Guernsey insurance mergers and acquisitions (M&A)

Briefing Summary: Carey Olsen recently acted as lead legal advisor to Strategic Risk Solutions (SRS), on its acquisition of Guernsey and Gibraltar based Robus Group from The Ardonagh Group. SRS is the world's largest independent insurance company manager.

Service Area: Corporate, Insurance Law, Mergers and Acquisitions, Insurance Business and Intermediaries

Sector: Insurance

Location: Guernsey

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Our specialist insurance mergers and acquisitions (M&A) team have advised on a number of other high-profile insurance industry transactions, including:

- the sale of Humboldt Re by the Credit Suisse Pension Fund;
- the acquisition of Kelvin Re by Humboldt Re, and the subsequent merger to create Marco Re;
- the acquisition of Old Mutual Guernsey by Northstar Bermuda;
- the acquisition by Islands Insurance Group of Hepburns Insurance, including its operations in both Jersey and Guernsey;
- the acquisition of the business and assets of Ortac Underwriting, a Guernsey licensed insurance manage, by Davies Group.

Mergers, acquisitions and restructurings in the insurance sector often throw up unique challenges from a legal and regulatory perspective. Carey Olsen is widely recognised as being home to the leading M&A and insurance practices in Guernsey and is uniquely placed to provide astute legal advice on all facets of insurance industry transactions.

Competition/anti-trust

A proposed merger or acquisition requires the approval of the Guernsey Competition and Regulatory Authority (GCRA) if:

a) the combined turnover of all of the businesses involved exceeds £5 million in the Channel Islands; and

b) two or more of the businesses involved each have turnover in excess of £2 million in Guernsey.

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It is relatively easy for a Guernsey insurer to meet these thresholds. For other sectors, whether turnover arises in Guernsey or the Channel islands is determined by the location of the customer or the place revenue is actually received. For an insurer it is the place where gross written premiums are received – and a Guernsey insurer invariably receives gross written premium in Guernsey. In addition, care must be taken in determining what constitutes gross written premium - even insurance companies in run-off often trigger the thresholds.

Where a controlling stake in a protected cell company (PCC) insurer is being acquired, the gross written premium of ***each of the cells*** of that PCC (and not just core revenue) counts towards that threshold. Further, many local insurance managers own PCCs which contain risk-carrying cells. Therefore, the acquisition of even a relatively small insurer or insurance management company can easily exceed these thresholds.

The vast majority of Guernsey licensed insurers write international business, underwriting risks situated outside of the Island. The acquisition of such a company will have no impact on competition within Guernsey. Nonetheless, such transactions often require GCRA approval and the sanction for failing to obtain such approval is harsh. Where approval is required but not obtained, the transaction is void.

Where GCRA approval is required, there is a short form approval process available to financial and credit businesses. Under this process the GCRA promise to approve a transaction within 14 days. However, this short form process is not available to licensed insurers, which must utilise the standard (long form) application process. Although the GCRA will often respond to such an application within 4-6 weeks there is no guaranteed time frame. In addition, the fee for a long form application is £5,000 - £10,000 as opposed to £500 for a short form application.

Portfolio transfers

The transfer or novation of a book of business by a Guernsey insurer requires the approval of the Guernsey Financial Services Commission (GFSC). Where such a transfer is effected by a protected cell of a PCC, it may also be necessary to obtain a cell transfer order from the Royal Court of Guernsey. In practice, obtaining any necessary approvals is usually straightforward where the transfer is effected on commercial terms.

GFSC consent is also required for the transfer of a book of business by or to a Guernsey licensed intermediary (ie, a broker or agent). Carey Olsen has advised on a number of acquisitions of intermediary businesses – either as share or as asset purchases. The sale of the assets of a broking business is essentially a sale of client data and can therefore give rise to significant data protection issues.

Change of Control

Guernsey is a world leading captive insurance company domicile. According to a January 2024 report by Frontier Economics (The value of Guernsey financial services to the UK) - over 40% of FTSE 100 companies have a captive domiciled in Guernsey, as do many multinational groups based elsewhere. International corporate transactions involving the parent companies of those businesses, such as mergers, acquisitions, restructurings and refinancings can give rise to changes in the controllers of the captive subsidiary in Guernsey.

Under the Guernsey regulatory regime, changes to controllers and various categories of officeholder must not be implemented until the new controllers and officeholders have been notified to or approved by the GFSC (as applicable). Failure to do so is an offence and can lead to transactions being declared void.

The table below identifies the controllers and officeholders which are subject to those requirements. It is worth noting that the change of control regime applicable to insurers has recently changed and differs from other sectors of the financial services industry.

All Guernsey licensed insurers are required to appoint a general representative to act as the principal point of contact for communications with the GFSC. Most insurers appoint a local, licensed insurance manager to manage the day-to-day business of the insurer and that manager usually also acts as general representative.

The general representative will usually be eager to understand any potential changes in the controllers of the insurer to which it is appointed, to ensure that it complies with its own statutory responsibilities. Accordingly, liaison with the general representative at the earliest opportunity is advisable – subject of course to any public disclosure restrictions.

	Notified	Vetted*	Approved*
Insurer	Significant Shareholder Auditor Company Secretary	MLRO MLCO CO Actuary Manager	General Representative Director Controller Partner/General Partner
Insurance Manager & Intermediary	Significant Shareholder Auditor Authorised Insurance Representative/Manager	Director Controller Partner/General Partner MLRO MLCO CO	None specified
POI Law	Significant Shareholder Manager Company Secretary	Directors Controllers GP, Partner MLRO MLCO CO	None
Fiduciaries Law	Significant Shareholder Manager Company Secretary	None specified	Director Controller Partner/General Partner MLRO MLCO CO

* The only difference between vetted and approved categories is that vetted applications are deemed approved after 60 days.