

Cayman Islands Companies (Amendment) Law 2011



The new Law includes the following principal areas of amendment:

1. Mergers

The revised merger regime removes certain problematic provisions and increases the flexibility available to Cayman companies in implementing mergers. In particular-

- The previous dual authorization threshold (75% by share count; majority by head count) is (subject to the memorandum and articles of the company) replaced by a simple requirement for a special resolution (plus any additional consent which may be required in the articles).
- It will be possible to conduct a merger with a foreign company where the foreign company is the surviving entity (previously the Cayman company was required to survive).

2. Treasury Shares

It will be possible for Cayman companies to redeem/repurchase their shares and instead of cancelling them (as presently required) to hold them 'in treasury'. Whilst held in treasury the shares will have no voting or economic rights but they may be resold by the company or cancelled. These provisions complement and extend Cayman's already highly flexible regime for share redemption/repurchase. It is anticipated that treasury shares will allow Cayman companies to

manage their capital more effectively and will be useful particularly to listed companies and in the context of employee benefit schemes.

3. Paperless Share Transfer/Non-Legible Registration

The provisions in this area will ensure that listed Cayman companies are able fully to take advantage of the trend on world exchanges towards paperless share transfers and the use of electronic account systems to evidence ownership in non-legible form. Depending on their articles, existing companies may need to pass a special resolution to avail themselves of these provisions.

4. Branch Registers

Exempted companies are not subject to any geographical restrictions as to where they maintain shareholder registers. The new provisions for branch registers add further flexibility by enabling an official branch register to be maintained in a territory different to that where the principal register is kept. A branch register may cover any category of shareholders.

5. Redemptions/Repurchases/Surrenders

Various technical amendments will add flexibility as well as increased certainty in this area.

- It will be possible to redeem/repurchase shares provided their nominal (par) value is fully paid. Previously the total issue price (par value and any premium) had to be paid up. This provision will increase a

Cayman company's ability to manage its capital structure. For example it will make it easier for companies issuing redeemable shares to use 'capital call' mechanisms.

- It will be possible to alter the rights of shares which are already in issue to make them redeemable. This will, for example, facilitate the 'open-ending' of closed-ended fund or other structures.
- It will be possible for the articles of association or a resolution of shareholders to delegate to the board the power to determine the 'manner of repurchase' (i.e. the repurchase terms-price etc). Thus, where appropriate, it will be possible for these matters to be handled more expeditiously. There was previously some lack of clarity in this area.
- Redemptions or repurchases for nil consideration (which among other scenarios can be significant for certain onshore tax purposes) will be explicitly permitted.

6. Execution of Documents

The English 'Mercury' case, which cast doubt on closing procedures where signature pages are separated from the document and circulated for execution, is effectively disappplied in Cayman. Thus customary closing mechanics where, with relevant party consent, signature pages are 'assembled' at closing into the final executed document will not be subject to doubt. The requirements for execution of Cayman law governed deeds by Cayman and by foreign companies are also clarified.

7. Foreign Companies

The law in this area has been modified so as not to impose unnecessary registration burdens on foreign companies in certain cases whilst extending their eligibility in others. Specifically-

- A foreign company will not be subject to registration and attendant fees in Cayman merely because it has registrar and transfer agency services provided to it here.

- Foreign 'companies' which are not technically bodies corporate (e.g. certain LLC's) may be registered as foreign companies (and hence for example will be eligible to act as general partners of Cayman limited partnerships).

8. Definition of Special Resolution

It will be explicitly provided that a company's articles may stipulate differing levels of approval (provided that the minimum level is, as now, two thirds) for a special resolution depending on the particular matter being resolved upon. There was previously some uncertainty on this point.

9. Foreign Script Company Names

It will be possible for a company to be registered with a dual foreign name. Thus the company will have an English name (or more correctly a name in the Roman alphabet script) coupled with a name in a foreign script (e.g. Chinese). The foreign script name will not need to be a direct translation of the 'English' name. However a translation of the foreign script name must be provided to the Registrar of Companies. The Registrar will record both the 'English' and the translation of the foreign script name and company searches will be done against both to avoid duplication of names on incorporation. The 'English' and foreign script name will appear on the certificate of incorporation and memorandum and articles (and should be on all letter heads, contracts etc). These provisions formalize and enhance what has previously been purely a matter of Registry practice. They will cater particularly to demand in Asia for dual names in English and Chinese which are not necessarily direct translations.

10. Segregated Portfolio Companies

- The issue of misattribution of a transaction, asset or liability to an incorrect portfolio is addressed. The previous provision for personal liability on directors is removed and replaced with a more constructive mechanism directed at resolving the situation. Directors will be obliged to correct the error and to give notice to affected parties who will, if dissatisfied, be entitled to apply to the court for review of

the matter. The court will in turn be empowered to make a ruling taking account of the intention of the parties and other relevant factors.

- A provision to formalize termination of portfolios and notification to the registrar of this in the annual return is introduced.
- It will be possible to refer to portfolios by the abbreviation ‘SP’ rather than ‘segregated portfolio’.

Future Developments

These changes are anticipated to be the “first wave” in an ongoing process to refine and enhance the Companies Law (as well as other areas of commercial law) and it is expected that further amendments and innovations will be brought forward over the near/medium term.

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