



Bermuda Captive Owners Association Member Forum

Legislative Developments in Bermuda

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Overview

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2. Bye-law filings
3. Proposed changes to the regulation of Insurance Brokers and Insurance Agents
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5. INTEGRA[®] Portal
6. Beneficial Ownership Register
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Privacy and Data Protection Update: *Personal Information Protection Act 2016 (“PIPA”)*

- 1. What does PIPA do:** PIPA sets out how organisations, businesses and the Bermuda government may use personal information and emphasises meeting international best practices while promoting Bermuda’s economic interests, regulatory regime and unique characteristics.
- 2. Seven Principles:**

PIPA requires organisations to:

 - Ensure sufficient security safeguards are in place to protect personal information;
 - Use personal information in a lawful and fair manner;
 - Ensure personal information used is accurate and up to date for the purposes of use;
 - Not keep personal information for longer than is necessary;
 - Provide individuals with privacy notices containing information about practices and policies;
 - Use personal information only for the specific purpose stated in the privacy notes;
 - Appoint a privacy officer to ensure compliance.
- 3. Fundamentals:** PIPA applies to every organization in Bermuda that uses personal information.



Privacy and Data Protection Update: *EU General Data Protection Regulations (“EU GDPR”)*

- 1. What the EU GDPR does:** The EU GDPR is designed to harmonise data privacy laws across Europe, protect and empower all EU citizens’ data privacy and reshape the way organisations across the region approach data privacy.
- 2. How does EU GDPR Apply outside of the EU:** The EU GDPR applies to all companies processing and holding the personal data of data subjects residing in the EU, regardless of the company’s physical location.
- 3. Key provisions of the EU GDPR:** Consent and Data Subject Rights



Bye-law Filings:

1. New legislation has been enacted which requires all Bermuda companies with share capital to file (on a non-public basis) limited provisions of their bye-laws with the Bermuda Registrar of Companies (the “RoC”).
2. Section 13(2A) of the Companies Act 1981, as amended, (the “Companies Act”) requires Bermuda companies with a share capital to file the following limited sections of their bye-laws with the RoC:
 1. the transfer of shares and the registration of estate representatives of deceased shareholders;
 2. the duties of the secretary to the company; and
 3. the number of members required to constitute a quorum at any general meeting of the members of the company.

Proposed Changes to the Regulation of Insurance Brokers and Insurance Agents

1. Insurance brokers and insurance agents have historically been lightly regulated
2. The Bermuda Monetary Authority (the “BMA”) has proposed more vigorous regulation in line with the standards set out by the International Association of Insurance Supervisors

A. Insurance Brokers and Insurance Agents’ Code of Conduct (the “Proposed Code”):

- Proposed Code establishes the duties, requirements and standards to be complied with by all insurance brokers and insurance agents
- Deadline for compliance 30 June 2019
- Principle of proportionality applies to the Proposed Code
- Proposed Code requires appropriate standards of corporate governance
- Insurance Brokers and Insurance Agents must not bring the reputation into disrepute

Proposed Changes to the Regulation of Insurance Brokers and Insurance Agents, cont'd...

B. Amendments to the Insurance Act 1978, as amended

- Bill entitled “The Insurance Amendment Act 2018” (the “Insurance Act Amendments”) is proposed to come into force on 1 January 2019
- The Insurance Act Amendments reinforce the guidelines set out in the Proposed Code and extends prudential standards to Insurance Brokers and Insurance Agents

C. The Insurance (Prudential Standards) (Insurance Brokers and Agents) Rules 2018 (the “Prudential Rules)

- Sets out prudential standards applicable to Insurance Brokers and Insurance Agents
- Rules are substantially similar to existing rules applicable to Insurance Managers registered under the Insurance Act
- The Prudential Rules require that Insurance Brokers and Insurance Agents, annually file:
 - a return accompanied by a copy of the Insurance Broker or Insurance Agent’s;
 - management accounts for the financial year; and
 - a business plan for the next financial year;
 - a declaration signed by two directors of the Insurance Broker or Insurance Agent confirming that to the best of their knowledge and belief the information in the annual return is fair and accurate.



Section 19 of the Insurance Act

1. Section 19(1) of the Insurance Act 1978 and its related regulations (the “Insurance Act”)
 - Prohibits the entry into of non-insurance business by commercial insurance companies
 - Amendments to the Insurance Act propose to extend this restriction to the captive insurance classes
2. Section 19(2) of the Insurance Act:
 - S19(1) is subject to an enabling provision in section 19(2) that “an insurer may engage in non-insurance business where such business is ancillary to the insurance business carried on by the insurer
3. As a result of proposed changes introduced in the Proceeds of Crime (Miscellaneous) (No 2) Act 2018, the above prohibition will apply (as of January 1 2019) to all insurers



Launch of new INTEGRA[®] Portal

1. The Bermuda Monetary Authority (the “BMA”) has replaced its Corporate Registration Processing (CRP) system (originally introduced in 2009) with INTEGRA[®], an integrated web-based portal for corporate registrations, applications and e-filings
2. INTEGRA[®] rolled out to keep up to speed with global technological standards
3. INTEGRA[®] is single portal for electronic filings to streamline and consolidate the filing of mandated information
4. Only licensed Corporate Service Providers (CSPs) and self-filers can submit over the INTEGRA[®] portal
5. CSPs to comply with BMA “Data Call” by entering for all companies information on any owners and ultimate owners holding 10% or greater ownership interest in the company prior to 15 December 2018



Beneficial Ownership Register

1. New legislation enacted on 23 March 2018 with the purpose of enabling Bermuda to meet international standards with respect to the accessibility of beneficial ownership information.
2. Deadline extended to 15 December 2018 for Bermuda entities to comply with the new requirements.
3. The new legislation codifies existing practice requiring Bermuda entities to file a register of beneficial ownership information with the BMA
4. The Register will not be public, but must be filed with the BMA and kept at the registered office of the Bermuda entity for inspection by the ROC



Beneficial Ownership Register cont'd...

5. **Beneficial Owner** – any individual owning or controlling more than 25% of the shares, voting rights or interest in the Bermuda entity through direct or indirect ownership
6. **Beneficial Ownership Register** – details of the beneficial owners include their full name and address, (for individuals) nationality, date of birth, (for corporate entities) place of registration and form of legal entity
7. Regulated “financial institutions” which includes insurance companies/captives and insurance managers, brokers and agents are exempt
8. Substantial civil and criminal penalties for non-compliance, fines ranging from \$5,000 for failure to comply to \$50,000 for knowingly providing false information



Proposed New Companies (Economic Substance) Regulations

1. Proposed new legislation will require every exempted company to maintain a substantial economic presence in Bermuda
2. Helpfully, insurers carrying on insurance activities are not subject to any new requirements
3. Rather, a company engaged in insurance activities will comply with the substance requirements as long as it complies with:
 1. Corporate governance requirements set in the Companies Act; and
 2. Applicable requirements set in the Insurance Act



Questions?

