

Article

Legislative Recognition for Capital Redemption Contracts, Aka Funding Agreements

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On Tuesday 28 June 2022, the Insurance (Amendment) Act 2022 (the “Amendment”) was published in the Official Gazette having been brought as a bill before the Cayman Islands Parliament during its third meeting of the 2021-2022 session. The Amendment is targeted at giving a legislative footing for the first time in the Cayman Islands to 'capital redemption contracts' (also known in certain other jurisdictions as 'funding agreements').

These have been popular for some time in places like the UK, EU and US. The Amendment is the product of efforts by the Financial Services Legislative Committee (the "FSLC") - a public/private body comprising representatives of the Ministry of Finance and the Cayman Islands' financial services industry set up in 2011 - to diversify the Islands' insurance and reinsurance sector. The FSLC proposes and helps draft legislative enhancements to the Cayman Islands financial services regime for Government's consideration and potential action, and has been responsible for at least 15 enacted legislative proposals since its inception. Conyers Partner Derek Stenson currently chairs the Insurance Sub-Committee of the FSLC.

Capital redemption contracts are alternative funding mechanisms for large life insurance and reinsurance carriers which diversify their funding sources and reduce their overall costs of funds. They are essentially contracts issued by insurance companies pursuant to which such insurance companies accept and accumulate funds with a view to making one or more payments at future dates. They carry fixed maturities and fixed interest rates but have no contingencies based on mortality of the person to whom they are issued (or any other person) and constitute a business arrangement capable of being underwritten by long term insurers as part of their insurance business activities. These instruments offer a number of advantages over life assurance variants, the latter of which require there to be a life assured.

The Amendment introduces a new statutory definition of 'capital redemption contract' and folds this into the existing definition of 'long term business' - it provides that such a contract is one under which an insurer may "(a) receive and accumulate sums of money; and (b) pay a sum or sums of money or render money's worth, on dates and in amounts that are not contingent on human life or against risks of the person insured". Express recognition of 'capital redemption contracts' effectively as insurance contracts in the Insurance Act (as amended) ensures that they would be treated, in an insolvency of the life (re)insurer for example, *pari passu* with other insurance contracts of that life (re)insurer, making such an investment in a contract issued by that Cayman carrier much more attractive to investors.

These amendments are a result of demand from existing Cayman carriers and are indicative of the growth and momentum in the longevity space Cayman is currently enjoying. The changes also serve to:

- i. expand potential business opportunities for existing Cayman Islands licensed long term insurers by allowing them to compete on a more level playing field with competitors in other jurisdictions whose legal and regulatory regimes already provide for such instruments; and
- ii. enhance the broader overall reputation and attractiveness of the Cayman Islands insurance industry to attract potential new players who may only wish to do business in jurisdictions that have statutory recognition of Capital Redemption Contracts/Funding Agreements.

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