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Portfolio Insurance Companies | Cayman Islands

> "The 'responsive and practical' team in the Cayman Islands is commended for the way in which it 'understands the business implications of transactions'."
>
> — Chambers & Partners

Those familiar with the Cayman Islands segregated portfolio company ("the SPC") will note that an SPC is one legal entity irrespective of the number of segregated portfolios created. This means that segregated portfolios forming part of the SPC cannot contract together. Many offshore jurisdictions have sought to overcome this obstacle by introducing legislation to specifically provide that segregated portfolios within the same segregated portfolio company can contract together. Through the portfolio insurance company legislation, the Cayman Islands offers its own solution to the perceived limitations of the traditional SPC structure.

What is a Portfolio Insurance Company?

The portfolio insurance company legislation permits a segregated portfolio licensed insurance company (an "SPC insurer") to establish, for the account of a segregated portfolio, an exempted company limited by shares as a subsidiary. This is nothing new but significantly, upon an application in writing to the Cayman Islands Monetary Authority ("CIMA") to register the exempted company as a portfolio insurance company, the portfolio insurance company is permitted to carry on insurance business without requiring a separate insurance licence.

What are the key benefits?

- The portfolio insurance company legislation allows an SPC insurer greater flexibility to contract. A portfolio insurance company may enter into any contract with any person including: (i) the SPC insurer acting on behalf of any of its segregated portfolios; (ii) its SPC insurer acting otherwise than on behalf of any of its segregated portfolios; or (iii) any other portfolio insurance company.
- As the portfolio insurance company has separate legal identity and its own board of directors, who may be different to the segregated portfolio company, conflicts of interest can be avoided.
- Going forward, arguably it will be easier to hive off and establish the portfolio insurance company as a stand alone fully licensed insurance company, separate and distinct from the segregated portfolio company.

The Registration process

An exempted company that is controlled by an SPC insurer may make an application in writing to CIMA to register as a portfolio insurance company. As part of the application process the exempted company is required to file a business plan containing prescribed details. Further, the exempted company is required to provide full details on the directors, managers and officers and furnish written consent from the SPC insurer to the registration of the exempted company as a portfolio insurance company. Subject to CIMA concluding that the directors, officers and managers are fit and proper, the business plan is in order and that the company will be able to comply with any applicable requirements of the Money Laundering Regulations, CIMA can approve the application and issue a certificate of registration to the exempted company as a portfolio insurance company.

The portfolio insurance company legislation provides a process to transfer existing insurance business written by the SPC insurer, for the account of a segregated portfolio, to the portfolio insurance company. 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 segregated portfolio of the SPC insurer; (ii) that immediately following the transfer and assumption the relevant segregated portfolio 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 segregated portfolio 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 portfolio insurance company 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 segregated portfolio, immediately vest in the portfolio insurance company. Any existing claims or proceedings pending at the time of the transfer and assumption against the SPC insurer, for the account of the relevant segregated portfolio, shall continue against the portfolio insurance company.

Ongoing Obligations

In order to continue as a portfolio insurance company, the portfolio insurance company is required to be controlled, at all times, by the SPC insurer. Further the portfolio insurance company is subject to a broadly similar regime as the SPC insurer. The portfolio insurance company 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.

Additional Features

- The name of the portfolio insurance company must include the letters “PIC” or “P.I.C.” or the words “Portfolio Insurance Company”.
- An SPC insurer can only control one portfolio insurance company on behalf of any relevant segregated portfolio.
- The directors, managers and officers of the portfolio insurance company may be the same as the SPC insurer but it is not mandatory.

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