

Insurance & Reinsurance Law & Regulation

Jurisdictional comparisons

First edition 2014

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Foreword

Clive O'Connell, Goldberg Segalla Global LLP

Insurance is about the spreading of risk. Ever since Lombard merchants introduced marine insurance in 1200 or Icelandic farmers formed themselves into a mutual later that century, the risk of one has been spread across many.

Of course, sharing risk among people exposed to the same peril does not always work. Accumulation of risk in one geographic area or some other similarly exposed grouping simply magnifies the problem. It was for this reason that reinsurance was born in the fourteenth century in order to allow greater diversification of security and of risk. Risks crossed frontiers, often on a reciprocal basis. A calamity in one place was resolved from the purses and pockets of strangers from far away.

As much early insurance and reinsurance was based upon international trade, the growth of insurance and reinsurance has always been international and the geographic sharing of risk has allowed economies to flourish or, at least, has prevented them from an even earlier demise.

Insurance and reinsurance are not the sole preserves of capitalism. Socialist countries, for example, have used the world's reinsurance markets to protect their macroeconomic interests. Even North Korea used to reinsure itself around the world until sanctions denied it protection. Countries in the former Soviet bloc used reinsurance not merely to protect themselves, but as a way to earn "hard" currency. Often they did so only to find that claims had to be paid in hard currency as well.

The global economy is growing and is becoming ever more interconnected. With the growth in economies, the need for insurance grows as well. Whereas, in the early 1980s, the USA accounted for around 40 per cent of the world's insurance premiums, that figure has fallen to under 25 per cent today while, at the same time, US premiums themselves have continued to grow.

Insurers have also tended to become larger. As global enterprises have consolidated and grown, their need for ever larger insurers has increased. These larger insurers, in turn, need larger reinsurers to protect their capital.

New markets are developing around the world. As they do so, established insurers are often seeing their opportunities for growth there rather than in established and over-competitive locations.

As economies expand, insurance is required in new areas, both geographically and conceptually. New forms of risk are emerging and insurers are struggling to apply old forms of cover to them, often restricted in what they can do by regulatory regimes.

Insurance does not merely follow but can be used as a tool to assist development. Microinsurance schemes are being established, often

in conjunction with microfinance, to help create a middle class and a sustainable economy in poorer countries, and to allow them to develop beyond subsistence. Takaful is being developed to give access to risk sharing to millions of devout Muslims, who make up a significant proportion of the world's population, often in areas undergoing some of the fastest economic growth, and who would otherwise have no recourse to cover.

The insurance and reinsurance industry, however much it may be growing, is still dwarfed by the capital markets. Following the global economic downturn and the combined effects of a number of natural disasters, a need emerged for non-correlated security to protect insurers. At the same time, capital, lacking opportunity elsewhere, was available. As economies have recovered, the capital has remained, and now it is clear that insurance-linked securities are not a temporary trend but a significant change in the way that insurers protect themselves and that capital markets interact with them.

As capital markets become familiar with and develop an appetite for risk transfer, the issue arises as to what extent they will still require the intervention of insurers or whether they might be better suited to providing new solutions to those requiring protection directly. The ability of capital markets to innovate within the confines of their regulatory framework could present the greatest challenge yet to insurers.

Regulators are bound by the limits of their jurisdiction. Those that they regulate and those they protect operate on a broader, often global, scale. Cooperation between regulators is required for fear of loopholes emerging between them which could be exploited by those without good faith.

The international nature of recent developments, adding to an already global industry, presents challenges not only to regulators, but also to legal systems. Principles of insurance law, developed from cases surrounding eighteenth- and nineteenth-century ocean voyages, where cargos were carried on sailing ships, are now being asked to respond to quasi-financial instruments protecting satellite launches.

Often the transaction will be reflected in a number of documents involving parties in a variety of jurisdictions and subject to different forms of regulation.

Existing laws and regulations are being tested. It is too early to say whether they will pass these tests, but all concerned must be aware of the issues that they face.

To aid this process, we have brought together leading insurance lawyers from around the world to ponder and opine upon some of the challenges the insurers and their lawyers and regulators will face in the coming years. The questions considered in this book will be asked for many years to come.

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Bermuda

ASW Law Limited

Neil Horner, Rod Attride-Stirling & Kim Willey

1. WHAT RISKS MUST BE INSURED?

1.1 What are the compulsory classes of insurance?

The large majority of insurance companies regulated in Bermuda are exempted companies operating 'from within' rather than 'in' Bermuda. Bermuda's insurance regime operates on a 'class' system or risk profile framework for general and long-term insurance companies and, accordingly, insurance companies are divided into classes primarily differentiated by the type of risks insured. As a preliminary matter, it should be noted that all companies, insurance or otherwise, are subject to the Companies Act 1981 (the Companies Act). Insurance companies are mostly designated 'exempted' as opposed to 'local'. An exempted company is a company which is exempted from the requirements imposed on local companies by the Companies Act – in particular, the requirement that at least 60 per cent of the equity of a company must be owned and controlled by Bermudians. This allows for an exempted company to be 100 per cent foreign owned (ie non-Bermudian owned).

The Insurance Act 1978, as amended, and its related regulations (the Insurance Act) provides for the following classes of registration:

General business

- Class 1. These are single-parent or 'pure' captives writing risks of the parent and its affiliates only.
- Class 2. These are multi-owner captives and single-parent captives writing up to 20 per cent unrelated business.
- Class 3. This category of insurer includes those whose percentage of unrelated business represents more than 20 per cent but less than 50 per cent of unrelated business (on a net premium written basis).
- Class 3A. This category applies to most former Class 3 insurers. It includes those insurers whose percentage of unrelated business exceeds, or is expected to exceed, 50 per cent of net premium written and/or net loss and loss expense provisions, and the unrelated business premium does not, or is not projected to, exceed US\$50 million.
- Class 3B. This category includes insurers whose percentage of unrelated business exceeds, or is projected to exceed, 50 per cent of net premium written and/or net loss and loss expense provisions, and where the unrelated business premium exceeds, or is projected to exceed, US\$50 million. Class 3B insurers are subject to restrictions on payment of dividends.

- Class 4. This is a special category of insurer who writes excess liability and or property catastrophe insurance risks.

Long-term business

- Class A insurer. These are single-parent or pure captives writing risks of the parent and its affiliates only.
- Class B insurer. These are multi-owner captives and single-parent captives writing up to 20 per cent unrelated business.
- Class C insurer. A long-term insurer is registrable as a Class C insurer if it has total assets of less than \$250 million and is not registrable as a Class A or Class B insurer.
- Class D insurer. A long-term insurer is registrable as a Class D insurer if it has total assets of \$250 million or more but less than \$500 million and is not registrable as a Class A or Class B insurer.
- Class E insurer. A long-term insurer is registrable as a Class E insurer if it has total assets of more than \$500 million and is not registrable as a Class A or Class B insurer.

Special purpose insurers (SPI)

An insurer writing special purpose business, for example a specific insurance programme. The SPI may be formed with capital of as little as US\$1.00, but must be fully collateralised, meaning that the insurer must fully fund its liabilities under the programme.

The specific classes of compulsory insurance under Bermuda law are as follows:

- Under the Civil Aviation (Air Transport Licensing) Act 2007, an applicant will be refused an air transport licence for the carriage of passengers or cargo on a flight if the Air Transport Licensing Panel is not satisfied as to the adequacy of the insurance covering the applicant's potential obligations. If the Panel refuses to grant a licence, an appeal may be brought to the Minister of Tourism Development and Transport against the decision.
- Under the Motor Car Insurance (Third-Party Risks) Act 1943, it is unlawful for any person to use, or to cause or permit any other person to use, a motor car on a highway or on an estate road without holding third-party risk insurance. This insurance policy will only be considered to be in effect if a certificate of insurance has been issued. According to the 1943 Act, insurers must have been authorised to conduct business by the Minister of Finance. As such, they cannot be foreign insurers (a foreign insurer is an insurer registered or incorporated in a country other than Bermuda that does not have a licence to operate as an insurer in Bermuda). According to the Motor Car (Examination, Licensing and Registration) Regulations 1952, no motor car shall be registered or licensed without a certificate of insurance relating to the use of the motor car and valid for the period within which the licence is to be issued.

- Under the Merchant Shipping Act 2002, any ship carrying a cargo of more than 2,000 tons of oil in bulk and any ship with a gross tonnage greater than 1,000 tons must have a contract of insurance or other security satisfying the requirements of either Article VII of the International Convention on Civil Liability for Oil Pollution Damage 1992 or the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001, respectively. Ships shall not enter or leave a port in Bermuda or, if the ship is registered in Bermuda, enter a port in another country or a terminal in the territorial sea of another country unless there is in force a policy of insurance complying with the Merchant Shipping Act 2002.
- Under the same Merchant Shipping Act 2002, the owner of a ship registered in a state party (a party specified in an order to the Merchant Shipping Act 2002 declaring that any state specified in the order is a party to the Convention on Limitation of Liability for Maritime Claims, 1976 (as amended by the 1996 Protocol); an order is subject to any subsequent orders made for that same purpose) and actually carrying hazardous and noxious substances must maintain insurance or other financial security in order to cover liability for damage under the International Convention on Load Lines 1966.
- Under the Merchant Shipping (Repatriation) Regulations 2013, every shipowner with responsibility for a Bermuda ship must make arrangements for financial security to cover the possible costs of repatriation of any of the seafarers in its employ. That financial security may be a policy of insurance, a copy of which must be carried on board the ship. In accordance with the Regulations, the security shall be effective even if the shipowner ceases to trade or becomes insolvent.
- Under the Health Insurance Act 1970, every employer must effect and continue, on behalf of his employees and the non-employed spouses of every employee, a health insurance contract providing at least standard hospital benefit. Standard hospital benefit means in respect of inpatient and outpatient treatment. Health insurance refers to insurance in respect of hospital treatment providing standard hospital benefit and medical, dental or other professional healthcare procedures. Subject to the Bermuda Immigration and Protection Act 1956, any insurer desirous of undertaking health insurance business may apply to the Bermuda Health Council for a licence. The minimum period of cover provided under a contract of health insurance is one month according to the Health Insurance (Cover) Regulations 1971.
- Under the Bermuda Hospitals Board (Medical Staff) Regulations 1996, medical and dental practitioners must have medical or dental malpractice insurance, respectively, in order to be eligible for membership of the active or association medical staff of the hospitals (other than the dental division).
- Under the Workers' Compensation Act 1965, the Minister of Home Affairs may, by order published in the Gazette, require any employer or class of employers to insure and keep himself or themselves insured in

respect of any liability which he or they may incur under the 1965 Act to any worker employed by him or them. The Minister of Home Affairs may exempt any employer if they provide and maintain in force a security approved by the Minister.

- Under the Care and Protection of Animals (Commercial Horse Stables) (Licensing) Regulations 2005, every licence holder must have a current insurance policy which insures him against liability for any injury sustained by those who hire a horse from him and those who use a horse in the course of receiving from him, in return for payment, instruction in riding. The policy must also insure those persons in respect of any liability which may be incurred by them in respect of injury to any person caused by, or arising out of, the hire or use of a horse.
- Under the Trusts (Regulation of Trust Business) Act 2001, in order to obtain a Trust Licence an undertaking must be conducted in a prudent manner, which includes having an insurance policy to cover risks inherent in the operation of its business of an amount commensurate with the nature and scale of the undertaking's operations. An application for a trust licence must be made to the Bermuda Monetary Authority (BMA). According to the Companies Act 1981, an exempted company does not require a licence to carry on trust business in Bermuda if it holds an 'unlimited trust licence' and the settlor of the trust is not ordinarily resident in Bermuda at the date of creation of the settlement.
- Under the Marine Board (Island Boats) Regulations 1965, no licence shall be issued to operate a boat without a third-party risk insurance policy with a minimum \$100,000 liability. The Schedule of the Act stipulates the minimum insurance cover required for different sized boats.
- Under the Bermuda Bar (Insurance) Rules 2009, individual barristers and professional companies (defined in the Bermuda Bar Act 1974 to mean a company the primary object of which is the provision of services of the sort practised by individuals who practise as barristers) must obtain and maintain a policy of professional liability insurance issued by an insurance company that is registered as an insurer under the Insurance Act 1978 or is authorised to provide insurance under equivalent legislation in another jurisdiction. It is required under the Bermuda Bar (Insurance) Rules 2009 that the insurance company notify the Bar Council immediately of any cancellation or reduction of the insurance coverage below the required limit. The aggregate limit for coverage must be at least \$1,500,000 for the first five barristers who are members or employees of the company and \$1,000,000 for each unit of five barristers after the first five, up to a maximum of \$10,000,000 for a company with 50 or more barristers.
- Under the Money Service Business Regulations 2007, in order to receive a licence to carry on a money service business, as defined by the BMA Act 1969, companies must demonstrate that they are conducting

business in a prudent manner by effecting an insurance policy to cover risks inherent in the operation of its business of an amount commensurate with the nature and scale of the company's operations.

- Under the Auxiliary Bicycles (Examination, Licensing, and Registration) Regulations 1955, no auxiliary bicycle licence shall be issued unless the applicant produces a certificate for third party risk insurance that is valid for the period for which the licence is to be issued, as required by the Motor Car Insurance (Third Party Risks) Act 1943.
- Under the Certification Service Providers (Relevant Criteria and Security Guidelines) Regulations 2002, the certification service provider (CSP) shall make adequate arrangements against potential claims arising from the issuance of accredited certificates. Where the CSP issues accredited certificates with specific reliance limits, the liability cover, such as by obtaining insurance, should be sufficient to meet the potential liabilities of the CSP in respect of the reliance limits.
- Under the Condominium Act 1986, a corporation must maintain adequate insurance on the units, other than improvements made to the units by the owners (unless its by-laws so require), and the common property against loss resulting from destruction or damage caused by fire, windstorm and any other peril against which the by-laws require the corporation to maintain such insurance.
- Under the Day Care Centre Regulations 1999, anyone to whom a day care centre licence has been issued must provide a policy of insurance that includes comprehensive general liability coverage, including accidental death and personal injury caused to children on or off the premises while under the supervision of the centre's personnel and to children, employees and volunteers while riding in private vehicles for activities. The insurance must also cover personal injury for the employees and volunteers.
- Under the Institute of Chartered Accounts of Bermuda By-Laws 2006, every firm or corporation and member engaged in the practice of public accounting in Bermuda must maintain professional liability insurance coverage. In certain instances, such as when a member, firm or corporation is unable to obtain insurance coverage on reasonable terms, the Council of the Institute may allow them to set aside assets at least equal in value to the amount of insurance coverage that would otherwise be required. The amount of insurance maintained by such members shall be at least \$1,000,000 for each member who, as applicable, is an employee, partner, proprietor or director (hereinafter referred to as relevant members). If the firm is not a corporation, the insurance requirement is \$1.5 million for ≤ 3 relevant members; and \$2.0 million for ≤ 2 relevant members. If the firm is a corporation, the insurance requirement is \$1.5 million for ≤ 3 relevant members; \$2.0 million for ≤ 9 relevant members; \$5.0 million for ≤ 24 relevant members; \$7.5 million for ≤ 34 relevant members; and \$10 million for ≥ 35 relevant members. Every professional liability insurance contract must be endorsed with a requirement that the insurer notify the Institute of

Chartered Accountants immediately of any cancellation or reduction of the insurance coverage below the specified amounts. Failure to maintain satisfactory proof of professional liability insurance coverage or sufficient assets of the same value will result in the suspension of rights and privileges of membership in the Institute.

- Under the Investment Funds Act 2006, a licensed fund administrator must have an insurance policy that covers the risks inherent in the operation of its business of an amount commensurate with the nature and scale of its administrator's operations. Business shall not be considered to be conducted in a prudent manner unless the licensed fund administrator maintains minimum net assets of \$50,000.

1.2 Who must they be insured with?

1.2.1 Locally admitted insurers

Certain lines of business, mainly immovable and moveable property located in Bermuda, including automobile insurance, fire insurance and health insurance, are compulsory lines of insurance that comprise 'domestic business', which is defined in section 1 of the Insurance Act 1978 as insurance business where, whether the contract of insurance is made in Bermuda or elsewhere, the subject-matter of the contract is one of:

- property that at the time of the making of the contract is in, or in transit to or from, Bermuda;
- the life, safety, fidelity or insurable interest of an individual who at the time of the making of the contract is ordinarily resident in Bermuda; or
- a risk of a company formed in Bermuda that is not an exempted company within the definition of that expression in section 127 of the Companies Act (ie non-Bermudian) owned and controlled and does not carry on business in Bermuda).

Generally, in order to conduct domestic business the insurer must have a licence granted by the BMA to operate as an insurer (in its relevant class) in Bermuda, which generally will mean that most domestic business is written by Bermuda local insurance companies which are also licensed as insurers/reinsurers. There are, however, exceptions to the general rule, and it is possible that a foreign insurer may be able to carry on 'domestic business' as an insurer in Bermuda:

- where an application is made under section 134 of the Companies Act to, and approved by, the Minister of Finance for a permit to engage in or carry on trade or business in Bermuda and licensed as an insurer/reinsurer by the BMA under the Insurance Act; or
- where permission is given and a permit is granted under the provisions of the Non-Resident Insurance Undertakings Act 1967 (NRIU Act) and licensed by the BMA under the NRIU Act. There is a moratorium on granting new licences under the NRIU Act, but existing holders of an NRIU Act licence can continue to conduct domestic business in Bermuda.

An exempted company, although domiciled in Bermuda, may not carry on any business in Bermuda without first seeking approval from the Minister

of Finance to do so under section 129A of the Companies Act unless so permitted under the Companies Act. This prohibition will therefore apply to exempted insurance companies as well, with one significant exemption: an exempted insurance company may carry on the business of reinsuring risks written by a licensed insurance company that is incorporated in Bermuda whether exempted or local. In other words, an exempted insurance company duly licensed under the Insurance Act can reinsure even domestic (local) risks that are ceded to it.

Operating 'in' and 'from within' are highly distinguishable concepts under Bermuda law, particularly in relation to the operations of an exempted company. An exempted company is defined in section 127 of the Companies Act, and is a company '*which does not comply with the requirements of the Companies Act in respect of a local company*' and which is registered as and purports to be (pursuant to its constitutional documentation) an exempted company. Not complying with the requirements of a local company refers to the fact that an exempted company can be foreign owned and controlled. Exempted companies are generally prohibited from carrying on business of any type whatsoever 'in' Bermuda; instead, they operate outside of Bermuda but 'from within' Bermuda. In order to operate 'in' Bermuda, an exempted company insurer is in the same position as a foreign insurer and would need regulatory approval to do so. When deciphering whether a foreign insurer can provide lines of insurance 'in' Bermuda, therefore, one must determine whether the provision of coverage will be provided 'in' Bermuda or 'from within' Bermuda. A foreign insurer can only provide domestic business coverage in Bermuda if it has the specific permissions referred to (eg under section 134 of the Companies Act and the Insurance Act, or under the NRIU Act).

1.2.2 Foreign insurers

See section 1.2.1 above. There are certain lines of business that cannot be covered by the foreign insurer because of local regulatory laws and policies. These relate to mainly immovable and moveable property located in Bermuda, and include automobile insurance, fire insurance and health insurance.

2. WHO CAN INSURE NON-COMPULSORY CLASSES OF RISK?

2.1 Locally admitted insurers

Yes; see 1.2.1 above.

2.2 Foreign insurers

If the non-compulsory class of risk is a 'domestic business', as defined in section 1.1 above, then a foreign insurer will need to be licensed under the Insurance Act. If it is not a domestic business, then such insurance may be provided by a foreign insurer without having to obtain any local business licences.

As mentioned in section 1.1 above, a foreign insurer may in certain circumstances be permitted to carry on domestic business.

2.3 Excess and surplus lines markets

Local or foreign insurers (subject to the limitations discussed above).

3. WHICH REINSURERS CAN BE USED?

3.1 Must they be locally admitted?

No; as discussed above, a duly licensed reinsurer may write reinsurance business ceded to it whether the reinsurer is exempted or local.

3.2 If not, are security requirements imposed?

No; see section 3.1 above.

4. THE TAXATION OF INSURANCE

4.1 What taxes are levied on insurance premium?

Bermuda has no premium taxes.

4.2 What exceptions are there?

Contracts of reinsurance and insurance policies that insure risks outside of Bermuda are exempt from stamp duty under the Stamp Duty Act 1976 (exempt policies).

Under the Stamp Duty Act 1976, stamp duty is levied on insurance and reinsurance policies issued by local insurers.

Accident and health policies

Stamp duty of \$25 is payable for accident and health insurance policies where the policy is non-renewable, written for a term of less than 10 days and insures more than four persons. Where the accident and health insurance policies are non-renewable, written for a term of less than 10 days and insure only one person, the stamp duty payable is 1 per cent of the amount for which receipt is given rounded up to the nearest cent. Accident and health policies which do not fall into the above categories attract stamp duty of \$10 for each person insured.

All other insurance policies

Stamp duty of 1 per cent of the first premium rounded up to the nearest cent is payable.

Insurance premium receipts

Stamp duty is also charged on insurance premium receipts at 1 per cent of the amount for which the receipt is given rounded to the nearest cent. This does not apply to life policies, exempt policies, accident and health policies or annuity sold by a person carrying on insurance business. If the contract is brought in or executed as a deed in Bermuda, stamp duty of US\$100 is payable.

5. INSURANCE REINSURANCE AND CAPITAL MARKETS

5.1 How is finite reinsurance treated?

5.1.1 What constitutes risk transfer?

Bermuda is a leading insurance and alternate risk transfer domicile. There is, however, no accepted statutory definition of insurance or reinsurance in Bermuda legislation. The term ‘insurer’ is defined in the Life Insurance Act 1974 as *‘the person who undertakes or agrees or offers to undertake a contract’*. The term ‘contract of insurance’ is defined in the Third Parties (Rights against Insurers) Act 1963 as *‘a contract whereby the insured is covered against the risk of liability to third parties’*.

In the regulatory context, the term ‘insurance business’ is defined in the Insurance Act as the business of effecting and carrying out contracts either:

- to protect persons against loss or liability to loss in relation to risks to which these persons may be exposed; or
- to pay a sum of money or render money’s worth on the occurrence of an event, and includes re-insurance business.

The latter does not require the (re)insured to have an insurable interest of any kind, nor does it require the transfer of any risk to the (re)insurer.

In addition, being a party to a ‘designated investment contract’ does not constitute carrying on insurance business, nor does a designated investment contract constitute a contract of insurance, for any purpose (section 57(A) (4) of the Insurance Act). Any contract (including any option contract, futures contract, swap contract, derivative contract, contract for differences or security) is a designated investment contract under section 57A of the Insurance Act if both:

- the purpose of the contract is to secure a profit or avoid a loss either:
 - by reference to fluctuations in the value or price of property of any description, or in an index, or other factor, specified for that purpose in the contract; or
 - based on the happening of a particular event specified for that purpose in the contract; and
- the BMA has given a direction in relation to the particular contract under section 57A(2) of the Insurance Act.

A direction under this section can be made with retroactive effect.

In the context of finite reinsurance, Bermuda does not have specific regulation to date, but the BMA has participated in discussions with the International Association of Insurance Supervisors on finite reinsurance and continues to monitor developments in this area and any possible regulatory implications for the Bermuda market.

5.2 Derivatives, ILWs and wagering agreements

5.2.1 What constitutes insurable interest?

The definition of insurance business under the Insurance Act (see section 5.1.1 above) was deliberately cast in very broad terms to offer maximum scope for industry expansion and product development. The Insurance Act does not require risk transfer, nor does it appear to require that there be an

insurable interest. However, other considerations may mandate that these elements be included in a proposed insurance programme.

Bermuda law recognises the convergence of the insurance and capital markets, enabling the BMA to categorise certain contracts, for example, swaps and insurance derivatives, as designated investment contracts and not insurance business as such. These are statutorily deemed not to constitute insurance business (section 57(A)(4), Insurance Act) (see section 5.1.1). As a result, so-called 'transformer companies' can offer both insurance and capital markets products, without the need to obtain a separate insurance licence in relation to designated investment contracts.

5.3 Side cars and CAT bonds

5.3.1 To what extent are these governed by the law relating to insurance contracts?

Bermuda has been at the forefront of both side car and CAT bond development. The Insurance Act was amended in 2008 to introduce special purpose insurers (SPIs), which are a flexible, attractive model for these vehicles.

- Side cars – where the side car is structured to issue insurance cover pursuant to one or more insurance policies, it is necessary to obtain an insurance licence from the BMA. Assuming that the side car is fully collateralised, it would generally obtain an SPI insurance licence, although other classes of licence (ie Class 3 or Class 3A) are available as appropriate. As a licensed insurer, the side car would need to be administered by a licensed insurance manager.
- CAT bonds – where the CAT bond issuer is structured to issue insurance cover pursuant to one or more insurance policies, it is necessary to obtain an insurance licence from the BMA. As CAT bond transactions are fully collateralised limited recourse transactions, a CAT bond issuer would generally obtain an SPI insurance licence, although other classes of licences (ie Class 3 or Class 3A) are available as appropriate. As a licensed insurer, the CAT bond issuer needs to be administered by a licensed insurance manager.

5.4 Other ILS and ART products

The Insurance Act is designed to be flexible and responsive to innovation in the insurance market. The particular insurance licence that is required for a particular ILS/ART product will depend upon the specific details of the particular transaction.

Bermuda's SPI legislation (see section 1.1) has proved to be a very popular vehicle in the ILS space. We have seen increasing use of Bermuda fund structures in convergence transactions involving investment by funds investors in the Bermuda insurance market. We have also seen increasing use of Bermuda's segregated account legislation in ILS structures with multiple programmes, which demonstrates the development of the SPI product from its origins in single-programme structures. SPI structures have been the most

commonly used structures in Bermuda insurance incorporations in the last few years, and that trend is expected to continue.

6. COMMISSIONS

6.1 What commissions and brokerages are permissible? What disclosure of commissions is required?

Bermuda does not have any restrictions on the types of commissions and brokerages permitted, and disclosure of commissions is not mandated.

7. HOW ARE AGENTS (BROKERS AND UNDERWRITING AGENTS AND THIRD PARTY CLAIMS ADMINISTRATORS) REGULATED?

Under the Insurance Act, insurance managers, brokers, agents and salesmen are regulated by the BMA. Each must be a holder of a valid licence as required under the Insurance Act. Depending upon the circumstances, third party claims administrators may be subject to further regulation.

Insurance managers must maintain an accurate list of all insurers for which they act as insurance manager, and must, if required by the BMA, provide the BMA with a copy of that list (Insurance Act).

In relation to any insurance contract to which an insurer is a party and in relation to which an insurance broker, agent or salesman has apparent authority to act for the insurer and receives a premium under the contract, both (according to the Insurance Act):

- the broker, agent or salesman is deemed to be the agent of the insurer; and
- the insurer is deemed to have received the premium.

Further, an insurance manager or broker registered under the Insurance Act is also subject to the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 if such person acts as a manager or broker in connection with long-term business (other than reinsurance business) falling within the definition of 'long-term business' in the Insurance Act.

8. IS TAKAFUL POSSIBLE?

Yes. Bermuda law provides significant flexibility to allow for the establishment and operation of takaful and retakaful arrangements. Strengthening Bermuda's case as a favourable domicile for the establishment of takaful and retakaful arrangements is that it has enacted the Bermuda Segregated Accounts Act 2000 (the SAC Act). Pursuant to the SAC Act, an insurance company may register as a segregated accounts company and set up separate accounts for different programmes of business. Each account is segregated from the claims of creditors of other accounts, thereby allowing each participant to run its own programme without sharing the underwriting risks of other participants.