

ADVISORY | INDUSTRY INFORMATION

# Looking ahead: The Bermuda insurance M&A horizon in 2024

2023 was a fairly gloomy year for global M&A activity and the insurance sector did not emerge unscathed, recording its lowest deals count since 2020<sup>1</sup>. The good news, however, is that insurance M&A activity appears poised for a rebound in 2024 in light of an apparent stabilisation of global interest rates, lower levels of inflation, and a perceived correction in previously overinflated market valuations. Pent-up demand is expected to result in insurance companies and other industry participants focusing on strategic acquisitions although, with borrowing costs forecast to remain relatively high, many are predicting that this cohort will be primarily focused on "mid-size" transactions rather than mega-deals.

With geopolitical tensions, climate change and high-profile cyber-attacks continuing to hit headlines, the insurance industry has increased its focus on managing risk. This has made InsurTech - especially where it provides solutions for mitigating risk - an attractive target for potential acquirers; and continued, fast-paced developments in artificial intelligence (AI) are also expected to drive insurance M&A activity as those active in the sector look to technological solutions to increase productivity and minimise costs.

## Bermuda's role in international insurance

Bermuda has long been a global hub for insurance (and reinsurance) across the property and casualty, captive, life, pensions and annuity sectors, governed primarily by the Bermuda Insurance Act 1978 (as amended) (the "**Insurance Act**") and regulated by the Bermuda Monetary Authority (the "**BMA**").

As of 31 December, 2022, Bermuda's total insurance assets accounted for US\$1,634 billion<sup>2</sup>. In addition, Bermuda is a leading market for insurance-linked securities (ILS) products, including catastrophe bonds, with the total nominal value of ILS listed on the Bermuda Stock Exchange as at the end of 2023 being US\$59.15 billion (representing 91% of global issuance)<sup>3</sup>.

With so much insurance activity going on, Bermuda has also become a hotbed of innovation for the market; and the BMA has established two innovation centres, the Regulatory Sandbox and the Innovation Hub, to help businesses develop new Insurtech products.

## Bermuda insurance M&A

This short note provides an overview of some of the structuring options which might be available in the context of a proposed acquisition of a Bermuda insurance (or reinsurance) company.

### Possible M&A structuring options

#### Statutory amalgamation or merger

In this process, two companies combine into one. Typically, the bidder incorporates a new subsidiary company in Bermuda ("**BidCo**") that amalgamates or merges with the target company ("**Target**"). In an amalgamation, BidCo and Target amalgamate into a single new company, continuing as one. In a merger, either BidCo or Target survives and absorbs the other, which ceases to exist.

This process can also happen between a company from Bermuda and a company from another country / territory. Depending on the laws and regulations, the newly formed company can either stay in Bermuda or move its base to another jurisdiction.

Generally, the decision to amalgamate or merge requires the approval of 75% of those shareholders voting at a special general meeting, with the quorum necessary for such meeting being at least two persons holding or representing by proxy more than one-third of the shares.

<sup>1</sup> <https://www.bbinsurance.com/news/insurance-mo-outlook/>

<sup>2</sup> <https://www.bma.bm/viewPDF/documents/2023-11-28-14-46-46-Bermudas-Coordinated-Portfolio-Investment-Survey-CPIS-2022-Report.pdf>

<sup>3</sup> [https://www.bsx.com/news\\_articles.php?ArticleID=1100803288](https://www.bsx.com/news_articles.php?ArticleID=1100803288)

If a shareholder does not vote in favour of the amalgamation or merger and thinks the offer for their shares isn't fair, they have the right to challenge such valuation (although a dissentient shareholder has no statutory right to prevent the amalgamation or merger). The dissentient shareholder can take their case to the Bermuda court within a month of the shareholder meeting notice to have the fair value of their shares appraised. If the court decides the shares are worth more than what was offered, the acquirer must pay the difference.

### Scheme of arrangement

A scheme of arrangement is a formal procedure allowing a company (like the Target) to make a deal or compromise with its shareholders.

A takeover by way of a scheme requires a double layer of approval: (i) the affirmative vote of a majority representing 75% in value of shareholders and (ii) the sanction of the Bermuda Court. The shareholders can vote either in person or by proxy. Once approved, the terms of the takeover are binding on all shareholders, regardless of their individual votes.

### Tender offer

In a tender offer, a bidder proposes to buy all the shares of the Target. This is a direct offer to the Target's shareholders.

Compulsory acquisition of the Target's shares by the bidder can happen in certain circumstances. If holders of at least 90% of the relevant shares of the Target accept the offer within four months, the bidder can, within the following two months, require the remaining shareholders to sell their shares for the offered terms – although dissentient shareholders may apply to the court to object to the transfer.

Alternatively, if the bidder secures 95% or more of the Target's shares, the bidder may give notice to the remaining shareholders of its intention to buy the remaining shares. A bidder's exercise of this mechanism will provide dissentient shareholders with the right to apply to the court within a month of such notice to have the fair value of their shares appraised.

### Business transfer

As an alternative to acquiring the Target, a bidder might choose to acquire certain assets and liabilities of the Target. This is generally more complex than acquiring the Target itself as the transfer of certain assets and liabilities may require additional regulatory and other approvals (amongst other considerations) and not all of the assets and liabilities may be Bermuda situs.

## Regulatory considerations

Where a Bermuda insurance (or reinsurance) company is proposed to be acquired, the BMA must first approve the transaction. This generally involves a material change application/notification under the Insurance Act. The application usually includes an updated business plan and a forecast of the surviving company's solvency capital requirements. However, other change of control requirements may also apply.

### Walkers' Corporate and M&A Group and Insurance & Reinsurance Group

Our market-leading Corporate and M&A Group in London provides time-zone sensitive support to clients in the EMEA region across the full spectrum of corporate matters involving Bermuda law, as well as British Virgin Islands and Cayman Islands law.

Our Corporate and M&A Group works closely with our highly experienced and multidisciplinary Insurance and Reinsurance Group, which has deep industry knowledge covering the full scope of insurance matters, including alternative risk transfer and insurance-linked securities.

Our clients include many of the world's leading insurers and reinsurers, as well as private equity firms, investment funds and financial institutions active in the insurance sector, and we have garnered international recognition for the high calibre of service we bring to the full range of transactions and structures in the market.

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## Further information

We practice Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Irish and Jersey law from an international network of ten offices across Europe, the Americas, Asia and the Middle East. For more information, please get in touch with your usual contact at Walkers or any of the contacts in your region listed below.

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