

HEAD OFFICE REQUIRED FOR COMMERCIAL INSURERS

by Stacy-Ann Maharaj

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Commercial insurers registered under the Insurance Act 1978 (**the Act**) are now required to establish and maintain a head office in Bermuda in accordance with changes to the Act that came into effect on 1 January 2016.

This requirement means that the insurance business of commercial insurers (Classes 3A, 3B, 4, C, D and E insurers) must be directed and managed from Bermuda.

At the time of licensing, the Bermuda Monetary Authority (**BMA**) assesses the nature, scale and complexity of an insurer's business to be conducted in accordance with the provisions of the Act, the Insurance Code of Conduct and the Insurance Statement of Principles (**the insurance framework**).

In relation to commercial insurers, the BMA further measures compliance with the insurance framework by taking into consideration various factors to ensure that it can exercise sufficient regulatory oversight over the business to be carried on in Bermuda. In this regard, the BMA has effected the requirement for commercial insurers licensed in Bermuda to establish their head office in Bermuda.

In determining whether an insurer has complied with the head office requirement, the BMA will consider, among other things, the following factors in order to ascertain whether the insurance business of the insurer is directed and managed from Bermuda:

- where the underwriting, risk management and operational decision making of the insurer occurs;

- whether senior executives who are responsible for and involved in the decision making related to the insurance business of the insurer are located in Bermuda;
- where meetings of the board of directors of the insurer occur;
- the location where management of the insurer meets to effect policy decisions of the insurer;
- the residence of the officers, insurance managers or employees of the insurer; and
- the residence of one or more directors of the insurer in Bermuda.

The BMA will apply the proportionality principle when it considers the above factors in determining whether the insurer, based on the nature, scale and complexity of its business, has met the head office requirement.

The head office requirement does not apply to a commercial insurer that has a permit under section three of the Non-Resident Insurance Undertakings Act 1967 or a permit under section 134 of the Companies Act 1981. These provisions cover branch operations in Bermuda for foreign insurers. In addition, Bermuda captives and limited purpose insurers (Classes 1, 2, 3, A and B insurers), as well as special purpose insurers, are not required to establish a head office in Bermuda.

The requirement for a head office in Bermuda has been effected as part of the BMA's overall enhancements to its current insurance supervisory and regulatory framework in an effort to achieve Solvency II equivalence. Solvency II is a harmonised framework aimed at ensuring that there is a single market, utilising a single set of rules for insurance services. Solvency II equivalence for Bermuda means that Bermuda's commercial insurers will not be disadvantaged when competing for, and writing, business in the European Union.

Currently, insurers licensed in Bermuda are required to have a registered office and principal office here and to appoint a principal representative resident in Bermuda. Some have queried whether an insurer's principal office, which is already a requirement under the Act, could be regarded as its head office. The BMA has confirmed that, where the insurer's principal office meets the standards required for the establishment of a head office, then the BMA will regard the principal office as the head office.

Commercial insurers are applying the proportionality principle as they consider the above factors in order to comply with the head office requirement. The general understanding at this time is that the factors are not necessarily prescriptive and that the BMA will take a holistic approach to deciding whether the insurer has a sufficient nexus to Bermuda to allow the BMA to exercise the requisite regulatory influence over the insurer.

Commercial insurers are encouraged to meet with BMA representatives if they have specific questions relating to their plans to implement the head office requirement.

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