

PIC Legislation in the Cayman islands

What is it?

The eagerly awaited portfolio insurance company (PIC) legislation was recently enacted in the Cayman Islands. An annual fee of US\$1,200 allows a segregated portfolio (cell) of a segregated portfolio company (SPC) to incorporate a PIC. The PIC will be a separate legal entity, i.e. an exempt company, limited by shares, which is wholly owned by the relevant cell. A cell can have no more than one PIC.

Unlike incorporated segregated portfolio legislation in other jurisdictions, such as Guernsey where it is the cell itself that is incorporated, in Cayman the cell is not a separate legal entity. However once the cell incorporates its own stand-alone subsidiary PIC, that PIC will be able to contract on behalf of the cell. If the relevant cell carries on insurance business, then its assets and liabilities will automatically move down to the PIC unless the directors of the SPC resolve otherwise.

What does it mean?

As interesting as this is, what does it mean in practical terms?

1. The ability to contract means that the PIC can enter agreements with other legal entities in its own name. Examples include the ability to contract with:
 - other PIC cells within the same SPC for pooling purposes (an IRS risk distribution requirement)
 - external risk pools, as above


- ceding or reinsurance companies for quota share or excess of loss coverage
- other insurance entities for novation and commutation purposes
- investment managers and consultants for services
- banks, lawyers, accountants, actuaries, insurance managers and other service providers

Counterparties, unfamiliar with cells should be more comfortable dealing with a PIC than an unincorporated cell.

A single PIC can be wound up without affecting other cells, other PICs or the SPC.



2. A PIC may create non-voting shares in one or more classes or series and may issue non-voting shares of any class or series to any person. In some cases, prior approval from the regulator may be required.

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3. The PIC will have its own board of directors. The legislation requires that the PIC have at least two directors, and these can be from the SPC or elsewhere. This allows the PIC to have Independence from the other cells within the SPC. For example, the PIC can, subject to the regulator's approval, have its own investment policy and its own underwriting policy. This also provides flexibility in terms of corporate governance.
 4. The PIC has the ability to separate assets from the SPC and other cells within the SPC.
 - Ever since SPCs were introduced in the 1990s, there has always been the nagging concern that courts outside the jurisdiction where the SPC is incorporated would not recognise the segregation of assets between cells and the SPC core. A PIC having its own legal personality will help to establish 'proper' separation.
 - A PIC can make its own tax election under its own federal ID number, which should remove some of the uncertainty currently prevailing as to how the IRS regards an unincorporated cell of an offshore insurer.

For an example of how the use of a PIC can save time, effort and money, consider an SPC with a number of different shareholders owning different cells. The directors of the SPC have adopted a very prudent investment policy which may no longer suit the risk profile of one of the cells. The shareholders of that cell want more control of the investments, so instead of leaving the SPC and setting up their own captive, that particular cell can incorporate a new PIC, appoint its own directors and implement its own investment policy, with approval from the regulator.

Finally, if a prospective company is not of sufficient size to be a stand-alone captive, establishing a PIC can be an excellent first step. The PIC can easily transition to a stand-alone captive later.

The implementation of this PIC legislation is another major plus of doing business in the Cayman Islands

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