In 2003 the International Monetary Fund ("IMF") performed an in-depth on-site review of Bermuda's financial services legislation which was carried out as part of its Offshore Financial Centre Assessment Programme. The assessment covered the financial services sector as well as anti-money laundering legislation and controls in Bermuda. The report issued by the IMF confirmed the high quality of Bermuda's international business and recognized the BMA's commitment to ensuring that Bermuda's financial services business is subject to regulation that is fully consistent with international standards. It also highlighted the effectiveness with which the BMA has been able to develop, implement and enforce the regulatory framework, based on new and updated financial services legislation for its different sectors. The IMF also made a number of recommendations for changes to current legislation or to aspects of the BMA's supervisory arrangements some of which changes were all ready in hand, including the issue of codes of conduct or guidance notes.

The Insurance Amendment Act 2004 ("Amendment Act") authorised the Bermuda Monetary Authority ("BMA") to issue "guidance" on the application of the Insurance Act 1978 and the regulations made thereunder (together the "Act") in respect of the duties, requirements and standards to be complied with by persons registered under the Act or otherwise regulated under it and the procedures and sound principles to be observed by such persons and by auditors, principal representatives and loss reserve specialists.

In the development of the Guidance Notes ("Notes"), the BMA took into account, amongst other things, the revised Insurance Core Principles adopted by the International Association of Insurance Supervisors in 2003. The Notes were also reviewed by the insurance industry in Bermuda and the Insurance Advisory Committee which is a statutory body appointed by the Minister of Finance.

The BMA's guidance or policies articulated in its recently published Notes are of general application and seek to take account of the wide diversity of institutions that may be licensed under the Act. There may be a need for revision to the Notes from time to time and material changes in the Notes will be published, generally through the issue of a revised version.

The BMA has always sought to ensure that companies licensed under the Act, and service providers to such companies, have a good working understanding of the nature of the Act's requirements and of the BMA's approach in implementing the Act. The Notes are intended to provide information on the application of the Act and constitute one of a series of steps that the BMA is taking to develop and enhance its supervisory approach in the Bermuda insurance sector.
The Notes should be understood as reflecting the minimum standard that the BMA expects insurers and other relevant parties to observe at all times. With respect to the regulatory changes brought about by the Amendment Act and which are referenced in the Notes, parties must take immediate steps to ensure they are in compliance with the same. In relation to other matters contained in the Notes, the BMA encourages insurers and other relevant parties to come into compliance as soon as possible and, in any event, not later than 31st December 2005 or such later date as may be agreed with the BMA in a particular case.

The Notes issued by the BMA, through its website at www.bma.bm in March 2005, are as follows:-

1) **Role of Principal Representative**  
   This Note details the role and duties of the principal representative, its duty to report certain events to the BMA and the management of information and people that the principal representative believes is necessary to fulfill its role. The BMA expects insurers to be prudently managed and while the board and the senior management have the primary responsibility for the conduct and performance of an insurer, the principal representative acts in an “early warning” role and monitors the insurer’s compliance with the Act on a continuous basis.

2) **Role of Inspector**  
   This Note sets out guidance on the appointment and role of the Inspector (appointed under Section 30 of the Act), his right to information, Inspector's Reports, confidentiality and expenses. Where the BMA is satisfied that an investigation of the affairs of an insurer is required in the interests of policyholders, it may appoint an Inspector to investigate the affairs of an insurer. Additionally, where a Class 4 insurer has failed to file its statutory financial statements or return within 3 months of its filing date, the BMA may appoint an Inspector to investigate the insurer. This power to appoint an Inspector is a remedial one that is to be used as required. Section 30 inspections are apart from the routine on-site examination process or “prudential visits”. The prudential visits, which may be carried out pursuant to Section 29A of the Act, are to supplement the regular off-site monitoring process carried out by the Authority and are an additional means of evaluating the risk profile of an insurer.

Fact-finding, reporting, and evaluation are the most critical aspect of the inspection activities. The purpose of a Section 30 inspection is to develop information to assist the BMA in its evaluation of the financial condition, solvency and regulatory compliance of the insurer under investigation. The scope of a Section 30 inspection may reflect the risk profile of the insurer, and may cover all areas of an insurer’s affairs – a so-called “full scale review”. The inspection may also be on a focused basis, targeting specific issues or concerns
that, for example, may have arisen as a result of a prudential visit or the off-site review process.

3) **Loss Reserve Specialist (appointment criteria)**
   This Note describes the eligibility criteria and the approval process for loss reserve specialists. Any new candidate for loss reserve specialist shall provide the BMA with a letter of undertaking that they will perform their functions in accordance with the Act and the standards of their relevant association.

4) **Role of Loss Reserve Specialist**
   This Note sets out the guidance for the issue by the loss reserve specialist of his opinion on the adequacy of the loss and loss expense provisions reflected in insurers’ statutory financial statements and statutory financial returns and other matters specified by the BMA. The Note details the nature of the opinion and the valuation of loss and loss expense provisions and touches on accepted actuarial practice and working papers of the loss reserve specialist.

5) **Approved Auditor (appointment criteria)**
   A person (either a natural person or a firm of accountants) will generally be considered a fit and proper person if the person is: i) a member in good standing of the Institute of Chartered Accountants of Bermuda ii) ordinarily resident in Bermuda, and iii) independent of the insurer. A letter of undertaking is now required in respect of new candidates for approved auditor.

6) **Role Approved Auditor**
   This Note gives guidance on the requirement for audited statutory financial statements, statutory financial returns, the auditor's examination, the auditor's right to information, the auditor's report, access to working papers, communications with the BMA and reliance on specialists.

7) **Fit and Proper Intermediaries**
   This Note sets out the criteria the BMA will use to determine whether a person is fit and proper to act as principal representative, insurance manager, broker, agent or salesman under the Act. When considering each application or when subsequently assessing the fitness of persons, the BMA may have regard to current, past and prospective matters. The most important considerations will be the person's competence, capability, honesty, integrity and reputation. During the application process, the BMA may discuss the assessment of the candidate's fitness informally with the insurer making the application and may retain any notes of those discussions.

8) **Appointment and Duties of Insurance Manager**
   This Note sets out guidance on the duties of the insurance manager. In considering an application for registration as an insurance manager, the BMA will consider whether the person is fit and proper for the role, including whether the
person has knowledge of the insurance business of the insurer it will manage adequate to enable it to act in that capacity. The Note also provides that there should be a formal management agreement between the insurance manager and the insurer.

9) **Approved Actuary (appointment criteria)**
This Note describes the eligibility criteria and the approval process for the approved actuary of an insurer. Prior to accepting an appointment as the approved actuary, and on an on-going basis, a candidate must be satisfied that, given the scale and complexity of the business as written by the insurer, the estimation of the liabilities of the insurer pursuant to the Act is within the person's professional expertise and proficiency and that the approved actuary is not subject to any conflicts of interest that would affect the approved actuary's ability to objectively fulfill his role.

An approved actuary is a natural person approved by the BMA as qualified to provide an opinion as to the adequacy of an insurer's total long-term business reserves as reported in its statutory financial statements. Any new candidate for approved actuary shall provide the BMA with a letter of undertaking that he or she will perform their functions in accordance with the Act and the standards of his or her relevant association.

10) **Role of Approved Actuary**
This Note sets out the guidance for the issue by the approved actuary of his opinion on the adequacy of the total long-term business insurance reserves of an insurer. The Note details the nature of the opinion and the valuation of long term business reserves and touches on accepted actuarial practice, working papers of the approved actuary, his right to information and communication of the approved actuary's opinion.

11) **Domestic (Bermuda) Insurance Business**
This Note sets out the guidance for market conduct for writers of domestic (i.e. local) insurance business. Insurers must ensure all authorized intermediaries are registered with the BMA and states that an insurer must take measures to monitor the performance of the authorized intermediary, including complaints made against the authorized intermediary with respect to advice or sales made by the authorized intermediary on behalf of the insurer. An intermediary is required to give customers information on its status, specifically whether it is independent or associated with particular insurance companies, and whether it is authorized to conclude insurance contracts on behalf of an insurer or not.

12) **Corporate Governance**
The BMA through this Note provides guidance to boards of directors and management of insurers about its expectations on corporate governance and related matters. The board is ultimately accountable and responsible for the
performance and conduct of the insurer. It should have a balance of appropriately skilled, experienced and qualified individuals who can apply informed and independent judgment to the governance of the licensed entity. It should ensure that the insurer is effectively directed and managed, and its business is conducted in a sound and prudent manner with integrity, due care and professional skills appropriate to the nature and scale of its activities. Risk management and internal control systems and practices may also differ depending on the size and complexity of the insurer, and the nature of the insurer's risk exposures. The BMA expects boards to be aware of emerging best practices that are applicable to their institution, and will look for indications that these have been considered and, where appropriate, incorporated into the institution's governance practices.

13) **Risk Management and Internal Controls**

This Note sets out factors that the board of directors and the management of an insurer should consider when establishing and implementing risk management and internal control systems and procedures. Insurers are expected to implement and maintain sound and prudent risk management policies and systems capable of promptly identifying, measuring, assessing, reporting and controlling their risks. The circumstances of each insurer are unique and the risk management systems and practices will differ, depending on the scope and size of the insurer and the nature of its risk exposures. Insurers should review their policies and practices regularly to ensure that they remain appropriate in light of changing circumstances and in light of how policies and practices have performed. Development and implementation of an adequate and sound system of internal controls is normally the responsibility of management. The board however, is ultimately responsible for ensuring that such a system is established and maintained.

14) **Insurance Underwriting/Reinsurance Management**

This Note states that every insurer should have in place strategic underwriting policies (underwriting guidelines) approved and reviewed regularly by the board. It is important that the board and management of an insurer recognize that they have the prime responsibility for the sound and prudent management of an insurer's underwriting strategy. Insurers should also have a clear strategy to mitigate and diversify risks, such as defining limits on the amount of risk retained, taking out appropriate reinsurance cover or using other risk transfer arrangements consistent with its nature, business and capital position. The reinsurance program should, among other matters, address how the reinsurance is to be purchased, how reinsurers will be selected, including how to assess their security, and what collateral, if any, is required at any given time. If requested, an insurer's reinsurance arrangements should be available for review by the BMA.

15) **Monitoring & Control of Investments**

This Note provides that insurers must manage their investments in a sound and prudent manner that is consistent with the risk profile of the company. Insurers
need to identify, measure, report and control the main risks. The board should establish, and the insurer adhere to investment policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments to avoid undue risk of loss and obtain a reasonable return. The BMA expects that the board will be ultimately responsible for the oversight of investment management, regardless of the extent to which associated activities and functions are delegated or outsourced. Key staff involved with investment activities should have the appropriate levels of skills, experience and integrity. The board should review the adequacy of the overall investment policy, at least annually, considering the company's activities, its overall risk tolerance, its long-term requirements and its solvency position.

The complete text of the Notes can be found on the BMA's web site (www.bma.bm) and are also available on request from us.

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For further information, please contact David J. Doyle at djdoyle@cdp.bm

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

About Conyers Dill & Pearman
Conyers Dill & Pearman, the international offshore law firm, was established in Bermuda in 1928. The Firm has a complement of over 400 staff and is headquartered in Bermuda with operations in Anguilla, British Virgin Islands, Cayman Islands, Hong Kong, London and Singapore. The Firm advises on the laws of Bermuda, the British Virgin Islands and the Cayman Islands.

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