Bermuda Insurers

The Bermuda insurance and reinsurance market was born in the 1950s and has developed rapidly since, beginning with the captive industry in the 1970s. Growth continued with the excess liability insurance market in the 1980s, the influx of large capital in the early 1990s to create catastrophe reinsurance companies and a further wave of capital in response to industry needs after the attacks on September 11, 2001 and Hurricanes Ivan, Katrina, Rita and Wilma in 2004 and 2005. The flow of unencumbered financial capital and substantial intellectual capital as well as the development of innovative risk financing and strong, flexible regulation has resulted in Bermuda becoming "The World's Risk Capital".

The Bermuda Licensing Regime

Bermuda's insurance licensing and regulatory legislation is contained in the Insurance Act and the regulations established thereunder (together, the "Act"). The Act distinguishes between long-term business (generally life, annuity, accident and disability contracts) and general business (in other words, anything that isn't long-term business).

General business insurers fall into different classes depending upon the nature of the risks that are being underwritten and how such risks relate to the owners of the company. There is no distinction made between insurance and reinsurance.

The Bermuda Monetary Authority (the "BMA") is responsible for the regulation of insurance companies under the Act with the Insurance Division dealing with licensing, supervision, regulation and inspection of companies and the licensing of brokers, managers, agents and salesmen. The Act combines elements of self-regulation, filing of statutory financial statements and certifications confirming compliance with statutory requirements and review and investigation by the BMA in certain circumstances.

Registration of Insurers

An insurance company may only carry on insurance business in Bermuda if its proposed business plan is acceptable to the BMA. The BMA is bound by the Act and has the discretion to decline any application to register a company or to impose conditions to the registration, and is required to exercise its discretion in the public interest.

There are two options available when forming and licensing a Bermuda insurer:

1. Make a pre-incorporation application for registration as an insurer with respect to the intended business concurrently with the application to incorporate. If the application is acceptable, the company will be incorporated under the Companies Act and it will be subject to the generally applicable company law.

   Following incorporation, the company will be organized and, after receipt of the necessary capital as described in its business plan, an application will then be made for the company to be registered as an insurer.

   This is the usual approach, which is illustrated in Schedule A "Key Steps to Establishing a Bermuda Captive".

2. Make an application to incorporate the company prior to any application being made in connection with the intended insurance business. This application is made in the same manner as any other Bermuda company and need only include a brief summary of the intended business. If successful, the company is then incorporated and organized, following which it can then make its full application for registration as an insurer.

It should be noted that the BMA still has the discretion to decline the application to register the company as an insurer, thus preventing it from actually carrying on insurance business.

The incorporation submission and the application for registration do not form a part of any public file in Bermuda. Registration under the Act will remain in force until cancelled by the BMA on any grounds specified in the legislation.

General Business Insurers

General business is any insurance business that is not long-term business. There are six classes of general business insurers, being Class 1, Class 2, Class 3, Class 3A, Class 3B and Class 4.

Schedule B "Comparison of the Classes" compares the nature of these classes and some of the key regulatory requirements. In addition, general business insurers are subject to regulation relating to minimum solvency margins and minimum liquidity rations.

Minimum Solvency Margin ("MSM")

The Insurance Act provides that the statutory assets of a general business insurer must exceed its statutory liabilities by an amount greater than the prescribed MSM.

The formula for calculating the MSM is prescribed by the Act and varies depending upon the class of insurer and the insurer's net premiums written and loss reserve level (See Schedule B).

Minimum Liquidity Ratio

An insurer carrying on general business is required to maintain the value of its "relevant assets" at not less than 75% of the amount of its "relevant liabilities".

The term "relevant assets" is defined by reference to certain items contained in the insurer's statutory balance sheet and include, among other things, (a) cash and time deposits, (b) quoted investments, (c) unquoted bonds/debentures, (d) investment income and (e) funds held by ceding reinsurers. Unquoted shares, investments in and advances to affiliates, real estate and collateral loans are not relevant assets but the BMA may, on application by the insurer, designate such assets as relevant assets.

Relevant liabilities are total general business insurance reserves and total other liabilities less deferred income tax, sundry liabilities and letters of credit and guarantees.

Long-term Insurers

Long-term business generally includes contracts of insurance on human life, annuities on human life and certain types of accident and disability coverage.

A long-term insurer is required to maintain an MSM whereby its long-term business assets exceed its long-term business liabilities by not less than $250,000.

Code of Conduct

Effective July 1, 2010, all Bermuda insurers must comply with the Code of Conduct which prescribes duties and standards to be complied with under the Insurance Act.

Failure to comply with these requirements will be a factor to be taken into account by the BMA in determining whether an insurer is conducting its business in a sound and prudent manner under the Insurance Act.

A note describing the requirements of the insurance Code of Conduct is available on request.

Schedule A – Key Steps to Establishing a Bermuda Captive

Choose your professional service providers
(including lawyers, auditors, insurance managers, bankers and actuaries, if necessary)

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Apply to the Registrar of Companies ("RoC") to reserve the preferred name of the new company (if approved, the name will be reserved for three months)

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Apply to the Bermuda Monetary Authority ("BMA") to incorporate the new company.

Complete the pre-incorporation information form (including details of ownership, proposed business plan, 5-year pro-forma financial projections and company administration)

Submit an application for registration (including the proposed Memorandum of Association) to the RoC.

The RoC will proceed with the registration after receiving notice of consent from the BMA

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Once the incorporation application is approved, incorporate and capitalise the new company and convene the initial organisational meetings

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Submit the insurance licensing application to the BMA for review by the BMA's Assessment and Licensing Committee. Successful applications approved for licensing

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Submit finalised pre-incorporation documents to the BMA's Licensing and Authorisations Department for final registration

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The BMA issues the new company's insurance licence

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Company commences insurance operations

Schedule B - Comparison of the Classes

	Class 1	Class 2	Class 3	Class 3A	Class 3B	Class 4
Key Characteristics	A "pure captive" which is owned by one person and insures the risk of its owner or affiliated entities	Up to 20% of net premiums written in respect of risks outside the group	Any body corporate not registrable as a Class 1, 2, 3A, 3B or 4 insurer or a special purpose insurer	(A) 50% or more of: (i) net premiums written; or (ii) the loss and the loss expense represent unrelated business; and (B) total net premiums written from unrelated business are less than $50 million	Same as Class 3A except total net premiums written from unrelated business are more than $50 million	Excess liability or property catastrophe reinsurance business with total Statutory Capital* of at least $100 million
Minimum issued share capital	$120,000	$120,000	$120,000	$120,000	$120,000	$120,000 - $1 Million
When are statutory returns/statements to be filed?	6 months from financial year end	6 months from financial year end	4 months from financial year end	4 months from financial year end	4 months from financial year end	4 months from financial year end
Failure to maintain minimum solvency margin	n/a	n/a	File explanatory report with the BMA within 30 days	File explanatory report with the BMA within 30 days	File explanatory report with the BMA within 30 days	File explanatory report with the BMA within 30 days
Any Insurance Act prohibitions on declaring or paying dividends?	Prohibited if fails to maintain minimum solvency margin without BMA approval	Prohibited if fails to maintain minimum solvency margin without BMA approval	Prohibited if fails to maintain minimum solvency margin without BMA approval	Prohibited if fails to maintain minimum solvency margin without BMA approval	Dividends must not exceed 25% of Statutory Capital unless affidavits filed	Dividends must not exceed 25% of Statutory Capital unless affidavits filed
Reduction of statutory capital	BMA approval required if reduction of 15% or more	BMA approval required if reduction of 15% or more	BMA approval required if reduction of 15% or more	BMA approval required if reduction of 15% or more	BMA approval required if reduction of 15% or more	BMA approval required if reduction of 15% or more and provided that directors' affidavit filed
Is a loss reserve specialist required?	No (unless directed by the BMA)	Yes	Yes	Yes	Yes	Yes
Minimum solvency margin	Greater of: (a) $120,000; (b) 10% of the aggregate of loss expense provisions and other general business reserves; and (c) (i) 20% of NPI** (for NPI up to $6 million); or (ii) the aggregate of $1.2 million and 10% of the amount by which NPI exceeds $6 million in that year	Greater of: (a) $250,000; (b) 10% of the aggregate of loss expense provisions and other general business reserves; and (c) (i) 20% NPI (for NPI up to $6 million); or (ii) the aggregate of $1.2 million and 10% of the amount by which NPI exceeds $6 million in that year	Greater of: (a) $1 million; (b) 15% of the aggregate of loss expense provisions and other general business reserves; and (c) (i) 20% of NPI (for NPI up to $6 million); or (ii) the aggregate of $1.2 million and 15% of the amount by which NPI exceeds $6 million in that year	Greater of: (a) $1 million; (b) 15% of the aggregate of loss expense provisions and other general business reserves; and (c) (i) 20% of NPI (for NPI up to $6 million); or (ii) the aggregate of $1.2 million and 15% of the amount by which NPI exceeds $6 million in that year	Greater of: (a) $1 million; (b) 15% of the aggregate of loss expense provisions and other general business reserves; and (c) (i) 20% of NPI (for NPI up to $6 million); or (ii) the aggregate of $1.2 million and 15% of the amount by which NPI exceeds $6 million in that year	Greater of: (a) $100 million; (b) 15% of the aggregate of loss expense provisions and other general business reserves; and (c) 50% of net premiums written in current financial year (or projected to be written on application for registration)

* "Statutory Capital" comprises share capital, contributed surplus and other statutory fixed capital (for example, letters of credit).
** NPI" means net premium income

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