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This article summarises the main points of the Insurance (Amendment) Bill 2011. This Bill, currently a consultation draft, seeks to amend the Insurance Law, 2010 to permit the registration of PIC; and to provide for incidental and connected purposes.

# The Insurance (Amendment) Bill 2011: Portfolio Insurance Companies (PIC)

The main objective of the Bill provides for the registration of an exempted company as a PIC and for the exemption of a PIC from the requirement of a licence to carry on insurance business that is within the scope of the licence held by its controlling relevant insurer (CRI) – a relevant insurer that controls an exempted company. The Bill requires that a PIC must be controlled by a relevant insurer and provides for other relevant matters such as the creation and issuance of shares, requirement for a registered office and registration where the relevant segregated portfolio carries on insurance business.

## Structure

A potential structure could be as in Figure 1.

A PIC does not require a licence to carry on insurance business within the scope of the licence held by its CRI.

The Bill states that a PIC shall be at all times controlled by a relevant insurer. If a PIC ceases to be controlled by a relevant insurer, it shall, with effect from such date be deregistered with Cayman Islands Monetary Authority (CIMA) as a PIC and shall not be permitted to carry on any insurance business unless it is the holder of a licence.

A relevant insurer may not control more than one PIC on behalf of any of its segregated portfolios.

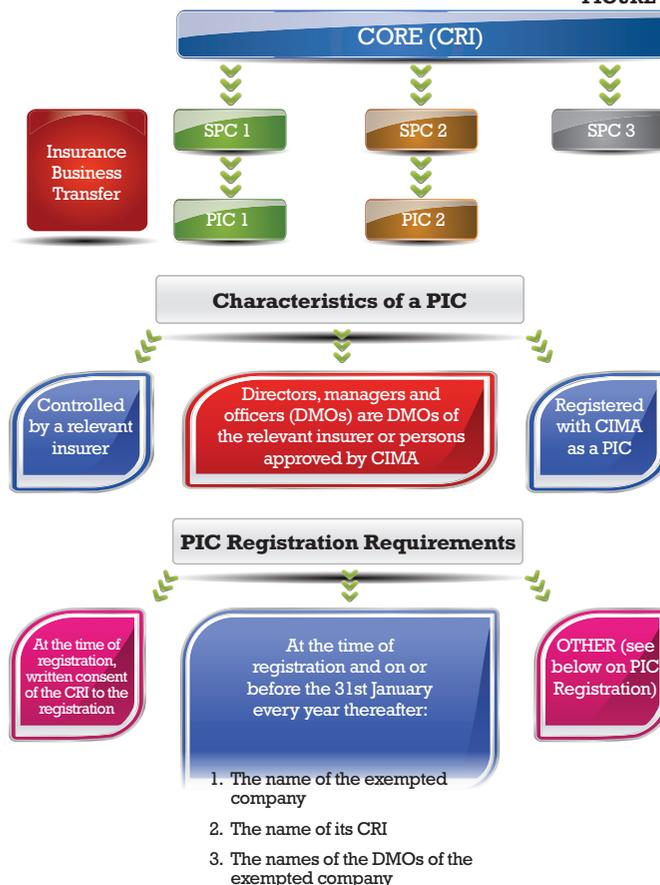
A PIC shall have the same registered office as its CRI and shall be deemed to be an “insurance company” for the purposes of section 5(5)(d) of the Companies Management Law.

## Share capital

No voting shares in a PIC shall be issued, transferred or disposed of in any manner, without the

## PORTFOLIO INSURANCE COMPANIES STRUCTURE

FIGURE 1



prior approval of CIMA. See Figure 2.

## PIC registration where the relevant segregated portfolio carries on insurance business

Where an exempted company registers as a PIC and at the time it registers the relevant segregated portfolio carries on insurance business, the registrant shall also file with CIMA:

- (a) a declaration made by at least two directors of the CRI setting out an accurate statement:

- (i) of the assets and liabilities of the relevant segregated portfolio as at a date within three months prior to the date of the declaration;
- (ii) of any transaction or event which, at the date of the declaration, has occurred or is expected to occur between the date of the statement of assets and liabilities prepared pursuant to (i) and the date of the transfer and assumption which, if it had occurred before the date of the declaration, would have caused material changes to the assets and liabilities disclosed in the declaration;
- (iii) that immediately prior to the transfer and assumption, the relevant segregated portfolio will be solvent;
- (iv) that the transfer and assumption is bona fide and not intended to defraud creditors of the CRI in respect of the relevant segregated portfolio;
- (v) no receivership order has been made in respect of the relevant segregated portfolio pursuant to section 224 of the Companies Law (2011 Revision);
- (vi) that each creditor of the CRI in respect of the relevant segregated portfolio has consented in writing to the transfer and assumption or, alternatively, that adequate notice (in writing) has been given to all creditors (exceeding CI\$1,000) of the CRI in respect of the relevant segregated portfolio and that 95 per cent by value of the creditors have consented to the transfer and assumption; and

- (b) any consents required to the transfer and assumption, whether under the relevant insurer's memorandum and articles of association or otherwise.

A director who knowingly makes a declaration as discussed in (a) above without reasonable grounds or who knowingly makes a false dec-

## PORTFOLIO INSURANCE COMPANIES SHARE CAPITAL

FIGURE 2

### REQUIREMENT

A PIC shall not issue more than 10% of its authorised capital as non-voting shares without CIMA's approval

### EXAMPLE

Authorised Capital 100,000 shares, the maximum non voting shares allowed to be issued is 10,000 without CIMA's approval

**CIMA TO APPROVE**  
transfer or disposal of issued non-voting shares totalling more than 10% of the entire issued share capital

**CIMA APPROVAL REQUIRED**  
Issued Capital 2,000 shares, non voting shares to be transferred or disposed 230

**NO CIMA APPROVAL REQUIRED**  
Issued Capital 2,000 shares, non voting shares to be transferred or disposed 180

laration is guilty of an offence and liable on summary conviction to a fine of CI\$5,000 or to imprisonment for one year.

Where at the time the registrant registers as a PIC the relevant segregated portfolio carries on insurance business:

(a) immediately upon the registration:

- (i) the rights, the property of every description including choses in action, and the business, undertaking, goodwill, benefits, immunities and privileges of the relevant segregated portfolio, shall immediately vest in the registrant and, for so long as the registrant is registered as a PIC, the CRI shall not be permitted to carry on insurance business on behalf of the relevant segregated portfolio; and
- (ii) the registrant shall be liable for and subject, in the same manner as the relevant segregated portfolio, to all mortgages, charges or security interests, and all contracts, obligations, claims, debts, and liabilities of the relevant segregated portfolio; and

- (b) an existing claim, cause or proceeding, whether civil (including arbitration) or criminal pending at the time of the transfer and assumption by or against the relevant segregated portfolio, shall not be abated or discontinued by the transfer and assumption but shall be continued by or against the registrant; and
- (c) a conviction, judgment, ruling, order or claim, due or to become due, against the relevant segregated portfolio, shall not be released or

impaired by the transfer and assumption, but shall apply to the registrant.

### Advantages of PICs

According to the Ministry of Finance of the Cayman Islands, the advantages of the PIC as compared to a cell of a segregated portfolio company (SPC) are:

1. The ability to contract with other cells or PICs within the same SPC facilitates reinsurance, quota sharing and pooling
2. A separate board of directors permits governance flexibility
3. For counterparties unfamiliar with cells, a PIC may be more readily accepted than a cell
4. A PIC can easily transition to a standalone captive because it is a separate legal entity.
5. Because a PIC would be indistinguishable from any other company limited by shares, it likely would be recognised as a separate legal entity for US tax purposes, allowing it to make its own tax elections under its own federal tax identification number.

### Current status

As noted above the Bill is a consultation draft at this stage with the hope of being finalised by quarter one of 2013. The Bill demonstrates Cayman's interest in giving current and potential captive owners the option to structure their business in a manner that will be preferential to their objectives and the ability to evolve as the PIC grows or objectives change.

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