

BERMUDA INCORPORATION: STEP BY STEP

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LAW FIRM, COX HALLETT WILKINSON, OUTLINES THE STEPS INTERNATIONAL FIRMS NEED TO TAKE IN ORDER TO ESTABLISH AN INSURANCE ENTITY IN BERMUDA.



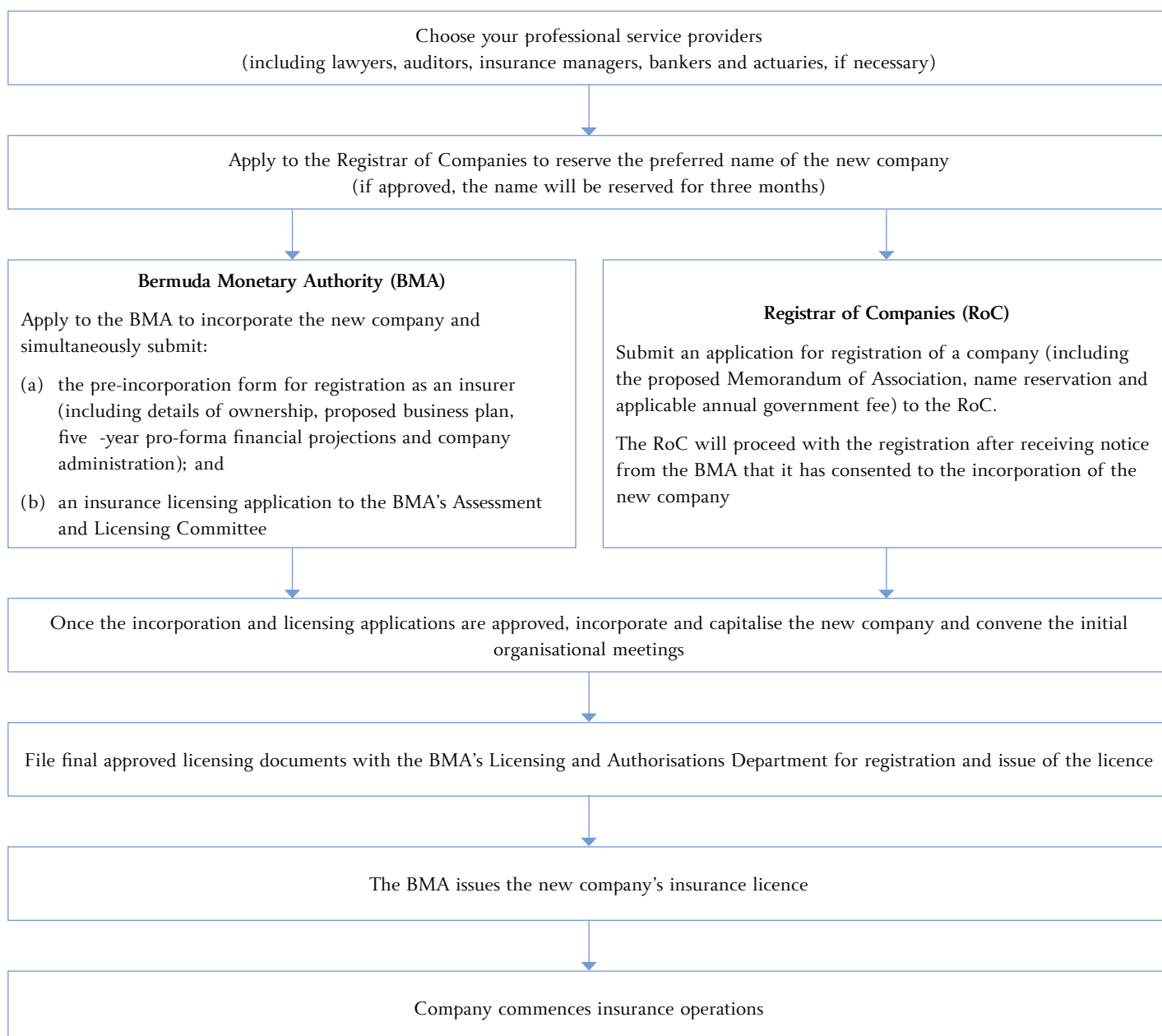
The Bermuda licensing regime

Bermuda’s insurance licensing and regulatory legislation is contained in the Insurance Act 1978 (the Act) and the regulations established by the Act. The Act distinguishes between long-term business (generally life, annuity, accident and disability contracts) and general business (anything that isn’t long-term business).

General business insurers fall into different classes depending upon the nature of the risks that are being underwritten and how such risks relate to the owners of the company. There is no distinction made between insurance and reinsurance.

The Bermuda Monetary Authority (BMA) is responsible for the regulation of insurance companies under the Act, with the Insurance

SCHEDULE A – KEY STEPS TO ESTABLISHING A BERMUDA CAPTIVE



SCHEDULE B – COMPARISON OF THE CLASSES

	Class 1	Class 2
Key characteristics	A “pure captive” which is owned by one person and insures the risk of its owner or affiliated entities	Up to 20% of net premiums written in respect of risks outside the group
Minimum issued share capital	\$120,000	\$120,000
When are statutory returns/statements to be filed?	6 months from financial year end	6 months from financial year end
Failure to maintain minimum solvency margin	n/a	n/a
Any Insurance Act prohibitions on declaring or paying dividends?	n/a	n/a
Reduction of statutory capital ¹	BMA approval required if reduction of 15% or more	BMA approval required if reduction of 15% or more
Is a loss reserve specialist required?	No	Yes
Minimum solvency margin (“MSM”) ²	Greater of: (a) \$120,000; (b) 10% of the aggregate of loss expense provisions and other general business reserves; and (c) (i) 20% of NPI ³ (for NPI up to \$6 million); or (ii) the aggregate of \$1.2 million and 10% of the amount by which NPI exceeds \$6 million in that year	Greater of: (a) \$250,000; (b) 10% of the aggregate of loss expense provisions and other general business reserves; and (c) (i) 20% NPI (for NPI up to \$6 million); or (ii) the aggregate of \$1.2 million and 10% of the amount by which NPI exceeds \$6 million in that year
Minimum liquidity ratio	Relevant assets ⁴ not less than 75% of relevant liabilities ⁵	Relevant assets not less than 75% of relevant liabilities

(Footnotes)

¹ “Statutory capital” comprises share capital, contributed surplus and other statutory fixed capital (for example, letters of credit).

² The statutory assets of an insurer must exceed statutory liabilities by an amount greater than the MSM.

³ “NPI” means net premium income.

⁴ “Relevant assets” are defined by reference to certain items contained in an insurer’s statutory balance sheet and include, among other things, (a) cash and time deposits, (b) quoted investments, (c) unquoted bonds/debentures, (d) investment income and (e) funds held by ceding reinsurers. Unquoted shares, investments in and advances to affiliates, real estate and collateral loans are not relevant assets but the BMA may, on application by the insurer, designate such assets as relevant assets.

⁵ “Relevant liabilities” are total general business insurance reserves and total other liabilities less deferred income tax, sundry liabilities and letters of credit and guarantees.

Division dealing with the licensing, supervision, regulation and inspection of companies and the licensing of brokers, managers, agents and salesmen. The Act combines elements of self-regulation, filing of statutory financial statements and certifications confirming compliance with statutory requirements, and the potential for review and investigation by the BMA.

How to incorporate and register a new captive

In order to form a new Bermuda insurer and obtain a licence, your chosen lawyers will make a pre-incorporation application to the BMA for registration as an insurer and licensing, while at the same time applying to the Registrar of Companies to incorporate the new company. The application will include a detailed business plan supported by pro-forma financials, as well as a description of the individuals who will be involved in the management of the captive. If the application is acceptable, the company will be incorporated under the Companies Act 1981 and it will be subject to generally applicable company law.

Following incorporation, your lawyers will prepare the necessary resolutions and documents to organise the company and, after receipt of the necessary capital described in its business plan, a final application

will be made to the BMA for the company to be registered as an insurer and receive its licence. This process is illustrated in Schedule A: Key steps to establishing a Bermuda Captive.

The incorporation submission and the application for registration do not form a part of any public file in Bermuda. Registration under the Act will remain in force until cancelled by the BMA on any grounds specified in the legislation.

Regulation of general business insurers

General business is any insurance business that is not long-term business. There are six classes of general business insurers under the Act, ranging from Class 1 (pure captives), through Class 2, Class 3, Class 3A and Class 3B to Class 4 (excess liability insurers or property catastrophe reinsurers).

Schedule B: Comparison of the classes compares the nature of each of these classes and the key applicable regulatory requirements.

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Class 3	Class 3A	Class 3B	Class 4
Any body corporate not registrable as a Class 1, 2, 3A, 3A or 4 insurer or a special purpose insurer	(A) 50% or more of: (i) net premiums written; or (ii) the loss and the loss expense represent unrelated business; and (B) total net premiums written from unrelated business are less than \$50m	Same as Class 3A except total net premiums written from unrelated business are more than \$50m	Excess liability or property catastrophe reinsurance business with total Statutory Capital ¹ of at least \$100m
\$120,000	\$120,000	\$120,000	\$1,000,000
4 months from financial year end	4 months from financial year end	4 months from financial year end	4 months from financial year end
File explanatory report with the BMA within 30 days	File explanatory report with the BMA within 30 days	File explanatory report with the BMA within 30 days	File explanatory report with the BMA within 30 days
Prohibited if fails to maintain minimum solvency margin	Prohibited if fails to maintain minimum solvency margin	Dividends must not exceed 25% of Statutory Capital unless directors' affidavit filed	Dividends must not exceed 25% of Statutory Capital unless directors' affidavit filed
BMA approval required if reduction of 15% or more	n/a	n/a	BMA approval required if reduction of 15% or more
Yes	Yes	Yes	Yes
Greater of: (a) \$1 million; (b) 15% of the aggregate of loss expense provisions and other general business reserves; and (c) (i) 20% of NPI (for NPI up to \$6 million); or (ii) the aggregate of \$1.2 million and 15% of the amount by which NPI exceeds \$6 million in that year	Same as Class 3	Same as Class 3	Greater of: (a) \$100 million; (b) 15% of the aggregate of loss expense provisions and other general business reserves; and (c) 50% of net premiums written in current financial year (or projected to be written on application for registration)
Relevant assets not less than 75% of relevant liabilities	Relevant assets not less than 75% of relevant liabilities	Relevant assets not less than 75% of relevant liabilities	Relevant assets not less than 75% of relevant liabilities

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