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corporate international

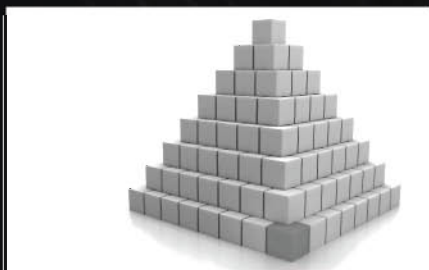


## Green Dragon Gas: China's green energy leader



International Sector Panel

Shay & Partners



LEGUS International

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# INSURANCE AND REINSURANCE

In these days of economic uncertainty it is more important than ever that insurance companies are adequately covered for the 'expected' deluge of claims they are likely to encounter from clients. It is, therefore, essential that they are privy to excellent legal advice.

**Reinsurance is a means by which an insurance company can protect itself with other insurance companies against the risk of losses. Individuals and corporations obtain insurance policies to provide protection for various risks (hurricanes, earthquakes, lawsuits, collisions, sickness and death, etc). Reinsurers, in turn, provide insurance to insurance companies.**

There are myriad reasons why an insurance company might choose to reinsure as part of its responsibility to manage a portfolio of risks for the benefit of its policyholders and investors.

The main use of any insurer that might practise reinsurance is to allow the company to assume greater individual risks than its size would otherwise allow, and to protect a company against losses. Reinsurance allows an insurance company to offer higher limits of protection to a policyholder than its own assets would allow.

An insurance company's writings are limited by its balance sheet (this test is known as the solvency margin). When that limit is reached, an insurer can do one of the following: stop writing new business, increase its capital, or buy "surplus relief" reinsurance. Buying reinsurance is usually done on a quota share basis and is an efficient way of not having to turn clients away or raise additional capital.

The insurance company may be motivated by arbitrage in purchasing reinsurance coverage at a lower rate than what they charge the insured for the underlying risk, which can be in the area of risk associated with any form of the asset that is being issued or loaned against. It can be a car, a mortgage, an insurance (personal, fire, business, etc.) and alike.

By choosing a particular type of reinsurance method, the insurance company may be able to create a more balanced and homogenous portfolio of insured risks. This would lend greater predictability to the portfolio results on net basis (after reinsurance) and would be reflected in income smoothing. While income smoothing is one of the objectives of reinsurance arrangements, the mechanism is by way of balancing the portfolio.

Corporate INTL spoke to a number of leading advisers in this specialist practice area about their offering and the laws governing Insurance and Reinsurance in their jurisdiction.

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**AFRIDI & ANGELL**

Federal Law No. 6 of 2007 on the Establishment of an Insurance Authority and Regulation of Insurance Business (the "Insurance Law") governs insurance companies operating in the United Arab Emirates (excluding the free zones). The Insurance Law has repealed the Federal Law No. 9 of 1984 Regarding Insurance Companies and Agents as amended ("Previous Law") which previously regulated insurance companies in the United Arab Emirates. However the regulations issued under the Previous Law continue to be applicable to the extent that they are not inconsistent with the provisions of the Insurance Law. Under the Insurance Law, an insurance authority has been established as a corporate body with financial and administrative independence (the "Authority") to regulate and supervise the insurance sector. Insurance policies sold or distributed in the UAE must be submitted to the Authority along with all the general and special conditions, rates of premium and the redemption tables. Further insurance products must be issued by insurance companies registered in accordance with the provisions of the Insurance Law.

Afridi & Angell is a law firm with offices in Dubai, Abu Dhabi and Sharjah in the United Arab Emirates. The main areas of the UAE practices are comprised of corporate and securities, commercial banking, Islamic finance, insurance, maritime, project development and finance and dispute resolution. The firm is the UAE member of Lex Mundi, an international Association of over 120 inde-

pendent law firms with more than 300 offices worldwide.

The firm advises clients with respect to corporate and regulatory issues facing underwriters, insurers, brokers and agents, including risk financing problem investments, permitted insurance activities, director and officer liability and insurance and reporting requirements. The firm also acts on behalf of clients with respect to insurance disputes.

We have advised several foreign life insurance companies, particularly from India on the manner in which they should structure their operations in the UAE. While at present branch offices of foreign insurance companies are not being licensed the Authority licenses representative offices to act as a liaison office for the parent company. The exact scope of the activities of a representative office is not very clear and essentially a representative office may only deal with insurance intermediaries (such as licensed brokers and agents) and not directly with the customer.

We have also advised several banks on marketing and sale of Bancassurance products. Commercial banks, investment banks and investment companies in the UAE market and distribute financial and investment products which have insurance wrappers. Investment products in which the insurance element is nominal (with insurance cover generally limited to the monies actually invested) are viewed by the UAE Central Bank as investment products. Products in which the amounts payable on death are a substantial multiple of the premia are viewed as insurance products. In addition to investment products, the UAE Central Bank has recently permitted banks to collect premia and to distribute and to act as a point of sale for registered insurance products issued by insurance companies registered in the UAE.



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"It is likely that the domestic aspects of the Insurance Act 2004 will be split off in the near future and enacted in separate legislation which will allow for further development of the captive sector but also strengthening of the reinsurance and onshore sectors as well." - Carlyle K. Rogers

### The Man

Carlyle K Rogers has more than ten years experience in financial services having served as Deputy Director of the Anguilla Financial Services Commission and its predecessor body, the Financial Services Department of the Government of Anguilla, for seven where he was responsible for regulating corporate and trust service providers, licensing fund managers and administrators, approving fund applications and enforcing Anguilla's anti-money laundering regime amongst other duties.

He is Managing Director of Global Consultants and Services (Anguilla) Limited, Global Trustees (Anguilla) Limited and Global Insurance Managers (Anguilla) Limited. He holds Associates of Arts (Business Management), Bachelors (Finance), Masters of Business Administration (Finance), LLB (Hons) and LLM (Commercial and Corporate Law) degrees from the University of the Virgin Islands (St. Thomas), City University (London) and the University of London. He has also recently completed a certificate in captive insurance management from Glasgow Caledonian University in Scotland, UK. Carlyle is the current Chairman of the Anguilla Branch of the Society of Trust and Estate Practitioners, and a member of the International Tax Plan-

ning Association, the Anguilla Financial Services Association and the Asia Offshore Association.

### The Firm

Global Consultants and Services (Anguilla) Limited is a registered agent. Our related companies provide trustee and insurance management services. This distinguishes us in that we are able to provide a full-suite of services including incorporating companies for licensing while providing registered agent/office services, assisting with the preparation of the licence application, serving as insurance manager after the licence has been granted and acting as trustee of the shares if the client wishes to add an asset protection feature to the ownership structure by placing the shares in a trust.

We focus on small to medium sized businesses and high net worth individuals who have specific insurance needs which are not being met by the traditional market at affordable rates. Recently, we helped a Slovenian entrepreneur launch a company to provide insurance for a specialized product in Eastern Europe and a US entrepreneur provide for his specific insurance needs which covered his personal risks as well as those of his many businesses which covered real estate, construction and company incorporation services.

Anguilla's legislation is set out in the Insurance Act 2004 which covers domestic insurance, reinsurance and captive insurance. The legislation is simple and provides maximum flexibility to meet the needs of small to medium sized enterprises with reasonable capital requirements which are adjusted based on the scope of operations of the insurer and the risk level being underwritten as well statutory filings. This allows clients the scope to structure their operations with as much freedom as possible in conjunction with the regulators.

Clients are focused on asset-protection strategies and self-insurance through captives for financial and other risks for which coverage is difficult to secure.





#### Lydian - Belgium

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“Straight-to-the-point advice is the hallmark of Lydian” - Legal 500

#### The people

Hugo Keulers joined Lydian in 2001. Mr Keulers frequently acts before the Belgian Courts upon the instruction of international clients. He has worked on referrals from the world's most prestigious law firms, often acting for listed multinational companies in complex cross-border disputes. He is also in demand as a speaker at conferences on litigation and insurance and has published articles in international publications.

Sandra Lodewijckx joined Lydian on 1 January 2002. Ms Lodewijckx is specialised in insurance law and pension law. She assists Belgian and international (insurance) companies, professional organisations and insurance intermediaries in all insurance issues. She also advises companies on the different aspects of supplementary pensions, corporate governance, pension plans and management agreements. She holds experience in litigation on insurance and pension matters.

#### The practice

As one of Belgium's leading independent law firms, we have earned an impressive reputation in the area of insurance and reinsurance, both nationally as well as internationally.

Lawyers from our Insurance team, which is part of our Commercial & Litigation department, have particular experience and expertise in advising insurance companies about their regulatory framework and providing assistance in discussions with the Belgian regulator as well as in developing and advising on new insurance products and checking whether the policy conditions comply with mandatory provisions of Belgian law. Lydian's insurance team also assists insurance companies with respect to the exercise of their activities in the framework of the EU's fundamental principles of freedom to provide services and the freedom of establishment.

We regularly assist and represent Belgian and international (re)insurance clients in litigation, a.o. in the following areas: professional liability, product liability, reinsurance, property and business interruption insurance, coverage disputes, defense work and subrogation claims and insurance distribution. Over the past few years, Lydian has been involved in litigation on the Belgian market involving product liability, D&O liability, reinsurance, property and business interruption insurance. This has given us highly valued expertise and experience in handling complex policy disputes and subrogation claims, very often with an international or cross-border dimension.

We also advise (re)insurance intermediaries on the field of application of the law on intermediation in (re)insurance as well as on codes of conduct, alternative forms of insurance intermediation, etc. We also assist insurance companies in reviewing, drafting and negotiating their insurance distribution agreements with their insurance intermediation network.



#### Wildgen - Luxembourg

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Luxembourg legislation mainly follows the framework of the EU directives with a focus on life-insurance and reinsurance legislations and with the specificity that the reinsurance local legislation has influenced the preparation of the relevant EU directives as Luxembourg was and remains ahead of most EU jurisdictions and one of the world's leading center of expertise for reinsurance activities.

We have seen side-effects due to the financial difficulties of certain financial institutions, insurance companies and commercial groups on aspects of their business not related to Luxembourg. Main effects on advice we give were noted in the aspects of wealth management structuring that are inherent to the life-insurance activity and were also noted in the reinsurance industry in the context of stop loss policies as well as in the context of asset allocation.

Our specialised team has a long-standing expertise in all Luxembourg legal aspects of insurance and reinsurance activities including the following:

**Regulatory advice:** Wildgen provides regular assistance and representation in regulatory issues and communications with the Luxembourg Insurance Commission such as for license applications, transaction approvals, restructurings and portfolio transfers.

**Life insurance advice:** Life insurance is a core activity in Luxembourg and Wildgen has a sound expertise in related matters such as distribution on a cross-border basis, professional secrecy matters, anti-money laundering

procedures and the legal structuring of dedicated life-insurance policies invested in securities or non-traditional assets for high net worth individuals.

**Reinsurance advice:** Wildgen has a dedicated team involved in reinsurance matters including in structuring and negotiating M&A transactions relating to reinsurance companies.

Our client base has a very large and international scope. We provide advice to local, regional and international insurance and reinsurance entities as well as to corporate clients from SME to major groups for their insurance and reinsurance needs. Over the last months Wildgen has notably negotiated the acquisition of captives for two international commercial groups and for an international financial service group.

Wildgen is focusing on the development of sharia-compliant insurance and reinsurance products from Luxembourg. The existing Luxembourg legislation offers highly attractive vehicles and legal framework to structure sharia-compliant products but the experience of the financial place in such matters is still in its early stage. Wildgen benefits from a locally quite unique position in this new trend with the joint expertise of our insurance & reinsurance team and our dedicated Islamic finance team.

We believe also that securitisation of insurance or reinsurance risks and claims will be a new trend and Luxembourg has a key role to play as jurisdiction to structure those transactions with the combination of its highly efficient and competitive reinsurance and securitisation legislations. Certain aspects need to be clarified and improved to fully harmonize both instruments but discussions are in progress within the Luxembourg insurance community and we trust that there will be a positive outcome leading to attractive solutions that our team is already working on.