

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: <sup>400</sup> OF 2005

IN THE MATTER OF THE COMPANIES LAW (2004 REVISION)  
AND IN THE MATTER OF THE INSURANCE LAW (2004 REVISION)  
AND IN THE MATTER OF PFA ASSURANCE GROUP, LTD.



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**PETITION**

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**TO: HER MAJESTY'S GRAND COURT OF THE CAYMAN ISLANDS**

The Humble Petition of THE CAYMAN ISLANDS MONETARY AUTHORITY (hereinafter called "the Authority" or "the Petitioner")

SHOWETH as follows:

1. PFA Assurance Group, Ltd. ("PFA" or the "Company") was incorporated on 2<sup>nd</sup> September 2002 as an Exempted Cayman Islands company. The Authority granted the Company an Unrestricted Class 'B' Insurer's Licence on 2<sup>nd</sup> September 2002.
2. The Authority was advised at the time of licensing that PFA would be equally owned by Messrs Luis Manuel Cornide ("Cornide") and Robert Anthony de la Riva ("de la Riva"). However, based on subsequent information, it has been revealed that PFA is owned equally by two holding companies, namely LMC Holdings Ltd. (which is owned by Cornide) and RDLR Holdings Ltd. (which is owned by de la Riva).

3. Cornide and de la Riva are also joint owners of Pension Fund of America (“PFOA”), a consulting firm specialising in pension funds. Headquartered in Coral Gables, Florida, PFOA was incorporated on 6<sup>th</sup> June 1999 and services clients based in Latin America, Europe and the Caribbean. Cornide is the President and Manager of PFOA and de la Riva is the Vice-President and Information Systems Manager of PFOA.
4. The Directors of PFA are Cornide and de la Riva.
5. The Company was formed for the purpose of providing life insurance / investment products to the clients of PFOA. The products marketed by PFOA to its clients, and issued by PFA, are primarily life insurance with an investment component in which the investments are in separate accounts held in custody with Lehman Brothers, Merrill Lynch and SunTrust Bank.
6. The business plan submitted at the time of licensing stated that all policies issued by PFA would be 100% reinsured by American United Life Insurance Company ("AUL"), an A.M Best's "A" Rated Insurer, headquartered in Indianapolis, Indiana. However, this is not currently the case and deviations from the Company’s business plan regarding changes in re-insurers and the types of policies written occurred without prior knowledge and approval by the Authority. Utilizing PFA allowed the commission produced from PFOA's book of business to ultimately be retained for the common shareholders.
7. PFOA was to provide on-going administration of the products.
8. The Insurance Manager for the Company is JLT Risk Solutions (Cayman) Limited (“JLT”).
9. The Auditor for the Company is KPMG.
10. On 31<sup>st</sup> March 2005 the Authority learned that Cornide and de la Riva had been charged on 29<sup>th</sup> March 2005 by the United States Securities and Exchange Commission (the “SEC”) with running a “sham” program to enrich themselves. Upon further enquiry, the Authority discovered that on 28<sup>th</sup> March 2005 the SEC filed an emergency civil action to halt an ongoing offering fraud that targeted Latin American investors. The action was filed against

PFOA, PFA, affiliated entities PFA International, Inc., Claren, TPA, and their principals Cornide and de la Riva. Also, on 28<sup>th</sup> March 2005, the United States District Court for the Southern District of Florida issued temporary restraining orders, asset freezes and other relief against the defendants and appointed a receiver over all the entities named.

11. The SEC's complaint alleged that from October 1999 to present, PFOA, PFA, Cornide and de la Riva raised approximately US\$127million from over 3,400 investors, through the sale of "retirement trust plans" that purportedly combine life insurance and investments in mutual funds purchased through U.S. banks and broker-dealers". The complaint included allegations that the offering materials provided to investors fail to disclose that up to 90% of funds invested in "The Liberty Trust" were used to pay exorbitant commissions, an "administrative fee" taken by PFOA and PFA, and other costs. It further alleged that the defendants misrepresented their relationship with financial institutions and broker-dealers and created false documents to support their position. In respect of Cornide and de la Riva, the complaint alleged they "misappropriated at least US\$15million of investors funds for themselves".
12. The Insurance Supervision Division of the Authority conducted an onsite inspection of the Company, at the offices of JLT where the Company's records were held and maintained. The inspection commenced 11<sup>th</sup> April 2005 and concluded 13<sup>th</sup> April 2005. The key findings from the onsite inspection showed that the direction and management of the Company's business had not been conducted in a fit and proper manner; Premiums and commissions due to the Company had not been received and there was not proper documentation for policies written by the Company, nor was it clear what its potential liabilities were. In addition, the inspection revealed that transactions not related to the Company's business had passed through it without adequate documentation as to the rationale for such transactions. This information indicated that the manner in which the Company had been managed might have put it at risk of being used for the purposes of money laundering or financial crime, or of being involved in such a crime.
13. On 15<sup>th</sup> April 2005 the Authority exercised its powers under Section 13(1)(vii) of the Insurance Law (2004 Revision) (the "Law") and resolved to appoint a person to assume

control of the affairs of the Company. The regulatory considerations for the appointment included:

- (a) The Company had not filed audited accounts for the year ended 31<sup>st</sup> December 2003 and was therefore in breach of Section 10(3)(a) of the Law.
- (b) The Company had made significant changes to its business plan without the prior approval of the Authority and was therefore in breach of Section 7(3) of the Law.
- (c) The key findings from the onsite inspection showed that the direction and management of the Company's business had not been conducted in a fit and proper manner.

14. On 19<sup>th</sup> April 2005 Messrs Kenneth Krys and Christopher Stride, Partners of RSM Cayman Islands, were appointed to assume control of the affairs of PFA (the "Controllers").

15. On 25<sup>th</sup> April, 2005 by order of the Grand Court (Cause No: 191 of 2005), the Controllers obtained the powers of a person appointed under Section 18 of the Bankruptcy Law (1997 Revision).

16. In the Controllers' Interim Report dated 20<sup>th</sup> May 2005, they advised the Authority of the following:

- (i) The Controllers have assumed control over the books and records of the Company in the Cayman Islands held at JLT and have also assumed control of the Company's accounts held with Butterfield Bank in the Cayman Islands. The Controllers have experienced difficulty in gaining control over PFA's assets in the United States due to the appointment of a Temporary Receiver by the SEC. They have had minimal success in obtaining information from the Temporary Receiver to date, and only a limited number of documents have been provided by the Temporary Receiver.

- (ii) The Controllers' investigations to date suggest that, possibly since its inception, PFA has conducted its business outside the scope of the Business Plan approved by the Authority. In addition, PFA appears to have conducted its activities in a manner inconsistent with that agreed with its Reinsurance Brokers, Arthur J Gallagher (UK) Limited ("AJG"), as described in the Cover Notes, and further that there are substantial inconsistencies with the Business Plan and the Cover Notes.
  
- (iii) Given the extent of the business activities in which the Company was involved, the Controllers noted that the books and records held by JLT were few in number and appeared to be incomplete. From a review of the records held by JLT and from discussions with its management (including former management), it appears that JLT did not have a full understanding of PFA's business or its risks.
  
- (iv) Regarding the financial position of the Company, the Controllers prepared a Balance Sheet as at 12<sup>th</sup> March 2005 which is their best estimate of PFA's financial position. The un-audited Balance Sheet indicates assets and net equity of US\$519,897. Included in the assets is US\$64,382 due from related parties where the assets are in the US and under the control of the Temporary Receiver. In addition, the Controllers have estimated that there is US\$265,227 of profit commission receivable from AJG, however it is not known whether AJG will accept this estimate. No insurance liabilities have been accrued although the Controllers are aware of an unprocessed claim in the amount of US\$19,500. To the extent that the Company may be responsible for the loss and damages for selling investment products, it would appear, based on allegations in the SEC complaint, that the liabilities may be significant. To the extent that the Controllers estimates of sums due from related parties and profit commissions receivable are not accepted or paid, the Company's equity position will reduce. Also, to the extent that AJG has not been informed of claims outstanding, this would have a negative impact on the equity and possible the solvency of PFA. The Controllers are therefore not in a position to conclude on the solvency or otherwise of PFA.

- (v) Based on the information received to date, it would appear that PFA has breached Sections 7(3), 7(4), 7(6), 7(7)(a), 7(7)(b), 8(1) and 10(3)(a) of the Law. These breaches are set out in further detail under paragraph 17 below.
- (vi) PFA's annuity business would appear to be securities investment business as defined by the Securities Investment Business Law ("SIBL") and the Controllers could not identify any systems and controls that would suggest that PFA had in place policies and procedures consistent with the Securities Investment Business (Conduct of Business) Regulations.
- (vii) Based on a sample of policyholders files reviewed by the Controllers, it would appear that PFA did not obtain any client identification and source of funds information on policy holders and there is no evidence that PFA has anti-money laundering policies and procedures in place.
- (viii) The Controllers are of a view that PFA is not in a position to continue as a going concern and recommend that the Authority file a petition to wind up the affairs of PFA. The Controllers have suggested, in order to properly assess the viability of the term life insurance business, that PFA be placed into liquidation to protect its asset position and enable the liquidators to have the tools necessary to be recognised in other jurisdictions.

17. The Company is in breach of the Law as detailed below:

- (i) The Company failed to receive the prior approval of the Authority before changing their business plan regarding changes to re-insurers and the types of policies written. PFA was authorised by the Authority to carry on business as a 100% reinsurer and, as PFA is carrying on business as a 90% re-insurer, this constitutes a change in the business plan. Therefore the Company is in breach of Section 7(3) of the Law.

- (ii) The Company has failed to prepare any annual independently audited accounts and is therefore in breach of Section 7(4) of the Law.
  - (iii) The Company has failed to prepare an annual actuarial valuation and therefore the Company is in breach of Section 7(6) of the Law.
  - (iv) The Company has failed to maintain full and proper records of its business activities with its insurance manager, in contravention of Section 7(7)(a) of the Law.
  - (v) The Company has failed to maintain separate accounts in respect of its non-insurance business, in contravention of Section 7(7)(b) of the Law.
  - (vi) The Company has failed to gain the prior approval of the Authority for the transfer of more than 5% of the issued share capital. 100% of the issued share capital was allotted or transferred to LMC Holding Limited and RDLR Holding Limited, contrary to the approved Business Plan and in contravention of Section 8(1) of the Law.
  - (vii) The Company has failed to file audited accounts for the years ended December 31, 2003 and 2004, and therefore is in contravention of Section 10(3)(a) of the Law.
18. The Company has failed to have in place policies and procedures consistent with Securities Investment Business (Code of Business) Regulations.
19. The Company has failed to have in place anti-money laundering policies and procedures, and therefore is in breach of Section 5 (1) of the Money Laundering Regulations (2003 Revision).
20. On 11<sup>th</sup> August 2005 the Authority resolved, pursuant to Section 13(4)(d) of the Law, to revoke the licence of the Company and apply to the Grand Court for an Order that the licensee be forthwith wound up by that Court.

21. Pursuant to Section 13(4)(d) of the Law, the Petitioner applies under Section 94 of the Companies Law (2004 Revision) for the Company to be wound up by the Court on the grounds that it is just and equitable for the following reasons:

- (i) Based on the information available, the Controllers believe that the Company is not in a position to continue as a going concern;
- (ii) Joint Official Liquidators would be able to take steps to be recognised under the US bankruptcy laws, and would therefore be granted access to information in the possession of the SEC appointed Temporary Receiver, to which the Controllers have had limited access;
- (iii) Joint Official Liquidators could protect the asset position of the Company against potential legal proceedings, as well as gain access to assets under the control of the Temporary Receiver; and
- (iv) It is in the public interest that the Company be wound up expediently.

YOUR PETITIONER THEREFORE HUMBLY PRAYS as follows: -

- (a) That PFA Assurance Group, Ltd. be wound up by the Court subject to the provisions of the Companies Law (2004 Revision);
- (b) That Messrs Kenneth Krys and Christopher Stride, Partners of RSM Cayman Islands, be appointed as Joint Official Liquidators of the Company, and that the Joint Official Liquidators be authorised to do any acts or things jointly and severally considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs;

- (c) That the Joint Official Liquidators shall not be required to give security for their appointment;
- (d) That the Petitioner be at liberty to apply to the Court at any time, *inter alia*, for the removal of the Joint Official Liquidators;
- (e) That the Joint Official Liquidators be authorised:
  - (i) to bring or defend any action, suit, prosecution or other legal proceedings, whether criminal or civil, by way of court process or arbitration, in the name and on behalf of the Company.
  - (ii) to take possession of, collect and get in all property or assets (of whatever nature) to which the Company is or appears to be entitled;
  - (iii) to do all things as may be necessary or expedient for the protection of the Company's assets;
  - (iv) to do all things (including the carrying on of the business of the Company) so as may be necessary or expedient for the beneficial realisation of the property or assets of the Company (including power to borrow money);
  - (v) to appoint attorneys, solicitors and other professional qualified persons both in the Cayman Islands and elsewhere to assist them in the performance of their duties;
  - (vi) to appoint agents both in the Cayman Islands and elsewhere to do any business which they are unable to do themselves or which can more conveniently be done by an agent and power to employ and dismiss officers and employees of the Company;

- (vii) to make any power which is necessary or incidental to the performance of their duties;
- (viii) to open and maintain bank accounts in the name of the Company or themselves anywhere in the world as may be necessary for the better performance of their duties;
- (ix) to exercise and execute all the powers set out in Section 109 of the Companies Law (2004 Revision) without sanction or intervention of the Court and unprejudiced by the generality hereof;
- (x) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the Company and any contributory or alleged contributory or other debtor or person apprehending liability to the Company, upon receipt of such sums payable at such times and generally on such terms as may be agreed upon, with power to take securities for the discharge of such debts or liabilities and to give complete discharges in respect of all or such calls, debts, or liabilities; and
- (xi) to do and execute all such other things as may be necessary for winding-up the affairs of the Company and distributing its assets;

and for the avoidance of doubt the powers bestowed on the Official Liquidators may be exercised by them within and outside the Cayman Islands.

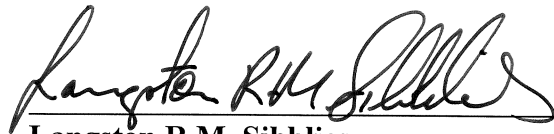
- (f) That the Joint Official Liquidators do file with the Clerk of the Court a report in writing of the position of and the progress made with the winding up of the Company and with the realisation of the assets thereof and as to any other matters connected to the winding up of the Company, every six calendar months or as the Court may from time to time direct;

- (g) That the Joint Official Liquidators engage attorneys in the Cayman Islands satisfactory to the Petitioner to assist in the winding up of the Company;
- (h) That, save as aforesaid, the Joint Official Liquidators be at liberty to employ attorneys, counsel and professional advisors whether in the Cayman Islands or elsewhere as they may consider necessary to advise and assist them in performance of their duties and on such terms as they may think fit;
- (i) That the Joint Official Liquidators be at liberty to and do pay themselves, their agents, employees, attorneys, solicitors and whomsoever else they may employ or instruct, remuneration and costs in priority to all other debts of the Company pursuant to Section 123 of the Companies Law (2004 Revision), and:
  - (i) The Joint Official Liquidators shall be entitled to receive remuneration for their services by reference to the time properly given by them and their staff in attending to matters arising in the winding-up and the hourly rates and the amount of remuneration shall be determined in accordance with Rules 4.127 – 131;
  - (ii) The Joint Official Liquidators be at liberty to pay their agents, employees, attorneys, solicitors and whomsoever else they employ or instruct either weekly or monthly or at such intervals as they consider appropriate;
  - (iii) The Joint Official Liquidators be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties;
- (j) The Joint Official Liquidators shall provide to the Petitioner copies of all reports filed with this Court and/or sent to creditors or contributories of the Company;
- (k) The Joint Official Liquidators shall serve on the Petitioner copies of all applications made to this Court for directions or other relief and any evidence in support thereof, such service to be within a reasonable time of date of the hearing of any such applications;

- (l) That the costs of this petition be paid out of the assets of the Company as an expense of the liquidation;
- (m) Such other orders and directions may be made as the Court thinks fit.

AND YOUR PETITIONER will ever pray etc.

DATED this 5<sup>th</sup> day of September 2005.



**Langston R.M. Sibblies**  
**General Counsel for the**  
**Cayman Islands Monetary Authority**

#### INDORSEMENT

This Petition having been presented to the Grand Court of the Cayman Islands on the \_\_\_\_\_ day of \_\_\_\_\_ 2005 will be heard by the Grand Court of the Cayman Islands:

DATE: 30<sup>th</sup> September 2005

TIME: 10:00

(or as soon thereafter as the amended petition can be heard).

This Petition is filed by the Legal Division of the Cayman Islands Monetary Authority, whose address for service is 80e Shedden Road, Elizabethan Square, PO Box 10052 APO, Grand Cayman, Cayman Islands.