BERMUDA: THE PREFERRED INSURANCE DOMICILE

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PRESENTATION TO THE MARITIME LAW ASSOCIATION

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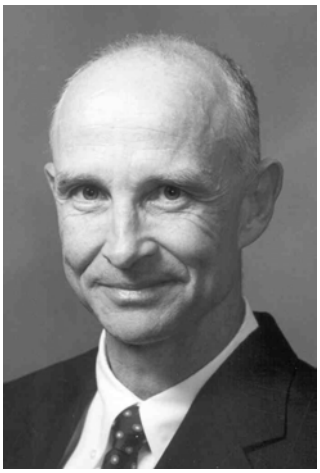

David J. Doyle, JP is a partner in the Corporate Department of Conyers Dill & Pearman, Bermuda. David was born and raised in Bermuda and has practised in Bermuda for over 25 years. He has extensive experience in Bermuda company law with expertise in insurance and reinsurance. David has considerable experience in the formation and administration of Bermuda companies and serves as counsel to many of Bermuda's private and publicly traded companies.

A notary public and justice of the peace, David is a member of the Honourable Society of the Middle Temple, England, and was called to the English Bar in 1975. He was admitted to practise in Bermuda in 1976.

David is the author of numerous articles on Bermuda law and has been closely involved in the development of Bermuda's company and insurance laws. He served for several years as chairman of a legislative committee that worked with the Bermuda Government to effect improvements to Bermuda's Company Law and has recently assisted that committee with the development of Bermuda's Segregated Accounts Companies Legislation.

David is a very keen runner and has also spent a considerable amount of time in recent years trying to develop a golf swing !

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F O R E W O R D

This memorandum has been prepared for the private educational use of delegates attending the meeting of the Maritime Law Association of the United States in Boca Raton, Florida, October 30-November 1, 2003 and is not to be relied upon by any other person, firm or entity or in respect of any other matter.

In this memorandum, I have dealt in some detail with the nature of Bermuda's international insurance business including the principal requirements and obligations of Bermuda's insurance legislation. I have also included a section on the Segregated Accounts Companies Act 2000 and Bermuda's new Merchant Shipping Act of 2002, courtesy of my partner, David Astwood.

During my presentation on October 30, I will touch upon other recent developments in Bermuda in the insurance and reinsurance world.

This memorandum has been prepared on the basis of the law and practice as at the date below.

David J. Doyle
Conyers Dill & Pearman
Hamilton, Bermuda

October 14, 2003

T A B L E O F C O N T E N T S

9. MISCELLANEOUS BERMUDA ITEMS: TAXATION, GOVERNMENT FEES, STAMP DUTY, EXCHANGE CONTROL AND PROCEEDS OF CRIME

9.1 Taxation
9.2 Government Fees
9.3 Stamp Duty
9.4 Exchange Control
9.5 Proceeds of Crime

1. INTRODUCTION

The Bermuda offshore insurance industry has its beginnings in the 1950s but rapid development, particularly in the captive industry, did not occur until the late 1960s/early 1970s. To maintain a healthy industry, some regulation was required, and, recognising this, the public and private sectors worked together to produce the Insurance Act 1978. Since that time the regulations have been amended in order to accomodate the extremely diverse range of underwriting activities conducted by Bermuda insurers and reinsurers. The Bermuda insurance industry is subject to realistic but not overly burdensome regulations aimed to support Bermuda's credibility as an international insurance and reinsurance market. Bermuda's success has been due, in large part, to the unique Bermuda regulatory system which represents the cooperation between the industry, the legal and accounting professionals and the Bermuda regulators.

As at September 30, 2003 there are some 1,654 insurance companies registered in Bermuda with combined total assets as at December 31, 2001 of $172.6 billion up from $146 billion in 2000.

2. REGULATORY FRAMEWORK

2.1 Insurance Legislation

The insurance legislation is comprised of the Insurance Act 1978 and the regulations promulgated under that Act (the "Regulations"). The Regulations are the Insurance Accounts Regulations 1980 (as amended) and the Insurance Returns and Solvency Regulations 1980 (as amended). References herein to the "Insurance Act" are to the Insurance Act 1978 (as amended) and the Regulations.

The Insurance Act applies to any person carrying on insurance business in or from within Bermuda including local companies, exempted companies, non-resident insurance undertakings (which sell policies through Bermudian agents on Bermudian lives and property) and overseas companies carrying on non-domestic insurance business from an office in Bermuda under a permit. It should be noted, though, that the act of merely underwriting the risks of, for example, a Bermuda incorporated company may not be within the scope of the Insurance Act where the underwriting is conducted by a non-Bermuda entity and entirely from an office outside Bermuda. Insurance agents, managers, brokers, intermediaries and salesmen not specifically employed by a registered insurance company are required to be registered under the Insurance Act.

The Insurance Act distinguishes between long-term business and general business. Long-term business consists of life, annuity or accident and disability contracts in effect for not less than five years. General business is any insurance business which is not long-term business. General business insurers fall into one

of four classes, depending upon the nature of the risks underwritten. A further distinction is made between domestic and non-domestic business; non-domestic business being that where the risks underwritten are those, for example, of an exempted company or overseas company registered in Bermuda. Generally, there is no difference in the regulation of insurance and reinsurance business.

2.2 The Bermuda Monetary Authority

The regulation of those matters pertaining to the Insurance Act is the responsibility of the Bermuda Monetary Authority (the "Authority"). Generally the day-to-day functions and exercise of powers of the Authority under the Insurance Act have been delegated to the Supervisor of Insurance (the "Supervisor").

The Supervisor is appointed by the Authority with the approval of the Minister of Finance. The Supervisor is a member of the Board of Directors of the Authority. As required by the Insurance Act, the Minister of Finance has appointed an Insurance Advisory Committee which has the duty to advise the Authority on any matter connected with the discharge of its functions under the Insurance Act. The Insurance Advisory Committee may advise the Minister of Finance on any matter relating to the development of the insurance industry in Bermuda.

The nature of regulation under the Insurance Act is generally aimed at the insurance industry to be self-regulating with an insurance company being required to make filings containing certifications by the appropriate officers and professionals connected with that company on its compliance with the applicable statutory standards.

Sub-committees of the Insurance Advisory Committee have been appointed for advising and reviewing of the law and practice of insurance in Bermuda, including reviewing accounting and administrative provisions and procedures. The membership of these sub-committees is basically drawn from the legal and accounting professions and the insurance industry itself.

3. REGISTRATION OF INSURANCE COMPANIES

3.1 Pre-Incorporation and Post-Incorporation Applications

An insurance company may not be incorporated in Bermuda unless its proposed insurance business is acceptable (only bodies corporate may be registered as insurers). A pre-incorporation application for registration as an insurer with respect to the intended insurance business is made normally concurrently with the application to incorporate. If the application is acceptable, the Minister of Finance will issue the necessary consent to the incorporation of the proposed company. An insurance company is incorporated in the same manner as any other

Bermuda company and subject to Bermuda company law. Incorporation is achieved by filing prescribed documents with the Registrar of Companies pursuant to the Companies Act 1981. Following incorporation, the company is formally organised (including such actions as the allotment of shares, adoption of bye-laws, appointment of directors) and, after receipt of the necessary capital, an application is made for the company to be registered as an insurer. An insurer cannot be registered as an insurer unless the minimum required share capital has been paid-up. On any such application, the Authority has discretion and the Authority is required to exercise it in the public interest. Further, registration may be granted subject to conditions. The Authority is bound by the Insurance Act to have regard to whether the applicant is a fit and proper body to be engaged in insurance business and, in particular, whether it has itself or has available to it adequate knowledge and expertise. These matters are usually considered during the pre-incorporation review stage and the Authority, in most cases, will consult with the Insurers Admissions Committee, a sub-committee of the Insurance Advisory Committee. However, given the nature of the pre-incorporation approval process, normally the post-incorporation registration as an insurer would proceed without re-examination of the business plan and other matters (unless there are differences between the pre-incorporation application and the registration application).

The statutory minimum capital and solvency requirements do not apply to applicants for registration as insurance managers, brokers and intermediaries without underwriting powers. However, as with insurers, the Authority must have regard to whether the applicant is a fit and proper person and whether he or she has adequate knowledge of insurance business to enable him or her to act in the capacity for which application has been made.

Registration once granted remains in force until cancelled by the Authority on any grounds specified in the Insurance Act, but an appeal lies to the Supreme Court.

3.2 Mutual Companies

Part XII of the Companies Act 1981, as amended, makes specific provision for the incorporation of mutual companies. Such companies are defined as "any company, other than a company limited by shares, or other company having a share capital, …. which is authorised to engage in or carry on as its principal object insurance or reinsurance business of all kinds on the mutual principle". A mutual company is deemed to engage in or carry on insurance or reinsurance business on the mutual principle where the members who are exposed to some contingency associate themselves together by contributing by way of premiums on the basis that if the contemplated contingency befalls any member he or she shall receive a compensatory payment.

A mutual company is required to create and maintain a reserve capital fund of not less than $250,000. In the event of a mutual company being wound up, the

liability of a member is limited to the premiums or any unpaid premiums or the undischarged portion thereof due to the company by the member. "Premiums" is defined to include retrospective premium adjustments or calls and any capital contribution or other such assessment that is due under the bye-laws or any other contractual obligation of the member.

It will be of interest to those attending this conference that most of the world's major P&I Clubs are located in Bermuda. The United Kingdom Protection & Indemnity Association (Bermuda) Limited which is the largest P&I Club in the world relocated to Bermuda from United Kingdom in 1969. Shortly thereafter most of the other clubs relocated to Bermuda following the lead of the UK P&I Club.

4. GENERAL BUSINESS INSURERS

General business is any insurance business which is not long-term business. There are four classes of general business: Class 1 ("pure captives"); Class 2 (not more than 20% unrelated insurance business/multiple owners); Class 3 (not falling within the other Classes); and Class 4 (excess liability or property catastrophe underwriters capitalised in excess of US$100 million). Each Class is subject to its own minimum solvency and other regulations. Further note, though, that some insurance programs, for example professional liability, may be required by the Authority to be capitalized at greater levels.

4.1 Class 1

Section 4B of the Insurance Act states:

A body corporate is registrable as a Class 1 insurer where that body corporate -

(a) is wholly owned by one person and intends to carry on insurance business consisting only of insuring the risks of that person; or

(b) is an *affiliate* of a *group* and intends to carry on insurance business consisting only of insuring the risks of any other *affiliates* of that *group* or of its own *shareholders*.

The Insurance Act defines:

"*affiliate*" as meaning a body forming part of a group.

"*group*" as meaning any two or more bodies, whether corporate or incorporate, that are in association, and two bodies shall be deemed for this purpose to be in association if any one of them has control of the other or both are under the control of the same person or persons; and "control" shall be construed in accordance with section 86(4) of the Companies Act 1981 (e.g. a person controls

another where holding more than 50% of the votes allowing that person to elect a majority of the board of directors).

"*shareholder*" as including a partner of a partnership and a member of any other body or association.

Set out below are the minimum capital requirements for Class 1 insurers:

(a) Minimum issued share capital: $120,000

(b) Minimum solvency margin: The statutory assets (i.e. admissible assets under the Insurance Act) of the insurer must exceed the statutory liabilities (as determined pursuant to the Insurance Act) by the prescribed amount. The minimum solvency margin for a Class 1 insurer is the greatest of Figures A, B and C below:

Figure A: $120,000

Figure B:

Net Premium Income ("NPI")	Prescribed Amount
Up to $6,000,000	20% of NPI
Greater than $6,000,000	The aggregate of $1,200,000 and 10% of the amount by which NPI exceeds $6,000,000 in that year.

In general, net premium income equals gross premium income after deduction of any premium ceded by the insurer for reinsurance.

Figure C: 10% of the aggregate of the insurer's loss expense provisions and other general business insurance reserves.

A Class 1 insurer before reducing by 15% or more its total statutory capital (comprising of share capital, contributed surplus and other statutory fixed capital e.g. letters of credit), as set out in its previous year's financial statements, must obtain the consent of the Authority.

Under the Insurance Act, every Class 1 insurer is required to file annually a statutory financial return within 6 months from the insurer's financial year end (may be extended on application to 9 months). Penalty fines may be incurred if filings are not done as required. The statutory financial return includes the auditor's report on the statutory financial statements, a declaration of statutory ratios and in the event there has been discounting

of loss reserves, an opinion from a loss reserve specialist (e.g. casualty actuary) where compliance is not possible on an undiscounted basis.

4.2 Class 2

Section 4C of the Insurance Act states:

(1) A body corporate is registrable as a Class 2 insurer where that body corporate is wholly owned by two or more *unrelated* persons and intends to carry on insurance business not less than 80% of the *net premiums written* in respect of which will be written for the purpose of -

(a) insuring the risks of any of those persons or of any *affiliates* of any of those persons; or

(b) insuring risks which, in the opinion of the Authority, arise out of the business or operations of those persons or any *affiliates* of any of those persons.

(2) A body corporate is registrable as a Class 2 insurer where that body corporate would be registrable as a Class 1 insurer but for the fact that -

(a) not all of the business which it intends to carry on, but at least 80% of the *net premiums written*, will consist of the business described in paragraph (a) or (b) of section 4B; or

(b) it intends to carry on insurance business not less than 80% of the *net premiums written* in respect of which will, in the opinion of the Authority, arise out of the business or operations of the person by whom it is owned or any of the *affiliates* of that person.

The Insurance Act defines:

"*unrelated*" as meaning not forming part of the same *group*.

"*net premiums written*" as meaning amounts calculated in relation to a body corporate by the application of the principles set out in the Insurance Accounts Regulations 1980 for the calculation of those amounts in relation to an insurer.

Set out below are the minimum capital requirements for Class 2 insurers:

(a) Minimum share capital: $120,000

(b) Minimum solvency margin: The statutory assets (i.e. admissible assets under the Insurance Act) of the insurer must exceed the statutory liabilities (as determined pursuant to the Insurance Act)

by the prescribed amount. The minimum solvency margin for a Class 2 insurer is the greatest of Figures A, B and C below:

Figure A: $250,000

Figure B:

Net Premium Income ("NPI")	Prescribed Amount
Up to $6,000,000	20% of NPI
Greater than $6,000,000	The aggregate of $1,200,000 and 10% of the amount by which NPI exceeds $6,000,000 in that year.

In general, net premium income equals gross premium income after deduction of any premium ceded by the insurer for reinsurance.

Figure C: 10% of the aggregate of the insurer's loss expense provisions and other general business insurance reserves.

A Class 2 insurer before reducing by 15% or more its total statutory capital (comprising of share capital, contributed surplus and other statutory fixed capital e.g. letters of credit), as set out in its previous year's financial statements, must obtain the consent of the Authority.

Under the Insurance Act, every Class 2 insurer is required to file annually a statutory financial return and statutory financial statements within 6 months from the insurer's financial year end (may be extended on application to 9 months). Penalty fines may be incurred if filings are not done as required. The statutory financial return includes the auditor's report on the statutory financial statements, a declaration of statutory ratios and in the event there has been discounting of loss reserves, an opinion from a loss reserve specialist (e.g. casualty actuary) where compliance is not possible on an undiscounted basis. Every third year, beginning with the return relating to the financial year following the company's licensing, Class 2 insurers must include in their annual statutory financial return the opinion of a loss reserve specialist in respect of the insurer's loss and loss expense provisions stated in the statutory financial statements.

4.3 Class 3

Section 4D of the Insurance Act states:

A body corporate is registrable as a Class 3 insurer where that body corporate is not registrable as a Class 1, Class 2 or Class 4 insurer.

Set out below are the minimum capital requirements for Class 3 insurers:

(a) Minimum share capital: $120,000

(b) Minimum solvency margin: The statutory assets (i.e. admissible assets under the Insurance Act) of the insurer must exceed the statutory liabilities (as determined pursuant to the Insurance Act) by the prescribed amount. The minimum solvency margin for a Class 3 insurer is the greatest of Figures A, B and C below:

Figure A: $1,000,000

Figure B:

Net Premium Income ("NPI")	Prescribed Amount
Up to $6,000,000	20% of NPI
Greater than $6,000,000	The aggregate of $1,200,000 and 15% of the amount by which NPI exceeds $6,000,000 in that year.

In general, net premium income equals gross premium income after deduction of any premium ceded by the insurer for reinsurance.

Figure C: 15% of the aggregate of the insurer's loss expense provisions and other general business insurance reserves.

Class 3 insurers must file within 30 days a written explanatory report with the Authority if it fails to maintain its solvency margin. Such insurer will be prohibited from declaring or paying dividends until the failure is rectified.

In addition, Class 3 insurers before reducing by 15% or more total statutory capital (comprising of share capital, contributed surplus and other statutory fixed capital e.g. letters of credit), as set out in the previous year's financial statements, must obtain the Authority's consent.

Under the Insurance Act, every Class 3 insurer is required to file annually a statutory financial return and statutory financial statements within 4 months from the insurer's financial year end (may be extended on application to 7 months). Penalty fines may be incurred if filings are not done as required. The statutory financial return includes the auditor's report on the statutory financial statements, a declaration of statutory ratios and in the event there has been discounting of loss reserves, an opinion from a loss reserve specialist (e.g. casualty actuary) where compliance is not possible on an undiscounted basis. In any event, the return is to include the opinion of the loss reserve specialist in respect of the insurer's loss and loss expense provisions stated in the statutory financial statements.

4.4 Class 4

Section 4E of the Insurance Act states:

(1) A body corporate is registrable as a Class 4 insurer where -

(a) it has at the time of its application for registration, or will have before it carries on insurance business, a total statutory capital and surplus of not less than $100,000,000; and

(b) it intends to carry on insurance business including *excess liability business* or *property catastrophe reinsurance business*.

(2) Where a body corporate is registrable as a Class 4 insurer it shall not be so registered if it is also registrable as a Class 1 or Class 2 insurer.

The Insurance Act defines:

"*excess liability business*" as meaning the business of effecting and carrying out contracts of insurance insuring the risk of the persons insured in the event that any such person incurs liabilities to third parties in excess of a stated sum.

"*property catastrophe reinsurance business*" as meaning the business of effecting and carrying out contracts of reinsurance indemnifying (whether or not to a specified limit) an insurer as a result of an accumulation of losses arising from a single catastrophic event or series of events.

Set out below are the minimum capital requirements for Class 4 insurers:

(a) Minimum share capital: $1,000,000

(b) Minimum solvency margin: The statutory assets (i.e. admissible assets under the Insurance Act) of the insurer must exceed the statutory liabilities (as determined pursuant to the Insurance Act) by the prescribed amount. The minimum solvency margin for a Class 4 insurer is the greatest of Figures A, B and C below:

Figure A: $100,000,000

Figure B: 50% of the net premiums written in its current financial year or projected to be written on application for registration as a Class 4 insurer.

Net premiums written means the net amount, after deduction of any premiums ceded by the Class 4 insurer for reinsurance (not exceeding 25% of gross premiums written), of the premiums written in that year in respect of general business of the Class 4 insurer.

Figure C: 15% of the aggregate of the insurer's loss expense provisions and other general business insurance reserves.

Class 4 insurers must file within 30 days a written explanatory report with the Authority if it fails to maintain its solvency margin. Such insurer will be prohibited from declaring or paying dividends until the failure is rectified. Further, where the Class 4 insurer's total statutory capital and surplus falls to $75,000,000 or less, the said report is required to be filed within 45 days (instead of 30 days) and accompanied by unaudited interim statutory financial statements covering such period as the Authority may require, a loss reserve specialist's opinion on reserves and a general business solvency certificate.

Class 4 insurers may not declare dividends which could exceed 25% of its total statutory capital and surplus, as shown on its statutory balance sheet in relation to the previous financial year, unless at least 7 days before payment of those dividends it files with the Authority an affidavit (as to continued solvency compliance) signed by at least two directors of the insurer (one of whom must be a director resident in Bermuda if there be one) and the principal representative. Once filed the affidavit becomes a public document.

In addition, Class 4 insurers before reducing by 15% or more total statutory capital (comprising of share capital, contributed surplus and other statutory fixed capital e.g. letters of credit), as set out in the previous year's financial statements, must obtain the Authority's consent. An affidavit as to continued solvency is filed with the application for the Authority's consent.

Under the Insurance Act, every Class 4 insurer is required to file annually a statutory financial return and statutory financial statements within 4 months from

the insurer's financial year end (may be extended on application to 7 months). Penalty fines may be incurred if filings are not done as required. The statutory financial return includes the auditor's report on the statutory financial statements, a declaration of statutory ratios and an opinion from a loss reserve specialist (e.g. casualty actuary) in respect of the insurer's loss and loss expense provisions. Further, a schedule of ceded reinsurance containing the required information is to accompany the annual return.

4.5 Minimum Liquidity Ratio

An insurer carrying on general business is required to maintain the value of its "*relevant assets*" at not less than seventy-five per cent of the amount of its "*relevant liabilities*".

Relevant assets is defined as certain items contained in the insurer's statutory balance sheet for general business. These items include (1) cash and time deposits, (2) quoted investments, (3) unquoted bonds and debentures, (4) investments in first mortgage loans on real estate, (5) investment income due and accrued, (6) accounts and premiums receivables, (7) reinsurance balances receivable and (8) funds held by ceding reinsurers. It should be noted that unquoted equities, investments in and advances to affiliates, real estate and collateral loans are not included for this purpose.

The *relevant liabilities* are total general business insurance reserves and total other liabilities less deferred income tax, sundry liabilities (i.e. those not specifically defined) and letters of credit and guarantees.

4.6 Professional Indemnity Business

The Insurance Act defines:

"*Professional liability insurance*" as meaning liability insurance business where the risks, the subject of the contract of insurance, are risks of the persons insured incurring liabilities in relation to the negligence or other exercise by those persons of some professional skill.

When applying to conduct professional indemnity business certain additional information is required (usually regardless of the class of the insurer). The Authority will permit the incorporation of insurance companies for the purpose of underwriting medical malpractice liability risks of groups of individual medical practitioners who are members of a recognized medical association. Sufficient information is required so as to determine that:

(a) the applicants are of good standing;

(b) the proposal is based on sound insurance principles and practices;

(c) there is a strong emphasis on loss prevention and good claims handling;

(d) adequate reinsurance protection has been obtained with acceptable security;

(e) arrangements have been made to comply with insurance regulations of other jurisdictions; and

(f) there are proper management controls.

4.7 Loss Reserve Specialist

Classes 2, 3 and 4 insurers are required to appoint a loss reserve specialist. Further for any insurer where the net premiums (as determined under the Regulations) from professional liability insurance constitute more than 30% of the net premiums written by an insurer during the relevant year, the insurer must appoint an approved loss reserve specialist for the purpose of certifying reserves, losses and loss expenses. Requirements for an applicant to qualify as an approved loss reserve specialist are that the applicant must be an individual and possess adequate professional qualifications as a casualty actuary and/or possess adequate experience to assess the sufficiency of insurance reserves.

An opinion of the loss reserve specialists on the loss and loss expense provision will be needed where loss reserves are discounted (i.e. reducing the amount of loss reserves by discounting the time value of money), but the insurer has not met its general business solvency margin on an undiscounted basis.

5. LONG-TERM (LIFE) INSURERS

5.1 Definition and Special Provisions under the Insurance Act

Insurers conducting long-term business are referred to in the Insurance Act as long-term insurers. Long-term business includes any of the following contracts of insurance:

(a) effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life;

(b) effecting and carrying out contracts of insurance against risks of the persons insured sustaining injury as a result of an accident or of an accident of a specified class or dying as the result of an accident or of an accident of a specified class or becoming incapacitated or dying in consequence of disease or disease of a specified class, being contracts that are expressed to be in effect for a period of not less than five years or

without limit of time and either not expressed to be terminable by the insurer before the expiration of five years from the taking effect thereof or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned;

(c) effecting and carrying out contracts of insurance, whether effected by the issue of policies, bonds or endowment certificates or otherwise, whereby in return for one or more premiums paid to the insurer a sum or a series of sums is to become payable to the person insured in the future, not being contracts such as fall within either paragraph (a) or (b).

However, certain credit life business and employee group health and life business may be excluded from falling within the definition of long-term business.

Long-term insurers are required to maintain a minimum solvency margin whereby long-term business assets exceed long-term business liabilities by not less than $250,000. The long-term business assets and liabilities are determined under the Regulations.

An insurer carrying on long-term business must maintain its accounts in respect of that long-term business separate from any accounts kept in respect of any other business. The Insurance Act imposes certain restrictions on dividends and payments made from the insurer's long-term business account which must be established with respect to its long-term business. Further, there are restrictions on transfer of insurance (not being reinsurance) business (requires a court order) and voluntary winding-up (liquidation of the long-term insurer is under court supervision). Long-term insurers must appoint an approved actuary.

Under the Insurance Act, every long-term insurer is required to file annually a statutory financial return and statutory financial statements within 4 months from the insurer's financial year end (may be extended on application to 7 months). Penalty fines may be incurred if filings are not done as required. The statutory financial return includes the auditor's report on the statements and a certificate of the approved actuary on the liabilities recorded in the statements.

A long-term insurer, before reducing by 15% or more of its total statutory capital (comprising of share capital, contributed surplus and other statutory fixed capital e.g. letters of credit), as set out in the previous year's statements, must obtain the Authority's consent.

5.2 Life Insurance Act 1978 (the "Life Act")

The Life Act will apply to certain policies that are made in Bermuda unless the parties agree that some other law shall apply. The Life Act requires certain matters to be stipulated in such policies as well as defining insurable interest (but

without restricting such definition). Other provisions include assignability of policies and designation of beneficiaries.

6. SUNDRY REQUIREMENTS UNDER THE INSURANCE ACT

6.1 Principal Representative and Principal Office

The Insurance Act requires every insurer to appoint a principal representative resident in Bermuda and to maintain a principal office in Bermuda. The principal representative must be knowledgeable in insurance and will be responsible for arranging for the maintenance and retaining custody of the statutory accounting records and for making the annual Statutory Financial Return. The principal representative, who must be approved by the Authority, may be a salaried director or manager normally resident in Bermuda or a Bermuda registered insurance management company. The principal office can be the office of that director or manager, or the office of the management company, and will normally be distinct from the registered office of the company where the share register, minute book, seal, etc. are kept by the company secretary. Certain minimum records are required to be maintained at the principal office, e.g. premium registers, loss registers and general records on reinsurers.

The Insurance Act imposes various obligations on the principal representative. Amongst these, the principal representative must report to the Authority when he or she considers that there is a likelihood of the insurer becoming insolvent or upon the principal representative becoming aware or having reason to believe that the insurer has failed or defaulted in various matters set out in the Insurance Act. Further, neither the insurer nor the principal representative may terminate the principal representative's appointment with less than thirty days' notice to the Authority or such shorter notice as the Authority may permit.

6.2 Auditor

Every registered insurer must appoint an independent approved auditor (based in Bermuda) who will report on the statutory financial statements. The auditor may be the same person or firm which reports to the shareholders.

6.3 Composite Insurers

The Insurance Act permits registering an insurer to conduct both general and long-term business. Generally, such composite insurer complies with the provisions of the Insurance Act as if the two types of business are underwritten by two separate companies, even though one set of statutory financial statements is prepared.

The minimum issued and paid share capital for composites:

(a) as a Class 1, Class 2 or Class 3 insurer and as a long-term insurer - $370,000;

(b) as a Class 4 insurer and as a long-term insurer - $1,250,000.

6.4 The Statutory Financial Statements and Returns

The Insurance Act requires every insurer each year to prepare statutory financial statements and file with the Authority these statements together with a statutory financial return (except that for Class 1 general business insurers only file the statutory financial return). The rules for preparing these statements are set out in the Regulations and include a uniform format of the Balance Sheet, Income Statement, Statement of Capital and Surplus and rules for valuation of assets and determination of the liabilities (the Insurance Act does not set out to define the type of assets in which an insurer may invest). These statements are not prepared strictly in accordance with any generally accepted accounting principles ("GAAP") and will therefore be distinct from financial statements prepared for presentation to the shareholders.

The statutory financial statements and the statutory financial returns do not form a part of any public file in Bermuda for members of the public to examine.

The statutory financial return includes a business solvency certificate and a declaration of statutory ratios, both of which must be signed by at least two directors of the insurer (of whom one must be a director resident in Bermuda if the insurer has a director so resident) and the insurer's principal representative in Bermuda. In signing the business solvency certificate, the directors and the principal representative are required to state whether the business solvency margin and (for general business insurers) the minimum liquidity ratio have been met. Further, the auditor is required to state whether in his or her opinion it was reasonable for them to do so and whether the declaration of statutory ratios complies with the requirements of the Regulations.

Any statement in the statutory financial return indicating that the insurer has failed to meet the various statutory criteria or any adverse opinion or inability to certify that they have been met, is not of itself a statutory offence, but is likely to trigger an enquiry by the Authority.

It should also be noted that where the insurer's accounts have been audited for any purpose other than compliance with the Regulations (for example, pursuant to the bye-laws of the company on behalf of the shareholders) a statement to that effect must be filed with the statutory financial return.

6.5 Obtaining Exemptions

Section 56 of the Insurance Act provides that the Authority may direct, having received an application from or on behalf of the insurer, that certain provisions of the Insurance Act and Regulations shall not apply to a particular insurer or shall apply to it subject to such modifications as may be specified in the direction. In general, the provisions to which Section 56 apply are those dealing with the margin of solvency, the solvency certificate, statutory financial statements and the statutory financial returns.

It is recognized that certain types of companies, such as protection and indemnity clubs, which are only insuring members' risk, may not be able to meet such requirements and companies writing substantially or exclusively the risks of their parent and/or affiliated companies may find it inconvenient to do so and that both, in effect, are generally outside the "public interest" which the Insurance Act seeks to protect. A direction of the Authority may be granted in such circumstances.

Section 57A of the Insurance Act provides that the Authority may direct, having received an acceptable application, a certain qualifying contract as being a "designated investment contract" for the purposes of the Insurance Act. Being a party (which includes being an issuer as well as an investor) to a designated investment contract does not constitute carrying on "insurance business" (accordingly the party will not be required to be registered as an insurer under the Insurance Act solely by reason of such contract). Further, a designated investment contract does not constitute a contract of insurance for any purpose. A qualifying contract is one where the contract (which can be an investment, a security, an option contract, a swap contract, a derivative contract or a contract for differences) has the purpose of securing a profit or avoiding a loss (i) by reference to fluctuations in value or price of property of any description, or in an index, or other factor, specified for that purpose in the contract, or (ii) based on the happening of a particular event specified for that purpose in the contract.

6.6 Maintenance of Records in Bermuda

Apart from the statutory financial statements the Authority may direct insurers to keep in Bermuda proper records of account with respect to -

(a) all sums of money received and expended by the insurer and the matters in respect of which the receipt and expenditure takes place;

(b) all premiums and claims relating to the insurer; and

(c) the assets, liabilities and equity of the insurer;

and any such directions may make different provision in relation to Class 1 insurers, Class 2 insurers, Class 3 insurers, Class 4 insurers and long-term insurers.

6.7 Providing Information to Authorities

The Insurance Act provides for the Authority, in certain circumstances, to assist a foreign regulatory authority in connection with that regulatory authority's insurance regulatory functions. In response to an acceptable request for information from such regulatory authority, the Authority may require, subject to the provisions of the Insurance Act, any person registered under the Insurance Act (this includes insurers and insurance managers) to furnish the Authority with the required information. The Insurance Act also sets out the need for disclosure of information in other circumstances.

7. THE SEGREGATED ACCOUNTS COMPANIES ACT 2000

The Segregated Accounts Companies Act 2000 (the "SAC Act") came into force on November 1, 2000. There are currently over 30 insurance companies and a number of collective investment schemes (mutual funds) that have registered under the SAC Act. Additionally, there are over 110 insurance companies in Bermuda that have enacted Private Acts to permit them to create what are referred to in the private legislation as Separate Accounts. The SAC Act now provides a public act through which insurance companies and collective investment schemes on application to the BMA may be registered and thereafter create Segregated Accounts. Simply put, the SAC Act permits those companies who are registered under it to contract with multiple parties without exposing each counterparty or participant to the misfortunes of the others or for any other purpose a company may have to identify, pool, and segregate assets and liabilities.

The SAC Act, as amended by the Segregated Accounts Companies Amendment Act 2002, makes provision for the registration of segregated accounts companies and sets out rules governing the operation of such companies. The most significant aspect of a segregated accounts company is that any asset which is linked to a particular segregated account shall be held as a separate fund which is not part of the general assets of the segregated accounts company and is held exclusively for the benefit of the account owner of that account and any counterparty to a transaction linked to that segregated account. Assets in such account shall only be available to meet liabilities to the creditors of that segregated account. The SAC Act provides that any asset which attaches to a particular account shall not be available or used to meet liabilities to and shall for all purposes be protected from the general shareholders of the company and from the creditors of the company who are not creditors in respect of the particular segregated account identified in the governing instrument.

There are a number of important definitions used throughout the SAC Act including, "account owner", "counterparty" and "creditor". These definitions clearly distinguish between those persons who hold an equity interest in a segregated account (account owner) from those who do not own an equity interest (counterparty) whose interest is in the nature of a claim under a contract.

The concept of segregated accounts has been employed in Bermuda by Private Acts since the late eighties and the SAC Act now establishes a system of registration so that segregated accounts companies may be created speedily and with the flexibility necessary to respond to the needs of international business. It should be noted that Bermuda companies may continue to petition the Bermuda Legislature for Private Acts where the company is desirous of obtaining special provisions relative to the constitution and structure of the company not otherwise capable of being obtained under the SAC Act. In most instances, the SAC Act should provide an effective alternative to the lengthy and expensive Private Act procedure.

The SAC Act provides that the establishment of a segregated account does not create a legal person distinct from the segregated accounts company. The SAC Act creates a statutory regime governing record keeping, the manner in which shares are issued and dividends distributed, accounting standards, the appointment of a receiver and winding up of a segregated accounts company.

SUMMARY OF KEY PROVISIONS OF THE ACT

Set forth below is a summary of some of the important provisions of the SAC Act:-

- Companies which are subject to the Companies Act 1981 may apply to be registered. A company registered as an insurer or mutual fund in Bermuda may apply without any restriction or approval but other companies must first obtain approval of the Minister of Finance ("Minister").

- The SAC Act sets out detailed information to be provided in connection with an application for registration. The Minister may direct that the name of any company to be registered pursuant to the SAC Act must contain the expression "(SAC)".

- The Registrar of Companies ("Registrar") is required to maintain a register of segregated accounts companies which is available for inspection by members of the public.

- The SAC Act sets out the requirements for the removal of companies from the register of segregated accounts companies.

- Where a company operates segregated accounts by virtue of the authority

conferred by a Private Act that company must give notice of that fact in writing to the Registrar attaching thereto a copy of the Private Act together with a copy of its most recent financial statements.

- The SAC Act provides that where a Private Act confers authority on a company to operate segregated accounts but also contains other operative provisions not pertaining to the operation of such accounts, those other provisions are not effected by the registration of the company under the SAC Act.

- Nothing in the SAC Act shall be construed as requiring a company which operates segregated accounts under the authority of a Private Act or otherwise to be registered under the SAC Act .

- The SAC Act clarifies that a segregated accounts company is not by reason only of the operation of segregated accounts carrying on trust business in Bermuda.

- A segregated accounts company must inform those with whom it deals that it is such a company and to identify the particular account to which the transaction relates. A company registered under the SAC Act shall include reference to that fact on its letterhead and in all contracts.

- Each segregated accounts company must appoint a segregated account representative in Bermuda whose duties are similar to those of the resident representative of an exempted company under the Companies Act 1981.

- Governing instruments and (unless otherwise provided) a contract relating to a segregated account must be governed by the laws of Bermuda and are subject to the jurisdiction of Bermuda courts. A governing instrument or contract relating to segregation of assets or liabilities of a segregated account shall be governed by and construed in accordance with the SAC Act and parties may not contract out of those provisions.

- A segregated accounts company may issue securities which track or are linked to the performance of a particular account and may pay a dividend or distribution in respect of securities linked to a segregated account provided certain solvency requirements are met before any dividend of distribution is effected. These provisions are consistent with the Companies Act 1981.

- The SAC Act establishes a regime for the conduct of inter-account contracts and transactions. Although a segregated account does not have legal capacity separate from the segregated accounts company the SAC Act permits transactions between accounts as if the transaction had been entered into between the company and a third party. Where there is any

dispute with respect to such a transaction, the parties may apply to the Supreme Court for resolution or refer the matter to arbitration.

- The SAC Act sets out the requirements governing the keeping of records with respect to each segregated account. An account owner may waive the laying of financial statements or an auditors report for an indefinite period and such waiver is revocable at the option of the account owner.

- Unless expressly excluded in writing, in every contract and governing instrument entered into by a segregated accounts company, terms shall be implied into that governing instrument or contract that only the assets of the account to which the transaction is linked will be liable to meet the claims and any recoveries in breach of this implied term will be held in trust by a recipient.

- The SAC Act provides that a receiver may be appointed for an account even where the account is not insolvent such as where the general account is insolvent and it is considered that there is a need for alternative management of an account.

- The test of insolvency to be applied when a segregated accounts company is wound up, shall be that specified in section 162 of the Companies Act 1981 or in the case of an insurance company, as specified in section 33 of the Insurance Act 1978.

- The SAC Act enables the Supreme Court to make a receivership order in respect of a segregated account where it is satisfied that the assets are unlikely to be sufficient to discharge the claims of creditors relative to that account.

- The SAC Act details the requirements relating to the winding up of a segregated accounts company. In particular, the SAC Act makes express provision for a liquidator to observe the segregation of accounts and apply the assets as intended by the parties.

- The SAC Act contains an important section that provides that no transaction or interest in a segregated account shall be void or voidable by reason only that at the relevant time the segregated accounts company fails to comply with, or is in breach of, any provision of the SAC Act. This provision is similar to a section in the Insurance Act 1978. The provision is important to ensure that the failure of a company to comply with the provisions of the SAC Act will not defeat the segregation of assets in a segregated account.

- The SAC Act also makes provision for the payment of an annual fee of $250 in respect of each segregated account operated by a segregated

accounts company subject to a maximum annual fee of $1,000 in the aggregate.

8. MERCHANT SHIPPING ACT 2002

Bermuda's merchant shipping legislation was completely overhauled with the passage of The Merchant Shipping Act 2002 (the "MSA") which came into force on April 7, 2003. The MSA consolidates the previously disparate merchant shipping legislation applicable in Bermuda which dated as far back as 1894. In addition to putting in place a more flexible registration regime, the MSA, inter alia, brings together in a single document all the relevant maritime safety legislation relating to load lines, pollution, tonnage and the Safety Convention which hitherto existed as separate pieces of legislation. The introduction of the new legislation has brought the Department of Maritime Administration in Bermuda (the "DMA") in line with other British flag registers thus enabling the DMA to be more competitive in attracting new tonnage.

The MSA contemplates various regulations being brought into force by way of secondary legislation. To date only the regulations relating to registration of vessels under Bermuda flag have been brought into force. Regulations relating to manning and related matters will be brought into force in due course.

The Merchant Shipping (Registration of Ships) Regulations 2003 contain the following significant changes:-

8.1 Wider class of persons qualified to be owners of British Ships – Regulation 5(1)

The qualification to be owners of British Ships has been extended to now include bodies corporate in a European Economic Area ("EEA") State together with "European Economic Interest Groupings" being groupings formed in pursuance of Article I of Council Regulation (EEC) No. 2137/85 and registered in the United Kingdom.

The following persons are thus qualified to be owners of British Ships and thus eligible to be registered under Bermuda flag:-

(a) British citizens;

(b) non-United Kingdom nationals exercising their right of freedom of movement of works or right of establishment;

(c) British Overseas Territories citizens;

(d) persons who under the British Nationality Act 1981 of the United Kingdom are British subjects;

(e) persons who under the Hong Kong (British Nationality) Order 1986 of the United Kingdom are British Nationals (Overseas);

(f) bodies corporate incorporated in a EEA State;

(g) bodies corporate incorporated in the United Kingdom or in any relevant British possession;

(h) bodies corporate incorporated in Bermuda; and

(i) European Economic Interest Groupings.

8.2 Bermuda connection and majority interest – Regulation 6(3)

Where a ship is owned by a majority interest that is not resident in Bermuda a representative person must be appointed in accordance with Part IV of the regulations. For existing owners there is no requirement for a representative person to be appointed at this time however once the vessel comes up for renewal of registration a representative person will have to be appointed.

8.3 Period of registration – Regulation 28

The registration period is now valid for ten years. Upon reaching the expiration date a renewal notice will be sent out at least 3 months before the expiry of the registration period. Owners will be required to submit the renewal of registration form together with a declaration of eligibility and a declaration confirming that there have been no changes to the registered details of the ship.

8.4 Notification of change affecting ownership of ship – Part IV – Regulation 39

Where there is a transfer of a registered ship the new owners shall within 48 hours of the transfer make application in accordance with the regulations for the transfer to be registered.

8.5 Removal from the register – Part V – Regulation 44

The Registrar may terminate a ship's registration in various circumstances as outlined in the regulations, eg. on application by the owner; on failure of the registered owner to notify the Registrar that ownership of the vessel has changed; on the ship no longer being eligible to be registered; on the ship being destroyed.

The MSA and related regulations are a welcome development to the Bermuda shipping community providing a more modern and flexible legislative regime for the twenty first century.

9. MISCELLANEOUS BERMUDA ITEMS: TAXATION, GOVERNMENT FEES, STAMP DUTY, EXCHANGE CONTROL AND PROCEEDS OF CRIME

9.1 Taxation

At the date of this memorandum, there is no Bermuda income, corporation or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax payable by an exempted insurance company or its shareholders, other than shareholders ordinarily resident in Bermuda.

An exempted insurance company may apply for and is likely to receive from the Minister of Finance of Bermuda under the Exempted Undertakings Tax Protection Act 1966 an undertaking that, in the event of there being enacted in Bermuda any legislation imposing tax computed on profits or income, or computed on any capital assets, gain or appreciation, or any tax in the nature of estate duty or inheritance tax, such tax shall not until 28 March 2016 be applicable to such company or to any of its operations or to the shares, debentures or other obligations of such company except in so far as such tax applies to persons ordinarily resident in Bermuda and holding such shares, debentures or other obligations of the company or to any land leased or let to the company.

9.2 Government Fees

Any insurance company, which is an exempted company ("exempted company" refers to being exempted from having to be owned and controlled by Bermudians), is required to pay an annual government fee based on assessable capital. For a company with share capital, the assessable capital is the aggregate of its authorized share capital and share premium account. Where the company is a mutual company, the assessable capital is the amount of the company's reserve fund. Please contact Conyers Dill & Pearman for a current listing of these fees.

An annual declaration is submitted each year at the time of payment of the annual government fee. This declaration states the type of business carried on by the company, the amount of its assessable capital and how the assessable capital has been calculated.

In addition to the annual government fee, an insurance company is required to pay an initial licence fee and thereafter an annual insurance registration fee. Please contact Conyers Dill & Pearman for a current listing of these fees.

There are various government fees payable regarding particular matters such as applications under sections 56 and 57A of the Insurance Act. Further, there are fees payable by SACs under the SAC Act.

9.3 Stamp Duty

Generally, as of 1st April, 1990, stamp duty is no longer payable by, or in respect of matters concerning, exempted companies, whether in respect of share capital or otherwise (except for Bermuda property).

9.4 Exchange Control

Bermuda's exchange control is operated under the Exchange Control Act 1972 and related regulations. Exempted companies are designated non-resident for exchange control purposes. The non-resident designation allows these companies to operate free of exchange control regulations and enables them to make payments of dividends, to distribute capital, to open and maintain foreign bank accounts and to purchase securities, etc. without reference to the exchange control authorities.

9.5 Proceeds of Crime

The Proceeds of Crime Act 1997, as amended, and the Proceeds of Crime (Money Laundering) Regulations 1998 are anti-money laundering legislation which came into effect in January 1998 and aim to consolidate Bermuda's legislation against proceeds of criminal conduct. The regulations have specific provisions which apply to "regulated institutions" which include banks, trust companies and licensed insurers. The legislation is primarily targeted at preventing offences relating to the proceeds of drug trafficking, serious crimes and other defined money laundering activities in Bermuda. In addition to creating offences relating to money laundering (or the giving of assistance in such activities), the Act also confers expansive information gathering powers upon the police relating to investigation into: (i) drug trafficking, and (ii) whether a person has benefited from criminal conduct. Such powers are enforceable by application to Court. There are also provisions empowering the Court to make confiscation orders with respect to the proceeds of drug trafficking or other relevant offences (as defined) and permits the enforcement of foreign confiscation orders in certain circumstances.

Regulated institutions have a duty of vigilance meaning they must (i) verify their clients' identity and bona fides, (ii) monitor, recognise and report to the police suspicious transactions, (iii) maintain certain records for the time period prescribed and (iv) train employees and staff so as to recognise possible unlawful activities. A regulated institution includes a company or society registered under the Insurance Act to the extent that it is carrying out long-term insurance (but not reinsurance) business within the meaning of the Insurance Act, other than life

insurance or disability insurance. While "life insurance" and "disability insurance" are not defined in the proceeds of crime legislation nor in the Insurance Act, such terms may be interpreted (as a guide) by using the meanings of similar terms defined in the Life Insurance Act 1978. It is our view that insurance companies which issue policies against lives in being are not caught by the definition of regulated institution. However, insurance companies engaged in "annuity business" not involving lives will be caught. Typically, annuity policies will provide certain defined rights to the owner of the annuity including rights of withdrawal before annuitisation. The intent of the regulations (notwithstanding the srtict legal definitions) is aimed at regulating such annuity business and we advise our clients to comply with the regulations.

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