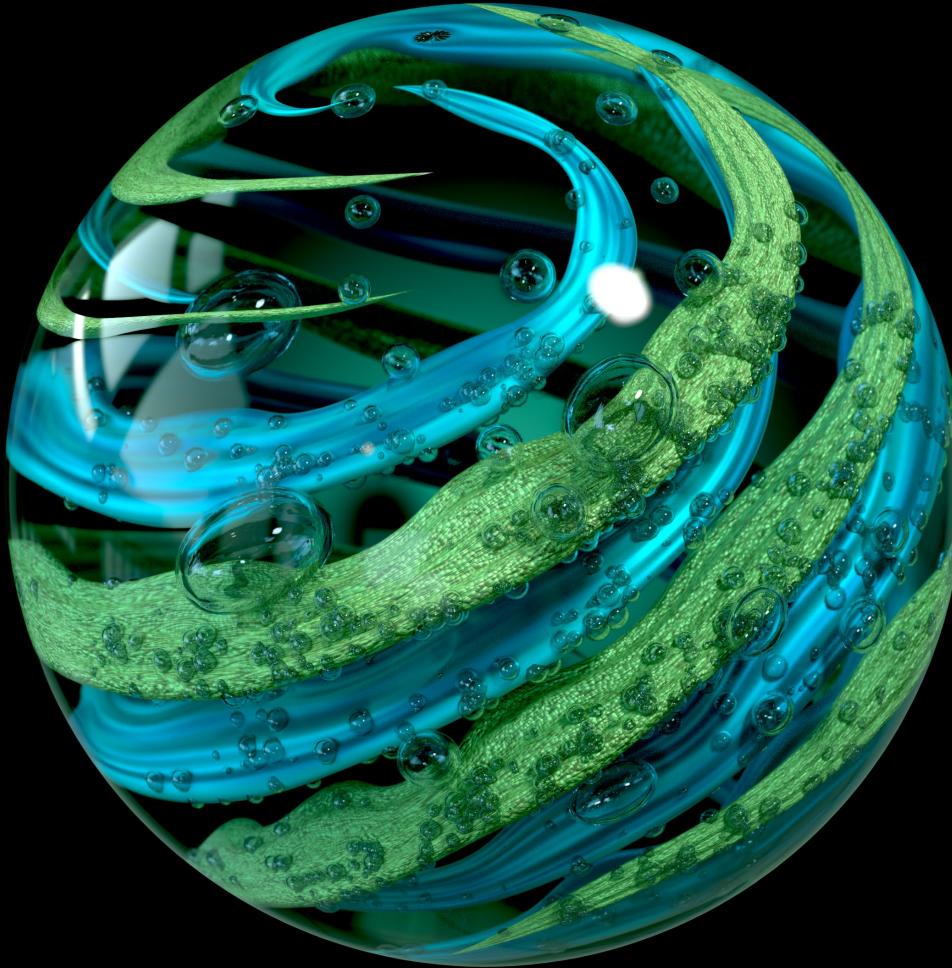


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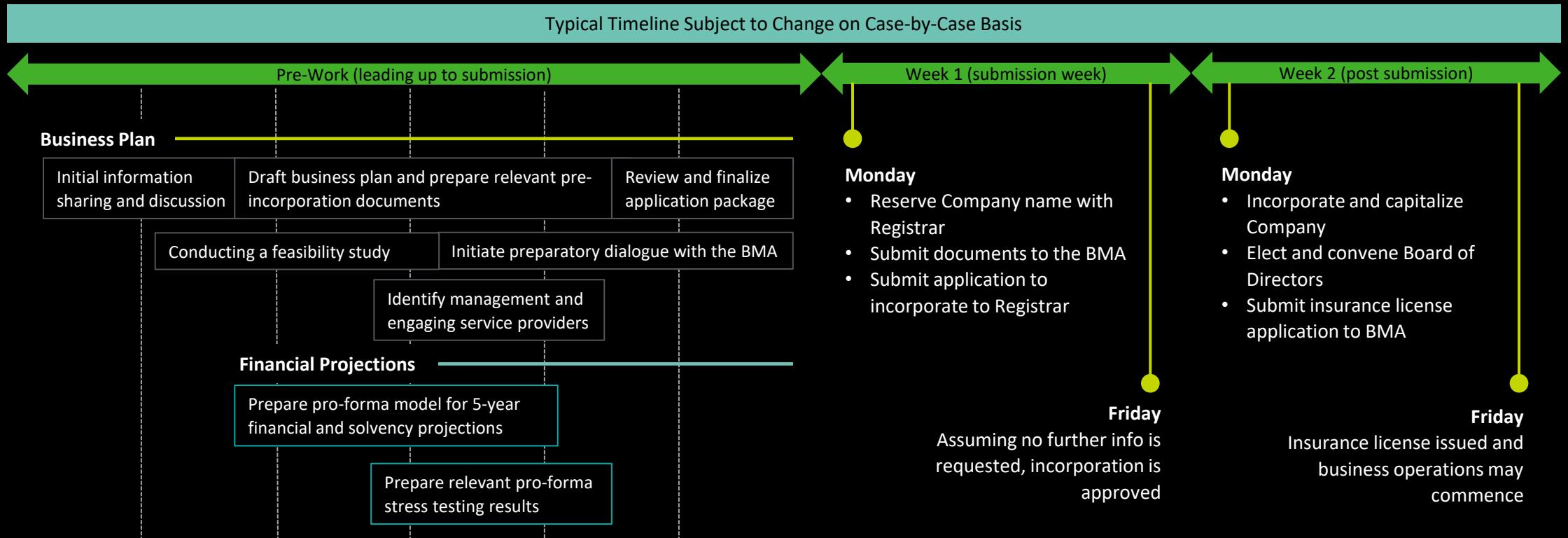


Captive Insurance in Bermuda

FEBRUARY 2024

MAKING AN
IMPACT THAT
MATTERS
since 1845

Setting up a Captive in Bermuda



Deloitte Bermuda Service Offering

- Deloitte Bermuda has both the deep knowledge and practical experience of setting up captives in Bermuda. We understand the Bermuda market and can provide answers to key stakeholder questions.
- Deloitte Bermuda can assist clients with the above pre-work leading up to the submission, including business plan drafting and financial projection support.
- In addition to providing support in the incorporation and licensing of new captives, Deloitte Bermuda can provide the following professional services once the captive is setup: advisor, auditor, and approved actuary/LRSO.

Advantages of Domiciling in Bermuda

- Bermuda has a short lead-time to establish a captive. A company can generally be registered in the same week an application is submitted. Following this, the BMA's Insurance Licensing and Authorization Committee (ILAC) will meet weekly to approve license applications.
- Further, Bermuda has a strong reputation as a robust financial center and has been the premier domicile for captive programs since its inception. Importantly, domiciling in Bermuda enables access to a deep pool of reinsurance capital that may be more difficult to access from alternate jurisdictions.

Frequently Asked Questions

Q. *What is the difference between Captives, Limited Purpose Insurers (LPIs), and Commercial insurers?*

A. Under the BMA two tier regime, LPIs are specialized insurance companies that underwrite a limited range of risks for a specific purpose or project. In contrast, commercial insurers provide a range of insurance products and services to businesses and individuals. The term “captive” is used when the business is all or mostly affiliate business. See table below for a breakdown of the BMA licensing classes.

Q. *Which license class in the BMA multi-license system of regulation is right for me?*

A. This will depend on the purpose and vision of the insurance company to be setup, including the percentage of premium written from unrelated business. See table below for a breakdown by class.

	Limited Purpose Insurers (Captives)			Commercial Insurers	
Business	Class	Description	Class	Description	
General Insurance (P&C)	1	100% - Only the risks of the owners of the insurance company and affiliates of the owners.	Class 3A	50% or more of net premiums written or net loss and loss expense provisions and where the unrelated business net premiums are less than \$50 million.	
	2	No more than 20% of net premiums from risks that are not related to the business of the owners and affiliates.	Class 3B	50% or more of net premiums written or net loss and loss expense provisions and where the unrelated business net premiums are more than \$50 million.	
	3	Over 20% but less than 50% of net premiums written is from risks that are unrelated to the business of the owners.	Class 4	Excess liability insurance and/or property catastrophe reinsurance risks.	
Long-term Insurance (Life & Annuity)	A	100% - only the long-term business risks of the owners of the insurance company and affiliates of the owners.	Class C	Long-term insurers and reinsurers with total assets of less than \$250 million.	
	B	No more than 20% of net premiums from risks that are not related to the business of the owners and affiliates (long-term).	Class D	Long-term insurers and reinsurers with total assets of \$250 million or more, but less than \$500 million.	
			Class E	Long-term insurers and reinsurers with total assets of more than \$500 million.	

Frequently Asked Questions

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Q. Should I make an irrevocable 953(d) tax election?

A. Section 953(d) of the U.S. Internal Revenue Code (IRC) allows a U.S. owned captive engaged in the insurance business to elect to be treated as a U.S. corporation for U.S. tax purposes. Should this election be made, the captive will be subject to tax in the United States on its worldwide income but will not generally be subject to the branch profits tax or federal excise tax which may be applicable to foreign captives with U.S. ownership. A 953(d) election may be beneficial for captives with U.S. ownership who would otherwise be treated as a foreign corporation for U.S. tax purposes and be subject to various U.S. international tax provisions.

Should a 953(d) tax election be made, the entity may also be deemed compliant with the economic substance (“ES”) requirements a tax resident of the U.S.

Q. What are the economic substance requirements?

A. The Economic Substance Act, 2018 (“Bermuda ESA”) requires certain entities conducting one or more ‘relevant activities’ to comply with the ES requirements prescribed by the legislation, unless the entity is tax resident outside of Bermuda. Relevant activities are further defined within the Bermuda ESA, and include banking and insurance amongst other industries. An Entity will be carrying on the Relevant Activity of “insurance” if it engages in insurance business in accordance with the Insurance Act. Insurance intermediaries, including insurance agents, managers and brokers which are required to be licensed under the Insurance Act, but which do not carry on insurance business, will not be carrying on the Relevant Activity of insurance.

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ES Requirements to be met if an entity is deemed to be carrying on insurance as a relevant activity:

- The entity must be managed and directed in Bermuda;
- The core income generating activities (CIGA) must be undertaken in Bermuda with respect to the relevant activity
- The entity must maintain adequate physical presence in Bermuda;
- There must be adequate full-time employees in Bermuda with suitable qualifications; and
- There must be adequate operating expenditure incurred in Bermuda in relation to the relevant activity.

CIGA related to insurance include:

- Predicting and calculating risk; includes management of the quantification and the determination of the likelihood of the insured event occurring and the likely costs, and ensuring that the premiums charged are commensurate with the risks accepted
- Insuring or reinsurance against risk; involves carrying on insurance business in accordance with the Insurance Act
- Providing client services; includes the commissioning of client services relevant to insurance business and ensuring the management of systems and processes put in place for the provision of such services
- Preparing regulatory reports; includes ensuring that the systems and processes are in place to ensure that the Entity is able timeously and accurately to convey the regulatory position of the Entity at any time

Frequently Asked Questions

Q. *What are my annual filing requirements?*

A. Annually, six months after financial year end, LPs are required to file Electronic Statutory Financial Return (E-SFR). This includes: Company Information Form, Statement of Control Form, Statutory Financial Statements (audited), Auditors Report, LRSO/Actuarial Certificate (if required), Alternative Capital Schedule (General Business), Anti-Money Laundering Return (Long Term Business), Own Risk Assessment, Schedule I – Underwriting Analysis, Schedule II – Segregated Accounts (if applicable), Solvency Page, and Annual Statutory Declaration.

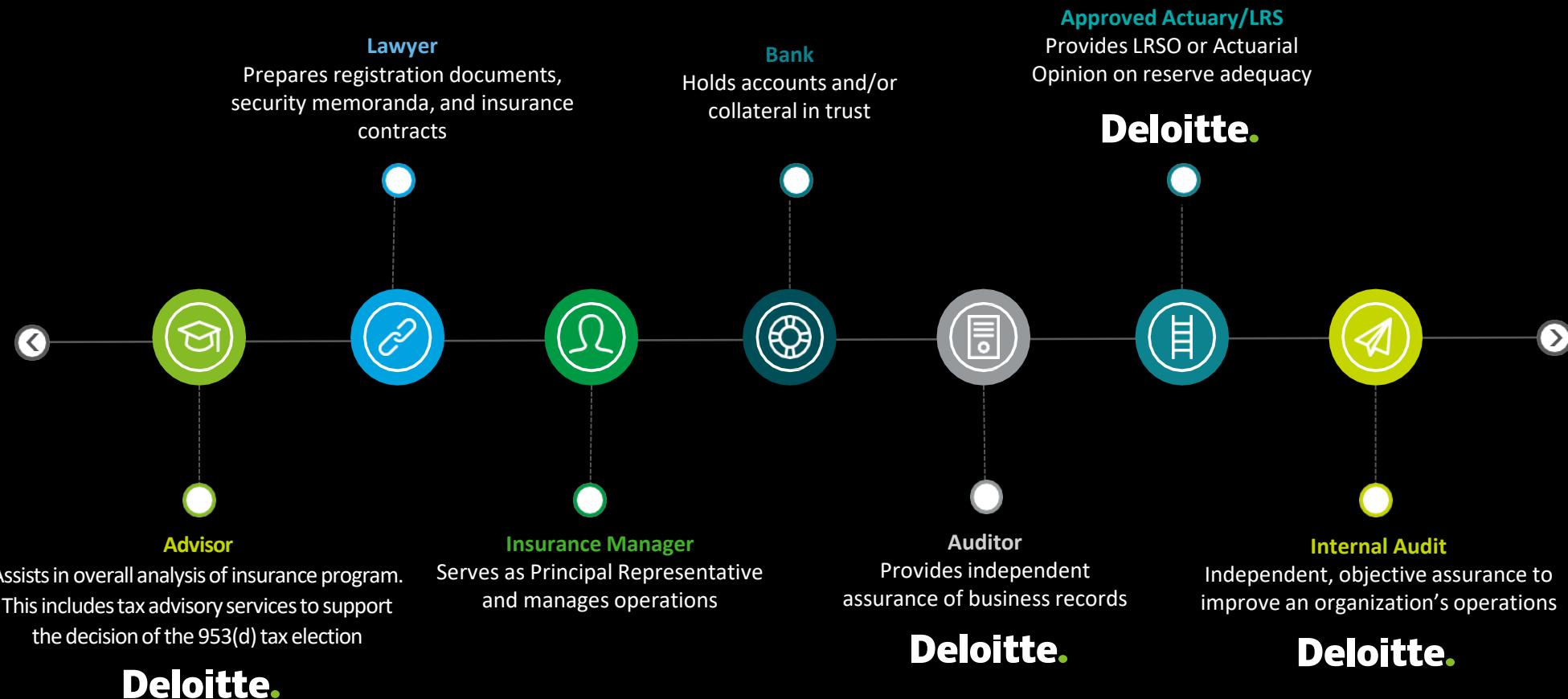
Q. *What are the common sections/what is included in the business plan?*

A. The business plan should address the matters set forth in the IALC Bulletin, which outlines what a business plan must include. Typical business plan sections include those listed in the below table.

Section	Business Plan Details
Introduction	<ul style="list-style-type: none">Overview of the company and proposed structure, including detailed information on the business purpose and ownership.
Capitalization	<ul style="list-style-type: none">Details of the capital management policy including target capital levels and access to sources of funding.
Business Model	<ul style="list-style-type: none">Details on the policyholders, lines of business to be written, nature of the risks being insured, deductibles and limits, exposure, net loss retention, reinsurance arrangements and any other relevant information.
Investment Management	<ul style="list-style-type: none">Investment guidelines should include targeted asset allocation, limits, exclusion, and asset-liability matching.
Financial Projections	<ul style="list-style-type: none">Pro forma income statements and balance sheets on a five-year basis to demonstrate the viability of the business plan.
Corporate Governance	<ul style="list-style-type: none">Personal declaration forms, biographies, and background information on the board of directors, senior management and/or key functionaries.Details of the governance framework outlining the level of board oversight and accountability over the key control functions.Details of the board committees to be formed, who will be on each committee, and the frequency of meetings.
Insurance Code of Conduct Compliance Framework	<ul style="list-style-type: none">Details to support the insurer's ability to comply with the Insurance Code of Conduct.
Service Providers	<ul style="list-style-type: none">Unconditional acceptance letters from proposed service providers including the approved auditor, loss reserve specialist (LRS)/approved actuary, principal representative, and insurance manager.

How can Deloitte help?

Deloitte Bermuda can assist clients with the above FAQs along with the pre-work leading up to the submission, including business plan drafting and financial projection support. In addition to providing support in the incorporation and licensing of new captives, Deloitte Bermuda can provide the following professional services once the captive is setup: advisor, auditor, and approved actuary/LRSO.



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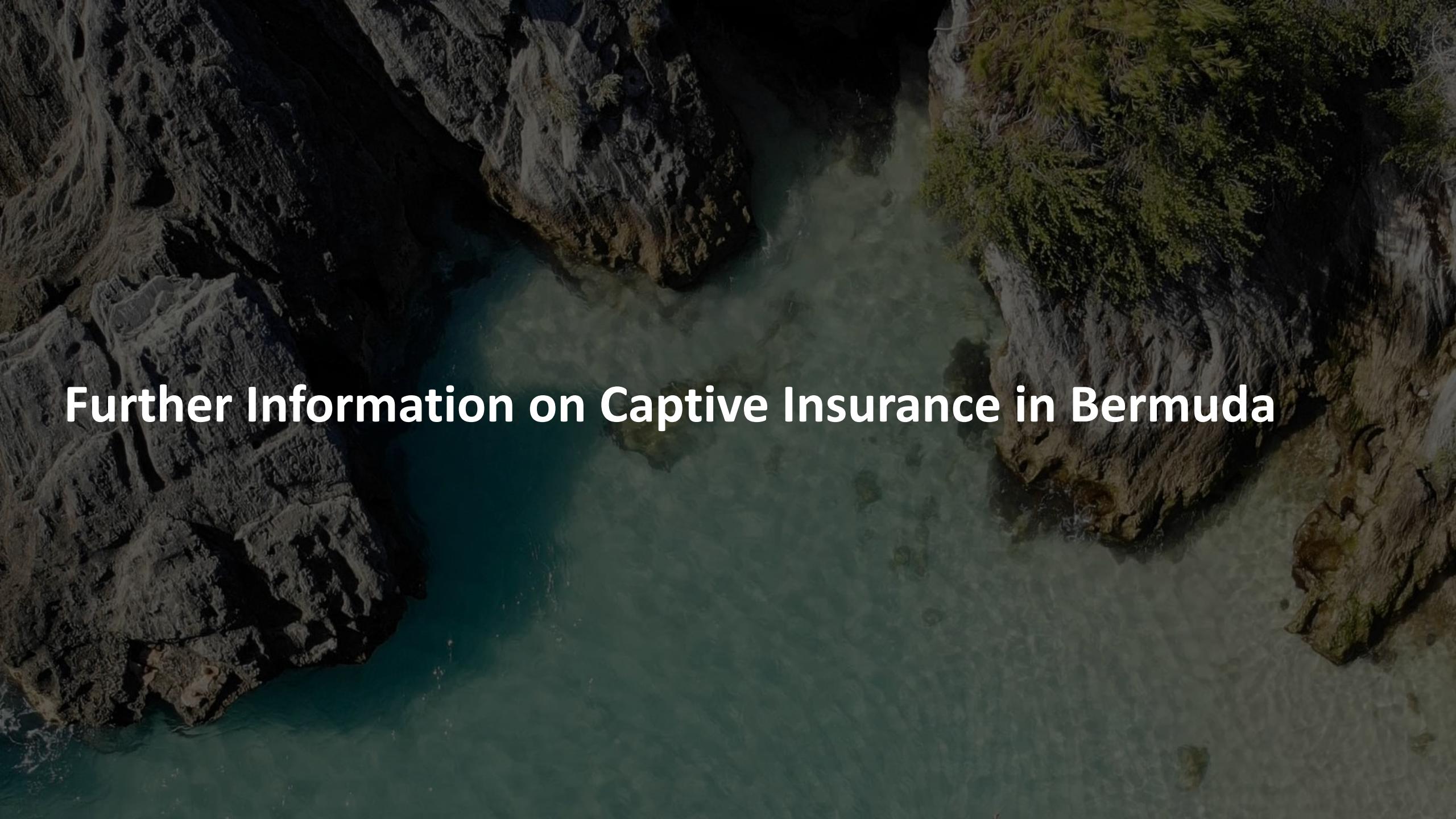


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How can Deloitte help?

Once you are ready to set up your program, you will need to select professional service providers and prepare the relevant documentation. We have experience developing pre-incorporation documents, and great relationships with local service providers, and can help you with your application. From there, it is a streamlined process to receive your insurance license.

If you would like to learn more about the application process, or would like more information on captive use cases we have observed in the market, please do not hesitate to contact us.

A dark, textured background image of a coastal scene. The left side shows dark, craggy rocks, and the right side shows a rocky cliff with green vegetation. The center is a dark, rippling body of water.

Further Information on Captive Insurance in Bermuda

Captive Insurance



A captive insurance company is an insurance company whose primary purpose is the financing of the risks of its owners.

The Global Captive Industry

Captives have long been in existence as a means of alleviating the risks faced by organizations. Many risks on a company's balance sheet do not align with its core business pursuits, so companies often transfer these risks to a captive via an insurance contract to better manage the associated volatility.

Captives can be more dynamic than traditional insurance companies and are more capable of serving a wider range of client needs. Captives are used by a wide array of entities including financial institutions, healthcare organizations, manufacturing companies, and insurance groups of all sizes.

In 2020, there were over 7,000 captives in the world and over 1,000 global companies now successfully use captives, with increasing momentum. A common misconception is that captives are only formed by large public companies. However, there is in fact a growing trend for private companies to own captives. Currently 47% of captives are owned by private entities, dispelling the myth that captives are only for large fortune 500 companies.

Benefits of a captive



The benefits of a captive are wide ranging, including:

1. Cost Reduction

- Reduces overall costs of the parent's insurance/risk-management program.
- Any underwriting gains and investment income are retained by the parent.
- Parent benefits from its own loss experience: does not pay a premium based on industry-wide losses or perceptions.
- Since insurance premiums can fluctuate significantly, captives can help normalize any drastic impact on insurance costs year on year.

2. Access to reinsurance

- Established to provide access to the reinsurance market.
- Access to preferential pricing from reinsurance market.
- Potential to earn ceding commission from reinsurers.

3. Investment Income

- Benefit from the lag between paying premiums and payout of losses, earn investment income and possibly reduce or defer tax.

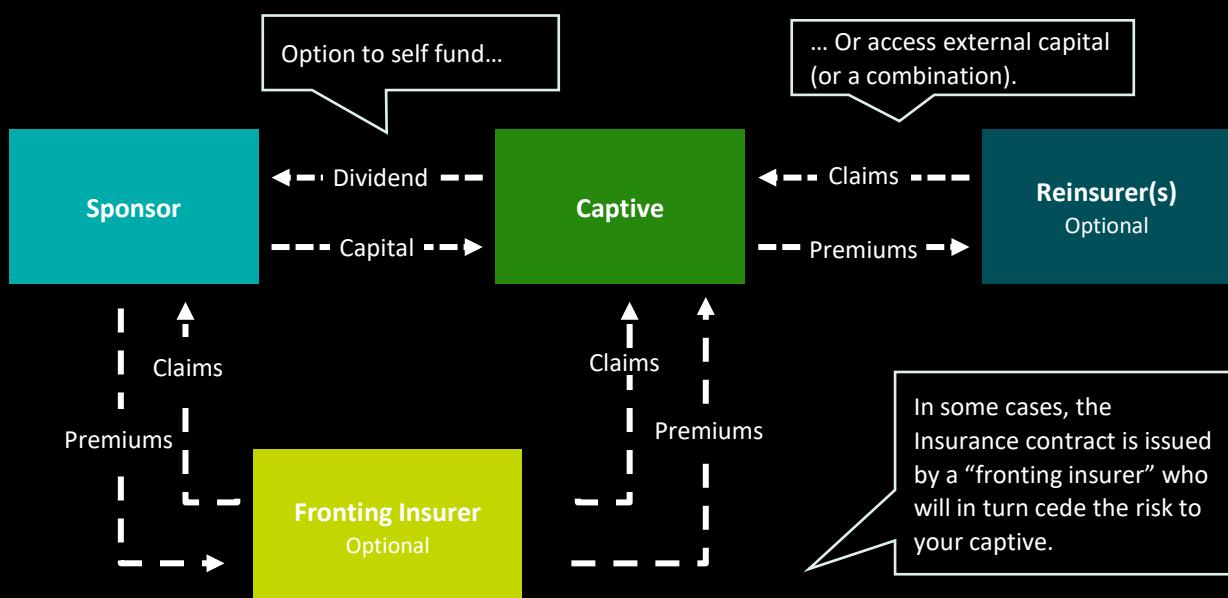
4. Administrative tool

- The parent can tailor insurance policies for its specific needs and risks, providing greater flexibility and control.
- Can help bring a focus to losses and loss prevention within the parent's overall culture.
- Successful captives become an integral part of the Enterprise Risk Management program.

Structuring a Captive

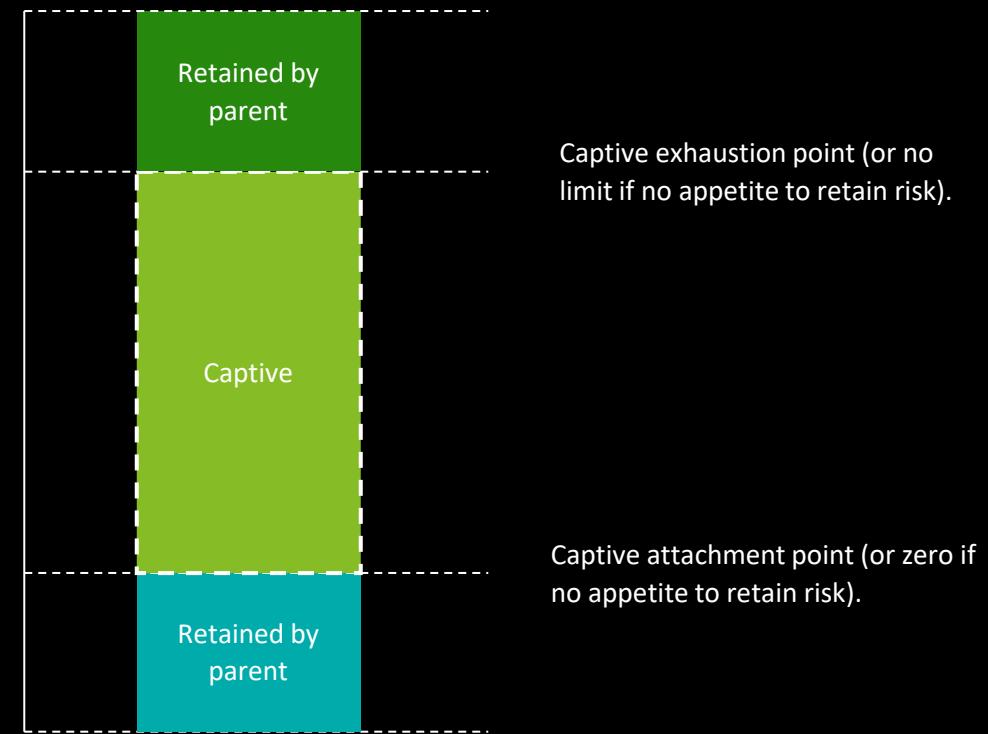
Captives are licensed insurance companies incorporated as a wholly owned subsidiary of the parent company. They are formed to primarily insure or reinsurance the risks of its parent and/or affiliates.

Below, we illustrate the potential structure of your captive program.



As shown above, you can either fund the captive yourself or transfer the risk outright to reinsurers/capital markets.

The illustration below shows the risk participation of a captive. The parent retains risks within its risk tolerance and the risks above that threshold are passed to the captive until a pre-determined exhaustion point. Above this exhaustion point, risks can either be ceded to a reinsurer or retained by the parent.



Captive Costs and Service Providers

Set-up Costs

Cost Item	Service Provider	Low (USD)	High (USD)
Incorporation	Advisor	15,000	40,000
Registration	Regulator	3,000	30,000
Legal	Lawyer	15,000	20,000
	TOTAL	33,000	90,000

Annual Operating Costs

Cost Item	Service Provider	Low (USD)	High (USD)
Management	Insurance Manager	75,000	150,000
Audit	Auditor	15,000	30,000
Business / License	Regulator	3,000	30,000
Actuarial	Actuary	10,000	25,000
Legal	Lawyer	5,000	15,000
	TOTAL	108,000	250,000

Service Providers

Establishing a Captive requires the involvement of the following service providers.

Lawyer

Prepares registration documents and insurance contracts.

Auditor

Provides independent assurance of business records.

Insurance Manager

Serves as Principal Representative and manages accounts.

Bank

Holds accounts and/or collateral in trust.

Advisor

Assists in overall analysis of insurance program.

Approved Actuary

Provides Loss Reserve Specialist Opinion or Actuarial Opinion on reserve adequacy.

Uses of Captives



Traditional Uses

Traditionally, captives are used by insurance companies as a front for reinsurance capacity, as a form of direct insurance, for deductible reimbursement, large retentions and when insurance coverage is not available in the commercial market. We have observed diverse uses for traditional captive programs, from employee benefits, professional liability, commercial property, workers' compensation, and more. More recently, we have noticed companies becoming more sophisticated and innovative in the way in which they use captives and the risks they are willing to manage with their captives.

Emerging Trends

Captives are increasingly becoming a key risk management tool as companies identify emerging risks that are underserved or prohibitively expensive in traditional insurance markets. Going forward, we expect captives to help sponsors manage cyber, environmental, longevity, and many other risks. Additionally, with various financial reporting standards trending toward fair value accounting, we anticipate increased interest among financial institutions to use captives as a means of managing fair value volatility. The industry is also looking at how it can embrace technologies such as blockchain and other forms of insurtech.

Recent developments have opened the door for companies looking to self-fund their employee health insurance plans through medical stop loss captives.

Captive Insurer Classes in Bermuda

Captive insurers are classes include 1,2,3 and A and B. This facilitates proportional risk-based regulation and supervision. Classes 1-3 are used to write general (i.e., non-life or P&C) contracts and Classes A-B are used to write long-term (i.e., life-contingent) contracts.

The table below shows the general regulatory requirements associated with each class.

Class of Insurer	Class 1 100% related business	Class 2 Less than 20% unrelated business or multi-owned insurer	Class 3 20% to 50% unrelated business	Class A 100% related business	Class B Less than 20% unrelated business or multi-owned insurer
Minimum paid up share capital	\$120,000 (General Purpose) \$370,000 (Composite)	120,000 (General Purpose) \$370,000 (Composite)	\$120,000 (General Purpose) \$370,000 (Composite)	\$120,000	\$250,000
Actuarial Opinion	Not required to file Loss Reserve Specialist Opinion (LRSO) unless Company discounts the loss and loss expense provisions and does not meet the solvency requirements on undiscounted basis OR greater than 30% written professional liability, otherwise required to file LRSO annually.	Required to file an LRSO every 3 years unless Company discounts the loss and loss expense provisions and does not meet the solvency requirements on undiscounted basis OR greater than 30% written professional liability, otherwise required to file LRSO annually.	Required to file an LRSO annually.	Required to file an Approved Actuary's Opinion annually.	Required to file an Approved Actuary's Opinion annually.

Captive Insurer Classes in Bermuda

The tables below shows how the Minimum Solvency Margins (“MSM”) and liquidity ratio are determined:

Class of Insurer	Class 1	Class 2	Class 3	Class A	Class B
MSM greater of:					
Minimum Statutory Capital & Surplus	\$120,000	\$250,000	\$1,000,000	The greater of \$120,000 or 0.5% of assets	The greater of \$250,000 or 1.0% of assets
Premium Test	20% of first \$6m NPW plus 10% for excess \$6m	20% of first \$6m NPW plus 10% for excess \$6m	20% of first \$6m NPW plus 15% for excess \$6m	n/a	n/a
Loss Reserve Test	10% of Net Loss & Loss Reserves	10% of Net Loss & Loss Reserves	15% of Net Loss & Loss Reserves	n/a	n/a

Class of Insurer	Class 1	Class 2	Class 3	Class A	Class B
Where solvency test is failed	Principal Representative must report to the BMA within 30 days	Principal Representative must report to the BMA within 30 days	Notify the BMA; pay no dividends until position rectified; file revised business plan within 30 days	Principal Representative must report to the BMA within 30 days	Principal Representative must report to the BMA within 30 days
Liquidity ratio	Relevant assets must equal at least 75% of relevant liabilities	Relevant assets must equal at least 75% of relevant liabilities	Relevant assets must equal at least 75% of relevant liabilities	n/a	n/a

Relevant assets refer to certain items contained in the insurer’s statutory balance sheets including cash and cash equivalents, quoted investments, unquoted bonds and debentures, investments in first mortgage loans on real estate, investment income due and accrued, accounts and premiums receivable, reinsurance balances receivable and funds held by ceding reinsurers.

*Relevant liabilities are total insurance reserves and total other liabilities less deferred income taxes, sundry liabilities, and letters of credit, guarantees or other instruments that do not relate to the insurers’ insurance contracts.

Captive Insurer Classes in Bermuda

The table below shows the restrictions for different classes of captives:

Class of Insurer	Class 1	Class 2	Class 3	Class A	Class B
Reduction of statutory capital	BMA approval prior to any reduction by 15% or more of its total statutory capital as shown in the previous years statutory financial statements	BMA approval prior to any reduction by 15% or more of its total statutory capital as shown in the previous years statutory financial statements	BMA approval prior to any reduction by 15% or more of its total statutory capital as shown in the previous years statutory financial statements	BMA approval prior to any reduction by 15% or more of its total statutory capital as shown in the previous years statutory financial statements	BMA approval prior to any reduction by 15% or more of its total statutory capital as shown in the previous years statutory financial statements
Dividend restriction	Comply with solvency/liquidity requirements at all times	Comply with solvency/liquidity requirements at all times	Comply with solvency/liquidity requirements at all times	Comply with solvency requirements at all times	Comply with solvency requirements at all times

Domicile Selection - Why Bermuda?



Bermuda has a strong reputation as a robust financial center and has been the premier domicile for captive programs since their inception. The incorporation and licensing process is straightforward and streamlined.

Importantly, domiciling in Bermuda enables access to a deep pool of reinsurance capital that may be more difficult to access from alternate jurisdictions. Bermuda also has equivalence tax treaties in place with many jurisdictions, allowing you to recognize credit for your captive program.

Bermuda also has the added benefit of being a one-stop shop for the full suite of services required by a captive including skilled professionals, management companies, attorneys, auditors, banking, and investment services.

The Bermuda Monetary Authority, Bermuda's integrated regulator is a world-class regulator with a pragmatic and flexible approach to regulation. This creates the perfect environment with an emphasis on creativity and innovation.

The BMA has a two-tier approach to regulating captives and commercial insurers. This recognizes that captives serve as risk retention tools rather than insurance companies.

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Bermuda has ease of access as well as robust laws and regulations pertaining to captive insurers along with a receptive regulator. In addition, there are many specialist service providers on the Island.



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