

CAPTIVE INSURANCE IN THE TURKS & CAICOS ISLANDS

Introduction

The offshore insurance industry started in the 1960s in Bermuda where the captive insurance company was first developed as a recognized commercial vehicle by major US corporations seeking alternative methods to finance their risks. In those days, this simple risk transfer mechanism not only potentially lowered the cost of insurance for the parent corporation but also enabled it to retain control of the investment income and reserves while allowing the premiums paid to be deducted onshore as a legitimate business expense. The taxation aspects of captive insurance in the US and elsewhere have become somewhat more sophisticated since those days; nowadays, risk management is as much a motivation for captive establishment as is tax planning.

Since the date of its use in Bermuda, the industry has expanded and matured, and a number of offshore insurance jurisdictions have proliferated. Cayman, The Channel Islands, The Bahamas and Barbados amongst others have joined the club as well as a number of US jurisdictions such as the states of Vermont, Hawaii, Colorado and Illinois. As the industry has grown, so has the need for regulation. Such regulation is concerned primarily with solvency and the need for each jurisdiction to ensure that it does not earn a bad reputation by allowing its users to engage in abuse in other people's jurisdictions.

The Turks & Caicos Islands (TCI) joined the party in 1989 when it gave its then-nascent insurance industry a sound legal and regulatory basis with the introduction of the Insurance Ordinance and subsidiary regulations. Since then the offshore and captive insurance industry in the TCI has expanded and matured. The jurisdiction is now home to 95 pure captives and over 2,700 restricted licence reinsurers, a niche area in which the TCI is the offshore market leader.

The events of 9/11 have led to a significant hardening of the global insurance market generally and a concomitant increase in demand for captives and other offshore insurance products, and the TCI is well placed to take advantage of that expanding market.

The TCI's advantages

Apart from its attractive legislation, the TCI offers risk managers, brokers, fronting companies and insurers a number of advantages:

- The stable physical environment of a British Overseas Territory;
- A one-stop user-friendly regulatory regime;
- Low establishment and operating costs;
- Easy access to the principal markets of North America;
- A sound and well developed legal and judicial system;

- A community of professionals capable of servicing the needs of captives;
- No taxation;
- No exchange control;
- US\$ as the local currency.

Incorporation and licensing

Most applicants for TCI insurance licenses will be companies incorporated in the TCI. Incorporation can be achieved within two days. The costs will vary depending on the amount of capitalization. Overall establishment and licensing costs are significantly more competitive than prevailing rates in Bermuda or Cayman.

No business may be carried on from or within the TCI, which uses the word “insurance”, or any of its derivatives which connotes insurance business, unless the entity concerned is licensed to carry on insurance business. Applications are made to the Financial Services Commission and must be accompanied by:

- (a) A business plan;
- (b) A copy of the memorandum and articles of association of the application (or other constitutional documents);
- (c) A list of the shareholders including where appropriate details of the ultimate beneficial owners;
- (d) Evidence of the good character and standing of the shareholders, and the ability integrity and experience of the directors, managers and officers;
- (e) Consent of an approved auditor to act as auditor of the applicant.

The time required for licensing will depend on the comprehensiveness of the business plan and the other information submitted to the FSC. A licence can normally be obtained within thirty days if properly prepared and documented.

An application fee of \$500.00 is payable on submission of an application for an insurers licence. The licence fee (non-domestic business) is currently US\$2,000.00 payable at the date of the grant of the licence and annually thereafter. The licensing period runs from 1st April to 31st March. Restricted licence reinsurers dealing with one direct writer are exempted from paying fees and from a number of other requirements under the Ordinance (see below).

The business plan

The business plan is the fundamental document determining whether the licence is granted and under what conditions. The business plan must include where appropriate:

- A five years projection including anticipated risks exposure and asset base at the end of each year during the period;
- The type and source of business contemplated, specifically categorized;
- Anticipated premium income, properly categorized;
- The reasons for choosing the TCI as a base for operations;
- An overall assessment of the risk factors and, if appropriate, an analysis of proposed reinsurances;
- An assessment of the expected ratio of claims to premiums for each category of business written with a statement explaining the rationale applied.

Capital and solvency requirements

No specific level of capitalization or surplus is required. The amount will be determined after consultation with the Superintendent of Insurance, having regard to the business plan. The superintendent's policy, however is that applicants writing general business will be expected to have an initial minimum capital of US\$100,000.00 and those writing long term business, an initial minimum capital of US\$180,000.00. Capital may take the form of an irrevocable letter of credit issued by an acceptable financial institution.

No surplus or solvency ratios are mandated but the superintendent's policy is that the net worth of an insurance company should be 20% of premium where net premium income is up to \$5m and 10% of premium plus \$100,000.00 (\$180,000.00 for long term business) where the net premium is over \$5m.

Yachts, airplanes, motor vehicles, livestock and loans to group or connected companies, options and future or forward contracts are not accepted for purposes of establishing net worth. All other assets are, in principle, acceptable but realisable assets with an easily establishable market value are strongly preferred. Investment policy should be conservative and appropriate for the type of business being undertaken.

Business restrictions

There are no specific business restrictions. All lines of property, casualty, life, personal risk, workmen's compensation, liability and other lines are permitted. The type of business must be included in the business plan. The superintendent must be satisfied that the proposed business is viable and that the management of the company has the

necessary expertise and experience to operate and administer the type of business to be underwritten.

There is no requirement that a captive insurer should have a physical presence in the TCI, although the preferred choice of the superintendent is that each captive, other than a restricted licence reinsurer, should have a local manager. The same applies to auditors. All insurers must appoint an authorized representative in the TCI.

Books, records and reporting requirements

A licensed insurer is required to keep annual accounts audited by an approved auditor and if it is engaged in long term business it must prepare an actuarial valuation of its assets and liabilities certified by an approved actuary. Separate accounts in respect of general business and long-term business must be kept. There is no requirement that books and records such as financial statements, minutes of shareholders and directors meetings, ledgers and journals, or loss and claims records be kept in the TCI but the superintendent has the power to require access to such records and to demand additional information.

In addition to filing annual audited accounts, an insurer must file an auditors' certificate of solvency and an auditors' certificate that its business has been conducted in accordance with its business plan. In the case of long-term business, an annual actuarial valuation by an approved actuary is also required.

Restricted licence reinsurers/PORCs

Under section 7 (11) of the Insurance Ordinance, if an insurer gives an undertaking that it will not engage in any business other than the reinsurance of risks covered by a single named insurer, it may potentially obtain exemption from practically all the requirements of the Ordinance apart from the need for a licence. At the time of the passage of the Insurance Ordinance, the exemption was tailored to encourage the incorporation in the TCI of producer owned reinsurance companies (PORCs). Approximately 2,700 PORCs are licensed and incorporated in the TCI. A PORC is a reinsurance company that is beneficially owned or controlled by the producers of business ultimately reinsured by the PORC. The typical uses include:

- Service contract/extended warranty business;
- Mortgage guarantee insurance;
- Provision of life, accident and health reinsurance coverage to the US car dealership industry;
- Involuntary unemployment reinsurance coverage.

PORCs are exempt from a variety of the regulations that apply to ordinary TCI insurance or captive insurance companies. There are no audit requirements, no requirement for a TCI insurance manager, no capitalization requirements and, no requirement that liquid

assets be maintained in the TCI, and government fees are reduced. The TCI is the leading offshore PORC jurisdiction.

For further information on this topic please contact [Owen Foley](#) or Kevin Coupland at Misick & Stanbrook by telephone (+1 649 946 4732) or by fax (+1 649 946 4734) or by email (owen@misickstanbrook.tc or kevin@misickstanbrook.tc).