good faith in their dealings with or on behalf of the company and to exercise their powers and fulfil the duties of their office honestly. This duty has four elements:

- to act in good faith;
- to exercise powers for the purpose for which such powers were intended (for example, the powers should not be exercised for the purposes of preventing a majority of the shareholders from exercising their rights as such);
- to avoid conflicts of interest (ie, where there would be a conflict between the director's personal interest and their duty to the company); and
- a duty not to make a personal profit from opportunities that arise from their directorship.

The duty of skill and care is a more positive obligation on a director and generally has three elements:

- to exercise the degree of skill which may reasonably be expected from a person of their knowledge and experience;
- attending to the business of the company by displaying the reasonable care an ordinary person may be expected to take in the same circumstances; and
- relying upon others (co-directors, officers and executive management) provided such reliance is honest and reasonable.

It should be noted that a director cannot absolve themself entirely of their responsibility by delegation to others.

4.7 Responsibility/Accountability of Directors

The directors owe their duties to the company (being the shareholders as a whole) rather than any particular shareholder or group of shareholders.

See **4.6 Legal Duties of Directors/Officers** and **4.8 Consequences and Enforcement of Breach of Directors' Duties**.

4.8 Consequences and Enforcement of Breach of Directors' Duties

Statute

The Companies Act provides that a director or officer of a company will be deemed not to be acting honestly and in good faith if they fail:

- on request, to make known to the auditors of the company full details of any emolument, pension or other benefit that they have received, or any loan received or that they are to receive from the company or its subsidiaries; or
- to disclose at first opportunity during a meeting or by writing to the directors their interest in any or proposed material contract or in any person that is a party to a material contract or proposed material contract with the company or any of its subsidiaries.

However, a director or officer is not liable to the above duties if they relied in good faith upon:

- financial statements of the company represented to them by another officer of the company; or
- a report of a professional (such as an attorney, accountant, engineer or appraiser) whose profession lends credibility to a statement they made.

A director who fails to disclose the above matters (subject to bye-laws) is liable to a fine of USD1,000.

Common Law

The company itself would bring a claim against a director for a breach of fiduciary duties and/or duties of skill and care. This would be a claim for damages to reclaim the loss arising from such breach. See **5.4 Shareholder Claims**.

4.9 Other Bases for Claims/Enforcement Against Directors/Officers

The Companies Act expressly provides that the bye-laws of a company may exempt or indemnify directors and other officers from any loss incurred by them while performing their duties provided such exemption or indemnity may not apply in the case of fraud or dishonesty by the director or officer.

4.10 Approvals and Restrictions Concerning Payments to Directors/Officers

There is no requirement in Bermuda law for directors or officers to be employees of the company and receive remuneration from the company.

Where applicable, the bye-laws may provide that the amount of directors' fees will be determined by the shareholders. However, the board of directors will often be delegated responsibility to determine the remuneration payable to them.

4.11 Disclosure of Payments to Directors/Officers

In relation to remuneration, fees or benefits payable to directors and officers, typically there is no requirement for disclosure. However, a BSX listed company must include the details within its prospectus of the total remuneration and benefits-in-kind paid to the director for the applicable financial year.

5. SHAREHOLDERS

5.1 Relationship Between Companies and Shareholders

The company's memorandum of association and bye-laws will principally govern the relationship between the company and its shareholders, the requirements of such constitutional documents being supplemented by the specific

requirements of the Companies Act relating to shareholders and shareholder matters.

In certain circumstances, there may be a shareholders' agreement setting out contractual rights and obligations of the company and the shareholders and governing the relationship between them.

5.2 Role of Shareholders in Company Management

Shareholders have minimal involvement in the management of a company and do not have a general right to interfere in the general management of a company.

Generally, shareholders do not have the power to direct the management of a company to take, or refrain from taking, certain actions in the business. However, the bye-laws may provide that decisions on certain business matters shall require the approval of the shareholders.

Although shareholders have a statutory right to require the board to convene a shareholders' meeting (see **5.3 Shareholder Meetings**), they cannot exercise that right to put forward a resolution regarding the management of the business. If the shareholders wish to manage the control of business management, they must begin by amending the bye-laws of a company to restrict the authority of the board to exercise management control.

5.3 Shareholder Meetings

Shareholders must convene and make decisions regarding the governance and management of the company by way of an annual general meeting (AGM) at least once every calendar year, or the directors may convene a general meeting at any other time, known as a special general meeting (SGM). Shareholders may elect to dispense with holding an AGM for a particular year, for a specified number of years or indefinitely.

Notice of all general meetings must specify the place, day and time of the meeting and, in the case of a SGM, the nature of the business to be considered. Pursuant to the Companies Act, at least five days' notice of the meeting must be given although the bye-laws may prescribe a longer period.

If a company fails to hold an AGM within three months of the date it should have been held, it may apply to the Registrar of Companies (the "Registrar") to sanction the holding of a general meeting to correct the affairs of the company and a USD250 fee shall be paid. Any creditors or shareholders of the company may also apply for the winding up of the company in the absence of steps being taken to hold an AGM or rectify the omission.

Voting at General Meetings

Subject to the bye-laws of the company and any shareholder agreement specifying rights and restrictions attached to any class of shares, each shareholder of the company is entitled to one vote per share. The shareholder may choose to vote in person or by proxy.

The majority of issues for consideration at a general meeting may be decided on a simple majority or in accordance with the bye-laws. A poll vote can be demanded by any of the following:

- the Chairman;
- at least three shareholders present in person or by proxy;
- a shareholder or shareholders present in person or by proxy, holding between them at least 10% of the total voting rights of all the shareholders with a right to vote at the meeting;
- a shareholder or shareholders present in person or by proxy, holding shares with the right to vote at the meeting on which an aggregate sum has been paid equal to at least 10% of the total sum paid up on all shares conferring such right.

Written resolutions are a viable alternative to a resolution of a company in general meeting, or to a resolution of a meeting of a class of shareholders (subject to the bye-laws). This method of passing resolutions may not be used when considering the removal of any auditor from office, or for the purpose of removing a director before the expiration of their term in office.

Notice must be given to all shareholders entitled to attend a meeting, except that any requirements prescribed by the bye-laws or the Companies Act relating to the length of notice period do not apply.

A resolution in writing will be valid as if it had been passed by the company in general meeting when the resolution is signed by:

- shareholders of the company who, at the date of the notice, represent such majority as would be required if the resolution had been voted on in person; or
- all the shareholders of the company or such other majority of shareholders as may be provided by the bye-laws.

Convening of SGM on Requisition

Shareholders of a company have the power to requisition the directors to hold a SGM. The directors are required to convene a meeting if, at the date of the deposit of the requisition:

- the requisitioning shareholders hold at least 10% of the paid-up capital of the company carrying the right to vote; or
- where a company does not hold share capital, shareholders of the company representing not less than 10% of the total voting rights of all the shareholders having a right to vote at general meetings.

5.4 Shareholder Claims

There are a few bases of claim which exist for shareholders against the company or its directors.

Personal Actions

Any shareholder may bring a personal action in respect of a wrong done to them as shareholders, whether committed by other shareholders or the company. This includes breaches of the company's memorandum of association or bye-laws, or an infringement of their personal rights.

Minority Shareholder Action

Pursuant to Section 111(1) of the Companies Act, any shareholder of a company (regardless of shareholding) who complains that the affairs of the company are being conducted or have been conducted in a manner oppressive or prejudicial to the interests of some shareholders, including themselves, may make an application to the Bermuda court by petition that the company be wound up on just and equitable grounds.

The court may make an order as it thinks fit, whether to regulate the affairs of the company going forward, or for the purchase of the shares of the petitioning shareholder by the other shareholders of the company.

Derivative Actions

This is where a shareholder sues in the company's name and their act complained of is ultra vires the company. This type of action may also be brought against the directors who have breached their fiduciary duties. A derivative action cannot continue without leave of the Supreme Court.

5.5 Disclosure by Shareholders in Publicly Traded Companies

There is no specific notification requirements for shareholders. However, for BSX listed companies, the directors or executive officers must

advise the BSX if they become aware of any shareholder who:

- acquires a beneficial interest, control or direction of 5% or more of the company's securities (or convertible securities) or any change in the identity of such holder; or
- has a beneficial interest in or exercises control or direction over 5% or more of the company's securities (or convertible securities) and the shareholder acquires an additional 3% or more of the company's securities.

6. CORPORATE REPORTING AND OTHER DISCLOSURES

6.1 Financial Reporting

Annual or other periodic financial reporting requirements vary from sector to sector.

In accordance with the Companies Act, the financial statements of a company are to be laid before a general meeting of the company, unless the requirement has been specifically waived under the Companies Act. The financial statements must include:

- a statement of results of operations for the period;
- a statement of retained earnings or deficit;
- a balance sheet as at the end of the period;
- a statement of changes in financial position or cash flows for the period;
- notes to the financial statements, which include a description of the generally accepted accounting principles used in the preparation of the financial statements; and
- any further information required by the Companies Act, the company's own act of incorporation or its memorandum, and its bye-laws.

Before being produced at the general meeting, the balance sheet page must be signed by a director of the company. The failure of a director to take all reasonable steps to comply with the Companies Act in this regard will result in the liability to a fine of USD1,000.

Unless the company is a BSX listed company, there is no requirement to file public financial statements.

BSX Listed Companies

The Listing Regulations provide that a company must provide shareholders with information by way of public announcement or circular that:

- is necessary to enable them to appraise the financial position of the company;
- is necessary to avoid a false market in shares or securities of the company; and
- might reasonably be expected to materially affect market activity in and the price of shares or securities of the company.

In satisfaction of the above, the issuer shall prepare audited annual accounts within six months of the end of the financial period to which they relate.

(Re)Insurers

The BMA requires Groups, Class 4, 3B, 3A, E, D and C (re)insurers to file audited general purpose financial statements as part of their annual filings, which the BMA will subsequently publish. The BMA may exempt a (re)insurer from the requirement subject to certain conditions and in exceptional circumstances, such as permission for the BMA to publish legal entity aggregate statutory financial statements and group general purpose financial statements.

The individual classes of (re)insurers listed above must also file a Declaration of Compliance as

part of their annual filings declaring the company has:

- complied with all requirements of the minimum criteria applicable to it;
- complied with the minimum margin of solvency at year-end;
- complied with the applicable enhanced capital requirements at year-end; and
- complied with applicable conditions, directions and restrictions imposed on, or approvals granted.

6.2 Disclosure of Corporate Governance Arrangements

There are no specific Bermuda law requirements for a company to disclose its corporate governance arrangements.

6.3 Companies Registry Filings

When incorporating a Bermuda company, the following information must be filed with the Registrar:

- memorandum of association;
- extracts of limited provisions of the bye-laws;
- the names and addresses of all directors; and
- the names and addresses of all directors.

Bermuda Registered Entities

Annual filings with the Registrar for Bermuda registered entities are minimal and are restricted to the Annual Statutory Declaration (this does not constitute financial reports), including payment of Annual Government Fees by 31 January each calendar year.

If there are any changes to the above information, the appropriate filing must be submitted to the Registrar.

Publicly Available Information

For a nominal fee, the public may request basic information about companies from the Registrar. A public search generally includes, but is not limited to:

- the entity's registered office address, memorandum of association and date of incorporation;
- changes to share capital;
- particulars on any outstanding mortgages or charges registered against the company or over its shares;
- any previous names of the company; and
- if applicable, any prospectuses filed with the Registrar.

For a nominal fee, members of the public may also request from the registered office of the company copies of its register of members and register of directors and officers.

In addition, members of the public may search the online Directors Register free of charge with respect to each director of a Bermuda company, which contains the following information:

- in the case of an individual, their present first name, surname and address; and
- in the case of a company, its name and address of the registered office.

Beneficial Ownership

Since March 2018 all Bermuda companies, except those exempted, are required to obtain information on their beneficial owners and maintain a beneficial ownership register at their registered offices. This information must also be filed with the BMA but is not publicly accessible.

Exceptions include:

- a company whose shares are listed on the BSX or an appointed stock exchange;
- a permit or overseas company;
- certain financial institutions, for example a corporate service provider, an open-ended invest-

ment fund, investment provider, fund administrator or trust company;
- a closed-ended investment vehicle managed by a licensed person, or registered, authorised or licensed by a foreign regulator recognised by the BMA; or
- any other type of company or entity that is exempted by order made by the Minister of Finance.

For the purposes of the applicable legislation, a "beneficial owner" is:

- any individual(s) who own or control more than 25% of the shares, voting rights or interests in the company (directly or indirectly);
- if no such individual(s) exist or can be identified, any individual(s) who control a company by other means; and/or
- if no such individual(s) exist or can be identified, the individual who holds the position of senior manager (such as a chief-executive officer or president) of the company.

Every company to which the above applies must obtain from every registrable person:

- their full name and any other names;
- where the person is an individual, their residential address, address for service, nationality, date of birth;
- where the person is a relevant legal entity, the address of the registered/principal office, the date and place of registration, the form of legal entity, and the name of the exchange on which it is listed, if applicable;
- the effective date each person was entered to the register as a registrable person;
- a statement of the nature and extent of the interest held;
- in respect of a class of beneficial owners, the size; and
- where applicable, the date each person ceased to be a registrable owner.

The register must be kept up-to-date and current, and any notification of any change must be filed with the BMA as soon as practicable, but not later than 14 days after the company is aware of the change.

Economic Substance

In December 2018, the Economic Substance Act 2018 and related regulations (the "ES Laws") came into force with the purpose of ensuring that Bermuda does not facilitate the use of structures that attract profits but do not reflect real economic activity that is being undertaken in Bermuda.

An entity is deemed in scope of the ES Laws and requirements if it is a Registered Entity carrying out one or more Relevant Activities.

A Registered Entity is a company to which the Companies Act 1991 applies, a limited liability company formed under the Limited Liability Company Act 2016, a partnership to which the Partnership Act 1902 applies, including a partnership, an exempted partnership, an exempted limited partnership or an overseas partnership.

A Relevant Activity means carrying on as a business as any one or more of the following:

- banking;
- insurance;
- fund management;
- financing and leasing;
- headquarters;
- shipping;
- distribution and service centre;
- intellectual property; and
- holding entity.

If any Relevant Entity carries on a Relevant Activity it will be in scope of the ES Laws. However, a Relevant Entity which does not earn gross income in respect of the Relevant Activity for the

relevant financial period will not be required to satisfy the Economic Substance Requirements (the "ES Requirements").

A Registered Entity complies with the ES Requirements if:

- it is managed and directed in Bermuda;
- its CIGA (core income generating activities) are undertaken in Bermuda with respect to the Relevant Activity;
- it maintains adequate physical presence in Bermuda;
- there are adequate full-time employees in Bermuda with suitable qualifications; and
- there is adequate operating expenditure incurred in Bermuda in relation to the Relevant Activity.

Each Registered Entity is required to file a declaration form no later than six months after the last day of each relevant financial period (the financial year as determined in accordance with its constitutional documents). The contents of the declaration form are not publicly accessible.

7. AUDIT, RISK AND INTERNAL CONTROLS

7.1 Appointment of External Auditors

Unless the requirement to appoint auditors is expressly waived (for a particular period of time) unanimously by all shareholders and directors, either in writing or at a general meeting, the shareholders must appoint auditors. This takes place at each AGM or where the company has dispensed with the requirements to hold the AGM, at an SGM or otherwise in accordance with the bye-laws.

If there is a failure to appoint an auditor, the existing auditor continues in office until the shareholders appoint a successor. If the shareholders fail to do so, the appointment reverts to the directors.

A person, other than an incumbent auditor, cannot be appointed at a general meeting unless notice in writing of an intention to nominate that person has been provided at least 21 days before a general meeting. The notice must be sent to the incumbent auditor (unless this right is waived).

In the event an auditor resigns, vacates the office, is removed, the term of their office has expired or is imminent, no individual can accept appointment or consent to act as a replacement unless they receive a written statement from the previous auditor of the circumstances and reasons why, in the incumbent's opinion, they are to be replaced. Failure to provide the written statement within 15 days after the request, the proposed replacement auditor can accept the appointment or consent to be appointed as the new auditor.

Listed companies must prepare annual audited accounts within six months of the end of their financial year.

7.2 Requirements for Directors Concerning Management Risk and Internal Controls

See **2.1 Key Corporate Governance Rules and Requirements** for details of the various codes applicable to regulatory entities which relate to the management of risk.

Walkers (Bermuda) Limited has a staff drawn from top international law firms and a partner bench with decades of combined experience in the Bermuda market. Walkers Bermuda provides first-class, commercially focused advice that is attuned to its clients' requirements and facilitates their business. The Walkers Bermuda team routinely works with the market-leading onshore law firms and the most innovative clients and institutions across the financial markets. The firm is Walkers' third office in the Americas region and the Bermuda team is closely aligned with the Walkers' global network and leverages synergies with its global satellite offices, particularly those in Asia and Europe. The firm works with both listed and private companies on a range of cross-border matters across the globe, with a particularly strong focus on North America, Asia and the UK, as well as providing tailored advice to boards of directors and general counsel on corporate governance matters.

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