Cayman Creates Incorporated Cell Companies

3 April 2013

Introduction of Incorporated Cell Legislation for the Insurance Sector

The Insurance (Amendment) Law 2013 of the Cayman Islands has introduced a new framework which will allow segregated portfolio insurers (SPC) to incorporate one or more of their cells as "portfolio insurance companies" (PIC). Following the recent introduction of a bespoke legal and regulatory framework for reinsurers and catastrophe bond issuers, this development further enhances the risk management options available in the Cayman Islands.

Notable points in relation to this development include:

- it is insurance sector led as it has been specifically designed for SPC insurers (legislative changes have been made to the Insurance Law as opposed to the Companies Law of the Cayman Islands);
- a PIC will be incorporated as a Cayman Islands exempted company and will be a subsidiary of its controlling SPC but will be related to a particular cell of the SPC;
- the insurance programme of an existing cell (including assets and liabilities) will be novated from the cell to the PIC as part of a fast track registration procedure with the Cayman Islands Monetary Authority (CIMA);
- although a PIC will be regulated by CIMA (with initial and annual registration fees payable) it will not be separately licenced and instead will fall under the licence of its controlling SPC;
- PICs will have the ability to contract with another cell of its controlling SPC, or with the SPC itself (which is not currently possible with a segregated portfolio of an SPC);
- the risk of inadvertent comingling of assets among SPC cells is reduced;
- a PIC can have a different board of directors to that of its controlling SPC, thus allowing for greater governance flexibility;
- greater recognition by counterparties that are unfamiliar with unincorporated cells;
- the ability to easily transition to a standalone captive/insurer;
- recognition as a separate legal entity for US tax purposes, allowing tax elections to be made under its own federal tax identification number; and
- a single PIC can be wound up without affecting its controlling SPC or other PICs.

The Insurance (Amendment) Law 2013 will only be implemented once ancillary amendments are made to related insurance regulations . In addition to the above, the Insurance (Amendment) Law 2013 has amended the description of a Class B(iii) insurer such that a Class B(iii) will only remain as such if its annual net premiums are less than US$20million and has created a new class of insurer known as a Class B(iv) insurer for any insurer whose annual net premiums exceed US$20million. This additional class will assist in reducing regulatory arbitrage whereby mid-tier open market reinsurers seek a Class B(iii) licence rather than applying for the more expensive full Class D reinsurer licence.

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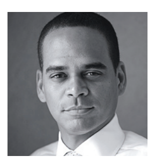

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