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LICENSING OF 'OFFSHORE' INSURANCE COMPANIES

Introduction

Insurance companies may be licensed under The Insurance Law of the Cayman Islands (the "Insurance Law"), which was first enacted in 1979 and most recently amended in 2003. The Insurance Law provides for a licensing regime applicable to all insurers, brokers, agents and insurance managers established in the Cayman Islands.

This memorandum is concerned with the formation and/or licensing of companies that will seek to operate from the Cayman Islands as "exempted" insurers with Class "B" insurance licences, underwriting non-domestic business.

The term "exempted insurer" means an insurer incorporated as a Cayman Islands exempted company, a non-resident company incorporated in the Cayman Islands or a foreign company which has been registered to establish a place of business in the Cayman Islands.

An "exempted insurer" may also be a Cayman Islands "Segregated Portfolio Company" or a foreign insurance company structured (under the laws of its jurisdiction of incorporation) along similar lines, i.e. so that it has capacity to establish separate accounts or "protected cells" each of which is legally segregated in order to protect different insurance contracts or portfolios of risks.



Licences

There are two categories of the Class “B” insurance licence:

1. Unrestricted Class "B" insurer's licence
 - This licence allows the insurer to carry on business, other than domestic business, outside the Cayman Islands from an office established within the Cayman Islands;

2. Restricted Class “B” insurer’s licence
 - This licence is similar to the unrestricted licence, except that the insurer may not write risks, which are (in effect) “unrelated business”. Accordingly, the insurer holding a restricted Class “B” licence may underwrite only the risks of its shareholders and/or risks of other parties specifically approved by the Cayman Islands Monetary Authority ("CIMA").

Application

Applications for an insurer's licence must be made on the prescribed form. The Head of Insurance Supervision at the CIMA usually requires a meeting with the sponsors of a prospective insurer (the “Applicant”), prior to submission of the licence application.

The application process will usually be completed in 3 to 6 weeks, commencing from the time of submission of all required information to the CIMA.

The names, addresses and nationalities of all proposed shareholders of the Applicant will have to be provided in the application. Where a corporation or corporations will hold the Applicant’s shares, the chain of ownership up to the ultimate beneficial owners of the shares of the corporations(s) must be indicated.

Resumes are required for all proposed directors, managers and officers of the Applicant, along with summaries of the experience of such persons in the insurance industry.

The Insurance Law requires the production of not less than three references acceptable to the CIMA, including a character reference and a reference verifying satisfactory financial standing of each:

- director, manager, and officer of the Applicant; and
- shareholder or beneficial owner of a shareholder of the Applicant who is a natural person holding more than 10% of the Applicant's issued share capital or voting rights.

For each director, manager, officer or shareholder of the Applicant, a police certificate (or other documentary evidence satisfactory to the CIMA) is required to be provided, establishing that such person does not have a criminal record.

The Insurance Law requires a licensed insurer to have appointed, a locally licensed insurance manager. The prospective insurance manager typically assists the Applicant in the development of a Business Plan for its licence application. The Business Plan must indicate the line or lines of insurance business that the Applicant intends to underwrite and give other pertinent details of its planned operations, so that the CIMA is provided with comprehensive details of the Applicant's prospective business.

The Insurance Law provides for a minimum net worth requirement in connection with the issue of insurance licences. "Net worth" means the excess of an insurer's assets, including any contingent or reserve fund, over its liabilities (other than liabilities to shareholders). The minimum net worth requirement (other than with respect to Restricted Class 'B' licences) for general (i.e. non-life) business only is US\$125,000. For long term (i.e. life) business only, the requirement is US\$250,000. For both general and long term business, the requirement is US\$375,000.

The CIMA will specify a minimum net worth for each Applicant, based upon the planned volume of business indicated in the application and Business Plan. This may well be greater than the minimum net worth referred to above.

The application process is the same, whether the Applicant is a Cayman Islands exempted company, a non-resident company incorporated in the Cayman Islands, a foreign company registered in the Cayman Islands or a segregated portfolio-type company.

However, segregated portfolio-type companies will need to submit separate Business Plans for each portfolio, separate account or “protected cell”, which will be subject to regulatory approval (including net worth requirements) as if each were a stand-alone insurance company.

Cayman Islands Insurers

The initial step for establishing an insurer, which is to be a Cayman Islands company, is the incorporation of the prospective insurer as a Cayman Islands exempted company. An application to the CIMA will then be submitted, seeking to have the prospective insurer licensed with a Class “B” insurance licence in one of the two categories indicated.

Legal costs in relation to the incorporation of an exempted company to be licensed as an insurer will be at a minimum US\$2,500. The foregoing amount is inclusive of the initial year’s Government fees. The legal costs will exceed the quoted amount, to the extent additional work is involved, such as the drafting of non-standard Articles of Association or assistance with formulation of the licence application.

There is an annual Government fee for an insurer’s licence in either of the two classes indicated. This fee is stated in Cayman Islands’ Dollars at CI\$7,000.00. The US equivalent of this is approximately \$8,540.00 per annum.

Additional costs involved in the formation of a Cayman Islands insurance company will include the fees paid to the local insurance manager for its involvement in the licence application process and thereafter, with the management of the company. The insurance manager’s fees will vary depending on complexity of the application and the demands placed upon the manager in managing the company’s business once its operations commence.

Summary

Forms - the prescribed application form for a Class B insurer’s licence (Restricted or Unrestricted) appears below. This form must be completed, typically with the assistance of the prospective insurance manager, and the supporting documentation assembled, to complete the licence application to the CIMA.

The following is a typical step-by-step outline of the formation / licensing process.

1. Sponsors (i.e. proposed owners and / or their professional advisors) engage local licensed insurance manager to assist with development of draft Business Plan, detailing proposed insurance operations.
2. Draft Business Plan developed and submitted for review by the Head of The Insurance Division of the CIMA.
3. Sponsors visit the Cayman Islands to meet with the Insurance Division of the CIMA, interview auditors, banks etc., meet with insurance manager, local attorneys.
4. Formal licence application completed, compiled and submitted to the CIMA.
5. Company incorporation commenced and subscription for shares follows.
6. The insurance application is submitted to the Executive Council (comprised of Ministers and officials of the Government of the Cayman Islands) – in normal circumstances, in-principle approval of the licence will be granted within six weeks (approximately) after submission.
7. In-principle approval to grant the insurance licence received by the insurance manager.
8. The Head of The Insurance Division of the CIMA issues insurance licence upon notification by the insurance manager that company has been incorporated and its capital subscribed.

This publication is intended to provide only general information for clients and contacts of Truman Bodden & Company and does not purport to be comprehensive or to constitute legal advice. It has not been prepared in contemplation of any particular facts and readers are cautioned not to rely on its contents without first taking specialist legal advice.

FORM 2

CAYMAN ISLANDS

THE INSURANCE LAW (2003 Revision)

THE INSURANCE (FORMS) REGULATIONS (2003 Revision)

APPLICATION FOR A CLASS “B” INSURER’S LICENCE

(Section 4(2))

Please complete all sections as fully as possible, giving reasons for non-compliance if any, and attaching appendices where appropriate.

1. Name of applicant

2. Whether licence applied for is Restricted or Unrestricted

3. Date on which applicant commenced or intends to commence, carrying on business in or from within the Islands.

4. Whether business being, or proposed to be, transacted is “General” or “Long –term” or both (as defined in section 2 of the Law).

5. Address of a) principal Office

b) registered office

6. If the applicant is to depend upon agent or service Companies for the provision of underwriting, management or financial accounting services, please give details of such companies including evidence of their agreement to provide the services mentioned.
7. Attach evidence of the proper incorporation of the applicant pursuant to Section 4 of the Companies Law, and a copy of the memorandum of association and articles of association, or other instrument of constitution of the applicant, as may be appropriate or in the case of companies not yet incorporated, the proposed documentation.
8. List all names (including any previous names), addresses and nationalities of all shareholders. In those instances, where shares are held by a corporate body or bodies, the chain of connection to the ultimate owner must be shown.
9. Attach the annual accounts, for the two years preceding the year of application, of each shareholder which is a body corporate holding more than ten percent of the applicant's issued share capital or total voting rights, together with similar accounts for the parent body, if any, of each such body corporate.
10. Attach curricula vitae of all directors, managers, and officers, including any previous names, and with particular emphasis on experience in the insurance profession.
11. Attach not less than three references acceptable to the Authority, including one character reference for and one reference verifying the good financial standing of –
 - a) each director, manager and officer of the applicant; and
 - b) each shareholder and each beneficial shareholder who is a natural person holding more than ten percent of the applicant's issued share capital or total voting rights;and, for each such director, manager, officer or shareholder, a police or other certificate satisfactory to the Authority that such director, manager, officer or shareholder has not been convicted of a serious crime or any offence involving dishonesty.
12. a) Name and address of the principal agent or representative resident in the Cayman Islands.

b) Address of designated principal office in the Islands where full business records will be kept.

13. Name, address and professional qualification of auditors and the country whose generally accepted accounting principles are to apply. Attach evidence that said auditors have agreed to accept appointment.

14. Name and address of person resident in the Cayman Islands who is authorised to accept service of process in legal proceedings and notices on behalf of the applicant and who is approved or proposed for approval under section 7(2) of the Law.

15. a) For an existing insurer - Attach annual accounts for three years preceding the date of this application.

b) For an applicant for a new unrestricted class "B" insurer's licence - Attach a written undertaking to provide at least the minimum net worth requirements set out in section 4(9) of the Law, together with a statement as to how said net worth is to be calculated.

16. Attach a business plan. The Head of Insurance Supervision may indicate that any part of the information included in the business plan shall not form part of this application for the purposes of sections 4(3) and 7(3) of the Law.

17. Have any of the parties connected with this application ever applied, either individually or in conjunction with others, for authority to transact insurance business in any other jurisdiction? If so, please give details.

