The Insurance (Portfolio Insurance Companies) Regulations, 2015

The following information relates to the enactment of The Insurance (Portfolio Insurance Companies) Regulations, 2015 and the commencement of related sections of The Insurance (Amendment) Law 2013. The changes permit licensed insurers established as segregated portfolio companies to incorporate one or more of their cells as "portfolio insurance companies".

The Insurance (Portfolio Insurance Companies) Regulations, 2015 (the "Regulations")

Following the implementation of the Regulations on 6 January 2015, The Insurance Law, 2010 (the "**Law**") was amended to allow for a segregated portfolio company ("**SPC**") to register subsidiary companies as portfolio insurance companies (each a "**PIC**") with the Cayman Islands Monetary Authority ("**CIMA**").

Historically, as an SPC is one legal entity (notwithstanding that, within that entity, there may be multiple segregated portfolios), the segregated portfolios forming that SPC (or "**cells**") cannot conduct business or contract with each other. PICs provide a practical legal solution for Cayman Islands SPCs to transact insurance business between cells. Since PICs have the express power to contract with the SPC, any cell and any other PIC related to the controlling relevant insurer SPC, it now allows for PICs within the SPC structure to participate in different cellular insurance strategies. An exempted company whose voting shares are held by a cell can register with CIMA as a PIC to undertake 'insurance business' that is within the scope of the insurance licence held by its controlling relevant SPC.

What are some of the key advantages of the change to the Law?

- The Regulations allow an SPC insurer greater flexibility to contract and provide a useful exception to the general inability of cells to contract with each other. A PIC may enter into any contract with any person including: (i) the SPC insurer acting on behalf of any of its cells; (ii) its SPC insurer acting otherwise than on behalf of any of its cells; or (iii) any other PIC.
- Conflicts of interest may be more easily avoided as the PIC has separate legal identity and its own board of directors, who may well be different to those of the SPC.
- It will arguably be easier in future to hive-off and distinguish the PIC as a stand-alone fully licensed insurance company.

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What is the procedure for registering a PIC?

An exempted company that is controlled by an SPC insurer may make an application in writing to CIMA to register as a PIC. The exempted company is required to file a business plan containing prescribed details as part of the application process. The exempted company is also required to provide full details of its directors, managers and officers together with written consent from the parent SPC insurer to the registration of the exempted company as a PIC. Provided CIMA is satisfied that such directors, officers and managers are fit and proper, the business plan is satisfactory and that the exempted company will be able to comply with any applicable requirements of the Money Laundering Regulations, CIMA may approve the application and issue a certificate of registration as a PIC to the exempted company.

The PIC legislation provides a process to transfer existing insurance business written by the SPC insurer, for the account of a cell, to the PIC. The directors of the SPC insurer are required to provide an affidavit to CIMA confirming: (i) the nature of assets and liabilities of the relevant cell of the SPC insurer; (ii) that immediately following the transfer and assumption the relevant cell of the SPC insurer will be solvent; (iii) that the transfer is bona fide and not intended to defraud creditors; (iv) that a receivership order has not been issued and that all creditors of the relevant cell of the SPC insurer (which for this purpose does not include policyholders) have consented in writing to the transfer and assumption or notice has been given and 95% of the creditors have consented to the transfer and assumption.

Upon registration of the PIC or upon a later date within 30 days, the rights and property and all liabilities of the SPC insurer, for the account of the relevant cell, will immediately vest in the PIC. Any existing claims or proceedings pending at the time of the transfer and assumption against the SPC insurer, for the account of the relevant cell, shall survive and continue against the PIC. Accordingly, the effective result is that a cell of an SPC can be incorporated into its own PIC.

Are there any ongoing obligations to maintain PIC status?

A PIC is required to be controlled, at all times, by the SPC insurer. In addition, the PIC is subject to a broadly similar regime as the SPC insurer. The PIC is required to: (i) carry on business only in accordance with the information given in its business plan; (ii) maintain a margin of solvency in accordance with the prescribed solvency requirements; (iii) maintain adequate arrangements for the management of risks; (iv) maintain capital in accordance with the prescribed capital requirements; (v) maintain an effective system of governance approved by the Authority; and (vi) prepare audited financial statements within six months of the end of its financial year.

Are there any other restrictions or limitations?

- The name of the PIC must include the letters “PIC” or “P.I.C.” or the words “Portfolio Insurance Company”.
- An SPC insurer is only permitted to control one PIC on behalf of any relevant cell.
- The directors, managers and officers of the PIC may be the same as the SPC insurer but this is not a requirement.
- Whilst the PIC must issue all voting controlling shares to the SPC for the account of the cell, non-voting shares in the PIC may be owned and held by any person provided that CIMA’s prior written consent is obtained.
- The insurance manager of the SPC insurer and the PIC must be the same and their respective accounting year end dates must also be the same date.

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This publication is for general guidance and is not intended to be a substitute for specific legal advice. Specialist advice should be sought about specific circumstances.

If you would like further information please contact:

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