

THE NEW BVI INSURANCE REGIME

Ned Jackson – March 2010

History and Scope of Insurance Legislation in the British Virgin Islands (“BVI”)

The first BVI insurance legislation, the Insurance Act, 1994 (the "Insurance Act, 1994") was passed in 1994 and the following year the Insurance Regulations, 1995 were passed. In subsequent years various amending statutes were passed, culminating in the enactment of the Insurance Act, 2008 (the "Insurance Act, 2008"), with attendant Insurance Regulations, 2009 (the "Insurance Regulations") the following year. Both enactments came into force 1 February 2010.

The Insurance Act, 2008 applies to any person carrying on insurance business in or from within BVI. "Insurance business" is defined in Section 3(1) of the Insurance Act as "the business of undertaking liability under a contract of insurance to indemnify or compensate a person in respect of loss or damage, including the liability to pay damages or compensation contingent upon the happening of a specified event, and includes life insurance business and reinsurance business". Section 4 defines certain circumstances in which insurers are deemed to be carrying on insurance business in or from within BVI. Insurance managers, agents, adjusters and brokers are also required to obtain a license under the Insurance Act.

The Insurance Act distinguishes between long-term business and general business. Long-term business consists of life, annuity or accident and disability contracts. Anything else falls under the general business heading. A further distinction is made between domestic and non-domestic business, domestic business being every contract insuring a person domiciled or resident in BVI at the date thereof, or the subject matter of which is property of any kind within BVI or in transit to or from BVI. Generally there is no difference in the regulation of insurance and reinsurance business. The Insurance Regulations set forth in detail particulars relating to the carrying on of insurance business, ascertaining measures of solvency, maintaining the required registers and determining which information must be made available to the public.

On January 1, 2002, an independent regulatory body was established in BVI known as the Financial Services Commission (the "Commission"). The Commission was formed pursuant to the Financial Services Commission Act, 2001 (the "FSC Act"), which established the separation of financial services from the BVI Government. The Commission has taken over all regulation of BVI insurance companies. All Commission policies are overseen by a Board of Commissioners appointed by the Executive Council (which is the Cabinet of Government Ministers). Operational responsibilities for the Commission are the responsibility of the Managing Director and the management team. The management team is comprised of the Managing Director, a Deputy Director and the various Division Heads. The Insurance Division is responsible for the regulation, supervision and inspection of all insurance companies, insurance managers and other intermediaries operating within BVI to ensure compliance with the provisions of the Insurance Act and Regulations and the head of this Division is referred to as the Director of Insurance Business.

In 2009 a Regulatory Code (the "Regulatory Code") was enacted which governs, among other things, many aspects of insurance business in BVI. Much of the detailed particulars relating to the administration and regulation of insurance formerly found in the Insurance Act and Regulations have now been set out in the Code.

Accordingly, the legislation regime which currently regulates all facets of insurance business in BVI consists of:

1. the FSC Act;
2. the Insurance Act, 2008;

3. the Insurance Regulations; and
4. the Regulatory Code.

Highlights of the New Act

The main thrust of the revised legislation structure is to provide a robust regulatory framework, with a high degree of flexibility based on the utilisation of the Regulatory Code. Many of the requirements formally enacted in the Insurance Act, 1994 are now to be found in the Regulatory Code, which can be fine-tuned by the FSC regulators without recourse to the full legislative amendment process.

Under the Insurance Act, 1994, insurance licenses expired each year and had to be renewed on an annual basis. Under the Insurance Act, 2008 a license, once granted, continues until it is cancelled, whenever that might be.

Under the Insurance Act, 1994 an insurance company was allowed to hold both General and Long-Term licenses simultaneously. Under the Insurance Act, 2008 no single insurer can hold both licenses. Companies currently holding both licenses will have to apply to the FSC for a license either to conduct one or more classes of General business or for a license to carry on one or more classes of Long-Term business.

The Insurance Act, 1994 regulated the re-domiciliation of an insurance company; the Insurance Act, 2008 does not. This is now dealt with under the general governing corporate legislation, the BVI Business Companies Act, 2004 (the "BVIBC Act"). Similarly, creation of segregated portfolio insurance companies are covered under the BVIBC Act, rather than the insurance legislation.

Under the Insurance Act, 1994 unlicensed insurers could be given an exemption under section 74(3) to allow them to effect contracts in the BVI. The criteria for granting such exemptions was generally vague and undefined. Under the Insurance Act, 2008 greater specificity is provided as to who would be able to seek such exemption and in what circumstances, in order to ensure more control and uniformity in application. Under the 2008 Act multi-national corporations, non-governmental organisations and companies resident in BVI are restrained from acquiring life, health and disability insurance and pension plan products from non-resident insurance companies.

The Regulatory Code

The Regulatory Code was enacted pursuant to FSC Act and is designed to enhance and modify the regulation of those businesses and individuals licensed to conduct financial services business in the British Virgin Islands.

As the Regulatory Code was made by the Commission pursuant to the powers given to it under the FSC Act, the Regulatory Code has the status of delegated or subsidiary legislation and has the same legal force and effect as if it had been contained in the FSC Act or in any other financial services legislation. Consequently, it is also enforceable by the FSC (e.g. the FSC will have the power to take enforcement action against a licensee if the licensee has contravened, or is in contravention of the Regulatory Code).

The Regulatory Code is structured into six main parts, briefly summarized as follows:

1. Part I sets out the fundamental principles of business applicable to all financial services in the British Virgin Islands;
2. Part II sets out provisions of general application that apply to every licensee, regardless of the type of license held, unless the Code specifically provides otherwise;
3. Part III sets out the additional requirements applicable to bank licensees;
4. Part IV applies to insurance licensees;
5. Part V sets out the additional requirements applicable to trust companies and company managers licensees; and
6. Part VI applies to money service providers (those licensed pursuant to the British Virgin Islands Financing and Money Services Act, 2009).

As indicated earlier, much of the detailed particulars relating to the administration and regulation of insurance formerly found in the Insurance Act and Regulations have now been set out in the Code.

BVI Looking to the Future

In recent years the BVI insurance industry has seen difficult times. The number of captives licensed in the jurisdiction has dropped from a high in the early 1990s of approximately two thousand companies, to a figure in the mid-300s less than decade ago to slightly more than 200 today. Part of this was due to the dramatic increase in the number of other “offshore” insurance jurisdictions (both within the United States and elsewhere around the world) and the introduction of more stringent capital and due diligence requirements, and part was due to the perception of the jurisdiction by the Organisation for Economic Cooperation and Development (OECD) and other international watchdog organizations.

In response to this the BVI regulators and legislators acted swiftly and decisively, revising much of its financial services laws, policies, codes and modalities to comply with international standards of transparency, etc and voluntarily entering into more than the requisite number of Tax Information Exchange Agreements (TIEAs). As a result, the threat of blacklisting has virtually disappeared and BVI is now listed on the OECD “white list”. The current feeling is that BVI has now created a competitive environment which will work going forward to attract more numbers and categories of insurers to the jurisdiction and ensure a bright future for all its players.

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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.

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