

**CAPTIVE INSURERS
&
INSURANCE BUSINESS (JERSEY) LAW 1996**



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CAPTIVE INSURERS & INSURANCE BUSINESS (JERSEY) LAW 1996

All insurance business (including reinsurance activities and establishment of captive insurers) conducted in or from Jersey is regulated under the Insurance Business (Jersey) Law 1996 (the “Law”).

The Law provides that a person may only undertake insurance business in or from within Jersey, if that person is authorised by a permit granted by the Jersey Financial Services Commission (“JFSC”). If the permit holder is authorised by or under the law of a recognised jurisdiction outside the island then it will apply for a category “A” Permit. Any other applicant will apply for a category “B” Permit. In addition to the incorporation of traditional forms of insurance company, the category “B” permit facility also allows groups of individual, partnership and other associations to form captives, and also caters for the establishment of reinsurance vehicles and other special purpose insurance related entities.

Category “A” permits are granted to applicants to carry on the same description of insurance business as that which they are authorised to undertake in their home jurisdiction, subject to confirmation from the home country supervising authority. Applicants with category “B” permits will, subject to meeting the requirements of the JFSC, be authorised to carry on long term or general business of one or more classes listed in the first Schedule to the Law.

When considering applicants for category “A” permits, the JFSC considers the stature of the applicant and the home country supervision to which it is subjected. Confirmation will also be required from the home country supervisor that the insurance business of the applicant in Jersey is subject to its consolidated supervision. Category “A” permits may carry certain conditions at the discretion of the JFSC.

In the context of category “B” permit holders which will typically be issued in connection with captive insurance, mutual insurance or reinsurance arrangements established in Jersey, the JFSC has determined that the following facts are relevant when considering applications for permits:

1. The standing, reputation and nature of business of the owners/promoters of the captive/offshore insurance vehicle and their combined level of free capital and reserves;
2. The knowledge and expertise in insurance matters available to the applicant;
3. The paid up share capital of the applicant and the level of free capital and reserves as compared with premium income;
4. Arrangements made or to be made by the applicant regarding re-insurance;
5. Whether fit and proper persons are employed by or associated with the applicant in the management, control and audit of its operations;

6. The nature of the risks to be insured against;
7. All category “B” permits carry conditions, as listed in the Schedule to the Insurance Business (General Provisions) (Jersey) Order 1996. The Law contains provisions to enable the JFSC to impose additional conditions including solvency requirements.

The broad policy with regard to capitalisation of category “B” companies is that the proposal submitted will be examined to ensure that the financing at the outset is sufficient to support the proposed business for the first five years, and to see the company safely into year six. It is not anticipated that permits will be issued where the initial capital of the category “B” holder will be below £100,000.

Applicants for category “B” permits and their professional advisors are encouraged to discuss proposals for insurance operations in advance with the JFSC in order to obtain “in principle” approval to the proposal from the JFSC.

The information requirements for a category “B” application will include the following main areas:

1. Background details of the applicant;
2. Copies of the latest audited accounts;
3. Details of persons who are to be directors, controllers or managers of the business in the island;
4. Name and address of external auditors;
5. Particulars of the classes of insurance business which the company is to be authorised to conduct pursuant to its permit;
6. Five year business plan;
7. Copies of draft re-insurance treaties.

Annual confirmation that the business has been undertaken in accordance with the Law and conditions and applicable Codes of Practice in Jersey will be sought for all permit holders.

REGISTRATION AND MANAGEMENT REQUIREMENTS

The application to the JFSC should be submitted on the appropriate form for either category “A” or category “B” permits, which can be downloaded from the JFSC website, and accompanied by the latest financial statements of the promoter organisation and, in the case of a category “A” permit application, a copy of the latest return provided to the appropriate home country regulator.

Applicants must include details of the proposed directors (including duly completed Long Form Personal Questionnaires), lawyers and auditors, together

with a business plan. A risk management proposal document in respect of a category “B” permit holder must also be prepared by a duly qualified insurance risk manager and submitted to the JFSC for approval.

ESTIMATED TIME TO PROCESS APPLICATIONS

Depending on the complexity of the scheme, authorisation can usually be expected within four weeks to six weeks of submission of the completed application documents following receipt from the JFSC of an “in principle” consent.

SOLVENCY MARGIN

Category “A” permit holders are expected to meet the solvency requirements of their home country regulators.

There is a Jersey solvency margin requirement for category “B” permit holders. For general business the required solvency margin is 17.5% of adjusted net premium income. In the case of long-term business the solvency margin is the greater of £50,000 or 2.5% of the value of the long-term insurance fund.

The permit holder will be required to restrict the investment of liquid assets to approved assets defined under the Insurance Business (Solvency Margin) (Jersey) Order 1996 and which include bank deposits and Government securities. In the case of general business insurance activities the category “B” permit holder must keep at least 75% of assets as approved assets.

JERSEY TAXATION ARRANGEMENTS

This paragraph provides a brief summary only of the main taxation provisions in Jersey relevant to a captive or mutual insurance or reinsurance company based in the island.

In respect of category “B” permit holders established as corporate entities in Jersey such permit holder will be subject to a 0% rate of corporate/income tax in Jersey under the “zero/ten” taxation regime introduced by the Income Tax (Amendment No. 28) (Jersey)) Law 2007 and the Income Tax (Amendment No. 29) (Jersey)) Law 2007.

Under the Goods and Services Tax (Jersey) Law 2007 and the GST Regulation in force in Jersey financial services including insurance are categories as exempt supplies

There is no insurance premium tax levied in Jersey nor are there any capital duties charged on the capital and reserves of Jersey domiciled companies.

REVOCATION PROCEDURES

Provision exists for the JFSC to be able to appoint managers to a permit holding entity where the JFSC judges this is necessary or to wind up a permit holding entity on “just and equitable” grounds. The permit may be cancelled if the

applicant has not commenced insurance business within one year of the date of the grant of the permit, if the permit holder ceases to carry on insurance business in or from within the island, at the request of the permit holder, or as the result of breach of a condition attached to the permit. The JFSC must give notice in writing to the permit holder if the permit is to be cancelled, and there are provisions for lodging an appeal against such a cancellation.

REPORTING REQUIREMENTS

Category “A” permits:

Annual audited accounts within 6 months after the end of the financial year together with a copy of the return to the relevant home country. The JFSC may also wish to contact the home country regulator for confirmation that the permit holder continues to meet its home regulator requirements.

Category “B” permits:

A schedule of summary information, as determined by the JFSC, is required at six monthly intervals, together with a balance sheet and profit and loss account.

The permit holder will be required to communicate the annual audited accounts to the JFSC promptly following the financial year-end. An annual confirmation by the external auditors that business has been undertaken in accordance with the Law and permit conditions and applicable Codes of Practice in Jersey is also required. If the company is undertaking long-term business an annual report by the actuary will be required confirming that the amount of long-term assets are appropriate to the long-term business undertaken.

Further information

Should you wish to discuss any aspect of the above in more detail, please contact Simon Howard using the contact details set out below.

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This document is a brief guide to the subject matter covered, and is not intended to be a detailed or comprehensive statement of the law. It should not be treated as legal advice. Clients are urged to take professional legal and other appropriate advice before pursuing any particular course of action.

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