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# Cayman Islands Insurance Companies

## Foreword

This memorandum has been prepared for the assistance of those who are considering the formation of an insurance company in the Cayman Islands. It deals in broad terms with the requirements of Cayman law for the establishment and operation of such an entity. It is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients and prospective clients seek legal advice in the Cayman Islands on their proposals before taking steps to implement them.

Before proceeding with the incorporation of an insurance company in the Cayman Islands, persons are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

This memorandum has been prepared on the basis of the law and practice as the date referred to below.

**Conyers Dill & Pearman**

27 April 2011

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## 1. INTRODUCTION

The governing legislation in the Cayman Islands is the Insurance Law (the “Law”) and 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 Companies Law (the “Companies Law”).

Though the Law also governs the licensing and regulation of insurance managers, brokers, agents, sub-agents and representatives, this memorandum deals only with the licensing and regulation of insurers or reinsurers.

## 2. 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:

- (a) Class A insurers licence which relates to domestic insurance in the Cayman Islands;
- (b) An unrestricted Class B insurers licence; and
- (c) A restricted Class B insurers licence.

The restricted Class B insurers licence is designed primarily for captives including group captives. The holder of a restricted licence may only accept insurance business from its parent or shareholders and such other persons as may have been specifically approved by the Cayman Islands authorities.

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.

### **3. LICENCE TO CARRY ON INSURANCE BUSINESS**

Application for a licence is made to the Cayman Islands Monetary Authority (the "Authority") in the prescribed form<sup>1</sup> and is typically filed either by the proposed company's attorneys or the insurance manager.

The prescribed licence fee must be paid at the time of application which will be refunded if the licence application is not successful. It should be noted that the proposed name must be cleared in the normal way under the Companies Law and by the Authority.

Applicants must demonstrate that they are fit and proper persons to carry on insurance business. In determining whether a person is "fit and proper" the Authority 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 can then proceed in accordance with the provisions of the Companies Law. Thereafter the company must be funded with the required net worth. Following incorporation evidence of incorporation and the requisite funding (usually written confirmation from the insurance manager or local bank) is then forwarded to the Authority which issues the relevant licence. Once the licence has been issued the company may commence business. It is generally considered appropriate to allow for a period of three weeks for the licensing process depending on the complexity or difficulty of the application.

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<sup>1</sup> A form of the application for a Class B insurers' licence is available upon request.

#### 4. NET WORTH REQUIREMENTS

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

- (a) CI\$100,000 (approximately US\$122,000) for companies effecting general business;
- (b) CI\$200,000 (approximately US\$244,000) for companies effecting long term business; and
- (c) CI\$300,000 (approximately US\$366,000) for companies effecting both general and long term.

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) – this is determined by the Authority after reviewing the application.

Every company must demonstrate appropriate underwriting expertise which can be supplied by the insurance manager.

#### 5. PRINCIPAL OFFICE

The Law requires every insurer to maintain full and proper business records at a designated principal office in the Cayman Islands.

In the case of an insurer which has not established its own staffed office in the Cayman Islands it is usual for the insurance manager to provide the principal office and to maintain the business records. The Law allows the alternative of appointing an approved principal representative for this purpose but this is not a common practice since it is now obligatory to have an insurance manager.

## 6. 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, with the inherent responsibilities attendant thereunder. It should be noted that the insurance manager may provide the registered office and secretarial services to the insurance company.

## 7. BUSINESS PLAN

The business plan must form part of the licence application and should cover the following areas:

- (a) Classes of business to be written;
- (b) Volume of premium to be written for each class;
- (c) Proportion of business to be reinsured;
- (d) Nature of reinsurance program;
- (e) Amount of retention of net premiums;
- (f) Maximum liability per risk/occurrence;
- (g) Details of “fronting” arrangements.

Generally, the business plan is divided into two sections setting out (1) the fundamental representations and information and (2) supporting information i.e. financial projections etc. It should be noted that the first part becomes obligatory once the Authority approves the same, but not the second part. The licence application must also provide a police clearance certificate (or an affidavit attesting that there have been no convictions), a resume 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 licence is granted the licensee is only permitted to conduct the insurance business detailed within the business plan.

Note that there is no requirement to appoint local directors.

## **8. FINANCIAL STATEMENTS AND AUDITORS**

Every licensed insurer is required to prepare financial statements in accordance with generally accepted accounting principles. Auditors approved by the Authority must be appointed. Insurers carrying on long term business shall, in addition to preparing GAAP financial statements, prepare annually an actuarial valuation of its assets and liabilities, certified by an approved actuary, so as to enable the Authority to be satisfied as to its solvency.

## **9. COSTS**

The fees payable under the Companies Law to the Registrar of Companies initially and annually will vary depending on the amount of the company's authorized share capital, but are generally not more than US\$3,000, payable both on registration and annually thereafter.

## **10. INSURANCE REGULATION**

### **10.1 General**

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

- (a) the obligation to conduct only the business described in the business plan, to notify the Authority of any changes in the information supplied to him and to file an annual certificate of compliance;
- (b) the filing of annual audited financial statements; and
- (c) the involvement of the insurance manager with its statutory duty to notify the Cayman authorities if it has cause for concern.

The Authority 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.

## **10.2 Long-term business (Section 7(8) of the Law)**

There are some additional requirements in the case of any insurer which writes long-term business. Specifically:

- (a) separate accounts must be kept;
- (b) premiums in respect of the long-term business must be kept in a separate fund which may be used only for payments attributable to the long-term business (save for any actuarially determined surplus); and
- (c) an actuarial valuation of assets and liabilities must be filed with the Authority annually for purposes of establishing solvency.

Section 7(8)(c) of the Law makes provision for segregated accounts for individuals annuities or life policies, secure from unrelated liabilities of the insurer; but this facility should not be used without specific legal advice.

## **11. SEGREGATED PORTFOLIO COMPANIES**

The Companies Law, which is of general application to companies incorporated in the Cayman Islands, including insurance companies, makes provision for the incorporation or registration of insurance companies as segregated portfolio companies ("SPC's) with protected cells or portfolios.

The SPC's segregated portfolios are not separate legal entities. Basically, the most significant aspect of an SPC is that the company is able to contract with creditors or shareholders so that any assets which are injected by these persons are linked to a particular portfolio and are held as a separate portfolio which is not part of the general assets of the company itself. Such segregated portfolios are held exclusively for the benefit of the account owner of that portfolio and any counterparty to a transaction linked to that segregated portfolio. Any asset which attaches to a

particular portfolio is not available to meet liabilities of the company (subject to any agreement to the contrary in the governing instrument) or any of the other portfolios.

## **12. ANTI-MONEY LAUNDERING AND PROCEEDS OF CRIME LEGISLATION**

The Proceeds of Crime Law, the Money Laundering Regulations and the Guidance Notes on the Prevention and Detection of Money Laundering in the Cayman Islands (together the “Anti-Money Laundering Legislation”) constitute Cayman’s anti-money laundering regime. The regulations have specific provisions which apply to relevant businesses including banks, trust companies and licensed insurers. In addition to creating offences relating to money laundering (or the giving of assistance in such activities), the Anti-Money Laundering Legislation confers expansive information gathering powers upon the authorities and there are also provisions empowering the Court to make client information, seizure and/or confiscation orders.

Regulated institutions have a duty of vigilance, meaning they must (i) verify their clients’ identity and bona fides, (ii) monitor, recognise and report suspicious transactions, (iii) maintain certain records for the time period prescribed and (iv) train employees and staff so as to recognize possible unlawful activities.

For full particulars of Cayman’s Anti-Money Laundering Legislation and its implications for regulated businesses, please contact us.

### 13. TAXATION

Cayman has no corporation tax, income tax, capital gains tax, inheritance tax, gift tax, wealth tax, or any other tax applicable to a company conducting off-shore business. Certain documents are subject to stamp duty which is generally nominal. All exempted companies are entitled to receive from the government a “Tax Exemption Undertaking” exempting them from any possible future Cayman taxes for a period of twenty years. Ordinary non-resident companies are not able to take advantage of the Tax Exemption Undertaking.

### 14. APPLICATION FORM

The following forms are available upon request:

- (a) application for a Class B insurers licence; and
- (b) personal questionnaire (to be completed by directors, officers, managers and shareholders having more than 10% of the shares).

*This publication is not a substitute for legal advice nor is it a legal opinion. It deals in broad terms only and is intended merely to provide a brief overview and give general information.*

### **About Conyers Dill & Pearman**

Conyers Dill & Pearman advises on the laws of the Cayman Islands, British Virgin Islands, Bermuda, Mauritius and Cyprus. Conyers' lawyers specialise in company and commercial law, commercial litigation and private client matters.

The combination of Conyers' structure, culture and expertise enables the highest quality, responsive, timely and thorough legal advice. Conyers' strategic global presence in major international business centres allows a seamless 24 hour service.

Conyers' sophisticated client base includes FTSE 100 and Fortune 500 companies. Working with leading local and international firms, Conyers advises on highly complex multi-jurisdictional projects.

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Founded in 1928, Conyers has 600 staff, including more than 150 lawyers.

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