

CAYMAN ISLANDS



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THE INSURANCE (AMENDMENT) LAW, 2013

(LAW 16 OF 2013)

THE INSURANCE (AMENDMENT) LAW, 2013

ARRANGEMENT OF SECTIONS

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CAYMAN ISLANDS

Law 16 of 2013.

I Assent

Duncan Taylor

Governor.

25th April, 2013

A LAW TO AMEND THE INSURANCE LAW, 2010 TO CREATE A NEW CLASS OF INSURER; TO PERMIT THE REGISTRATION OF PORTFOLIO INSURANCE COMPANIES; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Insurance (Amendment) Law, 2013.

Short title and commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Governor in Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. The Insurance Law, 2010, in this Law referred to as the “principal Law”, is amended in section 2 by inserting in the appropriate alphabetical sequence the following definitions -

Amendment of section 2 of the Insurance Law, 2010 - interpretation

““class B (iv) insurer” means a holder of a valid class B insurer licence referred to in section 4(3)(b)(iv);

“gross premium written” means total written premiums prior to any deductions;

“net earned premium” means net written premium applicable to the expired part of the policy period or reinsurance agreement period;

“net written premium” means gross premium written, less reinsurance premium ceded; and

“reinsurance premium ceded” means the premium ceded to reinsurers;”.

Amendment of section 4
- licences

3. The principal Law is amended in section 4 as follows -

- (a) in subsection (3)(b)(i), by deleting the words “net premiums written” and substituting the words “net written premiums”;
- (b) in subsection (3)(b), by repealing subparagraphs (ii) and (iii) and substituting the following subparagraphs -

“(ii) over fifty per cent of the net written premiums will originate from the insurer’s related business;

(iii) fifty per cent or less of the net written premiums will originate from the insurer’s related business and annual net earned premiums are less than sixteen million four hundred thousand dollars; or

(iv) fifty per cent or less of the net written premiums will originate from the insurer’s related business and annual net earned premiums are equal to or greater than sixteen million four hundred thousand dollars;”;

- (c) in subsection (4), by repealing paragraph (f) and substituting the following paragraph -

“(f) only a person incorporated or reregistered as an exempted company under the Companies Law (2012 Revision) or registered as a foreign company under Part IX of the Companies Law (2012 Revision) or registered by way of continuation as an exempted company under Part XII of the Companies Law (2012 Revision) and that has a minimum of two directors may be licensed as a class B insurer or a class C insurer;” and

- (d) in subsection (4)(g), by deleting the words “net premiums written” and substituting the words “net written premiums”.

Amendment of section 9
- returns required of
insurer

4. The principal Law is amended in section 9(4)(b) by inserting after the words “a Class B(iii)” the words “and a Class B(iv)”.

Insertion of Part 4A -
portfolio insurance
companies

5. The principal Law is amended by inserting after Part 4 the following Part -

“PART 4A - Portfolio Insurance Companies

Interpretation in Part 4A

28A. (1) In this Part -

“controlling relevant insurer” means a relevant insurer that controls an exempted company;

(2012 Revision) “exempted company” means an exempted company under the Companies Law (2012 Revision);

“non-voting shares” means shares other than voting shares;

“portfolio insurance company” means an exempted company that is not a segregated portfolio company which is registered with the Authority as a portfolio insurance company pursuant to section 28B(2);

“relevant insurer” means an insurer, other than a class A insurer, established as a segregated portfolio company;

“relevant segregated portfolio” means the segregated portfolio on whose behalf the controlling relevant insurer controls the relevant exempted company;

“segregated portfolio company” has the meaning assigned under section 212 of the Companies Law (2012 Revision);

“transfer and assumption” means a transfer of assets and the assumption of liabilities made pursuant to section 28R(5); and

“voting shares” means the shares which carry the right to vote at general meetings of a company.

(2) In this Part, section 2(2)(b) does not apply and an exempted company is only controlled by a relevant insurer and a relevant insurer only controls an exempted company if all of the voting shares issued by the exempted company are held by the relevant insurer on behalf of one of its segregated portfolios.

Registration of exempted company as portfolio insurance company

28B. (1) An exempted company that is controlled by a relevant insurer may make an application in writing to the Authority to register as a portfolio insurance company and in order to be registered and remain registered, the exempted company shall -

- (a) at the time of making the application and within six months of the end of each financial year during the continuation of the registration, file with the Authority an

annual declaration, in the form approved by the Authority, declaring -

- (i) the name of the exempted company which name shall include the letters "PIC" or "P.I.C." or the words "Portfolio Insurance Company";
 - (ii) the name of its controlling relevant insurer; and
 - (iii) the names of the directors, managers and officers of the exempted company;
- (b) at the time of making the application provide to the Authority -
- (i) the written consent of the controlling relevant insurer to the registration;
 - (ii) a business plan containing the details prescribed; and
 - (iii) the prescribed application fee; and
- (c) where section 28R(1) applies, at the time of making the application, file with the Authority the documents specified therein.

(2) If -

- (a) an application satisfies the requirements of subsection (1);
- (b) the director, managers and officers of the exempted company are the same as the director, managers and officers of the controlling relevant insurer or are otherwise persons approved by the Authority as fit and proper persons to be director, managers and officers of a portfolio insurance company;
- (c) the Authority approves the business plan provided with the application; and
- (d) the Authority is satisfied that the exempted company will be able to comply with any applicable requirements of the Money Laundering Regulations (2010 Revision),

(2010 Revision)

the Authority shall approve the application and issue a certificate of registration to the exempted company as a portfolio insurance company, subject to conditions determined by the Authority for the proper operation and

supervision of the portfolio insurance company.

No requirement
for a licence

28C. With effect from the time it is registered as a portfolio insurance company under section 28B(2), a portfolio insurance company shall be permitted to carry on insurance business without requiring a licence and section 3 does not apply.

Continuing
obligations

28D. A portfolio insurance company shall -

- (a) at all times be controlled by a relevant insurer;
- (b) include in its name the letters “PIC” or “P.I.C.” or the words “Portfolio Insurance Company”;
- (c) carry on insurance business only in accordance with the information given in its business plan and shall seek the prior written approval of the Authority for any change to the approved business plan;
- (d) not without the prior written approval of the Authority-
 - (i) open outside the Islands a subsidiary, branch, agency or representative office or change its name; or
 - (ii) where it is conducting insurance business other than long term business, amalgamate with any one or more insurers or other portfolio insurance companies or, other than in the normal course of business, transfer its insurance operations or any part thereof, or accept transfer of the insurance operations or any part thereof from an insurer or portfolio insurance company;
- (e) maintain a margin of solvency in accordance with the prescribed solvency requirements;
- (f) maintain adequate arrangements for the

- management of risks, including the reinsurance thereof where appropriate;
- (g) maintain capital in accordance with the prescribed capital requirements;
- (h) maintain an effective system of governance approved by the Authority; and
- (i) where its controlling relevant insurer is a class B (iii) insurer or a class B (iv) insurer, make its audited financial statements available to insured persons, third party beneficiaries, and any other persons that may be prescribed, on request.

Required
returns of
portfolio
insurance
company

28E. (1) A portfolio insurance company shall, except as otherwise provided by the Authority in writing and subject to subsection (2), submit to the Authority by way of annual return, within six months of the end of its financial year -

- (a) unless waived by the Authority, audited financial statements prepared in accordance with internationally recognized accounting standards by an independent auditor approved by the Authority, together with a copy of any prescribed management letter issued by the auditor;
- (b) an actuarial valuation of its assets and liabilities including loss and loss expense provisions, certified by an actuary approved by the Authority;
- (c) unless waived by the Authority, certification of solvency prepared by a person approved by the Authority in accordance with the prescribed requirements; and
- (d) any other information as may be prescribed.

(2) A portfolio insurance company that -

- (a) does not conduct long term business; or
- (b) conducts insurance business of the type described in section 4(3)(c),

is not required to make submissions under subsections (1)(b) or (c).

(3) The audited financial statements and actuarial valuation referred to in subsections (1)(a) and (b) shall disclose the standards applied.

Limitation as to number of portfolio insurance companies

28F. A relevant insurer shall not control more than one portfolio insurance company on behalf of any relevant segregated portfolio.

Directors, managers and officers

28G.(1) A portfolio insurance company shall have a minimum of two directors.

(2) The directors, managers and officers of a portfolio insurance company may be the same persons as the directors, managers and officers of the portfolio insurance company's controlling relevant insurer, the same persons as the directors, officers and managers of another portfolio insurance company which is controlled by the controlling relevant insurer or may be different persons.

Non-voting shares

28H. A portfolio insurance company may create non-voting shares in one or more classes or series and, subject to section 28O(2), may issue non-voting shares of any class or series to any person.

Insurance manager, auditor and registered office

28I. (1) A portfolio insurance company shall appoint the same insurance manager as its controlling relevant insurer and maintain, at the insurance manager's place of business or at another location approved by the Authority, full and proper records of the business activities of the portfolio insurance company sufficient to -

- (a) explain the transactions of the portfolio insurance company;
- (b) disclose, with reasonable accuracy, at any time the state of the affairs of the portfolio insurance company; and
- (c) enable the portfolio insurance company to prepare annual financial statements.

(2) Section 20 applies to a portfolio insurance company as if it were a licensee and the reference to

“licence” in section 20(1)(e)(iv) shall be construed as a reference to registration as a portfolio insurance company under section 28B(2).

(3) Section 21 applies to a portfolio insurance company as if it were an insurer and the reference to “licence” in section 21(2)(g)(iv) shall be construed as a reference to registration as a portfolio insurance company under section 28B(2).

(2003 Revision) (4) A portfolio insurance company shall have the same registered office as its controlling relevant insurer and shall be deemed to be an “insurance company” for the purposes of section 5(5)(d) of the Companies Management Law (2003 Revision).

No restrictions or limitation on entering into contract, etc.

28J. (1) Subject to any restrictions or limitations imposed by the Authority or the memorandum and articles of association of a portfolio insurance company, there shall be no restriction or limitation upon a portfolio insurance company entering into any contract, transaction or arrangement with any person including -

- (a) its controlling relevant insurer acting on behalf of any of its segregated portfolios, including the relevant segregated portfolio;
- (b) its controlling relevant insurer acting otherwise than on behalf of any of its segregated portfolios; or
- (c) any other portfolio insurance company.

(2) Nothing contained in subsection (1) permits a portfolio insurance company to hold shares in its controlling relevant insurer.

Persons which are not an insurance group

28K. A relevant insurer and the portfolio insurance companies which it controls does not constitute an insurance group for the purposes of this Law.

Financial year end

28L. A relevant insurer, each of its segregated portfolios and each portfolio insurance company controlled by the relevant insurer shall have the same financial year end.

Long term business

28M. (1) Section 17 applies to a portfolio insurance

accounts

company conducting long term business as if it were a class A insurer, a class B insurer or a class D insurer.

(2) Section 29 applies to a portfolio insurance company conducting long term business as if it were an insurer.

(3) Subject to subsection (4), section 31 applies to a transfer or amalgamation of the whole, or any part, of the long term business of any insurer to a portfolio insurance company or of any portfolio insurance company to an insurer or any other portfolio insurance company as if the portfolio insurance company in each case were an insurer.

(4) Subsection (3) does not apply to a transfer or amalgamation of the whole, or any part, of the long term business of a relevant segregated portfolio to its portfolio insurance company or of a portfolio insurance company to its relevant segregated portfolio provided that the relevant transferee is not already engaged in insurance business.

Premiums and effect of payment of proceeds

28N. Section 30 applies to a portfolio insurance company as if it were an insurer.

Insurance, transfer and disposal of shares

28O. (1) No voting shares in a portfolio insurance company shall be issued, transferred or disposed of in any manner, without the prior approval of the Authority.

(2) Non-voting shares totalling more than ten per cent of the entire authorised share capital of a portfolio insurance company shall not be issued, and issued non-voting shares totalling more than ten per cent of the entire issued share capital of a portfolio insurance company shall not be transferred or disposed of in any manner, without the prior approval of the Authority.

(3) For the purposes of subsections (1) and (2), the portfolio insurance company shall provide the information to the Authority, within the period of time, the Authority requires for the purposes of assessing whether persons acquiring control or ownership of shares in the portfolio insurance company are fit and proper persons to have control or ownership.

(4) In subsections (1) and (2), the reference to shares being transferred or disposed of includes the

transfer or disposal of the legal interest in the shares and the transfer or disposal of any beneficial interest in the shares.

(5) For the avoidance of doubt and for the purpose of issuing or transferring issued non-voting shares in this section, the reference to shares totalling more than ten per cent includes the cumulative acquisition of non-voting shares of less than ten per cent which amount to more than ten per cent of the entire authorised or issued share capital of a portfolio insurance company.

Powers and duties of the Authority in respect of portfolio insurance companies

28P. (1) Section 22(1)(b) applies in respect of a portfolio insurance company as if it were a licensee.

(2) The Authority shall in respect of portfolio insurance companies -

- (a) examine the annual returns submitted to the Authority under section 28E; and
- (b) examine and make determinations with respect to -
 - (i) business plans submitted to it by exempted companies which propose to register as portfolio insurance companies;
 - (ii) applications for registration under section 28B(1);
 - (iii) proposals for the revocation of the registration of a portfolio insurance company under section 25;
 - (iv) changes under section 28D(c);
 - (v) cases of suspected insolvency; and
 - (vi) the exercise of powers under section 23 or 24.

(3) Subject to subsection (4), subsections (2), (3) and (4) of section 22 and sections 23, 24, 25, 26 and 27 shall apply to a portfolio insurance company as if the portfolio insurance company were a licensee except that each reference to “licence” shall be construed as a reference to registration as a portfolio insurance company

and section 25(d) does not apply to a portfolio insurance company.

(4) In applying section 24(1)(e) to a portfolio insurance company, the reference to section 8(2) shall be construed as a reference to subsections (d),(e),(f),(g) or (h) of section 28D.

Deregistration

28Q. A portfolio insurance company may apply to the Authority to deregister as a portfolio insurance company if it -

- (a) has been granted a licence to carry on insurance business;
- (b) has ceased to carry on insurance business and its liability has been extinguished to the satisfaction of the Authority; or
- (c) has ceased to carry on insurance business and is being wound up voluntarily and produces evidence that it is solvent and able forthwith to repay all its creditors,

and the Authority may, where an application is made, deregister the portfolio insurance company and upon deregistration it shall not, without being the holder of a licence, be permitted to carry on any insurance business.

Registration where relevant segregated portfolio carries on insurance business

28R. (1) Except where subsection (6) applies, where an exempted company (“the applicant”) applies to be registered as a portfolio insurance company under section 28B and at the time it so applies the relevant segregated portfolio carries on insurance business, the applicant shall also file with the Authority -

- (a) a declaration made by at least two directors of the controlling relevant insurer 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 subparagraph (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 following 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 controlling relevant insurer 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 (2012 Revision);
 - (vi) that each creditor of the controlling relevant insurer in respect of the relevant segregated portfolio has consented in writing to the transfer and assumption or, alternatively, that adequate notice has been given in accordance with subsection (2) to all creditors of the controlling relevant insurer in respect of the relevant segregated portfolio and that ninety-five 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.

(2012 Revision)

(2) For the purposes of subsection (1)(a)(vi), adequate notice is given if notice in writing is sent to each creditor having a claim against the controlling relevant insurer in respect of the relevant segregated portfolio exceeding one thousand dollars.

(3) A director who knowingly makes a declaration under subsection (1)(a) without reasonable grounds or who

knowingly makes a false declaration commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for five years, or to both.

(4) A declaration pursuant to this section may be given in the form of a declaration or affidavit, as the directors may determine.

(5) Except where subsection (6) applies, where at the time the applicant is registered as a portfolio insurance company under section 28B(2) the relevant segregated portfolio carries on insurance business -

- (a) immediately upon the registration or upon a later date, being not later than thirty days after registration, as the applicant specifies when making an application to register as a portfolio insurance company -
 - (i) the rights, the property of every description including choses in action, and the business, undertaking, goodwill, benefits, immunities and privileges of the controlling relevant insurer in respect of the relevant segregated portfolio, shall immediately vest in the applicant; and
 - (ii) the applicant shall be liable for and subject, in the same manner as the controlling relevant insurer in respect of the relevant segregated portfolio, to all mortgages, charges or security interests, and all contracts, obligations, claims, debts, and liabilities of the controlling relevant insurer in respect of the relevant segregated portfolio;
- (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 controlling relevant insurer in respect of the relevant segregated portfolio, shall not be abated or discontinued by the transfer

and assumption but shall be continued by or against the applicant; and

- (c) a conviction, judgment, ruling, order or claim, due or to become due, against the controlling relevant insurer in respect of the relevant segregated portfolio, shall not be released or impaired by the transfer and assumption, but shall apply to the applicant.

(6) Any controlling relevant insurer may by a resolution of the directors passed prior to the registration as a portfolio insurance company of an exempted company which it controls, disapply the application of subsection (1) and subsection (5) to the applicant.

(7) In this section a creditor does not include a policy holder unless the policy holder shall have a claim against the relevant controlling insurer, whether the claim is present or future, certain or contingent, ascertained or sounding only in damages.

(8) For the avoidance of doubt -

(1996 Revision)

- (a) the provisions of the Fraudulent Dispositions Law (1996 Revision), section 146 of the Companies Law (2012 Revision) and section 31 shall not apply to any transfer and assumption; and

(2012 Revision)

- (b) a portfolio insurance company may but shall not be required to provide any consideration in respect of a transfer and assumption.

Offence of supplying false information to the Authority

28S. (1) A portfolio insurance company, applicant for registration as a portfolio insurance company, or any director or officer of a portfolio insurance company or of an applicant shall not knowingly or wilfully supply false or misleading information to the Authority.

(2) A portfolio insurance company, applicant for registration as a portfolio insurance company, or any director or officer of a portfolio insurance company or of an applicant who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a

term of five years, or to both.”.

Passed by the Legislative Assembly the 25th day of March, 2013.

Mary J. Lawrence

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.