



BERMUDA PUBLIC ACCOUNTABILITY BOARD (BPAB)

CONSULTATION PAPER

**Proposed Changes to the Regulatory Regime for
Public Interest Entity (PIE) Audit Oversight**

16 September 2024



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I. INTRODUCTION

1. The Bermuda Public Accountability Board (BPAB) was established as a statutory corporation by the Bermuda Government upon enactment of The Bermuda Public Accountability Act of 2011 (the 2011 Act) to provide a comprehensive, independent and transparent system of oversight of Bermuda public accountants that audit public interest entities (Bermuda PIE Auditors).
2. The 2011 Act provided BPAB with the power to carry out independent public supervision by means of developing and implementing quality assurance and enforcement systems with processes for investigations and enforcement.
3. BPAB's legislation is comprised of the 2011 Act and the subsequent 2015, 2017 and 2020 amendments thereto (the BPAB Act) as well as the Bermuda Public Accountability (General) Rules 2015 (the BPAB Rules), Bermuda Public Accountability (General) Regulations 2015, and Bermuda Public Accountability (Review Proceedings) Regulations 2015 (collectively referred to hereinafter as the BPAB Legislation).
4. BPAB proposes to make enhancements to the regulatory oversight regime for audits of Bermuda public interest entities (PIEs) that have a significant public interest. In doing so, BPAB seeks to ensure that the BPAB Legislation and practices provide a comprehensive, independent and transparent system of oversight of Bermuda PIE Auditors that is efficient and effective in promoting audit quality. Such BPAB Legislation and practices should be fit for purpose and appropriately tailored to Bermuda as a jurisdiction bearing in mind the relevant nature, size, or other risk-based considerations related to audits of Bermuda PIEs and the Bermuda jurisdiction in which they operate. To this effect, proportionality for the local jurisdiction is considered.
5. BPAB supports collaboration and transparent exchange of information through regulator-to-regulator exchange of information with other PIE audit oversight regulators. The Big Four Bermuda PIE Auditors are also subject to registration and inspection oversight by the Chartered Professional Accountants Bermuda (CPA Bermuda) and the United States (US) Public Company Accounting Oversight Board (PCAOB). Two of these firms are under the oversight of the United Kingdom (UK) Financial Reporting Council (FRC) and one of these two firms is also registered with the Netherlands Dutch Authority for the Financial Markets (AFM).
6. BPAB recommends that the BPAB Legislation and practices be amended to focus on audits where there is significant public interest in Bermuda entities while avoiding duplication of audit oversight and promoting collaboration and/or reliance, where practicable, with other reputable independent audit oversight regulators.
7. In order to understand the views of stakeholders, consultation with the auditing profession is required and is a critical step of effecting changes to the BPAB Legislation. BPAB is therefore requesting feedback on proposed changes to the BPAB Legislation noted in this consultation paper related to the purpose, scoping, and funding of BPAB. Depending on the outcome of the consultation on these fundamental areas, a further consultation may take place and may



include other matters such as BPAB governance structure, independence, registration process, inspections, investigations and establishment of a review panel.

8. Changes in this consultation may be made in the future because of (i) feedback received and/or (ii) BPAB's own fit-for-purpose considerations unrelated to the feedback received. These enhancements, if adopted as proposed, will primarily focus on the regulatory framework and practices for PIE audit oversight in Bermuda. BPAB acknowledges that the desired outcome of enhancing its regulatory regime may be achieved in a variety of ways. Accordingly, BPAB will consider the views of the auditing profession, including Bermuda PIE Auditors registered with BPAB, CPA Bermuda, and other interested parties or persons, in order to, where necessary, amend the proposed enhancements or consider alternative proposals. This approach will regard all proposed changes to the regulatory regime as subject to change until the conclusion of the consultation period and required legislative changes have been effected.

II. Proposed Changes to BPAB Legislation

9. The proposed changes to the BPAB Legislation addressed in this consultation paper cover the following areas: A. Purpose, B. Scoping, and C. Funding.
10. BPAB invites the views of the auditing profession, including its registered Bermuda PIE auditors, and other interested persons, on the proposals set out in this consultation paper, including views from the following: CPA Bermuda, member firms of CPA Bermuda, Bermuda Monetary Authority (BMA), Bermuda Stock Exchange (BSX), Association of Bermuda International Companies (ABIC), Association of Bermuda Insurers and Reinsurers (ABIR), Bermuda International Long Term Insurers and Reinsurers (BILTIR), and Bermuda Bankers Association.
11. Comments should be addressed to info@bermudapab.com no later than November 30, 2024.
12. BPAB intends that the proposed changes to the BPAB Legislation and practices will enter into force prior to the end of 2025.

A. Purpose of BPAB

13. BPAB was established to provide a comprehensive, independent and transparent system of oversight of Bermuda PIE Auditors. The 2011 Act referred to this system as “a system that is in accordance with Articles 29, 30 and 32 of Directive 2006/43/EC of the European Parliament and Council”.¹ This reference is outdated and should be removed as there has been subsequent amendments thereto.
14. BPAB set out to achieve European Union (EU) equivalence with respect to PIE audit oversight when the UK was part of the EU.
15. There are Bermuda entities listed and trading on US stock exchanges, which are all audited by the Big Four Bermuda audit firms. The US PCAOB requires registration of and inspects the

¹Details of this EU Directive and specially articles 29, 30 and 32 referred to in the BPAB Act can be found at : [EUR-Lex - 32006L0043 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/lexuri/cs/l/uri.do?uri=CELEX:32006L0043-EN)



Big Four Bermuda audit firms every three years, but does not have a concept of equivalence where it would rely on BPAB's oversight.

16. There are two Bermuda audit firms that audit a total of six Bermuda incorporated entities listed and trading securities on the London Stock Exchange (LSE). These firms are required to be registered with, and subjected to inspection every three years by, the UK FRC. The one Bermuda PIE audit subject to EU audit oversight has been registered with the Netherlands AFM.
17. Bermuda was assessed for EU equivalence with respect to PIE audit oversight which was not granted largely due to the lack of economic relevance.
18. The UK FRC has recently reviewed Bermuda's PIE independent audit oversight regime for equivalence and a decision has not yet been reached. Achieving equivalence with the UK FRC would be expected to result in the UK FRC relying on the inspection oversight regime of BPAB rather than conducting inspections every three years of Bermuda PIE auditors as it does now for the two Bermuda PIE auditors that audit UK listed and trading entities.
19. The UK FRC is a significantly larger independent audit oversight regulator benefiting from economies of scale with access to a greater level of resources in terms of funding and qualified, experienced staffing resources where it can perform inspections of Bermuda audit firms cost effectively. Bermuda has a much smaller number of audit firms, PIE audits, and economy of scale compared to the UK. It may be seen as unfair for audit firms that do not audit any UK or EU listed Bermuda PIEs to have to bear any additional cost of achieving and maintaining equivalence for the benefit of the two audit firms that audit the smaller number of UK or EU listed PIEs (currently less than 10).
20. BPAB proposes that the primary purpose of BPAB should not be to achieve equivalence but rather the stated purpose should be to promote audit quality with respect to Bermuda entities with significant public interest.
21. While it is recommended that BPAB continue to consider the legislation, criteria and practices of other reputable jurisdictions, including in the EU, UK, US and Canada, it is recommended that BPAB's independent audit oversight regime be tailored to Bermuda considering proportionality as Bermuda is a smaller jurisdiction with fewer audit firms and fewer PIEs than these larger countries. BPAB's independent audit oversight should be risk-based, avoid duplication of oversight, and not allow PIE audits to fall under the radar of any audit oversight.
22. It is also recommended that BPAB's legislation avoid references to specific legislation or requirements of other jurisdictions which could or likely will become superseded or amended in the future. As noted above, the reference in the 2011 Act to the Bermuda system being in accordance with Articles 29, 30 and 32 of Directive 2006/43/EC will need to be removed as this reference is outdated, excludes subsequent amendments or more recent directives, and focuses on one jurisdiction's legislation where there is only one firm and one Bermuda PIE audit impacted. The majority of the current PIEs are affiliated with the US or the UK. BPAB also recommends that the references to Canada be removed and, where necessary, leverage off international standards or principles that are more relevant to audits of Bermuda PIEs. Bermuda PIEs for the most part prepare their financial statements in accordance with US



generally accepted accounting principles (GAAP) or International Financial Reporting Standards (IFRS) where the audit is conducted in accordance with US generally accepted auditing standards (GAAS) or International Auditing Standards (IAS), respectively.

23. BPAB proposes that its legislation, where practicable, aims to meet generally accepted international standards on independent audit oversight such as adhering to the principles established by the International Forum of Independent Audit Regulators (IFIAR). IFIAR comprises independent audit regulators (including the US PCAOB, UK FRC and CPAB) from 56 jurisdictions around the globe. To be admitted as a member of IFIAR, BPAB must be independent of the profession and engaged in audit regulatory functions in the public interest. IFIAR requires its members to have ultimate responsibility for the system of recurring inspection of audit firms undertaking audits of public interest entities, including regulatory measures taken as a result of inspections and the regulator must exercise that responsibility either directly or through independent oversight.² Its mission is to serve the public interest, including investors, by enhancing audit oversight globally.³ To date, BPAB has not been admitted as a member of IFIAR but has been working with IFIAR in its assessment of Bermuda against its principles of independent audit oversight with respect to PIE audits expected in order for BPAB to be accepted as a member. BPAB proposes that such principles be met in order to be seen as an internationally recognized reputable independent audit oversight regulator and to be admitted as a member of IFIAR.

B. Scoping

24. BPAB aims to focus its independent oversight on audits of general-purpose financial statements of entities incorporated or otherwise established in Bermuda where there is significant public interest (Bermuda PIEs) whereby: (i) the entity's securities are publicly traded on, and whose primary listing is, the BSX and/or (ii) the entity is regulated by the BMA with a license in banking or insurance. In doing so, BPAB aims to ensure all auditors of such Bermuda PIEs are registered and subjected to independent audit oversight, regardless of location of that auditor.
25. BPAB proposes to clarify in the BPAB Legislation that the audit engagements in scope are audits of general-purpose financial statements required by Bermuda law or regulation whereby the audit report: a) expresses an opinion; b) provides reasonable assurance as to whether the financial statements give a true and fair view, or are presented fairly in all material respects, in accordance with a financial reporting framework or GAAS permitted under Bermuda law or regulation; and c) does not contain a restriction for use. In Bermuda, this typically includes audit engagements conducted in accordance with IAS or US GAAS, as noted above. Review engagements, audits of BMA statutory prescribed financial statements or other audits where the audit report is restricted for use, audits of internal controls over financial reporting, and audits of condensed consolidated financial statements prepared in accordance with the financial reporting provisions of the Insurance Act 1978 and amendments

² <https://www.ifiar.org/members/joining-ifiar/>

³ <https://www.ifiar.org/>



thereto (the Insurance Act 1978) and the Insurance Account Rules 2016 would continue to not fall within the scope BPAB.

26. BPAB proposes changes in scope as described below with respect to:

- a. Audit firms that are required to register with BPAB and
- b. Entities meeting the Bermuda PIE definition whose audits will be subjected to BPAB's oversight and inspection activity.

B1. Audit firms required to register with BPAB

27. BPAB currently scopes in only Bermuda audit firms who are members of CPA Bermuda that audit Bermuda PIEs, as currently defined in the BPAB Legislation. Audit firms outside of Bermuda that audit Bermuda entities were not scoped into audit oversight in Bermuda and therefore were not required to register with BPAB. They were also not required to register with CPA Bermuda as CPA Bermuda oversees the audit firms and individual accountants in Bermuda.

28. For effective and fair practices related to independent PIE audit oversight, it is important that there are no audits of Bermuda entities where there is significant public interest falling outside of the scope of any audit oversight. Ideally that oversight would be by a regulator who is independent from the auditing profession as is the case for BPAB.

29. BPAB proposes to change the scoping to better align with practices in other countries, such as the UK, US, Canada and certain EU member states, whereby BPAB's scope would first be determined based on Bermuda entities that meet the Bermuda PIE definition and then the auditors of those Bermuda PIEs would be required to register with BPAB in order to be able to issue audit reports on general distribution financial statements of Bermuda PIEs, regardless of whether that auditor is located in Bermuda or in another country.

30. Certain exempted companies conduct their business and/or have significant staffing and processes outside of Bermuda where it is more efficient and effective for the audit of the entity, or the group that the entity is part of, to be conducted by the same auditors in that particular location outside of Bermuda. As a result, BPAB is not proposing to prevent firms outside of Bermuda from auditing Bermuda PIEs that are exempted companies so as to not deter decisions by PIEs to choose or retain Bermuda as their jurisdiction. However, it is important that Bermuda ensures that no auditors fall under the radar of independent audit oversight if they audit a Bermuda entity with significant public interest. This would assist in preventing or detecting reputational damage to Bermuda should a Bermuda exempted company fail and in ensuring Bermuda is not seen as a country that lacks appropriate independent audit oversight of regulated exempted entities, whether they are publicly traded or privately held.

31. BPAB is seeking feedback as to whether or not Bermuda law or regulation should be put in place to require that, in order to issue an audit report on the financial statements of:

- a. A Bermuda local company (which under Bermuda law is a company where Bermudian ownership is >60% and the business is conducted locally) the auditor must be a Bermuda domiciled audit firm who is a member in good standing with CPA Bermuda or



- b. A Bermuda exempted company (which under Bermuda law is a Company whose business is conducted outside of Bermuda), the auditor must be a member in good standing with CPA Bermuda if it is a Bermuda domiciled audit firm or be registered with, or a member of, and under the audit oversight of another professional accountancy or audit oversight regulator that is deemed as being equivalent and acceptable to the relevant Bermuda regulator of that Bermuda PIE (being the BSX and/or the BMA) and to CPA Bermuda or BPAB, as applicable.

Where a Bermuda local company or exempted company meets the definition of a Bermuda PIE, the auditor must register with BPAB. This will ensure there is a complete registration and oversight of all auditors of Bermuda entities and that all auditors, regardless of location, pay fees to fund Bermuda's audit oversight regime and agree to share information with Bermuda regulators with respect to audits of Bermuda entities.

32. BPAB encourages fair competition in the market by more audit firms being registered to conduct PIE audits. Of the nine firms who are members of CPA Bermuda, five are registered with BPAB. The audits of Bermuda PIEs have been concentrated with the Big Four audit firms who audit 75 Bermuda PIEs based on the 2023 PIE reporting. Promotion of competition in Bermuda is encouraged while ensuring that PIE auditors have effective systems in place to promote audit quality for PIE audits.
33. While BPAB is not proposing to impose auditor rotation requirements, Bermuda PIEs are encouraged to consider auditor rotation in terms of enhancing objectivity by enabling a fresh set of eyes on the audited accounts unencumbered by past decisions.
34. BPAB's Legislation permits either audit firms or individuals to register with BPAB. An individual could be presumed to not have the quality control systems in place that a firm would have in place, including separation of individuals responsible for review and preparation of audit file documentation. Although no individuals have registered with BPAB since inception, BPAB is seeking feedback as to whether it should remove the provisions of the BPAB legislation that allows individuals or sole proprietors or practitioners to apply for registration as a PIE Auditor.

B2. Public Interest Entities whose Audits are within BPAB's Oversight

35. The BPAB Act currently defines a PIE as an entity that is audited by a PIE Accountant⁵ that meets one or more of the following:
 - a) listed and trading securities on the BSX as a domestic issuer^{1, 3}
 - b) listed and trading securities on any stock exchange in the UK or EU member states or such other jurisdiction as the Minister by Order may specify⁴;
 - c) licensed as a deposit-taking business under the Banks and Deposit Companies Act 1999³
 - d) registered under the Insurance Act 1978 as—
 - i. a Class 4 or Class E insurer³;
 - ii. a Class 3A, Class 3B, Class C or Class D insurer, where such insurer underwrites more than ten percent of its business by premium volume in the retail business^{2, 3};and/or



e) authorized as an investment fund under the Investment Funds Act 2006 and listed and trading securities on the BSX³.

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- 1 "domestic issuer" means an entity which is incorporated or otherwise established in Bermuda, but which is not an exempted company.
 - 2 "retail business" has the meaning assigned to it in section 30JA(2) of the Insurance Act 1978 : "the business of selling insurance products that are designed for and bought by an individual."
 - 3 The Act specifies that the definition of Public Interest Entity shall not apply, in any financial year, to an entity under a), c), d) or e) above in the case where such entity has a shareholder equity that is, or net assets that are, valued at less than \$10 million pursuant to the entity's latest audited financial statements.
 - 4 The Minister of Finance to date has not ordered any other jurisdiction to be included in the definition of a PIE.
 - 5 If an audit firm from a country outside of Bermuda issues the audit report on the financial statements of the entity that is registered in Bermuda, that entity would not be considered a PIE for purposes of the Act and reporting of PIEs to BPAB on the basis that the entity is not audited by a PIE public accountant registered with CPA Bermuda.
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36. Based on the 2023 reporting from PIE public accountants registered with BPAB, the 75 Bermuda PIEs whose audits are within the oversight of BPAB are comprised of 47 Class E or Class 4 commercial reinsurers, nine retail insurers, four banks, and 15 publicly listed and trading entities (excluding one bank that is publicly listed). BPAB is requesting updates from audit firms under the current and proposed new PIE definition (see below), within the same timeline as comments are due for this consultation paper, to determine the expected change in number of PIEs and whether or not any further audit firms will come into scope of BPAB's oversight as a result of the changes recommended in this paper.

37. BPAB recommends that the Bermuda PIE definition align with the revised IESBA definition and guidance published by the International Ethics Standards Board for Accountants (IESBA) on April 11, 2022 in the International Code of Ethics^{4 5}. In that publication the following was noted in paragraph R400-17: "a firm shall treat an entity as a public interest entity when it falls within any of the following categories: (a) A publicly traded entity; (b) An entity one of whose main functions is to take deposits from the public; (c) An entity one of whose main functions is to provide insurance to the public; or (d) An entity specified as such by law, regulation or professional standards to meet the purpose described in paragraph 400.10." Paragraph R400.18 of that publication states that "In complying with the requirement in paragraph R400.17, a firm shall take into account more explicit definitions established by law, regulation or professional standards for the categories set out in paragraph R400.17 (a) to (c)." In the IESBA's final pronouncement on its new public interest entity definition, it noted that public interest is considered to be interest in the financial condition of the entity due to the potential impact of its financial well-being on stakeholders of the entity and not related to other aspects of the entity (such as quality of services and data held). The factors to consider in evaluating the extent of public interest in the financial condition of an entity were listed as follows:

- The nature of the business or activities, such as taking on financial obligations to the public as part of the entity's primary business.

⁴ <https://www.ethicsboard.org/publications/final-pronouncement-revisions-definitions-listed-entity-and-public-interest-entity-code>

⁵ <https://www.ethicsboard.org/publications/final-pronouncement-revisions-definitions-listed-entity-and-public-interest-entity-code>



- Whether the entity is subject to regulatory supervision designed to provide confidence that the entity will meet its financial obligations.
- Size of the entity.
- The importance of the entity to the sector in which it operates including how easily replaceable it is in the event of financial failure.
- Number and nature of stakeholders including investors, customers, creditors and employees.
- The potential systemic impact on other sectors and the economy as a whole in the event of financial failure of the entity.

38. While the independent audit oversight functions in Canada and the US scope in audits of entities listed and trading on their own countries' exchanges, they have not scoped in audits of non-public banks or insurers. BPAB follows a similar practice to the UK and EU whereby it scopes in audits of publicly listed and trading entities as well as regulated non-public insurers and banks. This is also in line with the new international PIE definition which was published by the IESBA referred to above.

39. Each of the above categories of the current Bermuda PIE definition are discussed further below outlining specific issues arising from the current scoping with proposed changes.

a) listed and trading securities on the Bermuda Stock Exchange as a domestic issuer

Including entities trading securities on a country's own stock exchange is a key component of the PIE definition to ensure there is independent audit oversight in place. The IESBA defined publicly traded entity as "an entity that issues financial instruments that are transferrable and traded through a publicly accessible market mechanism, including through listing on a stock exchange." BPAB notes that the publicly accessible market mechanism through listing on a stock exchange for Bermuda is a listing on the BSX for purposes of the Bermuda PIE definition.

BPAB wishes to retain BSX trading entities in the Bermuda PIE definition where there is significant public interest in the financial condition of the entity by investors removing the words "listed and" in line with the new IESBA PIE definition published in April 2022.

When scoping in BSX listed and trading entities, only domestic issuers were included, which are considered local companies under Bermuda law. Exempted companies listed and trading on the BSX, which are listed on the BSX as international issuers, were excluded from the Bermuda PIE definition. Exempted companies under Bermuda law typically conduct business outside of Bermuda and are exempted from the Bermuda Companies Act 1981 requirement where a local company must have at least 60% of the total voting rights exercisable by and securities beneficially owned by Bermudians. This scoping would seem to align with a focus on where there is significant public interest in terms of share ownership by the Bermuda public in a locally listed and trading entity that conducts its business in Bermuda.

BPAB proposes to amend the PIE definition for BSX trading entities to better focus on where there is significant public interest in terms of ownership interest in a publicly traded Bermuda PIE, regardless of the location of the interest holder, and not refer to domestic



or exempted companies. By nature of being listed and trading on the BSX, it is presumed that there is public interest in the BSX traded entity. In addition, it is presumed that where the BSX is the primary listing, the level of significance of public interest is higher for Bermuda than for a BSX listed entity whose securities are traded on a stock exchange outside of Bermuda as its primary listing whereby the BSX is a secondary listing for that entity's publicly traded securities.

BPAB proposes that the entity is a Bermuda PIE where it trades securities on the BSX where the BSX is the primary listing, thereby excluding BSX listed and trading entities whose primary listing is on a stock exchange outside of Bermuda. Entities listed on the BSX mezzanine market where its securities are available to only qualified investors, and not to the public, will continue to be excluded from the scope of the Bermuda PIE definition.

The following is also presumed to not be in scope of the Bermuda PIE definition: listings of collective investment vehicles, depository receipts, insurance related products, and derivative warrants carrying rights based on, or rights to acquire, other securities, an index or some other asset.

An entity with shareholders' equity or net assets below \$10 million were excluded from the Bermuda PIE definition. BPAB proposes that the \$10 million net asset threshold be removed as it could result in scoping out entities with significant public interest where the entity may be moving toward a potential solvency or liquidity issue as the lower the net asset value, the closer the entity becomes to being at risk for not being able to pay its obligations to policyholders. BPAB is soliciting feedback as to whether a threshold should be put in place in the Bermuda PIE definition to scope out BSX traded entities such as scoping out entities that have: i) a smaller market capitalization (e.g. \$50 million or less) and/or ii) a small number of public shareholders (such as 10 or less) given that the IESBA new publication noted above includes as factors to consider in evaluating the extent of public interest in the financial condition of an entity the size of the entity and number and nature of stakeholders including investors, customers, creditors and employees.

b) listed and trading securities on any stock exchange in the United Kingdom or the European Union member states or such other jurisdiction as the Minister by Order may specify

The Bermuda PIE definition scoped in Bermuda entities listed and trading on the UK and EU exchanges that are already under the audit oversight of the respective UK/EU independent audit oversight regulators. Equivalence reviews focus on having adequate and equivalent systems of independent PIE audit oversight and not on coverage of the same PIE audits. There is no apparent risk-based rationale for BPAB to duplicate scoping into the Bermuda PIE definition UK and EU listed and trading Bermuda entities that are not listed and trading on the BSX and while not scoping in entities listed on exchanges in any other country. In addition, there are only two audit firms auditing a small number of UK or EU listed and trading PIEs that could potentially benefit from EU or UK equivalence.

Other countries, including Canada, the US, UK and certain EU member states scope in, for PIE independent audit oversight, audits of publicly listed and trading entities on their



own countries exchanges regardless of where the auditor of that PIE is located. Bermuda audit firms that audit Bermuda incorporated entities listed and trading on these other countries exchanges have to register with, pay fees to, and agree to be subjected to inspection oversight by these other countries' independent audit oversight regulators. BPAB proposes that Bermuda follow the same practices as applied by these other countries. As a result, BPAB wishes to remove this component b) from the Bermuda PIE definition entirely thereby removing the reference to UK and EU exchanges and to other jurisdictions as the Minister by Order.

c) licensed as a deposit-taking business under the Banks and Deposit Companies Act 1999

The US and Canada exclude audits of non-public entities from its independent audit oversight by the PCAOB and CPAB respectively. BPAB's practice of scoping in banks who take in deposits from the public is aligned with the UK FRC's practice as well as certain EU member states. In addition, BPAB's inclusion of regulated banks is aligned with the revised PIE definition published by the IESBA in 2022.

BPAB proposes that the small number of banks in Bermuda licensed by the BMA who take deposits from the public have significant public interest given the reliance on these banks to safeguard the deposits from the public. The failure of any one of these local banks could have a detrimental impact and result in reputational damage for Bermuda as they play a significant role for individuals, businesses and the overall economy. As a result, BPAB recommends that banks in Bermuda regulated by the BMA that take in deposits from the public continue to be included in the Bermuda PIE definition as there is significant public interest warranting independent PIE audit oversight.

Consistent with the recommendation noted under a), BPAB recommends removing the exclusion for banks with net assets under \$10 million from the PIE definition. This threshold to date has not resulted in any banks falling outside of the scope of independent audit oversight and a lower net asset level could be an indicator of financial difficulty rather than linked with significant public interest. This would be consistent with the practice in the UK where there is no threshold in place for deposit-taking banks with respect to inclusion as a PIE.

BPAB recommends changing the wording referring to the Banks and Deposit Companies Act 1999 or add "Bermuda" at the beginning as well as "and any subsequent amendments thereto" at the end as such a date reference could become outdated if amendments were or are made subsequently to the 1999 date.

d) registered under the Insurance Act 1978 as—

- i. a Class 4 or Class E insurer
- ii. a Class 3A, Class 3B, Class C or Class D insurer, where such insurer underwrites more than ten percent of its business by premium volume in the retail business.

BPAB wishes to retain (re)insurers with significant public interest in scope of the Bermuda PIE definition. This is consistent with the UK FRC practice as well as supported by the revised PIE definition published by the IESBA in 2022 referred to above.



The new IESBA PIE definition includes as a public interest entity “an entity one of whose main functions is to provide insurance to the public”. The IESBA noted that public interest is considered to be interest in the financial condition of the entity due to the potential impact of its financial well-being on stakeholders of the entity. For a non-publicly listed (re)insurer, the public interest is where public policyholders pay premiums to the (re)insurer in return for payment of losses should certain defined risk event(s) occur.

While the UK does not set a threshold to exclude smaller size insurers or reinsurers from its PIE definition, the IESBA’s list of factors to consider in evaluating the extent of public interest in the financial condition of an entity includes size of the entity, importance of the entity to the sector in which it operates including how easily replaceable it is in the event of financial failure, number and nature of stakeholders, and the potential systemic impact on other sectors and the economy as a whole in the event of financial failure of the entity.

In order to align scoping of Bermuda (re)insurers based on level of significance of public interest, BPAB proposes to retain in scope in both retail insurers and commercial (re)insurers that write third party or unrelated business (re)insuring risks of individuals and/or entities based on the BMA defined classes of registration of (re)insurers. Unrelated business would be where the (re)insurer issues policies to individuals or entities who are not the owner(s) or affiliate(s) of the owner(s) in order to (re)insure predefined risks. Unrelated business would exclude captive insurers licensed with the BMA under Classes 1 and A as they insure only the risks of its parent and affiliates.

As required by the Bermuda Insurance Act 1978, the BMA maintains a register of licensed entities which can be accessed on the BMA’s website at www.bma.bm where the names and classes of insurers are noted to facilitate identifications of PIEs based on class of insurer.

Consistent with the recommendation noted under a) for BSX traded entities and b) for banks, BPAB wishes to remove the exclusion for insurers with net assets under \$10 million from the Bermuda PIE definition as this risks scoping out an insurer with a significant level of public interest as a Bermuda PIE where there could be a potential liquidity or solvency issue linked to a low level of net assets.

BPAB considered whether another threshold should be applied for scoping in PIEs. Insurers that are Bermuda PIEs for the most part report under US GAAP or IFRS. While premiums, losses and loss expense reserves and other (re)insurance related account balances are often reported under US GAAP where there is transfer of risk or no deposit accounting, these balances may not be reported in the IFRS financial statements since insurance contracts are typically fair valued under IFRS 17. As a result, comparability of readily available financial information from the general distribution financial statements across PIEs would be challenging if BPAB were to implement a threshold related to premiums, loss and loss expense reserves or other reinsurance balance.

The ten percent of premium volume retail business is also proposed to be removed as this threshold lacks focus on the level of significance of public interest that is comparable across different insurers. For example, under the current definition, an insurer with a premium volume of \$30 million would be scoped in if it writes \$3.1 million in retail business while a much larger entity that writes \$1 billion in premium volume would be scoped out when it writes up to \$100 million retail business. The suggested scoping would support a



risk-based rationale and/or focus on the level of significance of public interest held in the insurer. Furthermore, premium volume was not defined to be clear as to whether it was gross or net premiums written or earned and ten percent retail business was not a reported number easily verified to a set of audited financial statements or other public report. As noted above, now that IFRS reporters fair value insurance contracts, premiums are no longer recognized on the face of the general-purpose financial statements under IFRS 17 as they were back when the PIE definition was first set in place.

BPAB is seeking feedback as to whether a quantitative threshold should be applied for (re)insurers that meet the Bermuda PIE definition or if no quantitative threshold should apply similar to the approach taken in the UK. Regardless, BPAB wishes for the focus to remain on certain classes of insurers that have significant public interest to be in scope bearing in mind that Bermuda has a large number of insurers who insure all or mostly all of the risks of its owners and affiliates, unlike the UK, where such Bermuda insurers would not have any, or any significant, public interest and therefore should be excluded from the PIE definition. Furthermore, there are certain quantitative thresholds built into the BMA defined classes of insurers that would create a natural scoping of PIEs with significant public interest as more fully described below.

The Insurance Act 1978 requires Class 3B, 4, and E insurers to prepare GAAP financial statements prepared in accordance with IFRS, US GAAP or a GAAP applicable in Bermuda, Canada or the UK or such other GAAP as the BMA may recognize (GAAP financial statements) under section 17A in addition to the restricted use statutory prescribed financial statements required under section 16 of the Insurance Act 1978. However, Class 3A, C and D insurers are permitted to submit condensed general purpose financial statements prepared in accordance with any insurance accounts rules instead of GAAP financial statements. As noted above, audits of condensed consolidated financial statements would not be in scope of BPAB's oversight as the audit report is restricted and the audit reports typically state that the financial statements are not in accordance with GAAP as they do not meet all the requirements that GAAP basis financial statements require.

Classes 1, 2, 3, A, and B insurers are not required to produce GAAP or condensed GAAP financial statements under the Insurance Act 1978. The BMA considers these classes of insurers as limited purpose insurers in its Insurance Code of Conduct for Insurers in addition to Innovative insurer general business, special purpose insurers, and collateralized insurers⁶.

The following classes of insurers (which includes reinsurers) would not be considered PIEs under the proposed new PIE definition given the lack of, or low level of, public interest and/or given that the BMA does not require general purpose audited GAAP financial statements for these classes:

- i. General business Class 1 and Long-term business Class A insurers who are wholly owned and insure only the risks of its shareholder and/or affiliates

⁶ <https://www.bma.bm/viewPDF/documents/2022-08-31-12-35-41-Insurance-Code-of-Conduct--Revised-August-2022.pdf>



- ii. General business Class 2 and Long-term business Class B insurers who are owned by two or more unrelated parties and the insurer's business written covers 80% or more of the risks of shareholder(s) and/or affiliates in terms of net premiums written.
- iii. General business Class 3 insurers who are not registrable as a Class 1, Class 2, Class 3A, Class IIB, Collateralized Insurer, Class 3B, Class 4 insurer or Special Purpose Insurer
- iv. Innovative insurer general business (IIGB) and Innovative insurer long term business (IILT) insurers who carry on business in an innovative manner
- v. Class IGB (innovative general business) or ILT (innovative long-term business) insurers where that insurer carries on business in an innovative and experimental manner
- vi. Special Purpose Insurers who carry on special purpose insurance business under which the insurer fully collateralizes its liabilities to the insured(s).
- vii. Collateralized insurers who carry on special purpose business, but are not registrable as a Special Purpose Insurer.

BPAB proposes that Classes 3B, 4 and E insurers and reinsurers are PIEs as the BMA requires audited GAAP financial statements for these insurers under Section 17A of the Insurance Act 1978 and these insurers are presumed to have significant public interest as described below:

- viii. General business Class 3B insurers are large commercial (re)insurers whose unrelated business is 50% or more of the net premiums written or net loss and loss expense provisions and where net premiums written from unrelated business is \$50 million or more.
- ix. General business Class 4 insurers are large commercial (re)insurers underwriting excess liability business or property catastrophe reinsurance risks, who have a total statutory capital and surplus of at least \$100 million. Where an entity is registrable as a Class 4 insurer, it cannot be so registered if it is also registrable as a Class 1 or 2 insurer. This means that that Class 4 (re)insurers do not include those that write all or 80% of more of the risks of its owners and/or affiliates.
- x. Long-term Class E insurers have total assets of more than \$500 million and are not registrable as a Class A, Class B or Class IILT insurers. This means that Class E (re)insurers do not include those that write all or 80% or more of the risks of its owners and/or affiliates.

BPAB is seeking feedback as to whether or not Class 3A, C and D insurers should be considered PIEs given they are not required to prepare GAAP financial statements as they have an option to prepare condensed general purpose financial statements or whether they are considered PIEs when they elect to prepare GAAP financial statements. Each of these are summarized as follows:

- General business Class 3A (re)insurers are small commercial (re)insurers whose unrelated business is 50% or more of the net premiums written or loss and loss expense provisions and whose net premiums written from unrelated business is less than \$50 million.
- Long-term Class C (re)insurers have total assets of less than \$250 million and are not registrable as a Class A, Class B or Class IILT insurer.



- Long-term Class D insurers have total assets of \$250 million or more but less than \$500 million and are not registrable as a Class A, Class B, Class IILT or Class C insurer.

BPAB is also seeking feedback as to whether or not the audit of the consolidated financial statements of insurance groups should be in scope of BPAB's oversight, if not already included in another category of the Bermuda PIE definition, where the BMA is the group supervisor and the insurance group is required under Section 23 of the Insurance (Group Supervision) Rules 2011 to file consolidated GAAP financial statements audited by the group's approved auditor. If the parent company is the BMA supervised group insurer whose consolidated financial statements are issued and this entity is a publicly listed and traded entity on a stock exchange outside of Bermuda, the entity is not proposed to be a PIE. However, it is proposed that where the parent company is the BMA supervised group insurer and this entity is a privately owned entity, this entity be considered a Bermuda PIE on the basis of being a BMA supervised group insurer to the extent it is not already in scope of the Bermuda PIE definition as a regulated insurer under one of the classes of general or long-term business noted above.

Retail insurers who write insurance policies directly to individuals are important to retain in scope where there is significant public interest given the reliance by the Bermuda public for insurance protection for their personal assets or risks and whereby a failure of the retail insurer could have a detrimental impact on policyholders and the broader Bermuda economy if there were significant losses and policyholders were unable to get reimbursed for their losses. The proposed new scoping would include both retail insurers and reinsurers under the class licenses proposed to be in scope of the PIE definition. As a result, BPAB proposes to remove the specific reference to retail insurers and so as to not preclude reinsurers with significant public interest who issue policies to other unrelated entities from the scope of the PIE definition, in particular for Class 3B.

BPAB proposed to add "Bermuda" at the beginning as well as "and any subsequent amendments thereto" at the end of the reference to the Insurance Act 1978 in the PIE definition to avoid such a date reference from being outdated.

BPAB is seeking feedback on the above in order to appropriately define which BMA regulated insurers should be in scope of the Bermuda PIE definition, including scoping considerations for general business and long-term insurers and reinsurers, to ensure the focus remains on where there is significant public interest.

- e) authorized as an investment fund under the Investment Funds Act 2006 and listed and trading securities on the Bermuda Stock Exchange (BSX).

The Bermuda PIE definition separately scoped in an entity authorized as an investment fund under the Investment Funds Act 2006 and listed and trading securities on the BSX. Based on this definition, there has not been any investment funds meeting the BPAB PIE definition as investment funds listed on the BSX have not traded. BPAB proposes to remove this category and only retain category a) above which would include as a PIE all entities, including funds, trading securities on the BSX as its primary listing.



40. BPAB further recommends that the Bermuda PIE definition is agreed between BPAB and CPA Bermuda so that there is no inconsistency in the definition to ensure there is an efficient and effective audit oversight in place in Bermuda whereby BPAB focuses its inspections on PIE audits while CPA Bermuda focuses its practice inspections on non-PIE audits without duplication or overlap.
41. BPAB proposes that the BSX, BMA, CPA Bermuda and BPAB ensure their terminology as noted in their respective legislation for describing required general purpose financial statements is consistently described to avoid confusion as to what is in scope.

C. Funding of BPAB

42. The cost of BPAB's PIE audit oversight regime is currently funded as follows:
 - a. PIE Auditors – There are five PIE Auditors registered with BPAB who pay \$5,000/year each to register with BPAB and they also reimburse BPAB for the costs of inspections and investigations, where applicable.
 - b. Bermuda Government's Ministry of Finance – All costs, other than registration, inspection and investigation costs, have been funded through the Bermuda Government's Ministry of Finance grants. The current level of grant funding is \$400,000 for the fiscal year ending March 31, 2025 which would result in an annual deficit based on budgeted expenditures. BPAB estimates that a total funding of more than \$500,000 per annum on average is required in order for BPAB to fulfil its obligations under the BPAB legislation.
43. The Bermuda Government's Minister of Finance has requested that BPAB, on a go-forward basis, works toward the creation of a plan, which will allow for expenditures to be funded from non-Government sources, on at least a break-even basis. A plan was requested to achieve that objective, including any recommendations for relevant legislative amendments.
44. Without funding from the Bermuda Government, the audit firms and/or their PIE clients would need to provide the funding required. There are currently only five registered firms, of which only four audit PIEs. It may be seen as unfair if the increased cost of funding BPAB were to be borne evenly across all audit firms without considering the relevant number and size of the PIE audits of each. The cost may be best shared based on the number of PIEs audited and the firm's prorata share of total audit fees received for Bermuda PIE audits, as reported by the audit firms to BPAB as part of the annual PIE listing update request.
45. BPAB is aware of the sensitivity regarding the cost of doing business in Bermuda whereby entities may be reluctant to do business in Bermuda, list on the BSX, and/or engage local auditors if the cost of doing so is prohibitive and outweigh the benefits. This challenge must be considered to avoid reducing the attractiveness of Bermuda as a jurisdiction. The higher cost of PIE audits typically impacts PIEs through higher audit fees.
46. Other countries affiliated with Bermuda PIEs (including Canada, US, and UK) have significantly more PIE audits and PIE auditors under their oversight whereby funding from the profession and/or PIEs would be more viable due to their larger size and scale.



47. Another challenge is that, if BPAB's funding is solely from the audit profession, there is the potential for not being seen to be independent and free of undue influence from the auditing profession with respect to funding which is important for BPAB as an independent audit oversight regulator to establish. Having guaranteed funding in place by the Bermuda Government has been an important consideration in this regard. BPAB is soliciting feedback as to whether or not the Bermuda Government's Ministry of Finance should continue to provide any level of funding for independent audit oversight such as the costs of BPAB outside of inspection, investigation and registration fees related to administration and general oversight functions.
48. BPAB is seeking feedback as to the most appropriate funding model for Bermuda's independent PIE audit oversight and, in particular, on the following proposed funding model:
- a. Audit firms pay initial and annual renewal registration fees to BPAB comprised of a fixed fee plus an additional fee based on the number and size of PIE audits (determined as a percentage of its PIE audit fees to total PIE audit fees of all BPAB registered PIEs auditors). This would be expected to result in a fairer sharing of costs of audit oversight than all audit firms paying the same fee regardless of number of PIEs or extent of PIE audit fees earned.
 - b. Audit firms continue to reimburse BPAB for inspection and investigation costs. BPAB will charge the audit firms the full costs of conducting inspections instead of the current practice of only passing on the costs paid to engaged inspectors. Staff and certain compliance committee members have and do participate directly in the planning, execution and reporting phases of the inspections and where applicable, investigations. The Compliance Committee's responsibilities relate to the conduct of inspections and investigation. In a year where there is both inspection and investigation activity, the total cost of the respective inspection and/or investigation (including of any BPAB staff and/or Compliance Committee members participating in the investigation and/or inspection activity) will be apportioned based on the estimated time and costs for each respective activity and firm that was inspected and/or investigated during the year.
 - c. If the Bermuda Government no longer provides funding to BPAB, the fixed costs would be charged to the firms through their annual registration fees with variable costs allocated to the respective inspection or investigation activities using the methodology outlined in 48a.
49. BPAB it is also seeking feedback as to whether or not funding should be provided to BPAB directly from the PIEs or indirectly through the PIE audit firms whereby the audit firms would recover the additional costs from the PIEs or whether the audit firms should bear the additional cost and have the ability to determine whether or not it wishes to, in turn, allocate of the additional costs through audit fees to PIE audits or otherwise.



D. Consultation Questions

Purpose:

Q A1. Should Bermuda have an independent audit oversight function whose purpose is focused on promoting audit quality to protect significant public interests in Bermuda PIEs as described above? Why or why not?

Q A2. Do you agree that BPAB should focus primarily on meeting the core principles for audit regulators such as those set out by IFIAR? Why or why not?

Q A3. Do you agree with the changes proposed as the purpose of BPAB noted above? Why or why not?

Q A4. Do you have any suggested changes to the proposed purpose of BPAB noted above?

Scoping of Audit Firms:

Q B1. Do you agree with the scoping proposed above, including that audit firms located outside of Bermuda should be required to be registered with BPAB to be able to audit and issue a report on the general-purpose financial statements of a Bermuda PIE? Why or why not?

Q B2. If yes to Q1. above:

Q B2.1 Should BPAB restrict registration of audit firms located outside of Bermuda to only those who are under the oversight of another reputable independent audit oversight regulator such as the UK FRC, US PCAOB, etc.?

Q B2.2 Should BPAB also require that the audit firm be a member in good standing with its local accounting or audit oversight regulator?

Q B3. Are you aware of any issues that would create difficulty for BPAB or the Bermuda audit firms in terms of scoping in and overseeing audit firms outside of Bermuda? If yes, please explain.

Q B4. If no to Q B1. above, should Bermuda continue to allow audit firms outside of Bermuda to audit Bermuda entities with significant public interest without Bermuda imposing any independent audit oversight? Why or why not?

Q B5. Should mandatory audit partner and audit firm rotation requirements be put in place in Bermuda or do you agree with BPAB's recommendation to encourage instead of requiring rotation? Why or why not?

Q B6. Should individuals be permitted to register with and audit Bermuda PIEs? Why or why not?

Q B7. What, if any, other comments or feedback do you believe BPAB should consider in determining the scoping of audit firms that has not been considered above or in the BPAB legislation?

Revised PIE Definition:

Q B8. Do you agree with the proposed changes to the Bermuda PIE definition noted above? If not, why not and what changes would you suggest to the recommended PIE definition and why? In responding, please provide feedback on the areas noted above where it is noted that feedback is being sought to determine the scoping for the revised PIE definition.



Q B9. Other than those noted above, what issues, recommendations or changes, do you wish BPAB to consider regarding the scoping of PIEs into the revised PIE definition?

Funding of BPAB:

Q C1. Do you agree with the proposed funding model noted above? Why or why not? If not, what funding model would you propose?

Q C2. Should the Bermuda Government provide any level of funding or should the auditing profession bear the full cost of BPAB as a PIE independent audit oversight function through a self-funded model as is requested by the Bermuda Government? Please provide feedback on the BPAB recommendations and areas where BPAB is soliciting feedback in responding to this question.

Q C3. What other comments or concerns do you wish BPAB and the Minister of Finance to consider in setting the new funding model, including related to registration fees, inspection and investigation fees and other costs of operating BPAB?