Global Legal and Professional Services

Notification of the Amendment to the Insurance Act 1978 (the "Amendment Act 2019")

5 September 2019

On 5 August 2019, the Amendment Act 2019 came into operation, amending the Insurance Act 1978. The Amendment Act makes provision for the supervision and regulation of two new classes of insurer, namely "Collateralised Insurers" and "Class IIGB", and for the supervision and regulation of a new category of insurance intermediary, namely the "insurance marketplace provider".

An insurance marketplace provider is aimed at addressing the growing interest in the establishment of InsurTech-related insurance market places.

This advisory will deal in broad terms with the requirements for the new classification of Collateralised Insurers, noting however that these remain subject to the detailed rules that are expected to be issued by the Bermuda Monetary Authority ("**BMA**") in the form of Guidance Notes. This new class of limited purpose insurer is a response to the increasing sophistication and scope of the insurance-linked securities ("**ILS**") market.

A Class IIGB Insurer is for those insurers who intend to conduct insurance business in an innovative manner, for instance, utilising digital assets. Unlike the existing Class IGB this is a non-sandbox innovation class and we would be happy to provide further details.

What are the class classification requirements of a Collateralised Insurer?

A company is registrable as a Collateralised Insurer when it carries on special purpose business, but is not registrable as a Special Purpose Insurer ("**SPI**"). SPIs are intended generally for single cedant use whereas Collateralised Insurers can be used for multi-use transactions for multiple cedants, often with more innovative applications of collateralised and capital markets backed protection. It also provides an intermediate class that does not fall into the existing commercial regime that are Solvency II equivalent (Classes 3A, 3B and 4) but which provides a proportionate licensing regime.

What is the minimum paid up share capital for a Collateralised Insurer?

A Collateralised Insurer must have a paid up share capital of at least $120,000.

How does a Collateralised Insurer differ from a traditional SPI?

It is understood that Collateralised Insurers will be allowed to enter into transactions with unrated non-affiliated cedants. Additionally, Collateralised Insurers will be able to collateralise potential obligations on each contract to either hard contractual limits or a modelled limit, provided contractual terms are clear and certain.

It is further expected that a wider variety of contingent collateral sources, such as outwards reinsurance and other financial instruments, will qualify for the BMA's definition of fully collateralised with the context of Collateralised Insurers.

What is the minimum liquidity ratio a Collateralised Insurer is required to maintain?

As with all general business insurers, a Collateralised Insurer is required to maintain the value of its "relevant assets" at not less than 75% of the amount of its "relevant liabilities" as defined under the Insurance Returns and Solvency Regulations 1980.

Are Collateralised Insurers required to appoint an approved loss reserve specialist?

A Collateralised Insurer is required to appoint an individual approved by the BMA, who is a qualified loss reserve specialist to provide an opinion. It is required to submit annually an opinion with its statutory financial return in respect of its total general business insurance technical provisions.

Head office requirements

A Collateralised Insurer is required to maintain its head office in Bermuda and direct and manage its insurance business in a proportional way.

Are there any filing deadlines for the Collateralised Insurer

Collateralised Insurers are required to prepare and submit financial statements, a declaration of compliance and annual statutory financial and solvency returns to be filed with the BMA within four months from the end of each relevant financial year, unless approval of an extension is granted by the BMA.

What are the other requirements of the insurance act applicable to the Collateralised Insurers?

Collateralised Insurers are required to appoint a resident principal representative and to maintain a principal office in Bermuda. The principal office may be the office of the person who has been appointed as principal representative, or the office of the management company.

Collateralised Insurers must appoint an independent auditor approved by the BMA, who will annually audit and report on the statutory financial statements of the insurer (although a waiver from audited financials is available for SPIs).

This advisory is not legal advice and not intended to be exhaustive, but provides brief details and information on the new class.

If you wish to learn more about Bermuda's insurance legislation or how Walkers can assist, please reach out to your usual Walkers contact or any member of the team below:

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