

Bermuda Head Office Requirements

Effective January 1, 2016, section 8C of the Bermuda Insurance Act was amended to require any commercial insurer to establish and maintain its head office in Bermuda i.e. be managed and directed in Bermuda. Bermuda has a multi-license system of regulation which categorizes general insurance companies into six classes (Class 1,2,3,3A,3B & 4) , long-term insurance companies into five classes (Class A to E) and the Special Purpose Insurers. Class 1, 2, 3, A , B and Special Purpose Insurers are considered "limited purpose insurers" because they primarily insure the risks of their parent and affiliates. Class 3A, 3B, 4, C, D, and E are "commercial insurers" writing all third-party business and are subject to the new enhanced Bermuda regulatory regime (Solvency II equivalency). In determining whether a commercial insurer has complied with the head office requirements, the Bermuda Monetary Authority ("BMA") will consider the following six factors:

1. Where the underwriting, risk management and operational decision making of the insurer occurs;
2. Whether the presence of senior executives who are responsible for, and involved in, the decision making related to the insurance business of the insurer are located in Bermuda;
3. Where meetings of the board of directors of the insurer occur;
4. The location where management of the insurer meets to effect policy decisions of the insurer;
5. The residence of the officers, insurance managers or employees of the insurer; and
6. The residence of one or more directors of the insurer in Bermuda.

In order to monitor compliance with these requirements, the BMA amended Schedule V (a) of the commercial insurers and insurance group's Capital and Solvency Return to include a list of head office requirements. This information will assist the BMA in determining whether or not the insurer has in fact established its head office in Bermuda, and whether the BMA is still the appropriate supervisor for the insurance group. In considering these factors, regard is given to whether there is sufficient presence in Bermuda for the BMA to appropriately regulate and supervise the insurer or insurance group, and also establish that the insurer or insurance group is managed and directed from Bermuda given its nature, scale and complexity (i.e. Proportionality Principle).

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Outsourcing

In July 2015, the BMA issued a revised Code of Conduct including an amendment as to how outsourcing of certain functions should occur. Specifically for limited purpose insurers, the board may outsource the Chief Executive and senior executive responsibilities to its Insurance Manager and the board shall ensure that the Insurance Manager is fit and proper to execute those functions. However for commercial insurers the Chief Executive and senior executive responsibilities cannot be outsourced to an Insurance Manager.

In complying with the above requirements, commercial insurers are encouraged to update their Corporate Governance Framework including the Code of Conduct to encompass:

- An analysis of how they meet section 8C head office requirements in a proportionate manner relative to their nature, scale and complexity;
- Identification and documentation of the roles and responsibilities of the board, Chief Executive and the senior executives.

This can be achieved by working closely with your Insurance Manager to establish a sound and prudent Corporate Governance Framework that fulfils the new requirements.

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