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Regulatory Policy

Approval of Trusts pursuant to section 7(1) of the Insurance Law

1. Introduction

The Insurance Law (2007 Revision) provide for policyholder protection for Cayman domestic business, in section 7(1) which reads:

(1) "Save as otherwise approved by the Authority, an Approved External Insurer that carries out domestic business shall, at all times–

(a) in respect of its general business, place and maintain upon trust, with a person approved by the Authority, in a segregated account at a bank in the Islands which holds an "A" licence issued under the Banks and Trust Companies Law (2007 Revision) funds approved by the Authority, the total value of which shall unless otherwise permitted by the Authority be at least equal to the total of its–

- (i) unearned premium reserve;
- (ii) outstanding claims reserve;
- (ii) reserve for claims incurred but not reported; and
- (iv) unexpired risk reserve.

(b) in respect of its long term business, place and maintain upon trust, with a person approved by the Authority, in a segregated account at a bank in the Islands which holds an "A" licence issued under the Banks and Trust Companies Law (2007 Revision) funds approved by the Authority, the total value of which shall unless otherwise permitted by the Authority at least equal its total actuarially determined policyholder liabilities in respect of its life and annuity business;"

and such trust funds shall be held pursuant to a trust deed approved by the Authority, which shall provide that:

- (i) such funds are exclusively to be used to discharge the Approved External Insurers domestic business obligations to policyholders and for no other purpose, and
- (ii) such funds are not to be made the subject of any charge, security interest, mortgage, trust assignment lien or other dealing,



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and except with the prior written consent of the Authority any distribution, dealing or undertaking entered into in contravention of subparagraphs (i) and (ii) shall be void.”

2. Statement of Objectives

1. To set out the criteria to be applied in exercising the power to approve the trust established by the Approved External Insurer to meet the requirement of section 7(1), (see section 3 below) and
2. To set out the circumstances in which the Authority would consider alternative arrangements to the trust arrangement as prescribed by section 7(1) of the Insurance Law and the criteria to be applied in considering whether to approve the alternative arrangements (see section 4 below).

3. Criteria to be met to obtain Approval of the Authority

In considering the grant of approval of the trust deed, as proposed by the Approved External Insurer, the following criteria will be applied:

3.1. Trust Agreement

- 3.1.1 The agreement should clearly present the purpose of the trust, the essence of which is protection of the domestic policyholders of the Approved External Insurer.
- 3.1.2 It is also necessary to include a conceptual description of the class of qualifying beneficiaries.
- 3.1.3 The powers and duties of the trustee should include direction on the power and duty to advance funds to qualifying beneficiaries and the circumstances in which those powers and duties will arise.
- 3.1.4 Notice of termination by either party must be approved by the Authority.
- 3.1.5 If the Approved External Insurer fails to meet its obligations under the Law or resulting from valid claims on policies issued, the Authority shall



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give the Approved External Insurer notice of such failure and if the Approved External Insurer fails to rectify that failure within 30 days of such notice the Authority shall be entitled to request the Trustee to apply discretion in favour of qualifying beneficiaries/policyholders. This is without prejudice to the Authority's general powers of enforcement against the Approved External Insurer but such shall not defeat the powers of the trustee or the effect of the trust.

- 3.1.6 An undertaking that in the event of a situation arising under paragraph 3.1.5 above the Approved External Insurer will take all necessary steps to facilitate the request to the Trustee by the Authority and the subsequent discharge by the trustee of its obligations to qualifying beneficiaries.
- 3.1.7 In the case of any other reasons for termination the new trust deed and thus any transfer of assets, must receive the approval of the Authority.
- 3.1.8 The Authority will be allowed access to relevant trustee records for enquiries and for inspection.

3.2. Subject matter of the Trust

- 3.2.1 Typically, cash and cash equivalents should form the subject matter of the trust. For example:
 - a) Cash;
 - b) Certificates of deposit;
 - c) Debt securities listed on an approved stock exchange¹ or the International Securities Markets Association being both capable of normal realisation within 90 days and of investment grade.

3.2.2 Other assets may be acceptable such as:

¹ As per the criteria of the Authority at section G12 of the Regulatory Handbook.



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- a) Irrevocable letters of credit for the benefit of the trustee, issued by a Class A bank in the Islands, for such amount and on such conditions as have been approved by the Authority.
- 3.2.3 The Authority may accept alternative instruments, such as security agreements and guarantees, in place of assets described in 3.2.1 and 3.2.2 provided that such structures are in favour of the trustee and a legal opinion relating to those instruments is made available to the Authority.
- 3.2.4 The trustee must report to the Authority if the Approved External Insurer instructs that 5% or more of the market value of the assets held are to be paid out within one calendar month. The trustee must provide a report regarding the assets held, to the Authority on request in a form to be prescribed by the Authority where applicable.
- 3.2.5 The Approved External Insurers should have internal controls in place to facilitate the reporting to the Approved External Insurer by the Trustee giving full details of asset movements.
- 3.2.6 If the amount of trust assets should at the end of any quarter period be above the amount required under Section 7 (1) of the Law the trust may provide that the Approved External Insurer may request withdrawal of the excess amount from the trust provided approved by the Authority. Such approval may be subject to receipt of an up to date actuarial valuation of liabilities for the current financial year of the company.
- 3.3. Trustee
- 3.3.1 The trustee must be Cayman based, and licensed by the Authority under the Banks and Trust Companies Law.



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- 3.3.2 The trustee must be independent of the Approved External Insurer.
- 3.3.3 The trustee is responsible for holding and safeguarding the applicant's assets but may appoint a custodian or custodians to hold its assets, provided that:
- a) The trustee is satisfied that the assets will be secure and available for the beneficiaries, with specific attention given to the nature and extent of the internal controls of the custodian and factors affecting the ability to initiate legal action and obtain redress, and
 - b) The trustee may only appoint custodian(s) if satisfied that they are fit and proper to perform the role, and specifically the custodian(s) must be independent of the Approved External Insurer.
- 3.3.4 The trustee shall be able to demand of the custodian the immediate withdrawal of assets from the custodian to another custodian. Where the custodian requires a period of notice this period of notice shall be minimal and justifiable.
- 3.3.5 The trustee may appoint an investment manager responsible for the investment management of the trust funds provided that:
- a) The investment manager is licensed or excluded under the Securities Investment Business Law to provide the services, or otherwise is regulated in another jurisdiction with equivalent legislation and regulation. In particular the trustee should pay specific attention to the nature and extent of the internal controls of the investment manager and the legal framework in the jurisdiction of the investment manager, in particular the respect for the rule of law and factors affecting the ability to initiate legal action and obtain redress, and
 - b) The trustee may only appoint investment manager(s) if satisfied that they are fit and proper to perform the role, and specific attention should be paid to the independence of the investment manager(s).
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4. The Approval of Alternative arrangements to section 7(1)

The section 7(1) requirements apply to all Approved External Insurers, but the Authority may amend the requirements where alternative structures are acceptable to the Authority.

- 4.1. Existing Approved Externals may wish to seek approval of existing alternative arrangements.
- 4.2. In addition, the Authority may wish to consider alternative arrangements as acceptable for approved external insurers applying for a licence for the first time following the passing of the law.
- 4.3. There is therefore a need to set out the circumstances in which alternative arrangements would be considered and the criteria to be applied for the granting of approval.

4.4. Circumstances Where Alternatives May Be Considered

4.4.1 “Except as otherwise approved by the Authority” was inserted to enable the Authority to consider the approval of alternative arrangements in very exceptional circumstances.

4.4.2 Existing Approved External Insurers may apply for approval of existing alternative arrangements where:

- a) the legal structure of the licensee makes it impossible or impractical to comply with the s.7(1) requirements as outlined in that section, or
- b) the arrangements existing at the time the provision comes into effect are at least equally effective in achieving the objective of “ring fencing” assets for the benefit of domestic policyholders in the event



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that the insurer becomes insolvent or otherwise refuses to honour its obligations in Cayman, and to undo those requirements would create costs for both the licensee and/or the Authority that exceed any additional benefits that the trust arrangement would provide above that of the existing arrangement.

4.4.3 New Approved External Insurers may apply for approval of alternative arrangements where:

- a) the legal structure of the licensee makes it impossible or impractical to comply with the s.7(1) requirements as outlined in that section, or
- b) there is a need to attract new domestic business capacity to Cayman and the nature of the international insurance markets are such that it is not possible or practical for the insurer to establish in the Island given the section 7(1) requirement. In this case requirements regarding the financial strength of any insurer seeking a licence should be set at a sufficiently high level.

4.5. Criteria For Approval Of Alternatives

4.5.1 The financial strength and vulnerability of the company.

4.5.2 The legal framework in the home jurisdiction of the licensee, in particular respect for the rule of law and factors affecting the ability to initiate legal action and obtain redress.

4.5.3 The legal and administrative powers and policies of the home supervisor in relation to the protection of policyholders of the licensee outside the home jurisdiction.



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- 4.5.4 History of the existing licensee's operation in Cayman and its cooperativeness and communications with the Authority.
- 4.5.5 Whether the company belongs to an international group or operation.
- 4.5.6 Type of insurance business.
- 4.5.7 The onus of establishing a case is on the licensee. Despite the establishment of a case, the Authority may still require the licensee to establish a trust as per section 7(1) where:
- a) it is considered to be necessary to protect the best interest of local policyholders,
 - b) there are no bona fide legal impediments on the licensee in so doing, and
 - c) the costs on the licensee are not prohibitive.