

CAYMAN ISLANDS INSURANCE GUIDE

Kevin Butler – March 2009

The Cayman Islands Monetary Authority reported that as at 30 June 2008 there were 946 insurance licensees under regulation, an overall licensee increase of 23 from 30 June 2007. Of these, 772 were Class B (captive) licensees. Among the 772 captives were 126 segregated portfolio companies under the Companies Law (2007 Revision), with a total of 511 segregated portfolios operating within them. The 2007 to 2008 fiscal year saw 39 new captive licences issued and 19 cancelled.

North America continues to be the largest region of origin for Cayman captives, and represents 90 per cent of licences. Continuing demand for the use of captives is expected primarily in the areas of medical malpractice, workers' compensation, property coverage and professional and general liability.

The governing legislation in the Cayman Islands is the Insurance Law (2007 Revision) (as amended) (the "law"). It is this law which stipulates that if a Cayman company is to carry on insurance business, it is required to obtain a licence. Generally the licensee must be a company incorporated in the Cayman Islands under the Company Law (2007 Revision). In addition, CIMA uses the core principles of insurance supervision that the International Association of Insurance Supervisors has issued, and the law as the basis for its regulatory regime. This combines an off-site and an on-site review and monitoring system. Other laws applicable to the captive insurance industry include the Monetary Authority Law (2004 Revision) and the Proceeds of Criminal Conduct Law (2007 Revision). CIMA provides additional direction through various rules, statements of guidance, policies and procedures for the industry.

Regulatory framework

Insurance business

The law defines insurance business as:

"The business of effecting and carrying out contracts —

- a. protecting persons against loss or liability to loss in respect of risks to which such persons may be exposed; or
- b. to pay a sum of money or other thing of value upon the happening of an event; and includes reinsurance business, and running off business including the settlement of claims."

The three categories of insurers licence are as follows:

1. Class A insurers licence which relates to domestic insurance in the Cayman Islands;
2. an unrestricted Class B insurers licence; and
3. a restricted Class B insurers licence.

The restricted Class B insurers licence is designed primarily for captives including group captives, but is also used for special purpose vehicles that issue catastrophe bonds. The holder of a restricted licence may only accept insurance business from its parent or shareholders and such other persons as the Cayman Islands authorities may have specifically approved. The unrestricted Class B insurers licence permits an insurer to carry on insurance business other than domestic insurance business. This allows the captive to write third-party business that is unrelated to the shareholder.

Licence to carry on insurance business

An application for a licence is made to CIMA in the prescribed form and is typically filed by the insurance manager. Applicants must demonstrate that they are "fit and proper" to carry on insurance business. In determining whether a person is fit and proper, CIMA will consider a person's (a) honesty, integrity and reputation, (b) competence and capability, and (c) financial soundness. Once approval has been granted, the company must be incorporated and funded, and then CIMA will issue the relevant licence.

Net worth requirements

Minimum capital or net worth requirements for an unrestricted Class B licence are as follows:

- \$120,000 for companies that effect general business;
- \$240,000 for companies that effect long-term business; and
- \$360,000 for companies that effect both general and long-term business.

Please note that these are minimum requirements and can vary depending on the scale and nature of the business to be carried on. No minimum capital is prescribed for a restricted Class B licence (single parent captive) — CIMA determines this after reviewing the application. Every company must demonstrate appropriate underwriting expertise which the insurance manager can supply.

Principal office

The law requires every insurer to maintain full and proper business records at a designated principal office in the Cayman Islands, which may be through an insurance manager.

Insurance manager

The law requires that every insurer which does not have its own staffed office in the Cayman Islands to appoint an insurance manager resident in the Cayman Islands. Insurance managers must themselves meet the requirements of and be licensed under the law.

Business plan

The business plan must form part of the licence application and should cover all relevant aspects of the insurer's business. Generally, the business plan is divided into two sections which set out:

1. the fundamental representations and information; and
2. supporting information i.e., financial projections etc.

The licence application must also provide a CV and references for each director and officer which show that they have sufficient insurance experience. Details of the independent auditors must be submitted. Once the licensee grants the licence it is only permitted to conduct the insurance business detailed within the business plan.

Auditors

Auditors must be appointed and generally the auditor must be in the Cayman Islands.

Insurance regulation

The three principal elements in the continuing regulation of licensed insurance companies are:

1. the obligation to conduct only the business described in the business plan, to notify CIMA of any changes in the information supplied to him and to file an annual certificate of compliance;
2. the filing of annual audited financial statements; and
3. the involvement of the insurance manager with their statutory duty to notify the Cayman authorities if they have cause for concern.

CIMA has wide powers to examine the affairs of insurance companies, with full access to business and other records of these companies and power to call on the insurance manager to provide any information or explanation.

Industry update

In 2007 CIMA granted a licence for the Caribbean Catastrophic Risk Insurance Facility. The facility has been established to provide parametric insurance to CARICOM (Caribbean Community) member and associate member countries in respect of windstorm and earthquake events. The Cayman Islands is among the 17 CARICOM countries participating in the insurance programme. Donor contributions support the facility, initially from the UK Department for International Development, the Canadian International Development Agency and the World Bank, in conjunction with participation fees and insurance premiums from the participating CARICOM countries. Sagcor Insurance Managers Ltd. (which holds an insurance managers licence) has been appointed as the insurance manager of the licensee.

The Cayman Islands is also a leader in licensing special purpose vehicles, which issue catastrophe bonds, collateralise the windstorm and earthquake exposures of several substantial international insurance and reinsurance companies. With continuing concerns over a credit crunch and the fallout from sub-prime mortgages rippling throughout the investment markets, investors appear to continue to be attracted to catastrophe bonds, and Cayman appears well positioned to serve this interest. In addition, the Cayman Islands have seen interest in the use of side cars which is another form of SPV that allows equity investors to assign the return (and risk) on insurance business.

The private sector and CIMA are reviewing the current laws and regulations in relation to the reinsurance industry with a view of making the Cayman Islands a more attractive jurisdiction for reinsurance companies.

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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.

Notes to Editors

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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.

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