



Bermuda

# INSIGHTS 2022





## Table of Contents

|  |    |
|--|----|
| Bermuda Insights                       | 3  |
| Insurance & Digital Assets             | 4  |
| Insurtech in Bermuda                   | 6  |
| Fintech & Digital Assets               | 6  |
| Corporate                              | 7  |
| Accessing Capital Markets from Bermuda | 8  |
| Bermuda Stock Exchange                 | 9  |
| Regulation                             | 10 |
| Finance                                | 12 |
| Private Capital & Trust                | 13 |
| Disputes & Restructuring               | 14 |
| Funds                                  | 15 |
| Insurance Disputes                     | 16 |



## BERMUDA INSIGHTS

### Trends and Opportunities

As part of our five year anniversary celebrations of our law firm opening in Bermuda, we put together the original version of this summary report highlighting the latest developments and trends in the Bermuda legal and financial services sectors. Our original report was very well received and Bermuda continues to evolve in exciting ways as a leading international financial centre. We have therefore updated and reissued Bermuda Insights to coincide with this year's Bermuda Day celebrations. When we established the business in Bermuda six years ago, we set ourselves some ambitious targets. We are really pleased to have exceeded these, having grown such that we are now a significant player on island, with over 20 lawyers as well as a dedicated team providing corporate administration, fiduciary, compliance and listing services. Our Bermuda team forms the core of our global practice, however we are particularly excited to note that we now have in excess of 45 registered associates who provide Bermuda advice across our practice areas from Hong Kong, Singapore, Dubai and London. Our Bermuda practice is global, with our team working as one seamlessly across time zones to deliver market-leading, commercially-tailored Bermuda advice to our clients. This positions us well to share our insights into the key sectors driving business growth and the position that Bermuda plays as a leading global offshore financial centre

We are particularly proud of the quantity and quality of work we have done with some of the most notable private equity firms and financial institutions around the world, partnering with a broad range of international onshore law firms on market-leading deals and disputes as an integral part of the Walkers global network of 10 offices covering six jurisdictions.

We hope you find this paper of interest. Should you have any questions regarding any of the content, please do reach out to your nearest Bermuda contact.



**Kevin Taylor**  
Managing Partner, Bermuda  
T: +1 441 242 1510  
E: kevin.taylor@walkersglobal.com



**Jonathan Betts**  
Partner  
T: +1 441 242 1511  
E: jonathan.betts@walkersglobal.com

Walkers are proud to be part of the Bermuda growth story. In Asia, we launched our local Bermuda legal capabilities in 2019 and, since then, we have added 39 Bermuda registered associates in the region, making us the largest Asia-based Bermuda legal offering.

Our investment also means that we have a deep bench of lawyers across all our key practices areas that our clients can trust and rely on. This underscores our commitment to delivering the same tier one legal advice for Bermuda as we do for Cayman Islands and BVI.

Thank you to our clients whose support and commitment motivated us to invest into Bermuda.

We hope you enjoy reading these insights.



**Andy Randall**  
Managing Partner, Hong Kong  
T: +852 2596 3305  
E: andy.randall@walkersglobal.com



**John Rogers**  
Managing Partner, Singapore  
T: +65 6595 4673  
E: john.rogers@walkersglobal.com

# INSURANCE AND DIGITAL ASSETS

## ILS

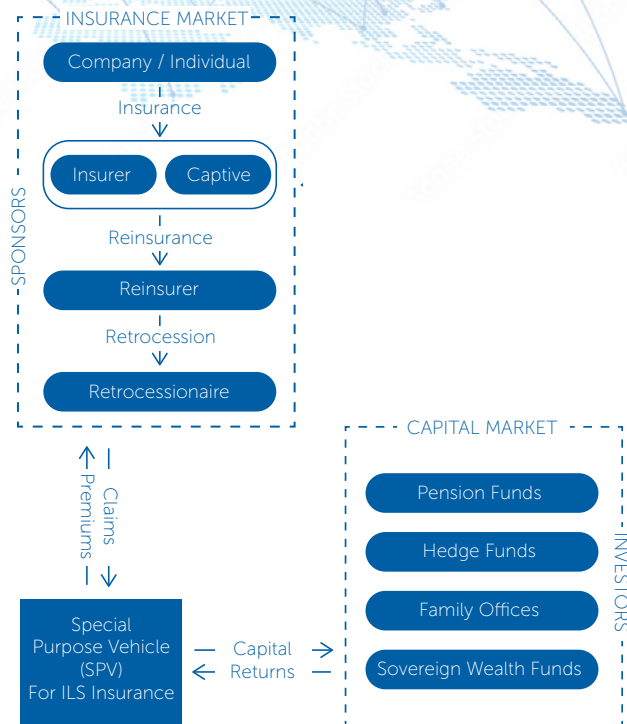
Bermuda is regarded as the “Risk Capital of the World”, as home to one of the largest reinsurance markets in the world and a market leader in insurance-linked securities (“ILS”). As the sector develops and evolves and with growing investor awareness of the benefits and uses of ILS structures, we expect to see continued growth in this fast expanding area.

### What is ILS?

ILS are an alternative asset class. The most common form of ILS are catastrophe bonds (“Cat Bonds”) but ILS also encompasses various other collateralized (re) insurance instruments and risk-linked securities.

The value of these assets are linked to insurance-related risks. These risks may include natural disasters such as earthquakes and hurricanes, which cause property damage, or other insurable risks such as the mortality and longevity risk associated with life insurance products. Therefore, ILS offers a method for insurance and reinsurance risks to be transferred to investors in the capital markets.

One of the key advantages of these instruments for investors is that they have little to no correlation with traditional asset classes whose returns are often determined by economic factors such as a country’s economic performance, company’s financial performance or geopolitical risks.



### Why Bermuda?

There are many reasons why Bermuda has become and remains a global leader in ILS. Some of the key advantages are its innovative regulatory framework, a deep talent pool and its proximity to both North America and Europe - two of the largest capital markets in the world.

### Market Updates

2021 was yet again a bumper year for the Bermuda reinsurance market with record levels of Cat Bond and ILS issuances yet again, reaching a record 281 issuances, representing an 11.1% increase from 253 listings in 2020, for a total of 757 listings. This increase has been driven both by existing sponsors making additional issuances and new sponsors entering the market.

In addition to this, there have been a large number of new reinsurance companies formed, with an overall increase by 10.3% in insurers registered. The number of special purposes insurers (“SPI”) registered has stayed steady, matching the 2020 numbers. These vehicles are typically used for the issuance of Cat Bonds and ILS. What has also been encouraging is the increase in the number of long term (re) insurers, which has jumped 62.5% since 2020. This indicates that the Bermuda reinsurance market is continuing to diversify away from property catastrophe business which has traditionally dominated the landscape in Bermuda.

The increase in formations and ILS issuances and listings has also resulted in a corresponding influx of new capital into the Bermuda reinsurance market, with the BSX reporting 786 ILS listings with a total nominal value of \$51.900 billion as of 18 May 2022. There is a general belief that these trends will continue for the rest of 2022, driven by the ongoing profitability of the sector.

**Largest provider of catastrophe insurance to US insurers**

40 bi-lateral Tax Information Exchange Agreements (TIEA’s) with all major trading partners

Solvency II equivalency (EU) and approved as a qualified jurisdiction by NAIC (US)

**281**  
number of insurances

**\$51.9bm**  
Current total value of ILS listings (as of May 10th 2022)

ILS Securities Listed in Bermuda

|      |     |
|------|-----|
| 2021 | 281 |
| 2022 | 253 |

**11%** ↑

### Authors



**Sarah Demerling**  
Partner  
T: +1 441 242 1525  
E: sarah.demerling@walkersglobal.com



**Peter Dunlop**  
Partner  
T: +1 441 242 1524  
E: peter.dunlop@walkersglobal.com



**Natalie Neto**  
Partner  
T: +1 441 242 1533  
E: natalie.neto@walkersglobal.com

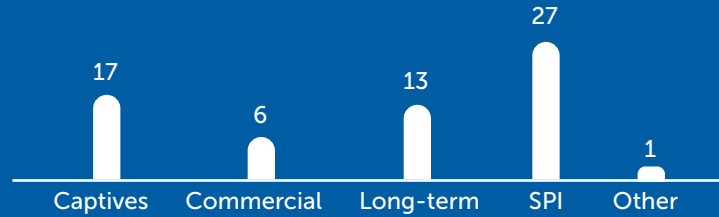


ISACs Becoming More Frequent

INSURER REGISTRATIONS - 2021

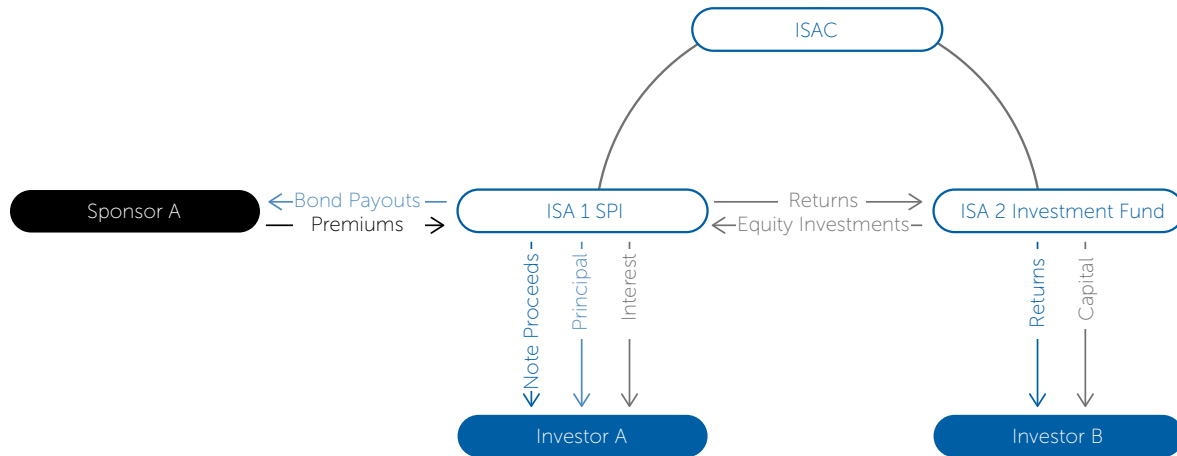
64 formations (as of December 2021)

27 SPI Registrations      13 Long-term Registrations



2020 saw the Incorporated Segregated Account Companies Act 2019 (“ISAC Act”) come into force, and 2021 saw ISACs enter Bermuda’s mainstream insurance sector. Incorporated segregated accounts companies share many of the features associated with segregated accounts companies, which are well known to the Bermuda market, but also offer some of the key advantages of an SPV. Importantly, incorporated segregated accounts (“ISAs”) have a separate legal personality from an ISA Company (“ISAC”) allowing them, amongst other things, to enter into contracts, to raise capital and be licensed and registered separately from the ISAC. These new structures appear to have piqued the interest of the Bermuda reinsurance market with the earliest adopters being reinsurance entities. The expectation is that these numbers will continue to rise during 2021 as ILS sponsors and investors become more aware of the potential advantages of such structures.

Note: based on Cat Bond issuance. Bond payout depends on loss trigger.





## INSURTECH IN BERMUDA

Bermuda has established itself as a leading market for insurtech, representing a convergence of the well-established reinsurance market with the burgeoning fintech market.

A number of Bermuda reinsurance companies already partner with, invest in, or are operating insurtech operations that provide disruptive innovations to the traditional reinsurance market cycle. As a result, risk is now better identified and measured in the Bermuda market and pricing is more efficiently calculated, resulting in greater client choice.

In line with Bermuda's history of innovation, the Bermuda government and the Bermuda Monetary Authority ("BMA") aim to make Bermuda the Silicon Valley of the mid-Atlantic. The BMA has introduced legislation to encourage the formation and licensing of insurtech operations, allowing insurtechs to take advantage of the same regulatory environment enjoyed by traditional reinsurers. There are two licensing tracks provided by Bermuda's Insurance Act 1978 (as amended); the Sandbox Innovative Insurer License; and the Innovation Hub, as shown below:

Innovative insurers (and innovative brokers, agents and marketplaces are also included in the Insurance Act licensing system) are those conducting business in an "innovative and experimental manner". Applicants for a Sandbox License are assisted by the BMA, in a collaborative way, to launch a new insurtech business under a defined license with proportionate regulatory capital and other licensing requirements allowing global business reach and growth towards a full Innovative License within an agreed Sandbox period of usually of 6-12 months.

Alternatively, innovative insurers, intermediaries and marketplaces can apply to join the BMA's Innovation Hub in which the insurtech has access to regulatory standards and requirements and a ready dialogue with the BMA and other participants in the Innovation Hub.

Access to a Sandbox License and the Innovation Hub is fast, frictionless and cost effective. This will appeal to venture capitalists and insurtechs in pre-seeding and seed funding rounds who cannot afford the delays, uncertainty and potentially high costs of the onshore licensing environments of the UK and the USA.

Examples of insurtechs in Bermuda, some of which Walkers has advised on, include a cryptocurrency custodian captive, two blockchain-powered marketplaces for the placement and claims payment of reinsurance risk, a cyber insurer, an AI-powered California wildfire risk Managing General Agent and a hybrid digital assets and smart contracts business that has launched an insurance-linked securities platform.

The insurtech market is still in its infancy, but with established regulatory standards in combination with the sophistication and business development efforts of innovative insurers, intermediaries and marketplaces leading the creative disruption of reinsurance, the outlook is bright for this developing sector.

## FINTECH AND DIGITAL ASSETS

Bermuda has continued to lead the way in the fintech and the digital assets sector, having first announced its Fintech Strategy in 2017. Bermuda was among the first jurisdictions to enact a fit-for-purpose regulatory and legal framework comprising the Digital Assets Business Act, 2018 ("DABA"), which provides for the regulation and licensing of digital assets business activities carried on in Bermuda, and amendments to Bermuda's Companies Act relating to the approval for public offerings of digital assets from Bermuda.

The Bermuda government and the BMA continue to refine the legal framework with a view to remaining agile in the face of an ever-evolving sector.

Since inception, DABA has been amended several times in response to industry feedback, including to widen the scope of licensable activities to capture digital asset derivatives exchanges and trading platforms.

In December 2020, DABA further was amended to provide an additional tier of license intended to suit start-ups and entrepreneurs looking to carry out beta testing to establish a minimum viable product in a regulated environment. This license class has lower fees and minimum net asset requirements, meaning that the BMA can provide a licensing framework for all manner of fintech businesses from innovation to global deployment.

The BMA has licensed a wide range of digital assets businesses under DABA, from global cryptocurrency exchanges such as Circle and Bittrex, innovative trading platforms, stable coin issuers and clearing houses, insurance companies and payment service providers. In December 2020, the BMA issued a DABA license to Diamond Standard Ltd. in connection with the issue of cryptographic tokens contained in a diamond commodity, which enables diamonds to be fungible and liquid and capable of being traded and used to asset-back transactions for the first time.



The Bermuda government also revamped its digital assets issuance legislation with the introduction of the Digital Assets Issuance Act 2020 (“DAIA”), which saw responsibility for the authorization of public offers of digital assets shift from the Minister of Finance to the BMA to be overseen by its growing team of fintech experts and advisers. In doing so, the BMA empowered licensed digital assets exchanges in Bermuda to operate as self-regulated organisations with respect to digital assets issuances conducted on their exchanges, removing the requirement to publish and file offering documents with the BMA.

Bermuda continues to innovate in other areas pertinent to the fintech sector and, in particular, has enacted amendments to banking legislation to offer restricted banking licenses to banks wishing to serve digital assets businesses both domestically and internationally without the requirement for a physical presence. We anticipate that this sector will see at least one new Bermuda entrant in the coming year capable of providing cutting edge solutions to banking, payment, settlement and clearing, utilising digital assets and digital technology.

## CORPORATE

### Take Privates

The last few years have been standout years for take private transactions globally – representing the most active years since 2007 - with Bermuda-incorporated listed companies involved in a number of the largest deals, including: <sup>1</sup>

What is driving the rush to the listco exit ramp? A convergence in the valuations of public companies - particularly in sectors adversely affected by COVID-19 - with their private company counterparts, record levels of private equity dry powder, relative ease (and affordability) of fundraising, increasing activism of minority public company shareholders, geopolitics and regulatory push factors have all played their part.

|   |   |   |  |   |
|---|---|---|--|---|
| <p>Apollo and Athene’s US\$11.43 billion merger - both Apollo and Athene underwent mergers under both Bermuda and US law as a ‘double-dummy’ merger transaction</p> | <p>Apollo’s US\$2.6 billion acquisition and take private of Aspen Insurance, previously dual-listed in New York and Bermuda</p> | <p>The acquisition and take private of aircraft leasing company, Airastle, in a \$2.4 billion deal involving its de-listing from the NYSE</p> | <p>The HK\$4.6 Billion acquisition of TPV Technology by CEIEC (and its concert parties) and the company’s dual de-listing from the Hong Kong and Singapore stock exchanges</p> | <p>The CVC-backed bid for Hong Kong-listed i.T. Limited, announced at the end of 2022</p> |
|---|---|---|--|---|

### So how do you take a Bermuda listed company private?

Bermuda’s Companies Act provides three mechanisms:



merger or amalgamation



scheme of arrangement



tender offer and squeeze-out

Much of the focus of take private activity, particularly involving businesses operating in Asia, has been on US-listed companies in the mid- and small-cap space. With Chinese businesses arguably the principal targets of the US Holding Foreign Companies Accountable Act passed in late 2020, this trend appears likely to continue. However, we also see increased take private activity in Hong Kong and elsewhere.

A number of factors will be relevant to structuring a take private, including: local law and listing requirements; the nature of the proposed acquisition; the proportion of the shares controlled by the bidder group; and anticipated public and independent shareholder take-up. In broad terms, it is more common to see mergers used in the North American markets, whereas a scheme remains de rigueur in Hong Kong.

Most take private proposals have the company’s founders to the fore - even if it is private equity underpinning the bid - and they nearly always involve cashing-out the public shareholders, with founders and/or senior management rolling over their shares into the bidding company. In weighing up a take private proposal, it is crucial for the board to ensure that its fiduciary duties are discharged appropriately and independently. This involves considering the bid in the context of what, in the reasonable and objective opinion of the directors, is in the best interests of the company as a whole (including all of its present and future shareholders). The board of directors of a target company is well-advised to establish a special committee of independent directors to consider and negotiate the proposal. Bermuda law does not require active ‘go-shop’ provisions - as seen in Delaware, for example

1. Walkers advised on the Athene and Aspen acquisition, one of the acquirors on the acquisition of Airastle, TPV Technology on certain post-privatisation matters and is acting for the bidder group on the proposed take private of i.T. Limited.



- requiring the special committee to actively solicit competing bids. However, it is increasingly common for the deal terms to include a 'fiduciary-out' – permitting the special committee to speak to other potential bidders and ultimately to switch to a competing bid if it is in the interests of the company to do so – and corresponding break fee clauses. Care must be taken to ensure that these provisions are enforceable as a matter of Bermuda law and consistent with market practice.

Although it is difficult to forecast anything with certainty in the current climate, we expect the upward trend of take private transactions to continue throughout 2021. With close to 40 Bermuda companies listed on the NYSE and NASDAQ combined and approximately 20% of companies listed in Hong Kong incorporated in Bermuda, the jurisdiction is certain to remain at the forefront of the take private wave.

#### Authors



**Jonathan Betts**  
Partner  
T: +1 441 242 1511  
E: jonathan.betts@walkersglobal.com



**Nicholas Davies**  
Partner  
T: +971 4 363 7934  
E: nicholas.davies@walkersglobal.com

## ACCESSING CAPITAL MARKETS FROM BERMUDA

### Initial Public Offerings

Thanks to the strong historical and commercial ties between Hong Kong, a former British colony, and Bermuda, an overseas territory of the UK, there are more than 450 Bermuda companies listed on the Hong Kong Stock Exchange ("HKEX"), accounting for over 20% of the total number of listed companies in Hong Kong. Bermuda remains the second largest domicile of Hong Kong Mainboard and GEM listed companies.<sup>2</sup>

Apart from Hong Kong, there is an increase in the number of Bermuda companies accessing the North American capital markets through US stock exchanges. Bermuda companies are also listed on a number of other stock exchanges including the Stock Exchange of Singapore, the Toronto Stock Exchange and the London Stock Exchange.

### Global IPO outlook

As COVID-19 hit the markets, IPO activity was dampened during the first half of 2020, with companies entering resilience mode and focusing on weathering the storm, both financially and operationally. The NASDAQ, HKEX and Shanghai Stock Exchange were among the top three exchanges in 2020 by IPO fundraising and number of listings.

Despite pessimistic market sentiment and waning investor confidence last year due to COVID-19, as well as political, social and economic concerns, global IPO markets showed resilience, recovering after a slower first half to end strongly.

### Hong Kong IPO market outlook

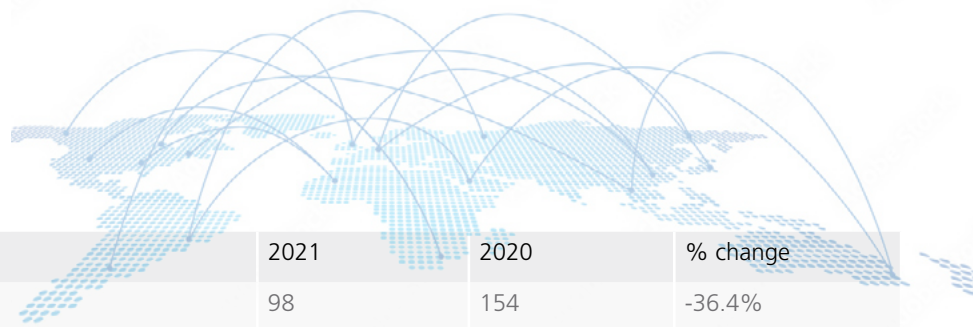
Hong Kong's capital markets, which is dominated with listed companies incorporated in offshore jurisdictions like Bermuda and the Cayman Islands, has continued to attract up-and-coming companies from around the world, with a number of homecoming listings.

Hong Kong's annual tally of IPOs shrank in 2021 for the first time since 2017, with a 36.4% drop of the number of newly listed companies, even though the total funds raised on the HKEX in 2021 was HK\$770.7bn, an increase of 3.2% when compared with HK\$745bn in 2020.

2. source: <https://webb-site.com/dbpub/domicile.asp>







| Securities Market                                  | 2021      | 2020      | % change |
|--|-----------|-----------|----------|
| No. of newly listed companies                      | 98        | 154       | -36.4%   |
| Average daily turnover by value (HK\$M)            | 166,730   | 129,476   | 28.8%    |
| Average share traded per trading day (Mil. Shares) | 252,061   | 220,627   | 14.2%    |
| Average no. of trades per trading day              | 2,364,755 | 1,962,253 | 20.5%    |
| Fund raised by IPOs (HK\$M)                        | 328,851   | 400,137   | -17.8%   |
| Total Funds raised (including IPOs)(HK\$M)         | 770,735   | 746,956   | 3.2%     |

**Source:**

[https://www.hkex.com.hk/Market-Data/Statistics/Consolidated-Reports/HKEX-Monthly-Market-Highlights?sc\\_lang=en&select={40F215EC-D057-4C61-9293-114240C470CD}](https://www.hkex.com.hk/Market-Data/Statistics/Consolidated-Reports/HKEX-Monthly-Market-Highlights?sc_lang=en&select={40F215EC-D057-4C61-9293-114240C470CD})

During this period, five US-listed Chinese companies (all being Cayman Islands incorporated) completed secondary listings in Hong Kong, raising a total of HK\$63.4bn, representing approximately 19.3% of the total funds raised by IPOs. The trend of secondary listings has highlighted Hong Kong’s solid fundamentals and its importance as an international capital-raising venue with a growing ecosystem for innovation and new economy companies.

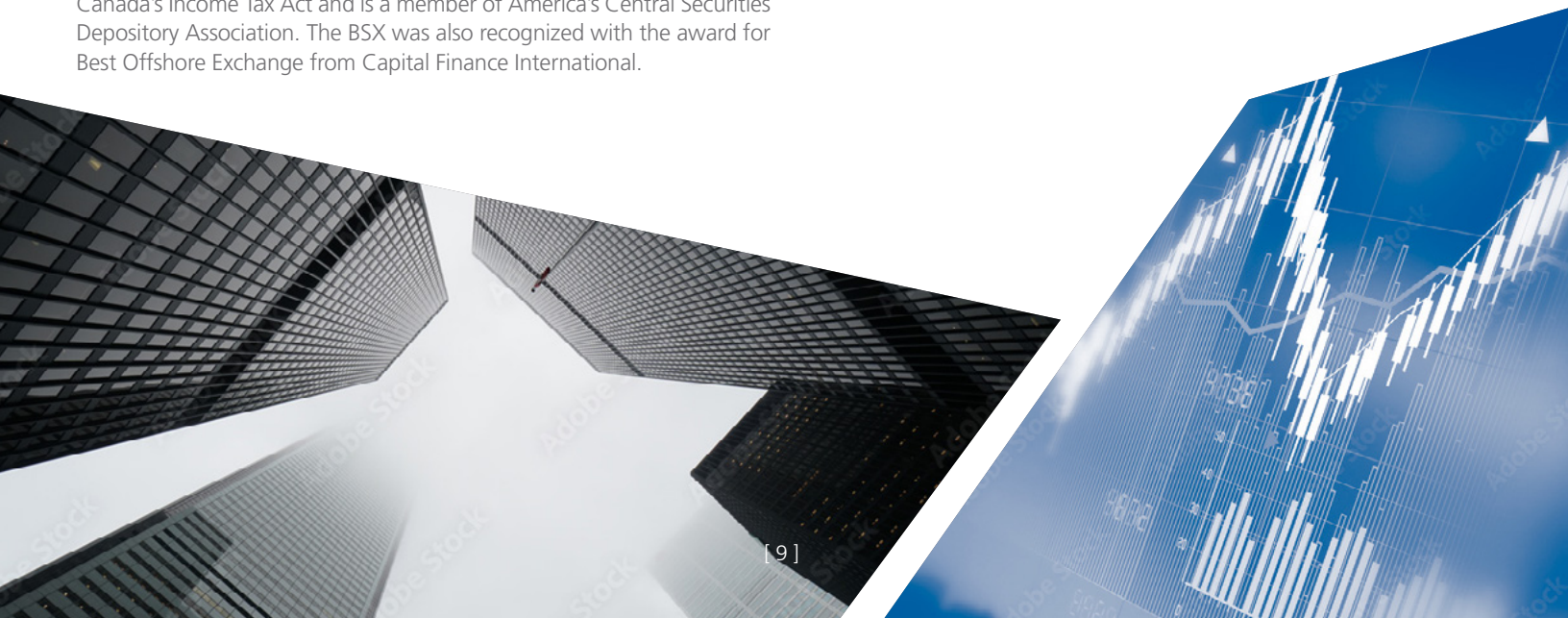
## BERMUDA STOCK EXCHANGE

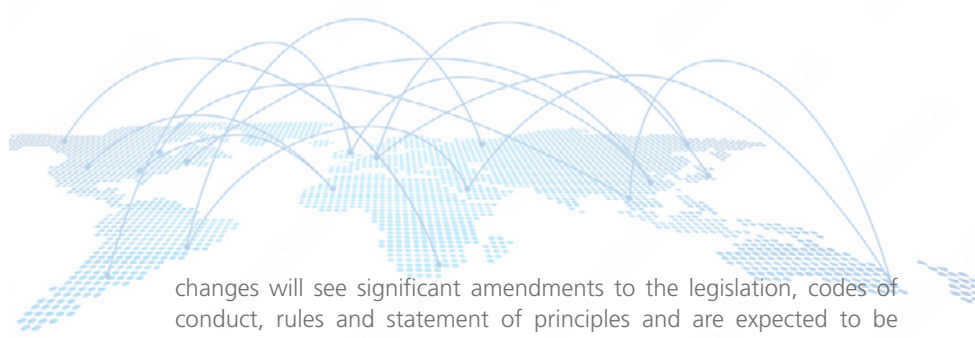
The Bermuda Stock Exchange (“BSX”) is one of the leading electronic offshore securities market. The BSX specializes in listing and trading of capital market instruments such as equities, debt issues, funds, hedge funds, derivative warrants and ILS. The BSX, recognized by the United States Securities and Exchange Commission as a Designated Offshore Securities Market, is a member of the World Federation of Exchanges, an associate member of IOSCO and is located in an OECD member nation. The BSX has Approved Stock Exchange status under Australia’s Foreign Investment Fund taxation rules; Designated Investment Exchange status by the UK’s Financial Services Authority; Recognized Stock Exchange by the UK HM Revenue and Customs; Designated Exchange status under Canada’s Income Tax Act and is a member of America’s Central Securities Depository Association. The BSX was also recognized with the award for Best Offshore Exchange from Capital Finance International.

The BSX was fully acquired by Miami International Holdings (“MIH”) in December 2020, MIH having taken a controlling stake in 2019. According to BSX President and Chief Executive Officer, Greg Wojciechowski, this acquisition is “intended to assist MIH in expanding its world-class technology, derivatives trading and regulatory expertise to address emerging markets, such as digital assets, and provide the BSX with additional support in the evolving global reinsurance risk market”.

The BSX reported record-breaking results in 2021, demonstrating resilience despite COVID-19, aided by the fact that it is a fully electronic exchange with securities being dematerialized and held in electronic book-entry form. ILS listings reached a record 281 issues in 2021, representing an 11.1% increase from 253 listings in 2020. Combined nominal value of 2021 listings totalled \$19.8 billion, a 25.4% increase from the \$15.8 billion total in 2020 with the number of ILS securities totalling 757 listings at the end of 2021, representing \$50.8 billion in nominal value.

International debt listings also increased and the BSX added to its existing base of premium international securities and client base blue-chip companies with the listing of US\$1.94bn in nominal value of senior notes issued by NCL Corporation Ltd., in respect of which Walkers acted as legal counsel and listing sponsor.





## REGULATION

### Updates to economic substance and reporting process

The economic substance regime has continued to develop, with the most notable change being the amendment to the definition of the 'relevant activity' of 'fund management', which was effective from 1 January 2022. As a result of the amendments, an entity will be carrying on the 'relevant activity' of 'fund management' if it manages investments for an investment fund, as defined under the Investment Funds Act 2006 (as amended), whether or not it is required to be licensed under the Investment Business Act 2003 (as amended) and will therefore include all entities even if they do not have a physical presence in Bermuda.

In March 2022, the ROC issued the first Notice to Comply and Warning Notices (the "Notices") for non-compliance with the economic substance requirements. These Notices were issued to entities that self-declared on their economic substance declarations filed with the Registrar of Companies for the 2019 and 2020 relevant financial period that the entity was non-compliant with the economic substance requirements as defined in section 3 of the Economic Substance Act 2018 and the Economic Substance Regulations 2018. The Notices permitted entities to make representations to the ROC for the ROC to decide whether the actions taken by the entity are adequate to meet the economic substance requirements or whether further enforcement action is required.

In light of COVID-19 and acknowledging the travel restrictions and health warnings, the BMA and the ROC extended their Notices to the Public, waiving the requirements to have physical board meetings in Bermuda, for the purposes of complying with the economic substance requirements until 31 December 2022. However, it is a requirement of directors to make good faith decisions in relation to meeting the economic substance requirements and any decisions relating to the corporate governance requirements should be well documented in the relevant board meeting minutes.

### Updates on Regulation of the Investment Business Act 2003

The BMA has issued a number of consultation papers with suggested enhancements to the investment business regime in Bermuda. These

changes will see significant amendments to the legislation, codes of conduct, rules and statement of principles and are expected to be effective in the latter half of 2022. At a high level, the amendments will require that entities either register as a Class A, Class B or Non Registrable Person and will require any entity that is incorporated or formed in Bermuda that is carrying on investment business activities to be licensed by the BMA, regardless of whether the entity is carrying on the investment business activities from a place of business, where it employs staff and pays salaries. Also proposed is a new sandbox license for investment business related innovation, which will be introduced in the form of Class T and Class F license categories. Certain license classes will also be required to appoint a Senior Representative.

### Continued updates to digital asset regulatory framework

As a leading fintech and digital assets sector jurisdiction, Bermuda continues to enhance its regulatory framework in connection with digital assets. The BMA continue to ensure that the digital asset legislative framework is fit for purpose and keep pace with the digital asset business environment, which continues to evolve rapidly. Proposed changes to the Digital Asset Business Act 2018 seek to provide further clarity to applicants and to facilitate more effective administration of the legislative framework.

### Personal Information Protection Act 2016

The Bermuda Privacy Commissioner has appointed an Assistance Commissioner of Operations, as well as an Assistant Commissioner of Policy and Engagement and has been active in developing guidance notes and training platforms to assist organisations in Bermuda to meet their obligations under the Personal Information Protection Act 2016 ("PIPA"). There is still no confirmed date for the substantive provisions of PIPA to be operative, however, we anticipate PIPA to be introduced by the end of 2022 with a phased approach for entities to be compliant. We recommend organisations in Bermuda to review their current handling of personal information now and ensure that they are ready to satisfy the obligations of PIPA when it comes into force.





## Regulatory trends in Bermuda's AML regime

The BMA issued a series of consultations papers on proposed enhancements to the general guidance notes and sector specific guidance notes for anti-money laundering and anti-terrorist financing purposes (the "AML Guidance Notes"). The proposed changes to the AML Guidance Notes do not propose any material changes that would affect the operations of a regulated financial institution, however there are enhancements that regulated financial institutions should be aware of, such as who the BMA will regard as 'fit and proper' to conduct the statutory independent audit.

As a result of a change to the definition of 'occasional transaction' digital asset businesses are now required to conduct customer due diligence on single transactions or a series of linked transactions where the threshold of such transactions meets USD1,000. This brings Bermuda fully into compliance with the FATF requirements and maintains Bermuda's reputation as a reputable jurisdiction.

The BMA continue to conduct on-sites of regulated financial institutions and issue enforcement actions, which has resulted in a significant increase in independent audit instructions as well as legal and regulatory advice, to ensure that on an ongoing basis, regulated financial institutions are operating within the laws and regulations of Bermuda.

## Introduction of cyber reporting requirements

All financial sectors licensed, registered and supervised by the BMA are required to comply with the Operational Cyber Risk Management Code of Conduct, which was first implemented for registered insurers and insurance intermediaries. There is also the requirement to report to the BMA any 'cyber reporting events' that are suffered by a Bermuda regulated entity or where a Bermuda entity is implicated in a 'cyber reporting event' of its global operations. As a result of these new requirements, there has been a significant increase in the number of instructions in relation to legal and regulatory reviews of cyber and information security policies and procedures as well as assisting entities with reporting to the BMA, where necessary.

### Author



Melanie Fullerton

Senior Counsel

T: +1 441 242 1537

E: [melanie.fullerton@walkersglobal.com](mailto:melanie.fullerton@walkersglobal.com)





## FINANCE

### A Jurisdiction of Choice for EU Investors in CLOs

Following the inclusion in February 2022 of the Cayman Islands on the European Union’s AML list, managers and investors have been turning to Bermuda as an alternative jurisdiction in which to incorporate issuers of collateralised loan obligations where the investor base is anticipated to include those based in the EU.

In the months leading up to Cayman’s inclusion on the EU AML list, Walkers worked with the Bermuda Monetary Authority and the Registrar of Companies to agree an expedited and prioritised incorporation process for standard off-balance sheet CLO structures, and the jurisdiction is well equipped to meet the turnaround times required for these transactions. Since then, we have moved a number of existing deals in warehouse stage across to Bermuda from Cayman, and have in addition incorporated multiple new issuer vehicles.

Bermuda has long been a favoured jurisdiction for securitisation deals, with market participants in the aircraft and shipping container sectors in particular choosing to incorporate issuer special purpose vehicles in Bermuda. The island has a secure, modern and established physical and technological infrastructure, with a long history of incorporating international companies and SPVs.

This background, and Bermuda’s status as the market leader in insurance-linked securities, means that the rating agencies are familiar with the jurisdiction and the characteristics and features of Bermuda deals. Crucially, Bermuda is able to offer to managers and investors many of the features they have come to expect on Cayman deals:

1. Bermuda is a tax-neutral jurisdiction, with no income, corporate, withholding or capital gains taxes. Bermuda exempted companies are entitled to an assurance certificate from the Minister of Finance exempting them from any tax that may be imposed through new Bermuda legislation. Such certificates are, under current legislation, valid through to 31 March 2035.
2. Its time zone of Atlantic Standard Time, one hour ahead of New York, makes it ideal for US-based managers and arrangers. This is a critical advantage which sets Bermuda apart given the speed at which these transactions can run, with various factors such as printing deadlines, investor demand and rating agency requirements often requiring swift turnaround times.
3. The island is compliant with US and UK anti-money laundering (AML) and anti-terrorist financing (ATF) requirements, and has no banking secrecy laws. Bermuda’s corporate beneficial ownership register was established decades ago, enabling qualified authorities to share essential information responsibly. The jurisdiction is recognised as a compliance leader by the OECD, FATF and G20 countries:

Ranked #1 globally for overall technical compliance and #7 in effectiveness by the Financial Action Task Force (FATF) at the time of publishing its January 2020 assessment of the island’s anti-money laundering and counter-terrorist financing standards. This represents a differentiating factor from other offshore jurisdictions and provides reassurance to market participants that Bermuda is unlikely to meet a similar “blacklisting” fate.

- » Recognised by the EU’s Economic and Financial Affairs Council (ECOFIN) as a ‘cooperative jurisdiction’ with respect to tax good governance.
  - » Member of the OECD Inclusive Framework joining the OECD statement in July 2021;
  - » Implemented US FATCA (Model 2 jurisdiction) and exchanges with OECD Common Reporting Standard (CRS) and Country-by-Country (CBC) information with all OECD member countries.
4. Bermuda issuers need not prepare financial statements if the directors and shareholders agree to waive their preparation, which is done as a matter of course at incorporation.
  5. Market participants in Asia are familiar with Bermuda structures, due to Bermuda’s long history in the region.
  6. CLO issuers are not subject to Bermuda’s AML/ATF regime, and are not ordinarily subject to economic substance requirements in Bermuda.

This latter point is a particular advantage in the commercial real estate (or “CRE”) CLO space, where structures tend to be on balance sheet, with the issuer’s ordinary shares being held by a fund managed by, or a holding entity affiliated with, the collateral manager, and the issuer’s board of directors typically comprising a mix of independent directors provided by the administrator and individuals associated with the manager. In the weeks leading up to the time of publication, we had seen a particular uptick in the number of CRE CLOs being formed in Bermuda.

The EU’s announcement understandably caused a degree of concern in the market. We are proud of the way Bermuda has been able to step into the breach to present managers and investors with a credible alternative, and the feedback the CLO team has received to date is that the Bermuda experience has been a seamless one. Even more encouragingly, those managers who elected to move their deals to Bermuda in the initial wave in February have shown their confidence in the jurisdiction by electing to do subsequent deals through Bermuda issuers.



## Ship Financing

As a major international financial centre, Bermuda has long been known as a creditor-friendly jurisdiction, with Bermuda entities being used in a wide variety of cross-border structures and transactions. In particular, it is a favoured jurisdiction for shipping, with the Bermuda Shipping and Maritime Authority being a member of the Red Ensign Group and a “category 1” register, able to register vessels of unlimited tonnage and type.

Over the past year, we have continued to act on a steady stream of ship financing work, from new builds through major capital raises for existing businesses to new SPV financings. Most notably, the cruise lines who in the grip of the COVID-19 pandemic were turning to the capital markets to sustain their operations through the downturn have largely been able either to refinance those note issuances on more favourable terms or discharge them entirely.

In November 2021, Norwegian Cruise Lines issued a total of \$1.15 billion 1.125% exchangeable notes (including \$150 million aggregate principal amount of notes issued in connection with the exercise by the initial purchasers of their option to purchase additional notes). The proceeds were partially used to buy back a portion of 6% exchangeable senior notes from a limited number of noteholders in privately negotiated agreements, with the remainder being used for general corporate purposes. At the same time, it commenced a registered direct offering of its ordinary shares to certain holders of those exchangeable senior notes, with the proceeds being used to redeem a portion of the 12.25% senior secured notes and 10.25% senior secured notes it had issued during the early months of the pandemic in 2020.

Norwegian went on to raise over \$2 billion in February 2022 by issuing a combination of senior secured notes, senior notes and exchangeable senior notes. The senior secured notes benefitted from collateral in the form of shares in, among other things, three of Norwegian’s vessels. Norwegian used the proceeds of these issuances to redeem the remainder of those senior secured notes issued in 2020.

Walkers acted for Norwegian on each of these offerings and on the subsequent listings of the notes on the Bermuda Stock Exchange.

Walkers have been engaged on a range of new build financings involving Bermuda entities. The sources of these instructions have varied from traditional lenders through to credit agencies. The types of vessel being built has also varied but we are seeing trends around the construction of container ships and chemical vessels as well as bulk carriers. This is reflective of the fact that shipbuilding yards in Asia have been reporting an increase in orders for 2021. These shoots of recovery are very promising especially after a tough 2020 with the effects of the COVID-19 pandemic.

## Authors



**Adam Bathgate**  
Partner  
T: +1 441 242 1515  
E: adam.bathgate@walkersglobal.com



**Rupen Shah**  
Partner  
T: +852 2596 3314  
E: rupen.shah@walkersglobal.com

## PRIVATE CAPITAL & TRUSTS

### Global Footprints, Asset Protection & Retention of Powers

Bermuda is a jurisdiction trusted to protect the assets of international families and HNWIs. Asset protection is an issue that has been highlighted recently not only due to COVID-19, but also arising from significant political instability and uncertainty in many countries.

Families and HNWIs have greater global mobility than ever before, and this expansive global footprint has led to an increased focus on the need for carefully tailored wealth planning and asset protection structures. An ability to tailor bespoke trusts for international private clients has been at the heart of Bermuda’s enlightened attitude to, and global popularity for, attracting private wealth.

In brief, a trust is a legal (typically contractual) relationship created during a lifetime, or on death, by a person (the settlor) whose assets are placed under the control of a trustee for the benefit of one or more identified beneficiaries or for a specified purpose. Once the assets are transferred to the trustee, they are:



outside of the settlor’s estate



held as a separate fund and are not classified as a part of the trustee’s estate



held on the terms in the trust deed

There are no restrictions on what can be held within a trust, be it physical assets, rights or interests, vested or contingent, or where those assets are held. A trust can protect assets from claims by third parties against the settlor, the settlor’s estate or the beneficiaries.



revoke the trust



vary the terms of the trust



give directions in relation to the trust property



add or remove beneficiaries or trustees

Bermuda’s commitment to attracting and retaining private wealth is emphasized by the inclusion of statutory rights for the retention of trust powers by either a settlor or a designated third party. This legislative framework ensures that the retention by such party of an extensive list of powers would not negate the validity of a trust. Examples of such powers include powers to:



This ability to reserve powers in settling assets into trusts provides greater confidence for clients who may not have used trusts or considered it asset protection before.

## Insurance, Fintech and Digital Asset Trusts

Bermuda's position as a leading jurisdiction for (re)insurance, fintech and digital assets, combined with the flexible nature of the Bermuda trusts product, has led to greater commercial uses of Bermuda trusts.

(Re)insurance companies are increasingly designing structures that make use of a master-trust structure created for the specific purpose of establishing individual trusts to hold the benefit of a policy for named beneficiaries.

Bermuda is at the cutting edge of fintech and digital assets, as discussed in this paper. Whilst, at first glance the traditional world of trusts would not seem a natural fit with the new digital assets space, there are many ways that the traditional and new can combine. Purpose trusts can be created to hold digital assets, such as tokens or coins, until a specified set of circumstances occur, which (depending on the terms of the trust) might then trigger either reinvestment, distribution or ownership. The ability to draft bespoke trust agreements under Bermuda law allows for creative solutions in an ever-evolving environment.

At Walkers, we have one of the leading Bermuda private client & trusts teams, based in Bermuda and in Europe (and with on-the-ground capability in Asia). The highly-skilled team are able to assist private clients and their advisors in designing bespoke asset protection structures using the full suite of Bermuda trusts and corporate structures.

### Author



**Rajah Abusrewil**  
Group Partner  
T: +44 (0) 1481 748 945  
E: rajah.abusrewil@walkersglobal.com

## DISPUTES AND RESTRUCTURING

### Market Update

#### Insolvency and Dispute Resolution

Walkers has been involved in many high profile restructuring and insolvency matters since it commenced operations 6 years ago in Bermuda.

As the international community reacts to recent tumultuous political and economic developments, in Bermuda we have seen a continued trend for creditors, particularly financial institutions, to accelerate the issue of winding up petitions against debtors. Whereas in recent years lenders may have delayed taking action to give a borrower an opportunity to improve its financial performance and trade out of difficulties, in 2022 lenders appear less willing to wait to enforce their legal rights against debtors. This is particularly the case with respect to debtor

companies with operations in the Asian markets. As a consequence, we are receiving significantly more instructions from lender clients to move expeditiously with a view to obtaining liquidation orders. With the wider global economic outlook remaining uncertain, we believe this trend may continue for quite some time yet.

## Recent Developments with the Light Touch Process in Bermuda

We have noticed in the last year that some creditors have lost patience and have been more willing to commence winding up proceedings against debtor companies incorporated in Bermuda. Walkers is aware of at least two cases where these debtor companies have used Bermuda's "light-touch" provisional liquidation jurisdiction as a means of responding to and delaying winding up proceedings (which are now also subject to appeal).

The "light touch" process allows the board and management of a company to remain in place, under the oversight of independent, professional liquidators, to enable a company to restructure its liabilities, return to solvency and recommence trading (the equivalent of the Chapter 11 regime in the United States and the Schedule B1 debtor-in-possession regime in the UK). Importantly, a "light touch" order will result in the critical moratorium on creditor action. The Bermuda Court has shown considerable flexibility in granting bespoke orders to permit management to have as much, or as little, a role in the formulation of a restructuring plan as the circumstances require.

Walkers was involved in a matter where the "light touch" process was used to effect a restructuring of a Bermuda company's debts and the Bermuda company was able to successfully resume trading on the Hong Kong Stock Exchange earlier in 2022. While there will always be a place for the "light touch" process where the company has a feasible restructuring plan, it will be interesting to see whether the Bermuda Court of Appeal will take the opportunity to set down further guidelines for when a "light touch" provisional liquidation order should be made and how competing applications from a petitioning creditor for a winding up order and from a debtor company for a "light touch" provisional order will be resolved in the near future.

## Recent developments in Hong Kong and the impact on Bermuda

Since late 2021, the Hong Kong Court has been scrutinizing applications for recognition of light touch provisional liquidators (with a focus on protecting creditors' interests). To this end, it has not recognized any provisional liquidators to companies incorporated offshore for restructuring purposes (which began in 2021 and has continued in 2022), citing concerns in recent judgments about whether the recognition process was being misused (in light of recent matters where little progress had been made on the restructuring).

In a recent decision of the Hong Kong Court, the judge also made some comments that a scheme sanctioned in the place of incorporation (such as Bermuda) and recognized under Chapter 15 of the United States Bankruptcy Code (where the relevant debt is governed by US law) will not be treated as a matter of Hong Kong law as having compromised



the debt. This is because the Chapter 15 regime does not result in the compromise or discharge of a US law governed debt (it only recognizes a foreign proceeding to ensure that creditors cannot take future actions in the US). This judgment may pave the way for the approval of parallel schemes in Hong Kong and Bermuda (or the relevant place of incorporation), as was the approach in the past.

Against this backdrop, the Hong Kong Court has also been willing to use its jurisdiction to wind up foreign companies more readily than in previous years, in an effort to protect the interests of creditors. This may result in a situation where the Bermuda Court has made a light touch order (so the company is not in liquidation as a matter of Bermuda law), but the Hong Kong Court makes an order placing the company in liquidation. We are not aware of any cases yet where this has occurred, but we will be keeping a close eye on such cases. Given that around 25% of the listed companies in Hong Kong are incorporated in Bermuda, the recent decisions out of Hong Kong have significant implications for such companies which find themselves in financial distress.

## Looking forward

Given the challenges to the world economy, we believe that we will see more lenders losing patience and taking steps to enforce their legal rights against debtors. While some lenders may have patience with companies which have a solid business but are experiencing short term liquidity issues, we do not expect this patience to be afforded to those which have been unable to pay for a long period of time or are otherwise engaging in suspected mismanagement or misconduct.

We expect to see an uptick in instructions from lender clients seeking advice about their rights of enforcement, with a view to seeking winding up orders.

## Authors



**Joanne Collett**  
Partner  
T: +852 2596 3354  
E: joanne.collett@walkersglobal.com



**Kevin Taylor**  
Managing Partner, Bermuda  
T: +1 441 242 1510  
E: kevin.taylor@walkersglobal.com



**Michaela Lam**  
Counsel  
T: +852 2596 3335  
E: michaela.lam@walkersglobal.com

## FUNDS

Bermuda remains one of the key offshore jurisdictions for traditional fund products, with a reputation for quality clients and innovative structures and is emerging as a popular jurisdiction for digital asset and crypto native funds given Bermuda's position as an early adopter of fintech dedicated legislation.

The most recently released figures from the Bermuda Monetary Authority (BMA) saw total net asset values increase to \$213.70 billion, representing a year to year increase for nearly all classes of funds in the jurisdiction as compared with 2021. Bermuda has shown itself to have fared remarkably well throughout the COVID-19 pandemic.

The introduction of the new Incorporated Segregated Accounts (ISAC) Companies Act legislation in 2020 has been well received. The ISAC Act builds on the traditional concept of operating segregated accounts that have the benefit of statutory segregation between accounts (limited recourse), allowing a ring-fencing of assets and liabilities but also introduces the ability for each account to have its own separate legal personality.

During 2021, investment managers operating in the Digital Asset sector benefited from the introduction of this new legislation and we saw various classes of funds set up using an ISAC as the corporate vehicle. We expect to see continued use of the ISAC vehicle in various types of fund structures.

Bermuda remains the leading jurisdiction for the creation, support and listing of ILS (with the Bermuda Stock Exchange having almost 95% of market share of global ILS listings) and ILS funds. Investors' appetite for portfolio diversification and interest in this relatively uncorrelated alternative asset class - that is also acknowledged as a sustainable development investment for environmental, social and governance (ESG) concerns - continues to grow and the total AUM of global ILS investment managers is approximately \$100 billion. Many of the largest ILS investment managers from the USA and the UK have a physical presence in Bermuda.

Bermuda is positioning itself as the 'Climate Risk Finance' capital of the world given Government of Bermuda's recent ESG commitments and the Island's experience in embracing sustainability and risk mitigation practices for 400 years. Investors looking to set up structures in this space benefit from having the reputation and combined knowledge of the sole regulator, the BMA.

## Authors



**Sarah Demerling**  
Partner  
Insurance, Corporate and Funds  
T: +1441 242 1512  
E: sarah.demerling@walkersglobal.com



## INSURANCE DISPUTES

Bermuda is the third largest reinsurance market globally and frequently provides the most significant high severity, low frequency catastrophe coverage in the largest excess insurance, reinsurance and retrocession placements. Bermuda remains a globally recognized choice of jurisdiction for the resolution of disputes. Bermuda law is grounded on English common law and has a dedicated Commercial Court with specialist judges experienced in (re)insurance law and practice, which has given rise to a body of (re)insurance case law that supplements English and other commonwealth authority. This gives all participants in the Bermuda legal system an equal and fair system for access to justice, with no “home court” advantage to Bermuda-domiciled parties. Bermuda is also a top arbitration jurisdiction for (re)insurance disputes, which operates two arbitration regimes:

1. the Bermuda Arbitration Act 1986, for domestic or non-commercial disputes; and
2. the Bermuda Conciliation and International Arbitration Act 1993, which incorporates the UNCITRAL Model Law.

The Bermuda Form policy, devised by XL and Ace in the infancy of the Bermuda insurance market is a world recognized, specialized form providing improved coverage and aggregation terms and a hybrid Bermuda/England/New York governing law and arbitration clause that all of which is preferred by many international companies for their ease of use and clarity.

Walkers Bermuda has one of the largest and most specialized dispute resolution teams in Bermuda with five experienced senior advocates covering all aspects of (re)insurance disputes, both in court and in arbitration. Bermuda also provides for the special admission of overseas counsel, such as English QCs, for complex and heavyweight litigation in respect of which clients want extra, specialist support.

Examples of (re)insurance disputes Walkers Bermuda lawyers have undertaken include:

- » Bermuda captive of US pharmaceutical company in US\$500m reinsurance arbitration claim against commercial reinsurers arising from mis-selling of anti-psychotic drug.
- » Bermuda sidecar in US\$20m trapped collateral dispute with cedent.
- » Bermuda excess insurer in US\$10m bad faith arbitration claim against primary insurer arising from US wrongful death runaway jury verdict.
- » US\$50m Bermuda captive arbitration claim against Bermuda healthcare insurer arising from aggregation of rogue surgeon malpractice.
- » US\$10m Bermuda long term insurer court claim against Bermuda management liability insurer arising from high profile failure of US law firm.
- » US\$1bn arbitration claim by London captive insurer of UK pharmaceutical company against Bermuda and international reinsurers arising from third party claims from the sale of genetically modified corn.
- » Swiss ISDA swap seller in US\$20m Industry Loss Warranty trapped collateral dispute with Bermuda ILS fund.
- » Bermuda and UK regulatory investigations in to finite reinsurance, price fixing and other market investigations. Employment disputes in court and in arbitration between senior re/insurance executives and former employers.

### Authors



**Peter Dunlop**  
Partner

T: +1 441 242 1524  
E: peter.dunlop@walkersglobal.com







## Bermuda



**Kevin Taylor**  
Managing Partner  
Insolvency and Dispute Resolution  
T: +1 441 242 1510  
E: kevin.taylor@walkersglobal.com



**Adam Bathgate**  
Partner  
Finance & Corporate and Funds  
T: +1 441 242 1515  
E: adam.bathgate@walkersglobal.com



**Jonathan Betts**  
Partner  
Finance & Corporate and Funds  
T: +1 441 242 1511  
E: jonathan.betts@walkersglobal.com



**Peter Dunlop**  
Partner  
Insurance, Insolvency and Dispute Resolution  
T: +1 441 242 1524  
E: peter.dunlop@walkersglobal.com



**Natalie Neto**  
Partner  
Finance & Corporate and Funds  
T: +1 441 242 1533  
E: natalie.neto@walkersglobal.com



**Sarah Demerling**  
Partner  
Insurance, Corporate and Funds  
T: +1 441 242 1525  
E: sarah.demerling@walkersglobal.com



**Rachel Nightingale**  
Senior Counsel  
Finance & Corporate and Funds  
T: +1 441 242 1520  
E: rachel.nightingale@walkersglobal.com



**Nathalie West**  
Senior Counsel  
Finance & Corporate and Funds  
T: +1441 242 1523  
E: nathalie.west@walkersglobal.com



**Melanie Fullerton**  
Senior Counsel  
Regulatory  
T: +1 441 242 1537  
E: melanie.fullerton@walkersglobal.com

## Dubai



**Nicholas Davies**  
Partner  
Finance & Corporate  
T: +971 4 363 7934 / +852 9856 5019  
E: nicholas.davies@walkersglobal.com



**Ciaran Bohnacker**  
Partner  
Finance & Corporate  
T: +971 4 363 7901  
E: ciaran.bohnacker@walkersglobal.com

## Europe



**Rajah Abusrewil**  
Group Partner, Guernsey  
Private Capital and Trusts  
T: +44 (0) 1481 748 945  
E: rajah.abusrewil@walkersglobal.com



**Neil McDonald**  
Partner, London  
Corporate and Finance  
T: +44 (0) 7220 4990  
E: neil.mcdonald@walkersglobal.com



**Patrick Ormond**  
Partner, London  
Corporate and Finance  
T: +44 (0) 7220 4983  
E: patrick.ormond@walkersglobal.com

## Hong Kong



**Andy Randall**  
Managing Partner  
Finance & Corporate  
T: +852 2596 3305  
E: andy.randall@walkersglobal.com



**Joanne Collett**  
Partner  
Insolvency and Dispute Resolution  
T: +852 2596 3354  
E: joanne.collett@walkersglobal.com



**Mark Cummings**  
Partner  
Investment Funds & Corporate  
T: +852 2596 3316  
E: mark.cummings@walkersglobal.com



**Tom Pugh**  
Partner  
Insolvency and Dispute Resolution  
T: +852 2596 3466  
E: tom.pugh@walkersglobal.com



**Rupen Shah**  
Partner  
Finance  
T: +852 2596 3314  
E: rupen.shah@walkersglobal.com



**Michaela Lam**  
Counsel  
Insolvency and Dispute Resolution  
T: +852 2596 3335  
E: michaela.lam@walkersglobal.com

## Singapore



**John Rogers**  
Managing Partner  
Finance & Corporate  
T: +65 6595 4673  
E: john.rogers@walkersglobal.com



**Shirleen Tan**  
Partner  
Finance & Corporate  
T: +65 6603 1665  
E: shirleen.tan@walkersglobal.com



**James Twigg**  
Partner  
Investment Funds & Corporate  
T: +65 6603 1699  
E: james.twigg@walkersglobal.com

### Disclaimer

The information contained in this advisory is necessarily brief and general in nature and does not constitute legal or taxation advice. Appropriate legal or other professional advice should be sought for any specific matter.