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COVID-19 and the Cayman Islands' Insurance Sector

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COVID-19 is likely to present unprecedented challenges for the insurance industry, across all lines of business, both domestic and international. Between the increasing number of confirmed infections worldwide, and the steps being taken in response by Governments and the private sector, COVID-19 has the potential to give rise to very significant losses, and associated legal disputes.

As a home for almost 700 licensed insurance and reinsurance companies, the Cayman Islands are the second largest domicile in the world for captive insurance companies, and Cayman holds the number one position worldwide for healthcare and Medical Malpractice Liability captives. US Workers' Compensation business makes up another large component of the Cayman Islands' captive sector.

The Cayman Islands also separately hosts a growing reinsurance industry and a reasonably active catastrophe bond and ILS sector.

The Cayman Islands are also home to a large number of insured entities, including hedge funds and private equity funds, publicly listed international holding companies, and professional service providers. Many of these entities purchase commercial insurance and reinsurance out of London, Bermuda, Hong Kong, Singapore, and the Cayman Islands, covering a wide range of risks and liabilities, including Directors' and Officers' liability, Management Liability, Professional Indemnity (Errors & Omissions), and Cyber liability.

Additionally, the Cayman Islands has a significant local tourism, construction, events, and real estate industry, with a large number of hotels, restaurants, and local development projects either recently completed, or actively underway.

Although it is too early to try to place a definitive value on total potential COVID-19 insured losses (whether related to the Cayman Islands or globally), it is worth noting that the SARS-epidemic in 2003 was the fourth-largest insurance loss event in Hong Kong's history, generating legal disputes and appeals all the way to Hong Kong's Court of Final Appeal (see, for example, *New World Harbourview Hotel Co Ltd v. Ace Insurance Ltd* [2012] HKCFA 21, a business interruption insurance claim).

Lloyd's of London has recently announced estimates that it will pay out sums in the range of \$3bn to \$4.3bn as a direct result of COVID-19, putting total insured losses at the same level as 9/11 in 2001, and the combined impact of hurricanes Harvey, Irma and Maria in 2017. Insurance broker Willis Towers Watson has separately estimated COVID-19 related insurance losses between \$32 billion and \$80 billion across key classes in the United States and United Kingdom, surpassing claims from the 9/11 attacks

Property insurers, trade credit insurers, life and healthcare insurers, travel and event insurers, and D&O insurers are likely to be put under particular pressure.

Reuters has recently reported that 'Insurers face a double whammy from coronavirus crisis', arising out of a sharp increase in claims activity, combined with significant investment losses.

The life insurance industry is likely to face particular challenges, given its exposure to interest-sensitive investments and investment losses, and the likelihood of increasing policy payments. Actuarial assumptions may also need to be re-visited, as Willis Towers Watson have discussed.

On the other hand, there may be an opportunity for new capital providers to enter the market, with new structures or products aimed at coronavirus-related cover, including, for example, catastrophe bonds aimed at pandemic losses. Although the World Bank's Pandemic Emergency catastrophe bonds are likely to be fully triggered, with associated investor losses, there is likely to be increasing interest in, and appetite for, such cat bond products, now that a trigger event such as COVID-19 has demonstrated their commercial value.

The D&O Diary has separately reported on the first COVID-19 securities Class Action Complaint filed in a US court against a cruise ship company, Norwegian Cruise Lines Ltd. (incorporated in Bermuda), suggesting that this may be the first of many D&O claims to

come. In Canada, a proposed class-action lawsuit has recently been filed against Northwood Care Group Inc. in Halifax, Nova Scotia, after widespread infections of the novel coronavirus allegedly resulted in the deaths of 53 long-term care home residents.

In practical terms, remote working and social distancing will present its own challenges for the insurance industry, in terms of notification and processing of claims, loss adjusting, claims handling and dispute resolution.

Legally, the general principles of English insurance contract law have been followed and applied in the Cayman Islands (see, for example, *Jackson v. Cayman Insurance Company Ltd* [1994-5] CILR 313, *Zeller v. British Caymanian Insurance Company Ltd* [2004–2005] CILR 283 (Grand Court), 464 (Court of Appeal) and [2008] CILR 11 (Privy Council), and *McLaughlin v. American Home Assurance Company* [1994–1995] CILR N-18 and [1996] CILR N-6).

Although there is no substitute for a careful review of each applicable insurance policy (by reference to its applicable governing law), the Association of British Insurers has published helpful guidance for consumers covering a range of insurance coverage topics, including Business Interruption Insurance, Home Insurance, Travel Insurance, Wedding Insurance, Income Protection Insurance, and Trade Credit Insurance.

The UK's Financial Conduct Authority ('the FCA') has also recently announced its intention to bring a test case before the High Court of England and Wales on an expedited basis (leading up to a High Court hearing in July 2020), to consider the scope of coverage for COVID-19 related losses that may be available under Business Interruption Insurance policy wordings, governed by English law, issued by insurers such as Arch, Hiscox, MS Amlin, QBE, Royal & Sun Alliance, and Zurich.

Although not binding as a matter of Cayman Islands law, the English High Court's ruling is likely to provide considerable assistance to the Cayman Islands insurance market, in the handling of local Business Interruption Claims on a timely basis in due course.

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