

THE INSURANCE AND
REINSURANCE
LAW REVIEW

NINTH EDITION

Editor
Peter Rogan

THE LAWREVIEWS

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PREFACE

It is hard to overstate the importance of insurance in personal and commercial life. It is the key means by which individuals and businesses are able to reduce the financial impact of a risk occurring. Reinsurance is equally significant: it protects insurers against very large claims and helps to obtain an international spread of risk. Insurance and reinsurance play an important role in the world economy. It is an increasingly global industry, with emerging markets in Asia and Latin America developing apace.

Given the expanding reach of the industry, there is a need for a source of reference that analyses recent developments in the key jurisdictions on a comparative basis. This volume, to which leading insurance and reinsurance practitioners around the world have made valuable contributions, seeks to fulfil that need. I would like to thank all the contributors for their work in compiling this volume.

One of the defining features of 2020 has been the covid-19 pandemic, which has inflicted terrible human misery around the world. The insurance industry, like most other aspects of the economy, has been badly impacted by the pandemic. Although the financial loss to the industry seems likely to be manageable, it has undoubtedly raised issues about the suitability of a range of policy wordings for the modern commercial environment, while also raising a range of legal issues related to, for example, causation and the quantification of loss. The different jurisdictions represented in this book will have different responses to these developments so it is vital to hear from the lawyers in each of those countries on the factors that will govern the international response.

The year 2020 looks likely to have been a very bad year for insured losses from natural catastrophes, with record numbers of severe windstorms and wildfires. These losses reinforce the continuing concern that climate change will see a long-term increase in the number and severity of such losses. From a legal perspective, the changing nature of natural catastrophes will raise issues of policy construction in relation to, for example, aggregation clauses and the obligation on reinsurers to follow their insured's underlying settlements.

The past year also saw no respite in the number or scale of cyber events, including the data breaches at MGM Resorts and California University and global organisations such as the World Health Organization. Events such as these test not only insurers and reinsurers, but also the rigour of the law. Insurance and reinsurance disputes provide a never-ending array of complex legal issues and new points for the courts and arbitral tribunals to consider. Aggregation will also be an area of uncertainty in relation to the treatment of all losses of this kind, and again different jurisdictions are likely to provide different responses.

Most recently, the courts in England and Wales have held that cryptocurrencies such as bitcoin are 'property' for legal purposes.

Looking ahead, 2021 is likely to see new developments and new legal issues. In particular, the impact of insurtech on the way in which insurance is underwritten, serviced and distributed will continue to present challenges around the world. This is reflected in our chapter on artificial intelligence.

I hope that you find this volume of use in seeking to understand today's legal challenges, and I would like to thank once again all the contributors. Finally, I would like to thank Simon Cooper, a consultant at Ince and a colleague of many years, for his huge contribution to finalising this ninth edition of *The Insurance and Reinsurance Law Review*.

Peter Rogan

Ince

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CAYMAN ISLANDS

*John Dykstra and Abraham Thoppil*¹

I INTRODUCTION

The insurance market in the Cayman Islands is divided into domestic business, captive insurance, special purpose vehicle (SPV) insurance and commercial reinsurance.

Domestic business is conducted primarily by companies incorporated in the Cayman Islands, although a number of approved external insurers are also permitted to write insurance (e.g., Lloyd's of London). Some external insurers have manned offices in the Cayman Islands while others operate through local agents.

Captive insurance business may be taken to be all insurance (and reinsurance) business where the premiums originate from the insurer's related business. The captive market began to develop in the late 1970s and there has been a steady natural growth since then. As at 31 December 2020, the Cayman Islands international insurance market reported total premiums of US\$20.87 billion, with US\$70.75 billion in total assets.² The Cayman Islands is the leading jurisdiction for healthcare captives, representing almost one-third of all captives. Medical malpractice liability continues to be the largest primary line of business in the Cayman Islands with approximately 24 per cent of companies insuring and reinsuring medical malpractice liability.³ The other significant class for captives is workers' compensation coverage, which is the second-largest primary line of business in the Cayman Islands with 22 per cent of companies assuming this risk.⁴

SPV insurance is driven principally by the insurance-linked securities market, in particular, the catastrophe bond market. Cayman is a leading market for the formation and licensing of SPV insurers.

The commercial reinsurance market is an area seeing interest and growth with a number of reinsurers setting up physical presence in the Cayman Islands.

1 John Dykstra and Abraham Thoppil are partners at Maples and Calder, the Maples Group's law firm. The authors would like to thank Mac Imrie for his assistance with the section on dispute resolution.

2 Insurance statistics and regulated entities as maintained by the Cayman Islands Monetary Authority.

3 *ibid.*

4 *ibid.*

II REGULATION

The body responsible for regulating the insurance and reinsurance business in the Cayman Islands is the Cayman Islands Monetary Authority (the Authority). The Insurance Division of the Authority discharges those responsibilities. The Authority operates independently of the government and meets international standards of supervision, accountability and transparency.

The Insurance Act was first enacted in the Cayman Islands in 1979. Since then it has been updated periodically to ensure that the jurisdiction maintains a strong regulatory framework. At the end of 2012, the Insurance Act 2010 (as amended) (the Act) came into force, bringing a new insurance regulatory regime into effect. The new regime provides for greater regulatory transparency for existing and prospective licensees and streamlines the regulation of licensed entities.

There are currently no proposals to achieve Solvency II equivalence for the Cayman Islands regulatory regime.

i Insurance licensing

All persons carrying on or wishing to carry on insurance business, reinsurance business or business as an insurance agent, insurance broker or insurance manager in or from within the Cayman Islands need to be licensed by the Authority. Insurers are licensed under one or more of the following categories:

- a* Class A – for the carrying on of domestic business or limited reinsurance business as approved by the Authority;
- b* Class B – for the carrying on of insurance business other than domestic business (however, a Class B insurer may carry on domestic business where such business forms less than 5 per cent of net premiums written or where the Authority has otherwise granted approval). Class B insurers are further categorised based on net premiums written, where:
 - Class B(i) – at least 95 per cent of the net premiums written will originate from the insurer's related business;⁵
 - Class B(ii) – over 50 per cent of the net premiums written will originate from the insurer's related business; or
 - Class B(iii) – 50 per cent or less of the net premiums written will originate from the insurer's related business;
- c* Class C – 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 these funding sources that include the issuance of bonds or other instruments, contracts for differences and such other funding mechanisms as are approved by the Authority. Typically licensees of this kind would be 'cat-bond insurers' or 'special purpose insurers'; and
- d* Class D – for the carrying on of reinsurance business and such other business as may be approved in respect of any individual licence by the Authority.

5 'Related business' is defined under the Act as business that originates from the insurer's members or the members of any group with which it is related through common ownership or a common risk management plan or as determined by the Authority.

Agents, brokers and managers are required to be licensed as follows:

- a* 'insurance agent' licence, for the soliciting of domestic business on behalf of not more than one general insurer and one long-term insurer;
- b* 'insurance broker' licence, for arranging or procuring, directly or through representatives, insurance or reinsurance contracts or the continuance of such contracts on behalf of existing or prospective policyholders; and
- c* 'insurance manager' licence, for providing insurance expertise to or for Class B or Class C insurers.

ii Organisation of licensees

Except for domestic business, where external insurers are permitted, only an entity incorporated under the Companies Act (2020 Revision) of the Cayman Islands (the Companies Act) or registered by way of continuation and that has a minimum of two directors (who have been approved by the Authority to be fit and proper persons) may be granted a licence by the Authority.

An insurance broker, an insurance manager, a Class A insurer or a Class D insurer is required to have a place of business in the Cayman Islands while a Class B insurer or a Class C insurer (unless it maintains permanently a place of business approved by the Authority) is required to appoint an insurance manager in the Cayman Islands that has been licensed by the Authority and maintain, at the insurance manager's place of business (or at another location approved by the Authority), full and proper records of the business activities of the Class B insurer or Class C insurer.

iii Licensing requirements

Every licensee is required to carry on insurance business in accordance with its approved licence application and business plan submitted to the Authority (as modified by any subsequent changes as approved in writing by the Authority). To satisfy the Authority's licensing requirements, an applicant is required to ensure that:

- a* the persons carrying on the business to which the application relates are fit and proper to be directors, managers or officers in their respective positions;
- b* it is able to comply with the Act and the Anti-Money Laundering Regulations 2020 of the Cayman Islands;
- c* the grant of a licence will not be against the public interest of the Cayman Islands;
- d* it has personnel with the necessary skills, knowledge and experience and such facilities and such books and records as the Authority considers appropriate, having regard to the nature and scale of the business;
- e* the structure of its insurance group, if any, will not hinder effective supervision; and
- f* its capital complies with the prescribed level.

iv Capital and solvency requirements

Every applicant for an insurer's licence needs to comply with the prescribed capital and solvency requirements. The prescribed capital and solvency requirements for each category of licence are set out in the relevant insurance regulations.

v Segregated portfolio companies

Since 1998, the Companies Act has provided for the formation of segregated portfolio companies (SPCs). An SPC is a single legal entity divided into an unlimited number of portfolios, the assets and liabilities of which are legally segregated from each other. The potential uses are varied and include rent-a-captives, life insurance, reinsurance and composite insurers. An insurer that is not a Class D insurer and not a Class B insurer incorporated as an SPC must be separately licensed for long-term and for general business.

In this context, general business is all insurance business other than ‘long-term business’, which means insurance business involving the making of contracts of insurance:

- a* on human life or contracts to pay annuities on human life, including linked policies, but excluding contracts for credit life insurance and term life insurance other than convertible and renewable term life contracts;
- b* against risks of the persons insured:
 - sustaining injury as the result of an accident or of an accident of a specified class;
 - dying as the result of an accident or of an accident of a specified class;
 - becoming incapacitated in consequence of disease or diseases of a specified class; or
 - being contracts that are expressed to be in effect for not less than five years or without limit of time and either are not expressed to be terminable by the insurer before the expiry of five years from the taking effect thereof or are expressed to be so terminable before the expiry of that period only in special circumstances therein mentioned; and
- c* whether by bonds, endowment certificates or otherwise whereby in return for one or more premiums paid to the insurer a sum or series of sums is to become payable to the person insured in the future, not being contracts falling within points (a) or (b).

vi Portfolio insurance companies

The relevant provisions of the Act allowing SPCs to register subsidiary companies as portfolio insurance companies (PICs) with the Authority came into force on 16 January 2015. A PIC may be able to write insurance business without the need for a separate insurance licence, provided its SPC parent is licensed. The principal aim of PICs is to provide SPCs with a mechanism that facilitates risk-sharing arrangements between portfolios. The introduction of PICs therefore provides a means by which SPCs can transact insurance business between segregated portfolios. PICs also facilitate the incubation of smaller captives, which might wish, at a later stage, to spin off as stand-alone captives.

PICs have the express power to contract with the parent SPC, any segregated portfolio of the parent SPC and any other PIC related to the parent SPC. This is of particular importance as it now allows for segregated portfolios within the SPC structure to participate in different portfolio insurance strategies. Each PIC is a separate legal entity from the SPC and any other PIC. This facilitates the drafting of legal documentation as each entity is a distinct legal person, which in turn streamlines compliance with the requirements of the Companies Act.

The Act also provides an option for the automatic novation and vesting with the PIC of all assets and liabilities of a segregated portfolio either at the time of registration of the PIC with the Authority or within 30 days of registration – all of which makes it easy for existing SPC insurers to incorporate a PIC and to move the insurance business from a segregated portfolio to a PIC.

A captive can be established on an SPC platform using a PIC and, as and when the programme grows to the point of justifying its existence on a stand-alone basis, the PIC can simply be spun-off from the SPC and apply for its own insurance licence.

vii Share issuances and transfers

A licensee cannot issue shares totalling more than 10 per cent of its authorised share capital without the prior approval of the Authority. In addition, a licensee cannot transfer shares totalling more than 10 per cent of the issued share capital, or total voting rights, without the prior approval of the Authority.

viii Annual requirements

Every insurer is required to pay the prescribed annual fee on or before 15 January every year after the first grant of its insurance licence. A licensee who fails to pay the prescribed annual fee on time may be subject to penalty fees.

Every licensee is required to comply with continuing requirements under the Act. As such, all licensees are required to appoint auditors approved by the Authority. In addition, and subject to certain exceptions, all insurers are required to submit by way of annual return to the Authority: audited financial statements; an actuarial valuation of their assets and liabilities; a certification of solvency; written confirmation that the information set out in the application for the licence (including the business plan), as modified by any subsequent changes approved by the Authority, remains correct; and such other information as may be prescribed by the Authority.

ix The position of unlicensed insurers

An unlicensed insurer carrying on insurance business in the Cayman Islands would be guilty of an offence and liable on summary conviction to a fine of CI\$100,000 or to imprisonment for five years, or to both.⁶ In the case of domestic business, insurance brokers can be permitted by the Authority to place limited amounts of this business with unlicensed foreign insurers. Accordingly, an unlicensed insurer with whom a broker can place insurance business pursuant to any such dispensation would not be considered as carrying on insurance business.⁷

For the purposes of the Act, a person would not be considered as carrying on insurance business solely by reason of the fact that the person effects or carries out a contract of reinsurance with an insurer in the Cayman Islands, unless that person's principal place of business is in the Cayman Islands.

x Intermediaries and the role of the broker

As noted above, the Authority may grant a special dispensation to an insurance broker to place a contract of domestic business with one or more insurers that are not licensed under the Act. These dispensations are granted on a case-by-case basis only and are subject to review at such intervals as the Authority may specify. An insurance broker who has not been granted a special dispensation shall be personally liable to the insured on all contracts of insurance placed with insurers not licensed under the Act in the same manner as if the insurance broker were the insurer.

6 Insurance Act 2010, Section 3(2).

7 Insurance Act 2010, Section 19(5).

In addition, an insurance broker is prohibited from entering into a binding authority with an insurer other than a Class D insurer.⁸ However, the Authority may grant a dispensation to an insurance broker for a fixed period (despite the duty of the insurance broker to act for the prospective insured) to enter into a binding authority with an insurer if it is satisfied that the insurance broker needs (in terms of additional capacity, policy coverage, cost savings or otherwise) the binding authority to be permitted. Such a dispensation granted by the Authority would be subject to any conditions that the Authority prescribes, including restrictions to lines of business, specific contracts, types of client and requirements for disclosure and review at such intervals as the Authority may specify.

Under the Act, an insurance broker shall maintain in force, and comply with the conditions of cover of, professional indemnity insurance placed with an insurer licensed to carry on domestic business (or an insurer accorded special dispensation by the Authority) and provide for an indemnity of not less than US\$1 million for any one loss, or another figure prescribed by the Authority. The professional indemnity insurance shall extend to include the activities conducted on behalf of the insurance broker and be subject to review by the Authority. In the event that the professional indemnity insurance is invalidated, becomes voidable or is withdrawn, cancelled or not renewed, the broker shall immediately notify the Authority and shall forthwith cease to solicit further insurance business until the professional indemnity insurance has been reinstated or replaced.⁹

III INSURANCE AND REINSURANCE LAW

i Sources of law

As noted in Section II, the Act came into force at the end of 2012 and governs insurance regulation in the Cayman Islands, including the authorisation and regulation of insurers, reinsurers, insurance managers, insurance brokers and insurance agents. While the Cayman Islands has its own body of case law, English case law is also of persuasive authority and may often be cited in court.

ii Making the contract

Parties

The insurance contract will normally be made between two parties: the insurer and the insured. Both parties may be carrying on insurance (or reinsurance) business as in the case of reinsurance or retrocession.

Insurable interest

There is no statutory requirement for insurable interest in Cayman Islands law, although English common law may be taken to imply a requirement for insurance interest in all types of indemnity insurance. In *Rowe v. Proprietors, Strata No. 83*¹⁰ the court ruled that a party has an insurable interest if it had a legal relationship with property that renders it liable to pay

8 Insurance Act 2010, Section 19(1).

9 Insurance Act 2010, Section 13(1)–(3).

10 (Grand Court), 2009 CILR N [31].

money in the event of it being damaged. In this case, the strata by-laws included a contractual obligation to keep the property insured and this was held to give the strata corporation an insurable interest.

Formation

Consistent with English common law, contracts under Cayman Islands law do not need to be in writing. In practice, policies are issued in writing and, for the purposes of regulatory policy, documentation must be available for inspection by the Authority and meet certain requirements.

Disclosure and misrepresentation

The general principles of English insurance common law regarding non-disclosure and misrepresentation have been followed in the Cayman Islands as demonstrated by the decisions of *Zeller v. British Caymanian Insurance Company Ltd*¹¹ and *McLaughlin v. American Home Assurance Company*.¹²

In *Zeller*, the Court of Appeal upheld the judgment, applying the English authority *Economides v. Commercial Union Assurance Co Plc*¹³ and ruled by a majority that the insurance policy was voidable for non-disclosure, confirming that as a contract in utmost good faith the appellant was under a duty to disclose all that a reasonable person would have considered material, being disclosure of all that he ought to have realised was material and not what he did, in fact, realise was material.

The decisions in *Zeller* were, however, overruled on appeal by the Judicial Committee of the Privy Council, thereby declaring that the respondent insurer's notice of cancellation of the appellant's health insurance cover was invalid and of no legal effect. The Privy Council concluded in the case that the basis of the contract was that the statements made by the appellant in the application form were true to the best of his knowledge and belief, which it considered to be consistent with the approach of the Court of Appeal of England and Wales in *Economides*.

The essence of the judgment was that, on the facts of the case, given the construction of the health questionnaire, the appellant was expected to exercise his judgement on what appeared to him to be worth disclosing. As a result, he did not lose cover after failing to disclose a complaint that he thought to be trivial but that later turned out to be a symptom of a much more serious underlying condition.

In *McLaughlin*, a case primarily concerning proof of arson and a fraudulent insurance claim, it was confirmed *obiter dicta*, pursuant to the English authority *Pan Atlantic Insurance Co Ltd v. Pine Top Insurance Co Ltd*,¹⁴ that for an insurer to be entitled to void a policy for misrepresentation or non-disclosure, not only does it have to be material, but in addition it has to have induced the making of the policy on the relevant terms. On the facts, it was ruled that a previous fire at the premises that had caused damage, but for which an insurance claim had not been made, was not material as it would not have induced the making of the contract on the relevant terms.

11 [2004–2005] CILR 464 (CA) and 283 (Grand Court), and [2008] CILR 11 (Privy Council).

12 [1994–1995] CILR N-18 and [1996] CILR N-6.

13 [1998] QB 587.

14 [1989] 1 Lloyd's Rep 568.

iii Interpreting the contract

English general principles of interpretation of contracts apply to insurance contracts in the Cayman Islands. In *Jackson v. Cayman Insurance Company Ltd*,¹⁵ the court followed the view of Lord Goddard CJ in the English case of *Edwards v. Griffiths*,¹⁶ where he ruled that a contract should be construed against the insurer where there is an ambiguity or a doubt as to its extent; if a question should arise as to liability of the insurer, the court should apply a construction most favourable to the insured.

There is no case law that has confirmed the distinction between types of conditions and warranties in insurance contracts and thus the English common law remains of persuasive authority. Jackson considered the interpretation of a condition in a motor policy, whereby the insurer sought to rely on a breach of a term of the policy to deny liability. It was ruled that the breach could only obviate liability of loss to third parties caused by negligence and not loss caused by breach of a statutory provision. There was, however, no discussion of the classification of the term that had been breached.¹⁷

IV DISPUTE RESOLUTION

i Jurisdiction, choice of law and arbitration clauses

As a British overseas territory, the Cayman Islands has a democratic system of government based upon the British Westminster model. Judicial independence in the Cayman Islands is protected by the Constitution, which is a cornerstone of the system of government.

Litigation is conducted on the adversarial system, based generally on English principles of civil procedure. Because of its status as a leading offshore financial centre, the Cayman Islands courts are accustomed to dealing with complex insurance disputes, often with significant cross-border aspects.

The most common alternative to litigation is arbitration. Large commercial contracts involving Cayman Islands entities tend to have arbitration clauses. The Cayman Islands courts play a supportive role to facilitate arbitration procedures and will generally recognise and enforce foreign arbitral awards made in any of the contracting states to the New York Convention under the terms of the Convention.

ii Litigation

Litigation stages

The Grand Court of the Cayman Islands (the Grand Court) is the superior court of record of first instance for the Cayman Islands. The caseload of the Grand Court is divided between five divisions: civil, family, admiralty, financial services and criminal.

Insurance actions, where the amount claimed exceeds CI\$1 million, are tried in the Financial Services Division. Every proceeding in the Financial Services Division is assigned to a commercial judge, that is, one of a number of commercially experienced judges including the Chief Justice. Commercial judges sit alone, without a jury. Where the assigned judge

15 [1994–1995] CILR 313 and N-19.

16 [1953] 2 All ER 874.

17 The decision actually focused on whether the policyholder was in compliance with the statutory provision as this was the requirement of the term. On the facts, the policyholder was found to be in breach of the law and therefore the term.

is unavailable, urgent applications may be heard or determined by another commercial judge. Visiting judges and senior lawyers from, in particular, England, Jamaica and Canada, sometimes sit as acting judges.

Appeals from the Grand Court are to the Cayman Islands Court of Appeal (which usually sits three times each year). The ultimate appellate court is the Privy Council in England.

Evidence

The issues in the litigation are defined by pleadings exchanged by the parties, including a statement of claim, a defence and (if necessary) a reply. The pleadings set out the parties' various factual allegations and, in the case of the plaintiff, the relief sought. All such allegations must be pleaded with a reasonable degree of particularity, to a level that is generally higher than what would be typical in the United States. At trial, the parties' arguments are limited to those matters set out in their pleadings.

Parties' discovery obligations are broad and extend to all documents that are relevant to matters in issue on the pleadings or that may reasonably lead to a train of enquiry. Certain classes of privilege apply, including, most significantly, legal professional privilege.

Depositions do not form part of the usual civil procedure. There is a mechanism known as 'discovery by oral examination', which is in some ways similar to a deposition. However, only parties may be examined in this way, not witnesses. Discovery by oral examination will only be ordered in exceptional or unusual circumstances.

Evidence at trial is usually given by way of oral testimony and cross-examination. Interlocutory matters are usually decided on affidavit evidence. The Court has wide-ranging interim powers, including the power to trace and preserve assets, order discovery or preservation of documents and appoint interim receivers.

Costs

The court will normally order that the unsuccessful party pay the successful party's costs of the litigation. The costs, which are recoverable on a typical costs order, are assessed on a 'standard' basis by reference to a set of prescribed rates. The prescribed rates are invariably lower than the actual cost of litigation and indicatively a party could expect to recover between around 50 per cent and 70 per cent of their actual costs. However, if the court takes the view that the losing party's conduct of the litigation has been particularly unreasonable, it may order that party to pay costs on an 'indemnity' basis; in that case, recovery is not limited to the prescribed rates.

iii Arbitration

The Arbitration Act 2012 of the Cayman Islands (the Arbitration Act) modernises the arbitration law of the Cayman Islands and brings it into line with the standards applicable in most of the world's leading arbitration centres. The Arbitration Act is based on the UNCITRAL Model Law, which has been adopted in a large number of countries, and on the Arbitration Act 1996, which applies in England, Wales and Northern Ireland and is similar to the UNCITRAL Model Law in many respects. In interpreting the Arbitration Act, the Cayman Islands courts have regard to the decisions of the courts of these countries where the provisions of the Arbitration Act are the same or substantially the same as those of the 1996 Act, which they are in many cases.

The Arbitration Act is founded on the following principles:

- a* the object of arbitration is to obtain the fair resolution of disputes by an impartial arbitral tribunal without undue delay or undue expense;
- b* the parties should be free to agree how their disputes will be resolved, subject only to such safeguards as are necessary in the public interest; and
- c* in matters governed by the Arbitration Act the court should not intervene except as provided in the Arbitration Act.

Arbitration agreement

An arbitration agreement may be in the form of an arbitration clause in a contract or a separate agreement. An arbitration agreement that forms, or was intended to form, part of another agreement is to be treated as distinct from that agreement. Thus, an arbitration clause may be valid and enforceable even though the insurance contract of which it forms part is found to be void.

Procedure and evidence

The parties of the insurance contract are free to tailor the procedures that are to be followed in the arbitration to meet their needs, subject to the mandatory provisions of the Arbitration Act.

In the absence of agreement by the parties as to the powers that may be exercised by the tribunal, the tribunal may make orders in relation to a variety of matters including: security for costs;¹⁸ disclosure of documents and interrogatories; the giving of evidence by affidavit; examination on oath or affirmation of a party or witness; and the preservation and interim custody of evidence for the purposes of the proceedings and property that forms part of the subject matter of the dispute.¹⁹

All directions given by the arbitral tribunal may, with the permission of the court, be enforceable in the same manner as if they were orders made by the court and, where such permission is given, judgment may be entered in the terms of the directions given by the tribunal.²⁰

Costs

Costs of the arbitration are generally at the discretion of the tribunal. If the tribunal does not make provision for costs in its award, any party may apply for a direction from the tribunal within 14 days of the delivery of the award or such further time as the tribunal allows. Costs will generally follow the event, such that the unsuccessful party will be ordered to pay the successful party's costs. Only the costs of attorneys admitted to practise in the Cayman Islands are recoverable and this includes the costs of foreign attorneys who have been granted limited admission to the Cayman Islands for the purpose of appearing or advising in proceedings.

18 Subject to the proviso in Section 38(4) that security is not to be required solely on the grounds that the claimant is an individual ordinarily resident outside the Cayman Islands or a company formed or with its central management outside the Cayman Islands.

19 Arbitration Act 2012, Section 38.

20 Arbitration Act 2012, Section 38(5).

iv Alternative dispute resolution

There is no formal requirement in the Cayman Islands to pursue alternative dispute resolution (ADR). The Grand Court Rules require parties to deal with each case in a just, expeditious and economical manner and judges encourage the parties to pursue ADR where appropriate. Although the court cannot compel the parties to use ADR, there will usually be costs consequences where the parties do not follow a suggestion to this effect. ADR methods such as mediation, early neutral evaluation and expert determination are still relatively uncommon in the Cayman Islands.

V YEAR IN REVIEW

In 2020, the Cayman Islands licensed 36 new captive insurers, which included a PIC and Class B, C and D insurers, and at year end had a total of 652 licensed captives. Medical malpractice liability continues to remain the primary line, followed by workers' compensation. SPV insurers are increasingly used by commercial reinsurers to access the capital markets to distribute reinsurance risk.

The Cayman Islands is also continuing to develop as an insurance and reinsurance domicile, as evidenced by the number of licences being pursued by reinsurance vehicles, as well as other direct write vehicles. As the leading domicile for private equity and hedge funds, the Cayman Islands is ideally placed to be the domicile for insurers and reinsurers affiliated with investment funds.

VI OUTLOOK AND CONCLUSIONS

An overhaul of the insurance regulatory regime has had a positive impact on the insurance and reinsurance industry. The government, working together with local service providers, is committed to facilitating industry growth. The efforts to date have yielded very positive results. In 2020, the Cayman Islands licensed 36 new captive insurers and at year end had a total of 652 Class B, C and D licensees. Medical malpractice liability continues to remain the primary line, followed by workers' compensation. The two main types of captives were pure captives and group captives. North America continues to be the main geographical source of business.

With a momentum driven by the new insurance regime and a renewed effort of the jurisdiction to market its position as a leading reinsurance domicile, it can be expected that other insurance products will also make increasing use of the Cayman Islands.

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