

BERMUDA INSURANCE GUIDE UPDATE

Michael Frith – March 2009

INTRODUCTION

Bermuda's insurance "industry" had its beginnings in the 1950s but rapid development, particularly in the captive industry, did not occur until the late 1960s/early 1970s. By the late 1970s, a system of regulation was considered essential to maintain a healthy expanding industry. The public and private sectors worked together to produce the Insurance Act 1978. Since that time the laws have been regularly amended to recognize the diverse range of underwriting activities conducted by Bermuda insurers and reinsurers. The industry is subject to realistic but not overly burdensome regulations aimed to support Bermuda's credibility as an international insurance and reinsurance market.

INSURANCE REGULATORY FRAMEWORK

Insurance Licensing and Regulatory Legislation

The insurance licensing and regulatory legislation is comprised of the Insurance Act 1978 and the regulations promulgated under that Act (the "Regulations"). The Regulations are the Insurance Accounts Regulations 1980 and the Insurance Returns and Solvency Regulations 1980. References herein to the "Insurance Act" are to the Insurance Act 1978 and the Regulations.

The Insurance Act applies to any person carrying on insurance business in or from within Bermuda including local companies, exempted companies, non-resident insurance undertakings (which sell policies through Bermuda agents on Bermudian lives and Bermuda property or pertaining to Bermuda risks) and overseas companies carrying on non-domestic insurance business from an office in Bermuda under a permit. It should be noted, though, that the act of merely underwriting the risks of, for example, a Bermuda incorporated company may not be within the scope of the Insurance Act where the underwriting is conducted by a non-Bermuda entity and entirely from an office outside Bermuda. No person is permitted to carry on business in or from within Bermuda as an insurance manager, broker, agent or salesman unless registered for that purpose in accordance with the Insurance Act.

The Insurance Act distinguishes between long-term business and general business. Long-term business consists of life, annuity, accident and disability contracts in effect for not less than five years and certain other types of contracts. General business is any insurance business which is not long-term business. General business insurers fall into different classifications depending upon the nature of the risks underwritten and the relationship of such risks to the owners of the Bermuda company. A further distinction is made between domestic and non-domestic business. Domestic business includes insurance business where the subject matter of the contract is property that at the time of the making of the contract is in, or in transit to or from, Bermuda. The Insurance Act does not distinguish between insurers and reinsurers: Companies are registered (licensed) under the Insurance Act as "insurers" (although in certain circumstances a condition to registration may be imposed to the effect the company may carry on only reinsurance business). The Insurance Act uses the defined term "insurance business" to include reinsurance. References herein to insurance companies include reinsurance companies.

The Bermuda Monetary Authority

The regulation of those matters pertaining to the Insurance Act is the responsibility of the Bermuda Monetary Authority (the “BMA”).

The Insurance Division of the BMA is responsible for the licensing, supervision, regulation and inspection of Bermuda’s insurance companies and for the licensing of all insurance brokers, agents, managers and salesmen. As required by the Insurance Act, the Minister of Finance has appointed an Insurance Advisory Committee which has the duty to advise the BMA on any matter connected with the discharge of its functions under the Insurance Act. The Insurance Advisory Committee may advise the Minister of Finance on any matter relating to the development of the insurance industry in Bermuda.

Sub-committees of the Insurance Advisory Committee have been appointed for advising on and reviewing the law and practice of insurance in Bermuda, including reviewing accounting and administrative provisions and procedures. The membership of these sub-committees is drawn from the legal and accounting professions and the insurance industry itself.

The nature of regulation under the Insurance Act is a combination of self-regulation, filings of statutory financial statements and certifications as to compliance with the applicable statutory requirements, together with review and investigation by the BMA in specified circumstances.

REGISTRATION AS AN “INSURER”

Incorporation Applications

An insurance company may not carry on insurance business in Bermuda unless its proposed business plan is acceptable to the BMA. The BMA has the discretion to decline any application to register a company or impose conditions to the registration, and is required to exercise its discretion in the public interest. The BMA is bound by the Insurance Act to have regard to whether the applicant is a fit and proper body to be engaged in “insurance business” and, in particular, whether it has itself or has available to it adequate knowledge and expertise.

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

The first option is to 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 1981 (like any other Bermuda company) and it will be subject to the generally applicable company law. Following incorporation, the company will be organized (at which time such actions as the allotment of shares, adoption of bye-laws and appointment of directors will be undertaken) 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 application closely resembles the pre-incorporation application, particularly if no changes in circumstances have occurred between the pre-incorporation application and the time of the registration application.

The second option is to 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 notwithstanding the incorporation of what appears on paper to be an insurance company using this method, 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.

The statutory minimum capital and solvency requirements do not apply to applicants for registration as insurance managers, brokers and intermediaries without underwriting powers. However, as with insurers, the BMA must have regard to whether the applicant is a fit and proper person and whether he or she has adequate knowledge of insurance business to enable him or her to act in the capacity for which application has been made. Applicants are required to demonstrate that the registered entity will have professional indemnity cover in place of at least \$1 million.

Registration under the Insurance Act, once granted, remains in force until cancelled by the BMA on any grounds specified in the legislation.

Mutual Companies

The Companies Act 1981 makes specific provision for the incorporation of mutual companies. A mutual company is defined as “any company, other than a company limited by shares, or other company having a share capital which is authorised to engage in or carry on as a principal object insurance or reinsurance business of all kinds on the mutual principle”. A mutual company is deemed to engage in or carry on insurance or reinsurance business on the mutual principle where the members of the company, who are exposed to some contingency, associate themselves together by contributing by way of premiums on the basis that if the contemplated contingency befalls any member he or she shall receive a compensatory payment.

A mutual company is required to create and maintain a reserve capital fund of not less than \$250,000. In the event of a mutual company being wound up, the liability of a member is limited to the premiums or any unpaid premiums or the undischarged portion thereof due to the company by the member. “Premiums” is defined to include retrospective premium adjustments or calls and any capital contribution or other such assessment that is due under the bye-laws of the company or any other contractual obligation of the member.

GENERAL BUSINESS INSURERS

Effective January 1, 2009, the Insurance Act was amended to create 2 additional general business classifications (Classes 3A and 3B) and a new stand-alone category of Special Purpose Insurer (“SPI”).

General Business Classifications

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

Class 1 - A body corporate is registrable as a Class 1 insurer where it -

- (a) is wholly owned by one person and intends to carry on insurance business consisting only of insuring the risks of that person; or
- (b) is an affiliate of a group and intends to carry on insurance business consisting only of insuring the risks of any other affiliates of that group or of its own shareholders.

Such insurers are often referred to as ‘pure captives’ and are subject to the least rigorous regulatory oversight of the different classes of insurers. However, it is noteworthy that before reducing by 15% or more its total statutory capital (comprising of share capital, contributed surplus and other statutory fixed capital e.g. letters of credit) as set out in its previous year’s financial statements, a pure captive must obtain the BMA’s approval.

Under the Insurance Act, every Class 1 insurer is required to file annually a statutory financial return within 6 months from the insurer’s financial year end (may be extended on application to 9 months). Penalty fines may be incurred if filings are not done as required. The statutory financial return includes the auditor’s report on the statutory financial statements, a declaration of statutory ratios and, in the event there has been discounting of loss reserves, an opinion from a loss reserve specialist (e.g. casualty actuary but the individual must be acceptable to the BMA) where compliance is not possible on an undiscounted basis.

Class 2 - A body corporate is registrable as a Class 2 insurer where it is wholly owned by two or more unrelated persons and intends to carry on insurance business not less than 80% of the net premiums written in respect of which will be written for the purpose of -

- (a) insuring the risks of any of those persons or of any affiliates of any of those persons; or
- (b) insuring risks which, in the opinion of the BMA, arise out of the business or operations of those persons or any affiliates of any of those persons.

Such companies differ from pure captives in two ways: (1) they have more than one owner, and (2) as much as 20% of the risks that they insure may come from outside of the groups of their owners.

A Class 2 insurer is similar to a pure captive in that it is lightly regulated but must obtain the approval of the BMA before reducing by 15% or more its total statutory capital.

Under the Insurance Act, every Class 2 insurer is required to file annually a statutory financial return and statutory financial statements within 6 months from the insurer's financial year end (may be extended on application to 9 months). Penalty fines may be incurred if filings are not done as required. The statutory financial return includes the auditor's report on the statutory financial statements, a declaration of statutory ratios and in the event there has been discounting of loss reserves, an opinion from the Class 2 insurer's approved loss reserve specialist where compliance is not possible on an undiscounted basis. Every third year, beginning with the return relating to the financial year following the company's licensing, Class 2 insurers must include in their annual statutory financial return the opinion of its approved loss reserve specialist in respect of the insurer's loss and loss expense provisions stated in the statutory financial statements.

Class 3A – A Class 3A insurer is a body corporate that intends to carry on insurance business in circumstances where – (a) 50% or more of the net premiums written; or (b) 50% or more of the loss and loss expense provisions represent unrelated business and its total net premiums written from unrelated business are less than \$50 million.

Class 3B - A Class 3B insurer is similar save that its net premiums written from unrelated business are \$50 million or more.

Class 3 - A body corporate is registrable as a Class 3 insurer where that body corporate is not registrable as a Class 1, Class 2, Class 3A, Class 3B, Class 4 insurer or Special Purpose Insurer.

A Class 3, 3A or 3B insurer must file within 30 days a written explanatory report with the BMA if it fails to maintain its solvency margin. Such insurer will be prohibited from declaring or paying dividends until the failure is rectified. Such insurer must also obtain the BMA's approval before reducing by 15% or more its total statutory capital.

Under the Insurance Act, Class 3, 3A and 3B insurers are required to file annually statutory financial returns and statutory financial statements within 4 months from the insurer's financial year end (may be extended on application to 7 months). Penalty fines may be incurred if filings are not done as required. The statutory financial return includes the auditor's report on the statutory financial statements, a declaration of statutory ratios and in the event there has been discounting of loss reserves, an opinion from its approved loss reserve specialist where compliance is not possible on an undiscounted basis. In any event, the return is to include the opinion of the approved loss reserve specialist in respect of the insurer's loss and loss expense provisions stated in the statutory financial statements.

As is the case for Class 4 insurers, Class 3B insurers may not declare dividends which could exceed 25% of its total statutory capital and surplus, as shown on its statutory balance sheet in relation to the previous financial year, unless at least 7 days before payment of those dividends it files with the BMA an affidavit (as to continued solvency compliance) signed by at least two directors of the insurer (one of whom must be a director resident in Bermuda if there be one) and the principal representative. Once filed the affidavit becomes a public document.

Given that Class 3B insurers (along with the Class 4's) are by definition Bermuda's largest commercial insurers, we anticipate that over the course of time further "Class 4 restrictions" will be extended to Class 3B's.

Class 4 (Excess and Catastrophe) - A body corporate is registrable as a Class 4 insurer where - (a) it has at the time of its application for registration, or will have before it carries on insurance business, a total statutory capital and surplus of not less than \$100,000,000; and (b) it intends to carry on insurance business including excess liability business or property catastrophe reinsurance business. Where a body corporate is registrable as a Class 4 insurer it shall not be so registered if it is also registrable as a Class 1 or Class 2 insurer.

A Class 4 insurer must file within 30 days a written explanatory report with the BMA if it fails to maintain its solvency margin. Such insurer will be prohibited from declaring or paying dividends until the failure is rectified. Further, where the Class 4 insurer's total statutory capital and surplus falls to \$75,000,000 or less, the said report is required to be filed within 45 days and accompanied by unaudited interim statutory financial statements covering such period as the BMA may require, a loss reserve specialist's opinion on reserves and a general business solvency certificate.

A Class 4 insurer may not declare dividends which could exceed 25% of its total statutory capital and surplus, as shown on its statutory balance sheet in relation to the previous financial year, unless at least 7 days before payment of those dividends it files with the BMA an affidavit (as to continued solvency compliance) signed by at least two directors of the insurer (one of whom must be a director resident in Bermuda if there be one) and the principal representative. Once filed the affidavit becomes a public document.

In addition, a Class 4 insurer must obtain the BMA's approval before reducing by 15% or more its total statutory capital. An affidavit as to continued compliance with the solvency margin and liquidity ratio is filed with the application for the BMA's approval. Once filed the affidavit becomes a public document.

Under the Insurance Act, every Class 4 insurer is required to file annually a statutory financial return and statutory financial statements within 4 months from the insurer's financial year end (may be extended on application to 7 months). Penalty fines may be incurred if filings are not done as required. The statutory financial return includes the auditor's report on the statutory financial statements, a declaration of statutory ratios and an opinion from its approved loss reserve specialist in respect of the insurer's loss and loss expense provisions. Further, a schedule of ceded reinsurance containing the required information is to accompany the annual return.

Minimum Solvency Margins

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 minimum solvency margin which varies with the type of registration of the insurer under the Insurance Act and the insurer's net premiums written and loss reserve level.

The formula for calculating the minimum solvency margin for each general business insurance classification is set out in the Appendices.

Minimum Liquidity Ratio

An insurer carrying on general business is required to maintain the value of its "relevant assets" at not less than seventy-five per cent 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 for general business. These items include (1) cash and time deposits, (2) quoted investments, (3) unquoted bonds and debentures, (4) investments in first mortgage loans on real estate, (5) investment income due and accrued, (6) accounts and premiums receivables, (7) reinsurance balances receivable and (8) funds held by ceding reinsurers. It should be noted that unquoted equities, investments in and advances to affiliates, real estate

and collateral loans are not relevant assets but the BMA, on application by the insurer, may designate such assets as relevant assets for the insurer.

The relevant liabilities are total general business insurance reserves and total other liabilities less deferred income tax, sundry liabilities (i.e. those not specifically defined) and letters of credit and guarantees.

Loss Reserve Specialist

Classes 2, 3, 3A, 3B and 4 insurers are required to appoint a loss reserve specialist approved by the BMA. Further for any insurer where the net premiums (as determined under the Regulations) from professional liability insurance constitute more than 30% of the net premiums written by an insurer during the relevant year, the insurer must appoint an approved loss reserve specialist for the purpose of certifying reserves, losses and loss expenses. "Professional liability insurance" means, for these purposes, liability insurance business where the risks, the subject of the contract of insurance, are risks of the persons insured incurring liabilities in relation to the negligence or other exercise by those persons of some professional skill.

Requirements for an applicant to qualify as an approved loss reserve specialist are that the applicant must be an individual and possess adequate professional qualifications as a casualty actuary and/or possess adequate experience to assess the sufficiency of insurance reserves of the insurer.

An opinion of the loss reserve specialist on the loss and loss expense provisions will be needed where loss reserves are discounted (i.e. reducing the amount of loss reserves by discounting the time value of money) but the insurer has not met its general business solvency margin on an undiscounted basis.

LONG-TERM INSURERS

A company is required to be registered as a long-term insurer in order to carry on long-term business. Long-term business includes contracts of insurance on human life, annuities on human life and certain types of accident and disability coverage. However, certain credit life business and employee group health and life business may be excluded from falling within the definition of long-term business.

A long-term insurer is required to maintain a minimum solvency margin whereby its long-term business assets exceed its long-term business liabilities by not less than \$250,000. The long-term business assets and liabilities are determined under the Regulations.

A long-term insurer must maintain its accounts in respect of its long-term business separate from any accounts kept in respect of any of its other businesses. The Insurance Act imposes certain restrictions on dividends and payments made from the insurer's long-term business fund which must be established with respect to its long-term business. Further, there are restrictions on transfer of insurance (not being reinsurance) business (requires a court order) and voluntary winding-up (liquidation of the long-term insurer is under court supervision). Long-term insurers must appoint an approved actuary.

Under the Insurance Act, every long-term insurer is required to file annually a statutory financial return and statutory financial statements within 4 months from the insurer's financial year end (may be extended on application to 7 months). Penalty fines may be incurred if filings are not done as required. The statutory financial return includes the auditor's report on the statements and a certificate of the approved actuary on the liabilities recorded in the statements.

A long-term insurer, before reducing by 15% or more of its total statutory capital (comprising of share capital, contributed surplus and other statutory fixed capital e.g. letters of credit), as set out in the previous year's statements, must obtain the BMA's approval for such reduction.

Life Insurance Act 1978

The Life Insurance Act 1978 (the "Life Act") will apply to certain policies that are made in Bermuda unless the parties agree that some other law shall apply. The Life Act requires certain matters to be stipulated in such policies as well as defining insurable interest (but without restricting such definition). Other provisions include assignability of policies and designation of beneficiaries.

SPECIAL PURPOSE INSURERS

With the growth in special purpose insurance transactions and securitizations, the Insurance Act has been amended to create a new classification: Special Purpose Insurer ("SPI").

In an orthodox insurance securitization transaction, an SPI (also referred to as a special purpose vehicle) is established for the purpose of entering into a single insurance contract. In order to fund its obligations under the contract, the SPI will issue some form of debt to investors in an amount equal to the company's maximum liability under the insurance contract. The notes will be limited recourse notes and provide that the company's obligation to pay interest and principal to the note holders diminishes by (and is subordinate to) an amount equal to the amount the company pays under the insurance contract.

The principal features of this new SPI category are as follows: (i) minimum paid up share capital will be \$1.00; (ii) the margin of solvency requirement will require that the assets of the SPI exceed its liabilities at all times; (iii) an SPI will only be permitted to write "special purpose business" (as that term is defined); and (iv) the SPI will be restricted from entering into any other business save for ancillary agreements to effect its special purpose business.

An existing insurer that meets the criteria for classification as an SPI may elect to remain a Class 3 insurer or re-register as an SPI, at the insurer's discretion. However newly incorporated insurers meeting the SPI criteria are expected to register as SPI's.

COMPOSITE INSURERS

The Insurance Act permits registering an insurer to conduct both general and long-term business. Generally, such composite insurer complies with the provisions of the Insurance Act as if the two types of business are underwritten by two separate companies. For example, the minimum issued and paid share capital for composites is as follows:

- (a) as a Class 1, Class 2, Class 3, Class 3A or Class 3B general insurer (\$120,000) and as a long-term insurer (\$250,000), is \$370,000;
- (b) as a Class 4 insurer (\$1,000,000) and as a long-term insurer (\$250,000), is \$1,250,000.

SUNDRY REQUIREMENTS OF THE INSURANCE ACT

There are certain provisions of the Insurance Act that are applicable to all registered insurers.

Principal Representative and Principal Office

The Insurance Act requires every insurer to appoint a principal representative resident in Bermuda and to maintain a principal office in Bermuda. The principal representative must be knowledgeable in insurance and will be responsible for arranging for the maintenance and retaining custody of the statutory accounting records and for making the annual statutory financial return. The principal representative, who must be approved by the BMA, may be a salaried director or manager normally resident in Bermuda or a Bermuda registered insurance management company. The principal office can be the office of that director or manager, or the office of the management company, and will normally be distinct from the registered office of the company where the share register, minute book, seal, etc. are kept by the company secretary. Certain minimum records are required to be maintained at the principal office, e.g. premium registers, loss registers and general records on reinsurances.

The Insurance Act imposes various obligations on the principal representative. Amongst these, the principal representative must report to the BMA when he or she considers that there is a likelihood of the insurer becoming insolvent or upon the principal representative becoming aware or having reason to believe that the insurer has failed or defaulted in various matters set out in the Insurance Act. Further, neither the insurer nor the principal representative may terminate the principal representative's appointment with less than thirty days' notice to the BMA or such shorter notice as the BMA may permit.

Auditor

Every insurer must appoint an independent auditor approved by the BMA (based in Bermuda) who will report on the statutory financial statements. The auditor may be the same person or firm which reports to the shareholders.

Fit and Proper Shareholder Controllers

For an insurer whose shares (or the shares of its parent company) are not listed on any stock exchange, the BMA maintains supervision over shareholder control. Where a person proposes to become a 10 percent, 20 percent, 33 percent or 50 percent shareholder controller of such insurer, the BMA must be notified. The BMA has 45 days from the date of service of that notice to object or request further information. The BMA needs to be satisfied that such controller is a fit and proper person to become a controller and that the interests of clients of the insurer would not be threatened by that person becoming a controller.

For an insurer that is publicly listed (or whose parent is) the BMA does not have the power to object to such increases in control, but the BMA must nevertheless be notified in writing of the changes.

The Statutory Financial Statements and Returns

The Insurance Act requires every insurer each year to prepare statutory financial statements and file with the BMA these statements together with a statutory financial return (except that for Class 1 general business insurers file only the statutory financial return). The rules for preparing these statements are set out in the Regulations and include a uniform format of the balance sheet, income statement, statement of capital and surplus and rules for valuation of assets and determination of the liabilities (the Insurance Act does not set out to define the type of assets in which an insurer may invest). These statements are not prepared strictly in accordance with any generally accepted accounting principles and will therefore be distinct from the annual audited financial statements prepared for presentation to the shareholders of the insurer.

The statutory financial statements and the statutory financial returns do not form a part of any public file in Bermuda for members of the public to examine.

The statutory financial return includes a business solvency certificate and a declaration of statutory ratios, both of which must be signed by at least two directors of the insurer (of whom one must be a director resident in Bermuda if the insurer has a director so resident) and the insurer's principal representative in Bermuda. In signing the business solvency certificate, the directors and the principal representative are required to state whether the business solvency margin and (for general business insurers) the minimum liquidity ratio have been met. Further, the auditor is required to state whether, in the auditor's opinion, it was reasonable for them to do so, and whether the declaration of statutory ratios complies with the requirements of the Regulations.

Any statement in the statutory financial return indicating that the insurer has failed to meet the various statutory criteria or any adverse opinion or inability to certify that the statutory criteria have been met, is not of itself a statutory offence, but is likely to trigger an enquiry by the BMA.

It should also be noted that where the insurer's accounts have been audited for any purpose other than compliance with the Regulations (for example, pursuant to the bye-laws of the company on behalf of the shareholders) a statement to that effect must be filed with the statutory financial return.

Exemptions

Section 56 of the Insurance Act provides that the BMA may direct, having received an application from or on behalf of the insurer, that certain provisions of the Insurance Act shall not apply to that insurer or shall apply to it subject to such modifications as may be specified in the direction. In general, the provisions to which Section 56 apply are those dealing with the margin of solvency, the solvency certificate, statutory financial statements and the statutory financial returns.

Section 57A of the Insurance Act provides that the BMA may direct, having received an acceptable application, a certain qualifying contract as being a “designated investment contract” for the purposes of the Insurance Act. Being a party (which includes being an issuer as well as an investor) to a designated investment contract does not constitute carrying on “insurance business” (accordingly the party will not be required to be registered as an insurer under the Insurance Act solely by reason of such contract). Further, a designated investment contract does not constitute a contract of insurance for any purpose. A qualifying contract is one where the contract (which can be an investment, a security, an option contract, a swap contract, a derivative contract or a contract for differences) has the purpose of securing a profit or avoiding a loss (i) by reference to fluctuations in value or price of property of any description, or in an index, or other factor, specified for that purpose in the contract, or (ii) based on the happening of a particular event specified for that purpose in the contract.

Maintenance of Records in Bermuda

Apart from the statutory financial statements the BMA may direct insurers to keep in Bermuda proper records of account with respect to -

- (a) all sums of money received and expended by the insurer and the matters in respect of which the receipts and expenditures take place;
- (b) all premiums and claims relating to the insurer; and
- (c) the assets, liabilities and equity of the insurer.

Any such directions may make different provision in relation to Class 1 insurers, Class 2 insurers, Class 3 insurers, Class 4 insurers and long-term insurers.

The BMA’s Powers of Intervention, Obtaining Information, Reports and Documents and Providing Information to other Regulatory Authorities

The Insurance Act provides the BMA with the power, in certain circumstances, to intervene in the conduct of business by the insurer, to obtain information, reports and documents from the insurer and certain others related to the insurer, and to assist a foreign regulatory authority in connection with that regulatory authority’s insurance regulatory functions. In response to an acceptable request for information from a foreign regulatory authority, the BMA may require, subject to the provisions of the Insurance Act, any person registered under the Insurance Act (this includes insurers and insurance managers) to furnish the BMA with the required information.

THE SEGREGATED ACCOUNTS COMPANIES ACT 2000

The Segregated Accounts Companies Act 2000 (the “SAC Act”) provides for the registration of companies, such as Bermuda insurance companies, as segregated accounts companies (“SACs”) and sets out rules governing the operation of segregated accounts. The SAC Act does not affect the incorporation procedure under the Companies Act 1981. Similarly, the SAC Act does not automatically alter compliance with the Insurance Act (although in some cases being an SAC may be the basis of an application for special directions exempting or modifying the minimum solvency requirements, see 8.5 above).

The most significant aspect of segregated accounts is that the company is enabled to contract with a creditor or shareholder so that the assets injected by that person are held by the company in a segregated account and insulated from any claims of the general creditors or the creditors of other segregated accounts. A segregated account is not a separate legal entity. Basically it is a record or a collection of records, maintained by the SAC, detailing transactions relating to the assets and liabilities segregated from other assets and liabilities of the SAC.

THE INVESTMENT BUSINESS ACT 2003

The Investment Business Act 2003 (the "IBA") establishes a system for licensing persons involved in investment business (as defined by the IBA). Essentially the IBA provides that no-one shall carry on an investment business (as defined under the IBA) in or from Bermuda unless that person is licensed under the IBA or exempted from being licensed. The licensing system is operated and supervised by the BMA. There are exemptions covering the Bermuda insurance and reinsurance industry. However, it is advisable to seek advice specifically on the IBA with respect to proposed activities or transactions.

PROCEEDS OF CRIME

The Proceeds of Crime Act (as amended) and the related regulations (the "POCA") operate to detect and deter money laundering activity and other criminal conduct in Bermuda. The regulations have specific provisions which apply to "financial institutions" which include banks, trust companies and licensed insurers. The legislation is targeted at relevant offences, which are indictable offences in Bermuda or offences which if committed abroad would be indictable in Bermuda. In addition to creating offences relating to money laundering (or the giving of assistance in such activities), POCA also confers expansive information gathering powers upon the authorities relating to investigation into money laundering and criminal conduct. The legislation includes extensive powers of information gathering, investigation, confiscation and forfeiture and permits the enforcement of foreign confiscation orders in certain circumstances. To assist clients, Conyers Dill & Pearman has produced a memorandum on the proceeds of crime legislation which is available upon request.

Financial institutions have a duty of vigilance meaning they must (i) verify their clients' identity and bona fides, (ii) monitor, recognize and report to the police suspicious transactions, (iii) maintain certain records for the time period prescribed, and (iv) train employees and staff so as to recognize possible unlawful activities. The definition of financial institution includes an insurer (but not a reinsurer) registered under section 4 of the Insurance Act who carries on long term business of the following types:

- (a) that which effects and carries out contracts of insurance on human life or contracts to pay annuities on human life; or
- (b) that which effects and carries out contracts of insurance, whether by the issue of policies, bonds or endowment certificates or otherwise, whereby in return for one or more premiums paid to the insurer a sum or a series of sums is to become payable to the persons insured in the future.

Whilst the definitions are complicated, the anti-money laundering regulations are aimed at the annuity business, and in case of doubt we would advise any clients involved in that sort of business to comply with the regulations.

TAXATION, GOVERNMENT FEES, STAMP DUTY AND EXCHANGE CONTROL**Taxation**

There is currently no Bermuda income, corporation or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax payable by an exempted company or its shareholders, other than shareholders ordinarily resident in Bermuda. An exempted company is a Bermuda company exempted from having to comply with the Bermudian ownership and control requirements set out in the Companies Act 1981.

An exempted company may apply for and is likely to receive from the Minister of Finance under the Exempted Undertakings Tax Protection Act 1966 an undertaking that, in the event of there being enacted in Bermuda any legislation imposing tax computed on profits or income, or computed on any capital assets, gain or appreciation, or any tax in the nature of estate duty or inheritance tax, such tax shall not until 28 March 2016 be applicable to such company or to any of its operations or to the shares, debentures or other obligations of such company except insofar as such tax applies to persons ordinarily resident in Bermuda (such as Bermudians holding shares in the exempted company) or to any Bermuda land held by or leased to the company.

Government Fees

Any insurance company, which is an exempted company ("exempted company" refers to being exempted from having to be owned and controlled by Bermudians), is required to pay an annual government fee based on assessable capital. For a company with share capital, the assessable capital is the aggregate of its authorized share capital and share premium account. Where the company is a mutual company, the assessable capital is the amount of the company's reserve fund.

An annual declaration is submitted each year at the time of payment of the annual government fee. This declaration states the type of business carried on by the company, the amount of its assessable capital and how the assessable capital has been calculated. In addition to the annual government fee, an insurance company is required to pay an initial registration fee and thereafter an annual insurance registration fee. There are various government fees payable regarding particular matters such as applications under sections 56 and 57A of the Insurance Act. Further, there are fees payable by SACs under the SAC Act.

Please contact Conyers Dill & Pearman for a current listing of these fees.

Stamp Duty

Generally, stamp duty is not payable by, or in respect of matters concerning, exempted companies, whether in respect of share capital or otherwise (except for Bermuda property).

Exchange Control

Bermuda's exchange control is operated under the Exchange Control Act 1972 and related regulations. Exempted companies are designated non-resident for exchange control purposes. The non-resident designation allows these companies to operate free of exchange control regulations and enables them to make payments of dividends, to distribute capital, to open and maintain foreign bank accounts and to purchase securities, without reference to the exchange control authorities. Note, however, any exempted company will require the prior approval of the BMA for the issue and transfer of its shares and other securities unless such transfers satisfy the criteria set out in the general permissions issued by the BMA in June 2005 in which case details of the transfers need only be notified to the BMA.

Michael Frith, Conyers Dill & Pearman

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.

Notes to Editors

Conyers Dill & Pearman has pioneered the field of offshore law since its establishment in 1928. It is the first law firm to have established an office outside of its home jurisdiction, setting up shop in Guernsey in 1982 as a base for servicing European clients (superceded by the London office in 1998). It is also the first to have expanded into Asia, with the opening of its Hong Kong office in 1985, and the first to establish a presence in Singapore in 2001. The firm continued in this vein in 2008, becoming the first offshore law firm to have a Russian presence with the launch of its Moscow office in March, and the first offshore law firm to have a physical presence in Brazil with the establishment of its São Paulo office.

With a current complement in excess of 550 staff, with over 150 lawyers, Conyers Dill & Pearman advises on the laws of Anguilla, Bermuda, British Virgin Islands, Cayman Islands and Mauritius from those islands and from Dubai, Hong Kong, London, Moscow, and Singapore. The firm has earned clients' trust, loyalty and respect by consistently providing responsive, timely and thorough advice on all aspects of offshore corporate, company and commercial law, commercial litigation and private client matters.

Affiliated companies (Codan) provide registered agent, registered office, corporate director and secretarial services, as well as specialised company management services. An affiliated global network of licensed trust companies undertakes a broad range of trust establishment and administration services. These services range from the administration of family trusts for private clients to the structuring of highly complex and innovative corporate ventures including special purpose trusts for ownership of securitization structures.

For further information please contact:

Naomi J. Little

Tel: +1 441 298 7828

Fax: +1 441 299 4987

e-mail: naomi.little@conyersdillandpearman.com

web: www.conyersdillandpearman.com