

## REGULATORY INTELLIGENCE

**COUNTRY UPDATE-British Virgin Islands: Insurance**

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**Market overview****Global**

The British Virgin Islands Financial Services Commission (FSC) is a member of the International Association of Insurance Supervisors (IAIS). The BVI insurance legislation has been implemented to take into account the Insurance Core Principles of the IAIS.

**Domestic**

The FSC is responsible for all regulations of BVI insurance companies. The FSC was formed pursuant to the Financial Services Commission Act, 2001 (the Commission Act), which established the separation of financial services from the BVI Government. All FSC policies are overseen by a Board of Commissioners appointed by the Executive Council (which is the Cabinet of Government Ministers). The Commission Act also established the Licensing and Supervisory Committee responsible for, among other things, reviewing and determining applications for licenses. The Licensing and Supervisory Committee generally meets weekly and will approve insurance applications presented to it by the Director of Insurance Business.

The BVI Insurance Act 2008 (as amended) (the Insurance Act) and the attendant Insurance Regulations (the Regulations) apply to any person carrying on insurance business in or from within the BVI. "Insurance business" is defined in Section 3(1) of the Insurance Act as " *the business of undertaking liability under a contract of insurance to indemnify or compensate a person in respect of loss or damage, including the liability to pay damages or compensation contingent upon the happening of a specified event, and includes life insurance business and reinsurance business*". No person shall carry on insurance business in or from within the BVI unless they hold the requisite licence under the Insurance Act. Section 4 defines certain circumstances in which insurers are deemed to be carrying on insurance business in or from within the BVI. Insurance managers, agents, adjusters and brokers are also required to obtain a license under the Insurance Act.

As at December 31, 2020, there were 52 licensed captive insurers and 37 licensed domestic insurers registered in the British Virgin Islands.

**Product specific legislation**

The Insurance Act distinguishes between life and health business and property and casualty business. Life and health business consists of life, annuity or accident and disability and health contracts. Any other insurance business falls under the definition of property and casualty business.

The BVI insurance regulatory framework distinguishes between domestic and non-domestic insurance businesses. Domestic business includes every contract insuring a person domiciled or resident in the BVI at the date thereof, or the subject matter of which is property of any kind within the BVI or in transit to or from the BVI, and also includes insurance against risks of any kind in relation to a person resident outside of the BVI in relation to such person or any immovable property or personal property situated or held outside of the BVI, provided the BVI insurer carrying on such business holds a category A licence.

**Capital reserve requirements**

A BVI insurer is required to (a) ensure at all times that it maintains its capital resources at a level that is adequate to support its insurance business, taking into account the nature, size, complexity, structure and diversity of that business and its risk profile and (b) maintain adequate systems and controls to monitor and assess its capital adequacy requirements on a continuing basis. The



BVI insurer is required to ensure that its contributed capital is maintained in an amount not less than the greater of (i) the minimum applicable to it as specified in the Regulatory Code, 2009 (the Regulatory Code); or (ii) such amount as the FSC may direct.

The minimum fully paid-up share capital of an insurance company or the contributed reserve fund of a mutual insurance company is:

- US\$200,000 where the insurer proposes to carry on life and health business;
- US\$100,000 where the insurer proposes to carry on property and casualty business; or
- US\$300,000 where the insurer proposes to carry on both life and health business and property and casualty business.

The capital or contributed reserve fund may be in U.S. dollars or the equivalent in a foreign currency and may take the form of cash or an irrevocable letter of credit issued by a financial institution approved by the Commission.

An insurer is required to maintain a minimum margin of solvency. This is the amount by which the total value of an insurer's assets must exceed the total amount of its liabilities.

In relation to a property and casualty insurer, the minimum margin of solvency is calculated as follows based on the annual net written premium (ANWP):

- if the ANWP is less than \$500,000, the prescribed minimum solvency margin is \$100,000;
- if the ANWP is greater than \$500,000, but less than \$5,000,000, the prescribed minimum solvency margin is 20% of the net annual written premium; and
- if the ANWP is greater than \$5,000,000, the prescribed minimum solvency margin is \$1,000,000 plus 10% of the difference between the ANWP and \$5,000,000.

In the case of a life and health insurer, the prescribed minimum solvency margin is \$250,000. The ANWP is defined in the Regulatory Code as "*the gross premium income written by the insurer in that year, reduced by any premiums ceded to approved reinsurers*". There is an overriding obligation on each BVI insurer to ensure that it maintains a solvency margin to enable it to meet its liabilities at all times. In the case of an insurer with both property and casualty business and life and health business, the prescribed minimum solvency margin is \$250,000 plus the amount required for the property and casualty business based on the insurer's annual net written premium from such business.

For the protection of BVI policyholders, a foreign insurer is required to establish a trust in support of payment of any claims by BVI policyholders. However, a foreign insurer may opt to pay a deposit to the FSC in lieu of forming a trust. All BVI insurers carrying on domestic business and foreign insurers carrying on domestic business that do not establish a trust are required to pay to the Commission a deposit: (a) in the amount of \$250,000 or (b) in an amount that is equal to the total of its domestic liabilities, whichever is the higher. A BVI insurer or foreign insurer who contravenes this requirement commits an offence and is liable on summary conviction to a fine not exceeding \$40,000.

## **Product specific legislation**

### *Reinsurance*

A BVI insurer may only enter into an agreement to reinsure its risks if (a) the proposed reinsurer has a financial strength rating of A ++, A+, A or A- assigned to it by the A. M. Best Company or an equivalent financial strength rating assigned by an equivalent rating company (the "Financial Strength Criteria"); or (b) the FSC has approved an application from the BVI insurer for the person to reinsure the liabilities specified in such application. Pursuant to section 16A of the Insurance Act, where a BVI insurer that carries on domestic business does not meet the Financial Strength Criteria, any reinsurance contract entered into by such BVI insurer shall include an endorsement substantially in the form prescribed in Schedule 1 of the Insurance Act.

### *Tax*

Business companies which are incorporated as insurance companies and shareholders thereof who are not ordinarily resident in the BVI are exempt from BVI income, corporation or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax.

## **Investment management and markets**

A BVI insurer is required to establish and maintain (a) an investment strategy and such investment policies as the board of directors of the BVI insurer considers appropriate for the nature, size, complexity, structure and diversity of the insurer's business; and (b) systems and controls that are sufficient to ensure that the investment strategy and policies are effectively implemented. The investment strategy and policies should cover matters such as the risk profile of the insurer and the mixture and diversification of investment by type, including the long-term asset mix over the main investment categories.

It should be noted that a BVI insurer is not permitted to invest or trade in a derivative without the prior written approval of the FSC unless the derivative concerned is otherwise permitted by the Regulatory Code.

## **Enforcement and investigation**

It is an offence under the Insurance Act if a person makes or assists in making a representation, statement, report or return to the FSC that contains a false statement of a material fact or omits to state a material fact required to be provided to the FSC or necessary



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to avoid the statement or document being materially misleading. It is a defence if the person did not know and, with the exercise of reasonable diligence, could not have known that the representation or statement contained a false statement or omitted a material fact.

If a person is convicted of an offence under the Insurance Act or the regulations, the Court may, in addition to any punishment it may impose, order that person to comply with the provision of the Insurance Act or the Regulations for the contravention of which such person has been convicted.

The Insurance Act sets out in Schedule 1 the relevant penalties applicable for an offence committed under such legislation based on whether the person committing the offence is an individual or a body corporate and the method of trial (summary or conviction). Note that where an offence is committed by a body corporate, any director or senior officer of that body corporate who knowingly authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on conviction to the relevant penalty set out (in respect of the offence).

Every insurance company must maintain permanently at its office in the BVI such books and records as will (i) show adequately the type and classes of insurance business carried on by the insurance company and (ii) will enable the FSC at any time to conduct a proper examination of the insurance company's affairs and to ascertain with reasonable accuracy its financial position. The Insurance Act provides that the FSC shall have at all reasonable times access to all the books, securities, records and documents of any insurer which relate to its insurance business.

The FSC has broad statutory powers to take enforcement action against an insurance licensee, including a subsidiary or holding company listed in or included on the licence of the licensee. The grounds for any such enforcement action include, without limitation, a breach of BVI financial services legislation or if a liquidator or receiver is appointed in respect of the insurance licensee or its relevant business. The FSC's powers include the power to revoke or suspend the insurance licensee's licence, appoint an examiner to conduct an investigation into the affairs of the insurance licensee or issue a warning letter to the licensee.

### **Data protection**

The applicable data protection legislation in the BVI is the Data Protection Act 2021 (the DPA). The DPA applies to all BVI companies, limited partnerships and other entities that process, have control over or authorise, the processing of, personal data anywhere in the world (such an entity, as a data controller). It also applies to non-BVI entities that use equipment in the BVI for processing personal data otherwise than for the purposes of transit of data through the BVI. Insurance companies will therefore need to be mindful of the practical impact of the DPA.

Data controllers must now comply with the data protection principles set out in the DPA, including, not processing personal data except with the express consent of the data subject (being the natural person, whether living or deceased, whose data is being processed) or where it is necessary for certain specified reasons, such as the performance of a contract to which the data subject is a party.

### **Financial crime prevention**

The BVI adheres to all applicable international compliance standards. BVI is listed on the OECD's 'white list', is a member of the International Organization of Securities Commissions (IOSCO) and is FATF compliant.

*This country profile was kindly provided by **Nicholas Kuria**, counsel in the corporate department of **Conyers** in the British Virgin Islands.*

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