

## Insurance Bulletin Spring 2020



In light of COVID-19, the Bermuda Monetary Authority and the Cayman Islands Monetary Authority have implemented continuity arrangements enabling them to continue to receive and process insurance applications of all types.

For information on managing your [Bermuda](#) or [Cayman](#) business and transactions during the pandemic, and on [Economic Substance](#) implications, please click on the foregoing links. Further topical articles can be found [here](#).

We would like to reassure our clients that we remain available to provide advice during this difficult time, when many businesses will have changing needs, and we sincerely hope that you, your families and colleagues stay healthy during this trying period.

As the market leading insurance legal practices in both Bermuda and Cayman, we hope you find this review of recent developments in the jurisdictions insightful and informative reading, while much of the world is in lockdown.

### Bermuda market

Bermuda's standing as one of the world's most important (re)insurance centres was confirmed recently when the National Association of Insurance Commissioners (NAIC) granted Bermuda [Reciprocal Jurisdiction status](#) effective from 1 January 2020, giving Bermuda 'covered agreement' status with the United States. This will mean that (re)insurers licensed and domiciled in Bermuda will not be required to post reinsurance collateral, putting them on an equal footing with EU and UK (re)insurers. The NAIC also reaffirmed Bermuda as a Qualified Jurisdiction, ensuring continued efficiency in the cross-border operations of Bermuda (re)insurers in the US market.

After a brief lull in the latter half of 2019, M&A activity has resumed with the announcements in March of the US\$80 billion merger of Aon and Willis Towers Watson, and the sale of PartnerRe to Covéa.

Bermuda is the principal offshore jurisdiction for a range of insurance-linked securities issuances, which use a Bermuda special purpose insurer as the issuer. In 2019, 155 new ILS securities were listed on the Bermuda Stock Exchange, up from 125 in 2018. This represents a growth of 24% year-on-year. The total number of ILS listed securities stood at 401 at the end of 2019, with a combined nominal value of US\$34.72 billion.

Catastrophe bonds, sidecars or similar ILS issuances are particularly common in Bermuda and the trend for innovative new products has continued. The growth in more sophisticated and complex ILS products was recognized with the introduction of a new Collateralized Insurance class as part of Bermuda's regulatory regime.

The life reinsurance sector continues to be a growth area for the jurisdiction, with a steady number of company registrations. As at the start of 2019, long-term insurance and reinsurance assets had risen to over US\$300 billion, overtaking both property & casualty (P&C) and captive assets. In particular, there has been increased activity by life insurance groups setting up affiliated insurers.

Bermuda also remains the world's premier [captive domicile](#) with over 700 active captive licences on its register generating approximately US\$40 billion in annual gross written premiums. Twenty-two new captives registered in 2019 compared to 19 in 2018.

At the inaugural **Captive International Cayman Awards** in December 2019, Conyers was voted **Law Firm of the Year**, and Cayman partner **Derek Stenson** was voted **Lawyer of the Year**.

## Cayman Islands market

The Cayman Islands insurance and reinsurance industry has experienced significant growth over recent decades. There were a total of 764 insurance licensees as at 31 December 2019, of which 94 and 670 related to domestic and international insurance markets, respectively. There were 33 new carriers licensed in 2019. The international industry is comprised mainly of companies insuring risks in North America (91%) with total premiums and assets of approximately US\$18 billion and US\$70 billion, respectively.

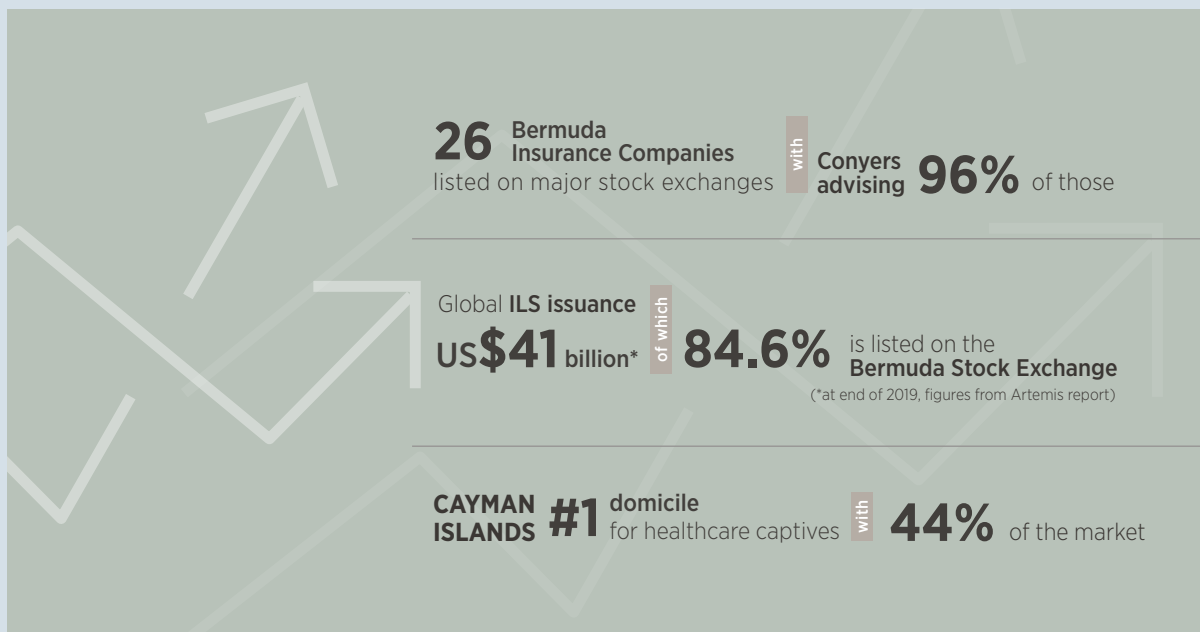
The reinsurance industry continues to gather momentum with particular interest from North American life and annuity carriers who intend to focus on the US market and are therefore not seeking a Solvency II equivalent offshore jurisdiction. There are currently 60 third party reinsurance carriers and new reinsurance licence applications continue to come not only from startups but also from well established companies re-domiciling their operations to the Cayman Islands.

The relatively recent introduction of [Portfolio Insurance Companies](#) (analogous to incorporated cells) continues to be a useful option for facilitating certain structures and we are continuing to see these being used in a variety of contexts, including in M&A structures and as specialist run-off vehicles.

In terms of the number of licensed captives, the Cayman Islands is globally second only to Bermuda and continues to be the leading jurisdiction globally for healthcare captives. In general, captive structures are clearly becoming more sophisticated and Cayman Islands based group captives have reported exponential growth in their programmes and membership.

Not evident from the license statistics are the proliferation of both sponsored and proprietary cell captive programs writing a variety of different business under a total of 128 licensed Segregated Portfolio Companies with over 600 segregated cells between them, each of which has typically been formed for the purpose of housing its own individual cell program or an underlying PIC.

The jurisdiction's international regulatory involvement continues to increase demonstrated by the Cayman Islands Monetary Authority's (CIMA) active participation in proceedings of the International Association of Insurance Supervisors quarterly NAIC meetings. To date, CIMA has entered into more than 50 international bilateral agreements and six multilateral agreements with regulatory authorities, including the Memorandum of Understanding entered into with the NAIC in 2018.



## Legal Updates

### BERMUDA

#### Insurance Amendment Act 2019

Amendments to the Insurance Act 1978, which became operative on 5 August 2019, have introduced two new classes of insurer and a new category of insurance intermediary.

The two new insurer classes are:

- Collateralized Insurer (CI) - insurers that carry on special purpose business but do not qualify for the “Special Purpose Insurer” or Class 3 insurer regulatory frameworks. The CI class is designed for insurers seeking to transact with a wide variety of cedant types, including unrated, non-affiliated cedants.
- Class IIGB - insurers carrying on general insurance business in an innovative manner. Class IIGB is designed primarily for insurer business models using digital assets. It is an addition to the insurance regulatory sandbox and innovation hub introduced last year.

The new form of insurance intermediary, Insurance Marketplace Provider, is defined as an intermediary that provides “a platform, of any type, established for the purpose of buying, selling or trading contracts of insurance”. The category is designed for insurtech-related providers.

The introduction of the Collateralized Insurer class seeks to address the growth and evolution of the insurance linked securities market. Meanwhile, the new Class IIGB and Insurance Marketplace Provider categories are designed to provide alternative regimes appropriate for insurers and intermediaries focused on innovative and technology-based solutions.

#### Incorporated Segregated Accounts Companies

The Incorporated Segregated Accounts Companies Act 2019 (ISAC Act) became operative on 15 January 2020. The ISAC Act allows for the creation of segregated accounts, with separate legal status.

As with Segregated Accounts Companies (SACs), Incorporated Segregated Account Companies (ISACs) ring-fence the assets of each individual account from the creditors of the ISAC and other accounts and allow for the winding up of individual accounts without affecting any of the others. However, ISACs differ from SACs in

that each incorporated segregated account is a separate legal entity in its own right. As such, each account will have many of the attributes of a company, including the ability to hold assets, sue and be sued in its own name, be subject to winding up proceedings with no impact on other accounts and the ISAC, and merge or amalgamate with other accounts of the ISAC.

Due to the separate legal personality of each segregated account, ISACs will have a number of advantages for certain insurance and reinsurance structures including the ability to function as an independent licensed insurer within the same ISAC and the option to obtain separate tax elections or credit ratings.

### CAYMAN

#### Companies Law (2020 revision) and Beneficial Ownership Update

The recently revised Companies Law (2020 Revision) includes enhanced penalties for companies that fail to establish or maintain a beneficial ownership register, comply with notices or fail to provide information. The Law also expands the Registrar’s functions and requires that companies enter additional information into registers of members. A company must enter into its register of members the number and category of shares held by each member, whether each category of shares carries voting rights under the articles of association, and, if so, whether such voting rights are conditional. Although insurance licensees will be out of scope for purposes of the Beneficial Ownership Regime and will not be required to keep an ownership register, they will still need to confirm their exempt status with their Corporate Service Provider who will need to notify the Registry of same.

Companies must notify the Registrar of any changes of directors or officers, including a change of name of directors or officers, within 30 days of any such change. A company that fails to comply with notices or provide information is liable on conviction on indictment to a fine of C\$25,000/ US\$30,025 for a first offence or, for a second offence, to a fine of C\$50,000/ US\$62,500 or to imprisonment for a term of two years, or both.

## Recent Transaction Highlights

### BERMUDA:

- Advised Apollo Global Management LLC in connection with its US\$2.6 billion acquisition of Aspen Insurance Holdings Limited ([Charles Collis](#) and [Jacqueline King](#))
- Advised Sagicor Financial Corporation Limited (SFCL) and Alignvest Acquisition II Corporation (AQY) in connection with the business combination of the two entities. As part of the transaction, AQY continued to Bermuda under the name Sagicor Financial Company Ltd. ("Sagicor") and became the new holding company of SFCL. Sagicor's securities are listed on the Toronto Stock Exchange ([Sophia Greaves](#), [Jennifer Panchaud](#), [Christian Luthi](#), [Katie Martin](#) and [Rhys Williams](#))
- Advised Sanders Re II Ltd. on the issuance of two new series of notes under its principal at-risk variable rate note program to provide Allstate Insurance Company and certain affiliates with risk protection for storms, earthquake, severe weather, fire and other perils ([Jacqueline King](#) and [Jessica Harris](#))
- Advised FloodSmart Re Ltd. on its Series 2019-1 and Series 2020-1 catastrophe bonds sponsored by the US Federal Emergency Management Agency (FEMA) to provide reinsurance protection to the National Flood Insurance Program (NFIP) ([Alexandra Macdonald](#))
- Advised Watford Holdings Ltd. in connection with its direct listing of up to 3.6 billion common shares on the Nasdaq Global Select Market ([Jacqueline King](#))
- Advised International General Insurance Holdings Ltd. on its business combination with Tiberius Acquisition Corp. IGI and Tiberius combined under a new holding company domiciled in Bermuda, International General Insurance Holdings Limited, Bermuda ("IGI Holdings"). IGI Holdings is expected to be listed on NASDAQ under the symbol "IGIC" ([Sophia Greaves](#), [Jennifer Panchaud](#), [Karoline Tauschke](#) and [Katie Martin](#))
- Advised a large global investment management firm with a new ILS platform which included the incorporation and registration of a new Bermuda Class 3B insurer ([Charles Collis](#), [Dawn Griffiths](#), [William Cooper](#) and [Jacqueline King](#))
- Advised Arch Capital Group Ltd. on its acquisition of Barbican Group Holdings Limited, including Barbican Managing Agency Limited, Lloyd's Syndicate 1955, Castel Underwriting Agencies Limited (Castel) and other associated entities ([Graham Collis](#) and [Marcello Ausenda](#))
- Advised GreyCastle Holdings Ltd. and its shareholders on its sale to Monument Re, which includes Monument Re's acquisition of GreyCastle's subsidiaries, GreyCastle

Life Insurance (SAC) Ltd. and GreyCastle Services Limited. The acquisition is subject to regulatory approval ([Chiara Nannini](#))

- Advised Liberty Mutual and Limestone Re Ltd in connection with its latest sidecar transaction, which will provide collateralised third-party reinsurance capacity for Liberty Mutual's US P&C programme and its US homeowners and global property reinsurance business. The deal comprised US\$50 million of Bermuda Stock Exchange listed notes issued by Limestone Re ([Jacqueline King](#) and [Jessica Harris](#))

### CAYMAN ISLANDS:

- Advised Royal Bank of Canada on the establishment and licensing of RBC Insurance Company (Cayman) Limited as a life and longevity Class D reinsurer ([Derek Stenson](#), [Rob Humphries](#), [Philippa Gilkes](#))
- Advised on the amalgamation of Mercy Health Insurance Company SPC, Ltd. and Bon Secours Assurance Company, Ltd. by way of a scheme of arrangement ([Derek Stenson](#), [Rob Humphries](#), [Paul Scrivener](#))
- Advised on the merger of Fairview Health and Health East Care System ([Derek Stenson](#) and [Jacqueline King](#))
- Advised Topsail Re on the establishment of a new reinsurance platform in the Cayman Islands using a segregated portfolio structure focusing, uniquely, on short-tail lines of business ([Derek Stenson](#))
- Advised Chicago-based Northwestern Memorial Healthcare in connection with the three-way amalgamation of its captive insurance companies ([Paul Scrivener](#))
- Advised Aquiline Capital Partners on the Cayman Islands legal and regulatory aspects of the acquisition of an independent insurance brokerage, Relation Insurance Services, from private equity firms, Parthenon and Century Equity Partners ([Derek Stenson](#))
- Advised University of Pittsburgh Medical Center on the cross-border merger of its affiliated captive insurance companies United Health Risk, Ltd., domiciled in Bermuda, with and into Cathedral Insurance Company Limited as the surviving entity domiciled in the Cayman Islands ([Rob Humphries](#), [Derek Stenson](#), [Jacqueline King](#))
- Advised Global Atlantic Financial Group on the establishment of its Ivy Co-Investment Vehicle designed to co-invest approximately US\$1 billion with Global Atlantic and its subsidiaries in qualifying reinsurance transactions ([Derek Stenson](#) and [Philippa Gilkes](#))

### Chambers Global



Insurance  
BAND 1  
Bermuda

### Legal 500



Insurance & Reinsurance  
TIER 1  
Bermuda and Cayman

### IFLR1000



### WWL Awards



Who's Who Legal  
BERMUDA LAW FIRM  
OF THE YEAR

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