

ADVISORY | INDUSTRY INFORMATION

# Cayman Islands – Company Law Amendments

## Key Aspects

The Companies (Amendment) Act, 2024 (the "**Amendment Act**") has been passed by the Cayman Islands Parliament. The Amendment Act is not yet in force. It will come into force by the making of a subsequent Cabinet order.

When in force, the Amendment Act will amend the Companies Act (2023 revision) (the "**Companies Act**").

The changes made by the Amendment Act are a welcome evolution of Cayman Islands company law. They provide increased flexibility and utility in a number of important areas and have been developed in close consultation with stakeholders in the Cayman Islands financial services industry.

The key amendments include the following:

- It will be possible for a company to reduce its capital without court approval. Under this new "out of court" procedure, a reduction of capital can be made by a special resolution which is supported by a solvency statement.
- It will be possible for a body corporate without a share capital to migrate to the Cayman Islands as a company.

These and certain other amendments are outlined in further detail below.

### Reduction of share capital

Under the current law, in order for a company to reduce its share capital, the members need to pass a special resolution and the reduction of capital also requires court approval.

When the Amendment Act comes into force, the court sanctioned reduction of capital procedure will remain in place. However, the Companies Act will establish a new "out of court" reduction of capital procedure.

The "out of court" reduction of capital procedure will provide an attractive alternative to the court sanctioned regime as the time and expense of a court application can be avoided.

Under this "out of court" procedure, a company will be able to reduce its share capital by special resolution provided that the directors of the company provide a supporting solvency statement.

The solvency statement will confirm that a full enquiry into the company's affairs has been made and, to the best of the directors' knowledge and belief, the company will be able to pay its debts as they fall due in the ordinary course of business commencing on the date of the solvency statement. The solvency statement will need to be made not more than 30 days before the passing of the special resolution and be given by all of the directors of the company.

The procedure for an "out of court" reduction of capital will be:

- a copy of the solvency statement and a minute have to be delivered to the Registrar of Companies (the "Registrar") (in addition to the filing of the special resolution);
- the minute has to record certain information in relation to the reduced share capital of the company;
- the Registrar will register the solvency statement and minute; and
- the special resolution takes effect on the date of such registration (and therefore the reduction of capital is completed on the date of such registration).

A reduction of capital (using the court procedure or the "out of court" procedure) must be authorised by the company's articles of association. If the articles of association do not authorise the "out of court" procedure to be used, then the articles of association will need to be amended to enable the new regime to be implemented.

There are a number of situations where a reduction of capital may be attractive. For example, a reduction of capital may be used to eliminate accumulated losses and enable the payment of dividends.

### Offering of securities to the "public in the Islands"

The Companies Act provides that an exempted company that is not listed on the Cayman Islands Stock Exchange is prohibited from making an invitation to the "public in the Islands" to subscribe for any of its securities. The term "public in the Islands" has not previously been defined in the Companies Act.

The Amendment Act helpfully defines the term "public in the Islands" to expressly exclude certain types of commonly used entities including exempted limited partnerships, exempted companies, Cayman Islands LLCs and foreign entities registered in the Cayman Islands. The Amendment Act also confirms that sophisticated persons and high net worth persons are excluded from the term "public in the Islands".

### Continuation – removal of the requirement for a continuing entity to have a share capital

Under the Companies Act, a body corporate incorporated, registered or existing under the laws of any jurisdiction outside the Cayman Islands may apply to the Registrar to be registered by way of continuation as an exempted company limited by shares.

Under the current law, it is a requirement that any such overseas body corporate must have a share capital.

This requirement will be removed when the Amendment Act comes into force.

Therefore, it will be possible for an overseas body corporate to be continued into the Cayman Islands whether or not it has a share capital.

### Conversion of a limited liability company to an exempted company

The Companies Act will be revised to include new conversion procedures allowing a Cayman Islands LLC or foundation company to be re-registered as an exempted company.

Conversions of exempted companies to Cayman Islands LLCs are already permitted under the Limited Liability Companies Act (2023 Revision) and these amendments provide further flexibility for entities to convert to a corporate form that is most suited to their needs.

### An enhanced company law

These amendments are a welcome enhancement to Cayman Islands company law and reflect the Cayman Islands continued resolve to introduce new legislation to meet the requirements of industry.

### Further information

For further information please speak with your usual contact or contact:



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