

Insurance Business

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Relevant Activity – What is an “insurance business”?

“Insurance business” has the meaning given to that expression by section 2 of the Insurance Act, 2010.

An entity therefore engages in ‘insurance business’ where it is in the business of accepting risks by effecting or carrying out contracts of insurance, whether directly or indirectly, and includes running-off business including the settlement of claims.

Source: Cayman Islands Economic Substance Guidance Notes v3.1, page 21

Insurance categories under the Insurance Act

The Cayman Islands Monetary Authority (“CIMA”) regulates several different categories of insurers under the Insurance Act, along with other insurance related activities, such as insurance management. A relevant entity must possess a valid licence granted by CIMA in order to carry on insurance business in the Islands.

(1) Class A insurer licence

The Class A Insurer licence is required for the carrying on of domestic insurance business by a local insurer or external insurer, or limited reinsurance business as approved by CIMA. The Insurance Act defines “domestic business” as insurance business where the contract is in respect of the life, safety, fidelity or insurable interest, other than in respect of property, of a person who at the time of effecting the contract is ordinarily resident in the Islands, or property that at the time of effecting the contract is in the Islands or, in the case of a vehicle, vessel or aircraft, or other movable property is ordinarily based in the Islands.

A “local insurer” is a Class A insurer incorporated in and having its place of business in the Islands.

An “external insurer” is a Class A insurer who is not a local insurer and whose principal or registered office is in a jurisdiction outside the Islands where the legislation for the regulation and supervision of insurers is acceptable to CIMA.

An insurance company with an “A” Licence should consider if it meets the definition of a “domestic company”.

Where a Class “A” insurer is not part of an MNE Group, is only carrying on business in the Islands and complies with section 3(a) of the Trade and Business Licensing Act (2019 Revision) it would qualify for the domestic company exemption.

A Class “A” insurer is required to meet CIMA requirements to obtain this licence. Where such an insurer does not meet the definition of a “domestic company” but does meet these CIMA requirements, it is

expected that the entity would meet the requirements of the ES Test. In terms of filing requirements, an insurer with a Class “A” license will be required to file the Economic Substance Notification (“ESN”) as normal (i.e. relevant entity carrying on the relevant activity of insurance business) however, when filing the Economic Substance Return (“ES Return”) there will be an option to select Class “A” insurer and once this option is selected no further information will be required on the ES Return.

(2) Class B insurer Licence

A Class B insurer is in scope for the International Tax Co-operation (Economic Substance) Act (2021 Revision), as amended (the “ES Act”). It is a relevant entity and is carrying on a relevant activity, insurance business, for the purpose of the ES Act.

The Class B Insurer licence is designed for carrying on of insurance business other than domestic business. This is typically used for captive insurance. Class B insurance licences are subdivided into four types depending on the percentage of net written premiums from “related business”. Most Class ‘B’ insurers will retain the services of an insurance manager to be the local representative of the insurer and to manage the day to day operations of the insurer and to fulfil their insurance, financial, legal and regulatory obligations. In some instances, Class B insurers will be approved to be self-managed which will require the establishment of an office in the Islands and the hiring of employees to oversee the operations of the insurer.

(3) Class C insurer licence (Catastrophe Bonds Special Purpose Insurers)

A Class C insurer is in scope for the ES Act. It is a relevant entity and is carrying on a relevant activity, insurance business, for the purpose of the ES Act.

The Class C insurer Licence is for the carrying on of insurance business involving the provision of reinsurance arrangements in respect of which the insurance obligations of the Class C insurer are limited in recourse to and collateralised by the Class C insurer’s funding sources or the proceeds of such funding sources which include the issuance of bonds or other instruments, contracts for differences and such other funding mechanisms approved by CIMA. Most Class ‘C’ insurers will retain the services of an insurance manager to be the local representative of the insurer and to manage the day to day operations of the insurer and to fulfil their insurance, financial, legal and regulatory obligations. In some instances, Class C insurers will be approved to be self-managed which will require the establishment of an office in the Islands and the hiring of employees to oversee the operations of the insurer.

(4) Portfolio Insurance Company (“PIC”) registration

A PIC insurer is in scope for the ES Act. It is a relevant entity and is carrying on a relevant activity, insurance business, for the purpose of the ES Act.

The PIC Regulations permits a segregated portfolio licensed insurance company (an “SPC insurer”) to establish, for the account of a segregated portfolio, an exempted company limited by shares as a subsidiary. The PIC must be controlled, at all times, by the SPC insurer. An SPC insurer can only control one PIC on behalf of any relevant segregated portfolio.

Once registered with CIMA, the PIC is permitted to carry on insurance business without requiring a separate insurance licence. A PIC may enter into any contract with any person including: (i) the SPC insurer acting on behalf of any of its segregated portfolios; (ii) its SPC insurer acting otherwise than on behalf of any of its segregated portfolios; or (iii) any other PIC. The PIC has separate legal identity and its own board of directors, who may be different from the SPC, facilitating a reduction in apparent or real conflicts of interest.

(5) Class D insurer licence (Reinsurance)

A Class D insurer is in scope for the ES Act. It is a relevant entity and is carrying on a relevant activity, insurance business, for the purpose of the ES Act except in the case of a Class D insurer that is a domestic company as defined in the ES Act.

The Class D Insurer Licence is for the carrying on of reinsurance business and such other business as may be approved in respect of any individual licence by CIMA.

Source: Cayman Islands Economic Substance Guidance Notes v3.1, page 69-70

Economic Substance Test

A 'relevant entity' that conducts one or more 'relevant activity', will need to satisfy the Economic Substance Test ("**ES Test**") in respect of each relevant activity conducted.

The ES Test requires that a relevant entity:

(a) conducts 'Core Income Generating Activities' ("CIGA") in relation to its relevant activity(ies);

'Core Income Generating Activities' means activities that are of central importance to the relevant entity in terms of generating relevant income and must be carried on in the Cayman Islands.

A relevant entity will satisfy the ES Test in relation to a relevant activity if its core income generating activities in relation to that relevant activity are conducted by any other person and the relevant entity is able to monitor and control the carrying out of the Cayman Islands core income generating activities by that other person.

(b) is directed and managed in an appropriate manner in the Islands in relation to its relevant activity(ies); and

The ES Act provides that a relevant entity satisfies this limb of the ES Test if in relation to the relevant activity:

- (i) the relevant entity's board of directors, as a whole, has the appropriate knowledge and expertise to discharge its duties as a board of directors in relation to the relevant activity;
- (ii) meetings of the board of directors are held in the Islands at adequate frequencies given the level of decision making required in relation to the relevant activity;
- (iii) during a meeting of the board of directors described in paragraph (ii), there is a quorum of directors present in the Islands;

- (iv) the minutes of the meetings of the board of directors described in paragraph (ii) record the making of strategic decisions of the relevant entity at the meeting; and
- (v) the minutes of all meetings of the board of directors and appropriate records of the relevant entity are kept in the Islands.

(c) having regard to the level of relevant income derived from the relevant activity carried out in the Islands (i) has an adequate amount of operating expenditure incurred in the Islands; (ii) has an adequate physical presence (including maintaining a place of business or plant, property and equipment) in the Islands; and (iii) has an adequate number of full-time employees or other personnel with appropriate qualifications in the Islands.

What is adequate or appropriate for each relevant entity will depend on the particular facts of the relevant entity and its business activity. A relevant entity will have to ensure that it maintains and retains appropriate records to demonstrate the adequacy and appropriateness of the resources utilized and expenditures incurred.

Source: Cayman Islands Economic Substance Guidance Notes v3.1, page 16

Relevant Activity – “insurance business”

An entity engages in ‘insurance business’ where it is in the business of accepting risks by effecting or carrying out contracts of insurance, whether directly or indirectly, and includes running-off business including the settlement of claims.

CIGA for Insurance Business

CIGA with respect to every type of relevant activity means activities that are of central importance to a relevant entity in terms of generating relevant income and must be carried on in the Islands.

In relation to insurance business, CIGA includes -

(a) Predicting or calculating risk or oversight of prediction or calculation of risk

Predicting or calculating risk includes oversight of the determination of the quantification and likelihood of the insured event occurring and the likely costs, and ensuring that the premiums charged are commensurate with the risks accepted.

Some examples could include:

1. Preparation of risk assessments and underwriting submissions
2. Approval of loss runs, management of claims, and reports on losses and claims
3. Preparation of actuarial funding and loss picks
4. Rate setting for life or annuity contracts

(b) Insuring or re-insuring against risk

An example could include analysis and agreement of underwriting submissions, insurance policy(ies), reimbursement agreements, reinsurance agreements and/or other similar contracts, such as commutations, novation, and loss portfolio transfers.

(c) Preparing reports or returns, or both to investors or CIMA

Some examples could include:

1. Preparation of regulatory filings to CIMA under the Insurance Act
2. Preparation of financial statements
3. Preparation of manager reports and executive summaries issued to investors

Source: Cayman Islands Economic Substance Guidance Notes v3.1, pages 71-72

Economic Substance Reporting

Entities that are in-scope under the ES Act (i.e. ‘relevant entities’ conducting ‘relevant activities’) will be required to report certain information on their relevant activities in the Cayman Islands, in particular the extent to which core income generating activities are being conducted in the Cayman Islands, on an annual basis to the [Tax Information Authority](#).

An ES Return must be submitted each year within twelve months of the relevant entity’s financial year end. Together with the ES Return, the entity will be required to upload appropriate documents (i.e. financial statements or books of account) that give a true and fair view of the state of the entity’s affairs and to explain its transactions.

Source: Cayman Islands Economic Substance Guidance Notes v3.1, page 28

Contact your Campbells attorney or regulation@campbellslegal.com if you have questions about Economic Substance Reporting.

For more information about Relevant Activity, CIGA, the ES Test and Economic Substance Reporting, please review the *Cayman Islands Economic Substance Guidance Notes v3.1* and additional DITC-issued Resources available [here](#).

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