

## Article

### Financing Transactions for Cayman Regulated Insurers

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As a leading jurisdiction for the domicile of captive insurance companies and, more recently, reinsurance companies (together “insurance vehicles”), the laws of the Cayman Islands have a central role and require careful consideration when such insurance vehicles seek to approve and execute the various commercial arrangements which they require.

One commonly seen transaction is the establishment of a credit facility or letter of credit arrangement between the insurance vehicle and a financial institution or lender (either based in the Cayman Islands or in North America) (a “**Financing Arrangement**”). Such Financing Arrangements assist insurance vehicles in a variety of ways and smooth issues that may otherwise cause wrinkles in their cross-border business models.

#### What Transaction Documents Are Standard?

The core transaction document in a Financing Arrangement is a credit agreement (entered into between the lender and the insurance vehicle) which will specify what additional documents the lender will require and in particular what security the lender will require to make the Financing Arrangement available. For the most part, the core transaction documents will be:

1. The credit agreement;
2. A charge over the bank account of the insurance vehicle in the Cayman Islands (or US where applicable); and
3. Any application forms required by the lender to apply for the Financing Arrangement.

On occasion the lender will also require security over shares of subsidiary companies of the insurance vehicle or guarantees of certain individuals/entities to give further comfort to the lender in extending credit.

#### What else do Lenders Expect?

In addition to the execution of the above transaction documents, lenders will also typically expect a legal opinion to be issued by the Cayman Islands counsel to the insurance vehicle covering such matters as:

- (i) The due formation and good standing of the insurance vehicle;
- (ii) The ability of the insurance vehicle to enter into the Financing Arrangement; and
- (iii) The enforceability of security granted under the transaction documents.

In addition, the insurance vehicle may also be required to demonstrate that it has sought and received any regulatory approvals required by the Cayman Islands Monetary Authority prior to closing the Financing Transaction.

## Common Issues in Deal Execution

Financing transactions involving Cayman Islands insurance vehicles have long been a feature of the market and are now standardized and non-controversial to document and execute. Two issues which commonly arise however are:

- (i) Timing – in instances where regulatory approval is required or changes to the constitutional documents or business plan of an insurance vehicle are required, the time to seek and obtain the necessary regulatory approvals must be built into the process; and
- (ii) Corporate Authorization – while approval by the board of directors of an insurance vehicle is generally not an issue, the question of convening and holding a meeting of such directors to formally approve such arrangements (which is required by the lender and the legal counsel issuing the legal opinion) can take time and, due to various rules on where meetings can be held for regulatory reasons, planning. Solutions to this issue can of course be found but it remains a common gating issue in closing Financing Arrangements.

## Conclusion

We expect the market for Financing Arrangements to continue to buoyant in the coming 12 months and, with the continued growth of the re-insurance industry in the Cayman Islands, expect that such transactions will become even more commonplace. As noted above, Financing Arrangements are generally not contentious to agree and close but the deal management perspective in guiding parties through the steps necessary to get to the finish line is vital to efficient execution of these transactions. Conyers has a deep bench of attorneys with experience in these matters and we are always ready to help you as such transactions arise.

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