

# Forming a Bermuda insurance company with Limestone Law Ltd.

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## Bermuda: the insurance jurisdiction

Bermuda is the premier offshore jurisdiction for the insurance and reinsurance industry. The island is home to insurance and reinsurance companies along with an extensive support network in the form of legal service providers, insurance managers, brokers and accountants. With a strong regulatory framework, settled legislation, advantageous taxation and a sound economic environment, it is no wonder that insurance and reinsurance companies consistently choose Bermuda.

Utilising Limestone Law Ltd., forming and maintaining a Bermuda insurance company is easy, inexpensive and accessible. This document provides a brief background of the regulatory requirements and the fees associated with forming a Bermuda insurance company. Limestone Law Ltd. can, of course, provide detailed advice and quotations to assist with management decision-making.

Companies that pay significant insurance premiums to third parties, and particularly those companies that closely monitor and manage their risks, are encouraged to consider the benefits (for example collecting the premium in excess of claims made) of forming a Bermuda insurance company. Companies seeking to mitigate larger risks can, of course, reinsure losses in excess of a particular sum.

## Background: what you need to know

### Regulation

There are two primary pieces of legislation governing insurance and reinsurance companies in Bermuda

1. **Companies Act**, which regulates Bermuda companies and
2. **Insurance Act**, which regulates insurance business in Bermuda.

### Types of Bermuda companies

There are two types of companies in Bermuda

1. **Exempted companies**, which can be resident in Bermuda thus taking advantage of the benefits of being a Bermuda company, without being controlled or owned by Bermudians. Exempted companies generally must conduct their business offshore and
2. **Local companies**, which are permitted to trade in Bermuda and must be 60% owned and controlled by Bermudians.

Bermuda companies can apply (pursuant to the **Segregated Accounts Act**) to be registered and operate as a segregated accounts company, which allows a statutory division between accounts (the assets in one account are protected against the creditors of another).

Insurance companies in Bermuda are licensed according to classes:

1. **Class 1**, an insurer writes 100% business of the parent company
2. **Class 2**, an insurer is owned by unrelated shareholders writing their own risks with up to 20% unrelated risk
3. **Class 3, 3A or 3B**, which are generally third party commercial insurers
4. **Class 4**, which are generally engage in catastrophe or excess liability business
5. **Long Term** insurers, which write life insurance and
6. **Composite** insurers, which write a mixture of general and life insurance.

A special purpose vehicle (SPV), which can be licensed in accordance with the above classes, can be incorporated for insurance derivative transactions. SPVs are commonly used to transfer risk into the capital markets. Insurance side-cars are an alternative to an SPV which can be used to segregate out a particular percentage of the parent company's underwriting.

## **Tax**

In Bermuda there are no taxes on profits, income or dividends, nor is there any capital gains tax, estate duty or death duty. There is in place a tax exemption for exempt companies valid until 2016. It is expected that this will be extended. The current government is cognizant of being seen as creating a 'tax haven' and is waiting for the global markets to improve before extending the period indefinitely.

Profits can be accumulated and it is not obligatory to pay dividends. The only tax imposed on an exempted company is an annual government fee. This amount varies depending on the amount of share capital (see Bermuda Government fees). Insurance companies also pay an annual license fee to the Bermuda Monetary Authority ([Schedule of fees listed under Schedule 2](#)). If an exempted company has local employees then the company may be liable for taxes in relation to employees. We do not provide tax advice.

### **Engaging a principle representative**

Every insurance company must appoint a principle representative. Commonly, an insurance manager such as Marsh or Aon will provide management, principle representative and principle office as required under the Insurance Act. The principle office is not the registered office for the purposes of the Companies Act. The principle representative carries serious reporting responsibilities in respect of the activities and in particular the solvency margins of every insurer they oversee. To engage a principle representative, it is usually necessary to enter into insurance management and co-operation and indemnification agreements. We can ensure that the company's interests are protected when entering into these agreements. This is the prescribed amount by which the value of the general business assets must exceed the value of the general business liabilities for a general insurer and the value of the long term business assets must exceed the value of the long term business liabilities for a long term insurer. The minimum liquidity ratio for general insurers only must exceed 75% on a test of relevant assets vs. relevant liabilities.

### **Engaging an auditor (and loss reserve specialist)**

The Insurance Act requires all registered Bermuda insurance companies to prepare financial statements in respect of its insurance business for each financial year. Every insurer must also file with the Bermuda Monetary Authority a statutory financial return in the prescribed form. All insurance companies are required to appoint an Auditor. A Loss Reserve Specialist is not required for a class 1 insurance company, but must be appointed for all other classes of insurance companies.

### **Process: licensing and incorporation**

The incorporation of a Bermuda insurance company is a two-stage process and takes around three weeks provided all information is available. There is an insurance application stage submitted to the Assessment and Licensing Committee of the Bermuda Monetary Authority and an incorporation stage submitted to both the Bermuda Monetary Authority and the Registrar of Companies. We make both applications simultaneously, which is generally more efficient.

### **Licensing**

The application to the Assessment and Licensing committee is in the form of a printed booklet. The booklet is properly tabbed and indexed and contains copies of incorporation and constitutional documents, a detailed 4 to 10 page business plan, five year pro forma financials, director's resumes, structure diagram, audited financials of parent, service provider letters and cover letter. Limestone Law prepares the application based on information provided. Insurance applications must be reviewed by the Assessment and Licensing committee, which meets every Friday morning. All applications must be received by the Monday before to allow 15 copies of the application to be distributed to the committee members before the Friday meeting. Clients are sometimes asked to be available to answer any questions the committee may have and should be available to be called in if required.

## **Incorporation**

All companies follow the same route in so far as the incorporation side is concerned. Copies of the ownership structure, including details of intermediaries and trusts are submitted to the incorporations team of the Bermuda Monetary Authority. A Memorandum of Association is filed with the Registrar of Companies, which sets out the share capital of the company and its objects. For the purposes of the incorporation we provide directors to hold the first three meetings of the company, the provisional meeting where the shares are assigned to the share holder, the first AGM (proxies to be provided) wherein directors and byelaws are approved and the first board meeting to appoint officers, service providers and bank accounts.

## **Share Capital**

A company writing insurance for its own account is required to have a minimum authorized and issued share capital of at least US\$120,000, all of which must, prior to the company's registration as an insurer, be fully paid. The Insurance Act sets statutory minimums on statutory share capital and contributed surplus as well as minimum liquidity ratios (General only). We can provide advice in respect of these requirements.

## **Directors and officers**

There is a requirement to have a minimum of two directors and other than the requirement to have a secretary there are no statutory mandated officers for an exempt company. Insurance companies are encouraged to consider two local directors as they can more easily facilitate day to day business by providing authorized signatures. Limestone Law can provide one director and the manager will usually provide the second.

## **Bye-laws (articles of association)**

The bye-laws of a company govern its internal organization, management and administration. They are not subject to scrutiny by public or governmental review. We can provide standard bye-laws and also provide special bye-laws based on the particular needs of the company.

## **Registered Office**

Every company must have a physical registered office in Bermuda. The register of shareholders must be kept and maintained at the registered office along with the constitutional documents. Our affiliated corporate administration company *Bermuda Corporate Services Ltd.* offers comprehensive corporate administrative and registered office services and will liaise directly with the insurance managers.

## Contact details

To speak to one of Limestone Law's dedicated corporate insurance team, please telephone: (441) 296 1848 or email: [spayne@limestonelaw.bm](mailto:spayne@limestonelaw.bm).

Limestone Law Ltd.

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# Schedule 1

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## 2010 FEE SCHEDULE

### INCORPORATION

	<b>BD\$</b>
Exempt Holding Company	5,000
Local Company	1,000**
Insurance Company    Class 1,2	5-10,000**
Class 3,3A	12-15,000**
Class 4	20-40,000**
Long Term Insurer	10-15,000**
Fund	10-20,000**
SAC application	2,000**

**N.B.** \*\*FEES excluding disbursements such as annual Government fees and licensing fees.

### Corporate Administration

Company secretary, provision of registered office and maintenance of minute book:

<i>Bermuda Corporate Services</i>	5,000 p.a.
Director	1,500++

## LEGAL

### *Opinions*

Standard	5,000
ISDA Netting	5,000
ISDA Collateral	5,000
One hour preparation time per charge	300
Disbursements	541
Byelaw amendments	300 per hour
Commissioner of Oaths and Certified Documents	Free

### **Amalgamation**

10,000+

### **Continuation**

10,000+

Attorney hourly rate	300
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***N.B. \*\*Fees excluding disbursements such as Annual Government fee.***

***++Exempted Holding Company and Class 1 captives. Director for class 2,3, 3A, 3B, 4 Funds and  
SAC companies to be negotiated.***

# Schedule 2

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## Bermuda Monetary Authority

(1) Applying for registration as –	
(a) an insurer under section 4(1)	\$525.00
(b) an insurance manager , broker or agent – under section 10	\$300.00
(c) an insurance salesman under section 10	\$ 71.00
(2) Applying –	
(a) to vary or delete any conditions imposed on the Certificate of Registration under section 4(3)	\$210.00
(b) to register as a different class of insurer under section 4(6)	\$350.00
(c) [repealed]	
(d) to be granted an extension to the filing deadline under section 17(4)	\$525.00
(e) to be exempted from the record keeping requirements of section 18C(2)	\$210.00
(ea) to notify new or increased shareholder control under section 30D	\$210.00
(f) to file an affidavit prior to the payment of dividends exceeding 25% of a Class 4 insurer's statutory capital and surplus under section 31B	\$210.00
(g) to receive Bermuda Monetary Authority approval for an insurer to reduce total statutory capital by 15% or more under section 31C	\$525.00
(h) to be granted a direction under section 56 other than those mentioned in paragraph (ha)	\$210.00
(ha) to be granted a direction under section 56, in respect of—	
(i) exemption from requirement of section 18B to include opinion of loss reserve Specialist	\$350.00
(ii) modifying of accounting provisions under sections 15 to 18 and regulations	\$525.00
(iii) modifying margin of solvency for general business under section 33 and regulations	\$350.00
(iv) modifying statutory financial returns under sections 15 to 18 and regulations	\$350.00
(i) to be granted a direction under section 57A	\$1,313.00
(j) to receive Bermuda Monetary Authority approval for an asset not appearing onlines I, 2, 3(a), 5(a), 9, 10. 11 and 12 as required by the Insurance Accounts Regulations 1980, to be treated as "relevant assets"	\$525.00
(k) to receive Bermuda Monetary Authority approval of letters of credit, guarantees and any other instruments to be treatedas other fixed capital	\$350.00

(l) application for cancellation of registration under section 41(1)(a)	\$350.00
(m) application for approval of internal model made under the provisions of an Order made under section 6A	\$50,000.00

**Fees in respect of the above are due upon application**

(3) Registering as –	
(a) an insurer –	
(i) non-resident insurance undertaking under the Non-Resident Insurance, Undertakings Act 1967 (fees in paragraphs (a)(ii) to (x) of this item do not apply to these undertakings)	\$3,650.00
(ii) Class 1 insurer carrying on general business	\$971.00
(iii) Class 2 insurer carrying on general business	\$1,737.00
(iv) Class 3 insurer carrying on general business	\$10,500.00
(iva) Class 3A insurer carrying on general business	\$19,000.00
(ivb) Class 3B insurer carrying on general business	\$75,000.00
(v) Class 4 insurer carrying on general business	\$220,500.00
(vi) Long term insurer	\$19,000.00
(via) Special Purpose insurers	\$10,000.00
(vii) Class 1 insurer carrying on both general business and long-term business	\$10,500.00
(viii) Class 2 insurer carrying on both general business and long-term business	\$10,500.00
(ix) Class 3 insurer carrying on both general business and long-term business	\$10,500.00
(ixa) Class 3A insurer carrying on both general business and long term business	\$19,000.00
(ixb) Class 3B insurer carrying on both general business and long term business	\$75,000.00
(x) Class 4 insurer carrying on both general business and long-term business	\$220,500.00
(b) an insurance manager, broker or agent under section 10	\$1,406.00
(c) an insurance salesman under section 10	\$140.00
(4) Issuing any certificate under section 14(1)(c)	\$525.00
(5) Inspecting the register under section 14(1)(d)	\$9.00
(6) The furnishing by the Authority of any document under document or copy of a document under section 14(1)(e):	
(a) for the first three pages or part thereof	\$6.00
(b) for each additional three pages or part thereof	\$6.00

**Fees in respect of the above are due upon application**

(7) (a) an insurer –	
(i) non-resident insurance undertaking under the Non-Resident Insurance Undertakings Act 1967 (fees in paragraphs (a)(ii) to (x) of this item do not apply to these undertakings)	\$3,650.00
(ii) Class 1 insurer carrying on general business	\$971.00

(iii)	Class 2 insurer carrying on general business	\$1,737.00
(iv)	Class 3 insurer carrying on general business	\$10,500.00
(iva)	Class 3A insurer carrying on general business	\$19,000.00
(ivb)	Class 3B insurer carrying on general business where gross premium written as reported in the previous year's statutory financial return (or, with the approval of the Authority, in the most recent statutory financial return)—	\$75,000.00
	exceeds \$150 million but does not exceed \$350 million	\$100,000.00
	exceeds \$350 million but does not exceed \$2 billion	\$140,000.00
	exceeds \$2 billion	\$175,000.00
(v)	Class 4 insurer carrying on general business	\$220,500.00
(va)	for each of the calendar years 2009 and 2010 (in respect of the mutual recognition initiative), an additional annual fee of \$40,000 shall be payable by each Class 4 insurer	\$40,000.00
(vi)	Long-term insurer	\$19,000.00
(via)	Special Purpose Insurers	\$10,000.00
(vii)	Class 1 insurer carrying on both general business and long-term business	\$10,500.00
(viii)	Class 2 insurer carrying on both general business and long-term business	\$10,500.00
(ix)	Class 3 insurer carrying on both general business and long-term business	\$10,500.00
(ixa)	Class 3A insurer carrying on both general business and long term business	\$19,000.00
(ixb)	Class 3B insurer carrying on both general business and long term business where gross premium written as reported in the previous year's statutory financial return (or, with the approval of the Authority, in the most recent statutory financial return)—	\$75,000.00
	exceeds \$150 million but does not exceed \$350 million	\$100,000.00
	exceeds \$350 million but does not exceed \$2 billion	\$140,000.00
	exceeds \$2 billion	\$175,000.00
(x)	Class 4 insurer carrying on both general business and long-term business	\$220,500.00
(b)	an insurance manager broker or agent under section 10	\$1,406.00
(c)	an insurance salesman under section 10	\$140.00

***Annual fees in respect of the above are due on or before 31st March 2010***

## Registrar of Companies

### 1 EXEMPTED COMPANIES

Where the assessable capital of the exempted company

<b>Conditions</b>	<b>Fee</b>
(a) Where the assessable capital of the exempted company—	
(i) is \$0-\$12,000	\$1,870
(ii) is \$12,001-\$120,000	\$3,820
(iii) is \$120,001-\$1,200,000	\$5,890
(iv) is \$1,200,001-\$12,000,000	\$7,850
(v) is \$12,000,001-\$100,000,000	\$9,815
(vi) is \$100,000,001-\$500,000,000	\$17,530
(vii) is \$500,000,001 or more	\$29,220
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