

Cayman Islands – Insurance and Reinsurance Companies

Introduction

All companies carrying on insurance or reinsurance business in or from within the Cayman Islands must be licensed by the Cayman Islands Monetary Authority (the "**Authority**") pursuant to the Insurance Law, 2010 (as amended) of the Cayman Islands (the "**Insurance Law**"), before they can commence business.

Application for a licence is made prior to the incorporation of the company, and each application is carefully considered by the Authority to ensure that the Insurance Law and applicable regulations made thereunder are complied with. Walkers would be pleased to assist clients in the preparation and filing of such licence applications.

In the first instance, the application is submitted to the Authority and, if found satisfactory, is approved in principle. Once approval in principle is obtained or in advance of same if a letter of no-objection is obtained from the Authority, the company can be incorporated. The licence will be issued when all outstanding legal and regulatory requirements have been complied with.

Types of licence

The following types of insurers' licences are available:

Class "A" licence

Class "A" licences are required by those companies specifically wishing to insure domestic risks in the Cayman Islands. Please contact your usual Walkers attorney on the requirements for obtaining a Class A licence.

Class "B" licence

Class "B" licences are divided into three sub-categories which are distinguished by the proportion of net premiums written which originate from the insurer's related business.

1. Class "B(i)" licence - more than 95 percent of net premiums are generated from related business;
2. Class "B(ii)" licence - more than 50 percent of net premiums are generated from related business; and
3. Class "B(iii)" licence - less than 50 percent of net premiums are generated from related business.

"Related Business" means business which will originate from the insurer's members or the members of any group with which it is related through common ownership or a common risk management plan, or as determined by the Authority.

Application for a Class "B" licence may only be made by an exempted company incorporated in the Cayman Islands that has at least two directors.

Class "C" licence

The Class "C" licence has been specifically designed for special-purpose reinsurers, such as issuers of catastrophe bonds. Please contact your usual Walkers attorney on the requirements for obtaining a Class C licence.

Class "D" licence

Class "D" licences are for insurers carrying on reinsurance business. It should be noted that reinsurance activity is also permitted under a Class "B" licence.

Application for a Class "D" licence may only be made by a person incorporated under the Companies Law (as amended) of the Cayman Islands that has at least two directors and a place of business in the Islands. In some cases the Authority has allowed a temporary exemption to the latter requirement.

In addition, there are provisions for the licensing of insurance managers, insurance brokers and insurance agents. Please contact your usual Walkers attorney on the requirements for obtaining a Class D licence.

For information on incorporation of companies in the Cayman Islands, please refer to Walkers' Memorandum on Cayman Islands' Companies.

Applying for a licence

In order for an application to be submitted, the applicable form for the relevant category of licence required must be completed and submitted to the Authority together with all relevant appendices. The following indicative information is generally required:

Name

The proposed name of the applicant may not be too similar to that of any company carrying on business in the Cayman Islands, or to any major insurance company in any other jurisdiction. Further, the name should so far as possible be indicative of the nature of the company's business.

Type of Licence

An applicant will need to indicate the type of licence required. The application form required for each licence category varies and will be dependent on the type of licence being applied for.

Commencement

The date on which the applicant intends to commence carrying on business.

Type of business

Whether the business to be transacted is to be general, long term or a combination of both.

"Long term business" means insurance business involving the making of contracts of insurance -

(a) on human life or contracts to pay annuities on human life, including linked policies, but excluding contracts for credit life insurance and term life insurance other than convertible and renewable term life contracts;

(b) against risks of the persons insured -

(i) sustaining injury as the result of an accident or of an accident of specified class;

(ii) *dying as the result of an accident or of an accident of a specified class; or*

(iii) *becoming incapacitated in consequence of disease or diseases of a specified class;*

being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either not expressed to be terminable by the insurer before the expiration of five years from the taking effect thereof or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned; and

(c) *whether by bonds, endowment certificates or otherwise whereby in return for one or more premiums paid to the insurer a sum or series of sums is to become payable to the person insured in the future, not being contracts falling within paragraphs (a) or (b).*

"**General business**" is all other business which is not categorised as being long term.

Registered office

Details of the company's registered office or, if a foreign company, its principal place of business must be provided. If a company does not have its own office, this would normally be the office of the Insurance Manager but, with the approval of the Authority, may be elsewhere. Further details of an insurance company's obligation to have a registered office in the Cayman Islands can be found in the final paragraph of this Memorandum.

Agents

If the applicant is to depend on agents or a service company for the provision of underwriting, financial or accounting services, full details must be provided together with evidence of such agent or company's willingness to provide these services. It is not necessary to employ the services of any local underwriting management company, and such services can be performed outside the Cayman Islands provided the Authority is satisfied with the credentials of such company. However, if the insurer does not intend to have a place of business in the Islands, an Insurance Manager licensed by the Authority must be appointed.

Principal agent in Cayman Islands

Full details must be provided for the principal agent or representative resident in the Cayman Islands, together with details of the principal office where full business records will be kept. This would probably be the Insurance Manager unless the company has its own office on the Island. It should be noted that full business records must be kept in the Cayman Islands.

Constitutional documents

A draft of the proposed Memorandum and Articles of Association of the company. Both the Memorandum and the Articles of Association of insurance companies usually require custom drafting to ensure that each client's needs are fully met.

Organisational structure

A copy of the organisational structure of the company and any insurance group to which it belongs.

Shareholders

The names, addresses, nationalities and percentages of shareholdings of all shareholders. In the event that any of those persons acts as nominee then full details of this relationship must be disclosed. Further, if the shares are held by a body corporate, details of ultimate beneficial ownership and the chain of connection must be provided. The Authority will request additional information in respect of any shareholder, whether a body corporate or an individual,

holding more than 10% of the company's issued capital or total voting rights. Additional information for a body corporate includes the annual accounts for the two years preceding the year of the application, together with similar accounts for the parent body. For an individual shareholder the additional information will include a completed personal questionnaire, three reference letters and a police clearance certificate or similar document.

Management

A completed personal questionnaire, three reference letters, photo identification, proof of address, police clearance certificate and details of qualifications and career (with particular emphasis on experience in the insurance or reinsurance industry) for each person who is to be or is currently performing the function of director, officer or manager. The Authority will use the evidence provided to assess whether such persons are fit and proper to perform the relevant function based on this information.

References

Where the regulations require a party to provide three references, these include two personal references and one from a bank. The regulations are not specific as to the parties upon whom such references shall be provided as there is a certain amount of flexibility as far as this is concerned. If the principals are private individuals, then these references will have to be provided on the principals themselves together with the directors, officers and managers. In the case of an insurance company being owned by a company in another jurisdiction, copies of such parent's latest financial statements should be submitted with an insurance reference from such company's existing insurers, and personal references on the proposed directors, managers and officers of the local insurance company.

Auditor

The name, address and professional qualifications of the auditor together with which internationally recognised accounting standards are to apply. In addition, evidence that the auditors have agreed to accept their appointment must be attached. It is normally required that local auditors be appointed, and a list of Authority approved auditors who have offices in the Cayman Islands follows.

Baker Tilly Cayman	BDO Cayman Ltd	Deloitte
Ernst & Young	Grant Thornton	Kinetic Partners Cayman LLP
KPMG	McGladrey & Pullen, Cayman	Moore Stephens Decosimo Cayman Limited
Morris Cottingham & Co	PKF Cayman Ltd.	PricewaterhouseCoopers
Rothstein Kass & Company (Cayman)	RSM Cayman Islands	

Financial year

The date of the financial year end of the company.

Acceptance of service

The name and address of one or more persons resident in the Cayman Islands who are authorised to accept service of process in legal proceedings on behalf of the company. These would normally be any local directors, but failing there being local directors, would probably be provided by the Insurance Manager or the registered office.

Capital and Solvency Requirements

Cayman Islands domiciled insurers and reinsurers are subject to a minimum capital requirement ("**MCR**"), a prescribed capital requirement ("**PCR**") and margin of solvency requirements. The MCR (ie the minimum statutory capital that an insurer must maintain in order to operate in accordance with the Insurance Law), the PCR (ie total risk based capital that an insurer must maintain in order to operate in a safe and sound manner) and margin of solvency (ie excess of the value of prescribed assets over prescribed liabilities) is stipulated in the Insurance (Capital and Solvency) Classes B, C and D Insurers) Regulations, 2012.

The Authority reserves the power to prescribe a higher level of capital based on risk factors specific to the applicant and can exclude from the calculations assets that it deems inappropriate. The Authority can do this as part of the authorisation process or later pursuant to its ongoing supervision powers. For a Class B insurer, the Authority may suggest a guarantee/undertaking from the group to capitalise the captive in future if required, and will also have regard for any actuarial input prepared as part of the process or filed as part of the annual return.

Although the prescribed capital requirements are quite rigid and formulaic, a Class B(iii) or Class D reinsurer is able to use its own internal capital model as an alternative provided it is approved by the Authority.

Unless otherwise approved by the Authority, a Class B insurer or Class D reinsurer must also maintain a solvency margin equal to or in excess of its PCR. "Margin of Solvency" is calculated having regard for admissible assets (which with the approval of the Authority could include receivables from insurers or highly rated reinsurers) over liabilities calculated and valued on the basis of the accounting standards in accordance with which the insurer's financial statements are prepared and will include liabilities arising out of its contracts of insurance.

Below is a summary of the MCR and PCR requirements for Class B insurance licensees (MCR and PCR details for Classes "A" and "D" can be provided on request).

Class of Insurance	MCR	PCR
Class B(i)	General business: US\$100,000 Long term business: US\$200,000 Composite business: US\$300,000	General business: PCR = MCR Long term business: PCR = MCR Composite business: PCR = MCR
Class B(ii)	General business: US\$150,000 Long term business: US\$300,000 Composite business: US\$450,000	General business: 10% of Net Earned Premium (" NEP ") to the first US\$5,000,000 5% of additional NEP up to US\$20,000,000 2.5% of additional NEP in excess of US\$20,000,000 Long term business: PCR = MCR

		Composite business: amount required to support the general business plus MCR
Class B(iii)	General business: US\$200,000 Long term business: US\$400,000 Composite business: US\$600,000	General business: 15% of NEP to first US\$5,000,000 7.5% of additional NEP up to US\$20,000,000 5% of additional NEP in excess of US\$20,000,000 Long term business: PCR = MCR Composite business: amount required to support the general business plus MCR

Actuary

If the company intends to write long term business, evidence that the actuary has agreed to accept his appointment to certify the actuarial valuation of its long term policy liabilities in accordance with the Insurance Law.

Business plan

The Authority will require a three year business plan which should be as comprehensive as possible. From experience, we cannot over-emphasise the importance placed on this document. The business plan should cover the following:

1. the rationale for establishing the insurer;
4. a brief history of the previous insurance programme, if applicable;
5. the capitalisation of the company;
6. investment and dividend policies;
7. the volume of premiums to be written;
8. the classes of business to be transacted;
9. whether or not a fronting company is to be used;
10. the proportion of business to be reinsured;
11. the nature of the reinsurance programme;
12. retention of net premiums and maximum liability per risk and catastrophe;
13. financial projections covering at least three years, by class of business; and

14. in the case of a Class B licence the names and addresses of the insured and their relationship (if any) to the company or its shareholders.

Copies of reinsurance contracts and treaties should accompany the business plan where appropriate.

Previous applications

If any of the parties connected with the application has ever applied either individually or in conjunction with others for authority to transact insurance business in any other jurisdiction then full details must be given.

Licence fee

The application fee varies depending on the class of licence being applied for, and range from US\$6,098 to US\$102,439.

Disclosure of information

The Authority will also wish to know whether they are to be permitted to disclose any information to enquirers and in particular details of the following:

1. the principals of the insurer;
2. the management of the insurer;
3. the total asset position of the insurer from time to time;
4. the net worth position of the insurer from time to time; and
5. the type of business conducted by the insurer.

It should be emphasised that such authority to disclose is entirely in the insurer's discretion and refusal to permit such disclosure will not in any way prejudice the outcome of the application.

Annual requirements

Once the licence has been granted and the company incorporated, there are a number of annual requirements as set out below.

Annual licence fee

The annual licence fee varies depending on the class of licence, and is currently equal to the application fee for each class of licence and is payable on or before 15 January in each year.

Annual audit

An audit must be carried out in accordance with internationally recognised accounting standards by an independent auditor approved by the Authority. It is a matter for the insurer to determine by what accounting standards its accounts are prepared (US GAAP or IFRS are most common). The auditors must provide written confirmation that annual statements have been prepared and audited within six months of the financial year end and must also state whether the auditors' certificate was qualified or not. The Insurance Law does not state that copies of the statements must be provided to the Authority, but this is normally requested by the Monetary Authority.

Annual reporting

The annual reporting requirements of an insurance licensee vary depending on the type of licence that it holds. Each licensee will be required to complete and submit to the Authority a prescribed form together with a number of documents, including audited financial statements.

Business conduct requirements

In recent years, the Authority has issued several rules and statements of guidance applicable to business conduct of insurance licensees. These rules and guidance require, among other things, that insurers implement a corporate governance framework, risk management framework, internal controls, strategies, policies and procedures and business continuity plans, in each case which achieve the minimum standards described in the applicable guidance. Please contact your usual Walkers attorney for specific advice on these regulatory requirements.

Portfolio Insurance Companies

A licenced insurer which is incorporated as, or which converts to, a special type of exempted company known as a segregated portfolio company (an "**SPC**"), is able to incorporate its separate cells or segregated portfolios as portfolio insurance companies ("**PICs**"). A PIC is a separately incorporated Cayman Islands exempted company and will be a subsidiary of its controlling SPC. The shares of the PIC are held by a particular cell or segregated portfolio of the controlling SPC and is thus attributable to that cell.

Insurers may wish to set up PICs for several reasons, including the following:

1. PICs may contract with each other, or with the SPC itself (which is not possible with unincorporated portfolios or cells);
2. establishing separate PICs also reduces the risk of inadvertent comingling of assets among SPC cells;
3. a PIC can have a different board of directors to that of its controlling SPC, thus allowing for greater governance flexibility;
4. PICs can easily transition to a standalone captive/insurer;
5. PICs have recognition as separate legal entities for US tax purposes, allowing tax elections to be made under a PICs own federal tax identification number; and
6. a single PIC can be wound up without affecting its controlling SPC or other PICs.

Incorporation of a PIC is simple and can be achieved within 24 hours. All the voting shares of the PIC must be held by the controlling SPC on behalf of one of its segregated portfolios and the name of the PIC must include the letters "PIC", "P.I.C." or the words "Portfolio Insurance Company". Registration of a PIC with the Authority is largely the same as the current procedure for creating a new cell of an SPC and will involve, among other things, the submission of an application with prescribed particulars, including written consent from the controlling SPC, due diligence materials on proposed directors and officers (if different to those of the SPC), a business plan and the required filing fee. If satisfied with the application, the Authority will issue a Certificate of Registration. There is no need for a separate licence for the PIC, as it will fall under the licence of its controlling SPC.

Ongoing obligations of PICs include a requirement to carry on its business only in accordance with the application submitted to the Authority, maintain a margin of solvency and capital in accordance with the requirements prescribed in the Insurance (Portfolio Insurance Companies) Regulations, 2015 and make annual regulatory filings with the Authority.

Government fees

You can find more details about the way in which Government and the Authority's fees are calculated in our Memorandum on Cayman Islands' Companies. The fees quoted below are based on an authorised capital of US\$50,000.

Licence Fees

Type of fee	Initial costs (US\$)	Annual costs (US\$)
Authority Licence Fees – Class "A"	91,463	91,463
Authority Licence Fees – Class "B(i)"	10,366	10,366
Authority Licence Fees – Class "B(ii)"	11,585	11,585
Authority Licence Fees – Class "B(iii)"	12,805	12,805
Authority Licence Fees – Class "B" (segregated portfolio company)	-	304.88 Additional fee per segregated portfolio
Authority Licence Fees – Class "C"	6,098	6,098
Authority Licence Fees – Class "D"	102,439	102,439
Authority Licence Fees – Classes "A", "B", "C" or "D" (licence granted in December)	-	One twelfth of the annual fee
Authority Licence Fees – Classes "A", "B", "C" or "D" – in Run-Off including the SPC annual fee	-	Annual fee reduced by one half
Government Incorporation fee (minimum) for exempted company	732	854

Registered office

Every company is required to have a registered office in the Cayman Islands. A number of Cayman Islands based service providers will be pleased to provide the registered office service, agent for service of process and act as secretary or assistant secretary of the company. The registered office can also be provided by the insurance manager but clients should be aware that insurance managers have a statutory reporting duty which might, in some circumstances, conflict with their duties to the company.

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For further information please refer to your usual contact or:

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