HARNEYS
Cayman Islands

Legal Update

PORTFOLIO INSURANCE COMPANY LEGISLATION IS INTRODUCED IN THE CAYMAN ISLANDS

April 3, 2013

On March 25, 2013, the Cayman Islands Legislative Assembly passed an amendment to the Insurance Law (the ***Amendment***) permitting certain insurers formed as segregated portfolio companies (***SPCs***) to register portfolio insurance companies (***PICs***).

The Amendment permits a new or existing SPC to incorporate a PIC on behalf of a relevant cell or segregated portfolio. The PIC, instead of the segregated portfolio, would then conduct the relevant insurance business. Unlike the traditional segregated portfolio or cell, a PIC will be a separate legal entity (i.e., an exempted company limited by shares).

A PIC will not need to be separately licensed as an insurance company as it will operate under the licence held by the SPC. It will, however, be regulated by the Cayman Islands Monetary Authority (***CIMA***). Among other things, a PIC must include in its name the letters “PIC” or “P.I.C.” or the words “Portfolio Insurance Company,” carry on insurance business only in accordance with its business plan, maintain a margin of solvency and adequate capital in accordance with prescribed requirements, maintain adequate arrangements for the management of risks, and maintain an effective system of governance approved by CIMA. Unless otherwise provided by CIMA in writing, a PIC will also be required to submit an annual return to CIMA within six months of the end of its financial year along with audited financial statements and in certain cases, for example where the PIC writes long term business, an actuarial valuation of its assets and liabilities and a certification of solvency.

The Amendment requires PICs to have a minimum of two directors and permits PICs to have the same directors, managers and officers as the SPC or such other persons approved by CIMA as fit and proper persons.

The Amendment also requires a PIC to be at all times controlled by the SPC and a SPC may not control more than one PIC for each segregated portfolio. In addition, pursuant to the Amendment, no voting shares in a PIC can be issued, transferred or disposed of in any manner without the prior approval of CIMA.

Some benefits of a PIC include:

- the ability to have a separate board of directors from that of the SPC provides flexibility in terms of corporate governance;
- a PIC can contract with any person including its own SPC and other cells or PICs within the same SPC which is helpful in terms of reinsurance, quota sharing and pooling;
- counterparties who are not familiar with segregated portfolios may more readily accept a PIC as opposed to a segregated portfolio;
- a single PIC can be wound up without affecting its controlling SPC or other PICs which was not previously possible within a SPC structure;
- as the PIC would be a separate legal entity, it may be possible for it to make tax elections under its own tax identification number; and
- a PIC can easily be converted into a standalone insurance company.

The Amendment, while enacted, will only come into full force once ancillary amendments are made to related regulations to the Insurance Law.

The Amendment also creates a new category of Class B(iv) insurer and amends the Class B(iii) category of insurer so that pursuant to the Amendment, an insurer will now fall within Class B(iii) if 50% or less of its net written premiums originate from the insurer's related business and annual net earned premiums are *less* than US$20 million. An insurer will fall within Class B(iv) if 50% or less of its net written premiums originate from the insurer's related business and annual net earned premiums are *equal to or greater* than US$20 million.

The Cayman Islands government has stated that the Amendment is more cost effective and efficient than introducing standalone incorporated cell company legislation, will boost Cayman's competitiveness, and will help contain the costs of doing business for insurers.

FURTHER INFORMATION

If you have any questions about the Insurance Law or the Amendment, please do not hesitate to contact Wendy Lee at wendy.lee@harneys.com or (345) 815-2924 for further information.

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