Out of the rabbit hole - Run-off insurance in Guernsey

Briefing Summary: The current hard insurance market has encouraged many new participants to enter the insurance business in the last few years. As a leading international insurance domicile, Guernsey has benefited. In 2021, 65 new insurance entities were licensed and it is expected that the figures for 2022 will be equally encouraging.

Service Area: Corporate, Insurance Law

Sector: Insurance

Location: Guernsey

Content Authors: Christopher Anderson

Created Date: 21 September 2022

Any dog owner whose hound has ever become stuck down a rabbit hole will appreciate the aphorism, "*Never get into anything you don't know how to get out of*". Like a rabbit hole, getting out of the insurance business tends to be less straightforward than getting in.

For that reason, specialist "run-off" carriers offer exit solutions to insurers who have ceased writing new business. Those run-off carriers may take on responsibility for policies written by those insurers or acquire the companies themselves, thereby taking responsibility for all of the business written by them.

Run-off is big business. PWC estimates that global run-off reserves are around US$864 billion[1]. Guernsey is home to a number of those run-off specialists[2] and its legislative framework offers a variety of tools to assist insurers towards the end of their lives.

Consolidation

With no new premium income coming in, the key to a successful run-off is managing outgoing cost. For that reason, it makes sense to rationalise acquired companies and lines of business into a single consolidated run-off insurance vehicle. Guernsey is an ideal location for that vehicle:

- Having never been a member of the European Union (EU), Guernsey insurers are not subject to the restrictive capital requirements of Solvency II;
- the Guernsey Financial Services Commission (GFSC) does not exercise group supervision over EU subsidiaries of a Guernsey licensed insurer;
- Guernsey's vibrant insurance industry make it a useful source of new business for run-off specialists.

Authorised By

Christopher Anderson

PARTNER, GUERNSEY

+44 (0)1481 741537

EMAIL CHRISTOPHER

In addition, it is straightforward to merge a newly acquired insurer into an existing consolidator vehicle in Guernsey. The amalgamation process merely requires:

- a resolution of the board of directors of both companies;
- 28 days written notice to creditors of both companies;
- declarations of compliance and solvency from the boards of both companies; and
- GFSC consent.

The process can usually be completed in around 3 months.

Cross border mergers

Guernsey's amalgamation legislation not only permits two Guernsey companies to merge with each other, it permits Guernsey companies to merge with overseas companies.

Using this process Carey Olsen have advised on mergers with French, Swiss, Luxembourg, Cayman, Bermuda and Vermont entities (among others).

This process can be used for life as well as general insurers. The amalgamated company succeeds by operation of law to all of the assets and liabilities of the target. Therefore, the merger does not constitute a transfer of insurance contracts and so can be a quicker and more cost-effective alternative to a court-approved long-term business transfer scheme (see below).

Purchase by mergers

Guernsey's amalgamation regime can also be used to effect an acquisition of a target company (in Guernsey or elsewhere) by merger.

This can be particularly useful where the target company is a captive insurer. A captive insures risks to which its shareholder is exposed. However, following the acquisition of the captive by the run-off vehicle, its shareholder will have changed and it will no longer be insuring its shareholder. This change can lead to an increase in the former captive's capital requirements and increased regulatory fees. Given run-off specialists' focus on cost minimisation, these increased costs are best avoided. However, structuring the acquisition as a merger under Guernsey's amalgamation regime avoids these additional costs because the target is directly absorbed into the existing run-off vehicle immediately upon acquisition.

Cell companies

Many licensed insurers operating in Guernsey are protected cells rather than standalone companies. While it is not possible to amalgamate a protected cell with a company directly, a protected cell may be converted into a company and then amalgamated, as above.

Portfolio transfers

Run-off transactions often involve the purchase of a book of business by the consolidated run-off vehicle rather than the purchase of shares in a company. These novations or portfolio transfers are commonplace in Guernsey and local service providers are experienced at documenting such transactions. GFSC consent is required although this rarely takes more than a couple of weeks.

Long term business transfer schemes

Like many other sophisticated financial services jurisdictions, the Guernsey court has power to order the transfer of a life insurance business from one insurance company to another. Very often these transfers involve companies operating in multiple jurisdictions. Carey Olsen has advised on a large number of these so-called Part VII transfers.

Schemes of arrangement

Guernsey Companies Law enables schemes of arrangement to be used to effect a large range of corporate restructures including reordering arrangements between a company and its policy holders, reinsurers, creditors and shareholders. Please see the following link to our experience in relation to schemes of arrangement.

1 PWC Global Insurance Run-off Survey 2021

2 DARAG and Randall & Quilter have operations in Guernsey. More recently Marco Capital have entered the jurisdiction through its high-profile acquisition of international rated re-insurer, Humboldt Re.