



PORTCULLIS TRUSTNET

PTN eUpdates – Keeping you informed (Issue 39 – June 2011)

CAYMAN ISLANDS – MOVING WITH THE TIMES **THE COMPANIES (AMENDMENT) LAW, 2011 (“the Amendment Law”)**

2011 Act

The Amendment Law recently enacted in the Cayman Islands is the first wave of amendments to the Companies Law. The amendments are designed to further enhance the attractiveness of the jurisdiction and to provide increased flexibility and clarity to areas which have previously been governed by common law practices. The result is a more ‘user friendly’ approach to commercial transactions involving Cayman Islands companies. The principal revisions are as follows:

ss.3-6

1. Foreign Script Company Names

It is now permissible for a company to be registered with a dual foreign name which does not need to be a direct translation of the English name. 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. Both the English and foreign script name will appear on the certificate of incorporation and memorandum and articles. It is expected that this option will appeal to markets in China and Hong Kong.

ss.7 & 8

2. Redemption, Repurchase, and Surrender of Shares

These amendments are expected to be useful in group restructurings and increase a company’s ability to manage its capital structure:

- The term “paid up” with respect to a share has been redefined as the par value of that share and any share premium payable does not need to be taken into account. It will therefore be possible to redeem or repurchase shares provided their nominal (par) value is fully paid.
- Shares originally issued as non-redeemable can be converted into redeemable shares.
- A company’s directors can be authorised to determine the manner or terms upon which the any redemption or purchase will be made.
- Redemptions or repurchases of shares for nil consideration are permitted (subject to restrictions in the company’s articles of association).
- A payment out of share premium is not regarded as a payment out of capital but akin to a payment out of profits.

s.9

3. Treasury Shares

Cayman Islands companies will now have greater flexibility in the management of their share capital. Upon the repurchase, redemption or surrender of shares, instead of cancelling them the directors can now hold them as treasury shares pending cancellation, transfer or sale. The company must obtain authorisation to hold such shares as treasury shares (either in accordance with the company’s articles of association or by board resolution) before being repurchased, redeemed or surrendered in accordance with the usual rules and articles.

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s.10

4. Branch Registers

An exempted company may maintain shareholder registers in any country or territory it determines. The new provisions of the Amendment Law enable an official branch register to be maintained in a territory different to that where the principal register is kept, although copies of branch registers must also be maintained with the principal register; this provides a convenient option for multi-jurisdictional companies. A branch register may cover any category of shareholders.

s.14

5. Definition of Special Resolution

A company's articles may now establish differing levels of approval (subject to the minimum level of two thirds) for a special resolution depending on the particular matter being resolved upon. This is likely to benefit matters such as joint venture transactions.

ss.15 - 17

6. Execution of Documents

Procedures relating to the execution of documents by companies, the execution of deeds by Cayman and by foreign companies are clarified. For "virtual" signings or closings featuring Cayman Islands law governed documents it is now permitted for parties to use pre-signed or separate signature pages in order to facilitate an efficient and administratively convenient closing deal.

ss.10, 26

7. Paperless Share Transfer/Non-Legible Registration

For Cayman Islands companies with shares listed on a foreign stock exchange named in the Schedule, the Amendment Law permits paperless share transfers and the use of electronic account systems to evidence ownership. Existing companies may need to pass a special resolution to avail themselves of these convenient provisions.

ss.25-35

8. Foreign Companies

The law regarding the registration of foreign companies has been modified. Specifically:

- Certain non-Cayman Islands entities may be registered as foreign companies (eg, a foreign LLC);
- Changes have been made to the documents which are required to be filed with the Cayman Islands Registrar of Companies upon the registration of a foreign company in the Cayman Islands.

ss.38-45

9. Segregated Portfolio Companies

- Segregated Portfolio Companies ("SPC") are now permitted to use the abbreviation "S.P." or "SP" instead of Segregated Portfolio;
- Directors of a SPC no longer have personal liability for failing to identify which segregated portfolio the SPC was contracting for. Instead directors will be obliged to correct the error and notify the party to the contract and any person who is adversely affected who will, if dissatisfied, be entitled to apply to the court that has the power to order the correct attribution.
- Termination and reinstatement procedures for an SPC have been amended to provide that subject to the authority required under the articles of the SPC, the segregated portfolio may be terminated or reinstated by director's resolution; and that notice of the termination of portfolios must be included in the annual notice filed with the registrar.
- The directors of the SPC can move assets between a segregated portfolio and the general assets provided that the transfer is at full value. Prior to this amendment transfers were only permissible between segregated portfolios.

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ss.46-51

10. Mergers

- The shareholder approval requirements to a merger or consolidation of a Cayman Islands company have been clarified – 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 the requirement for a special resolution.
- It is now permissible to conduct a merger with a foreign company where the surviving entity is the foreign company (previously the Cayman company was required to survive).

s.54

11. Fees and Approved Stock Exchanges

Previously fees for certain actions were spread throughout the Companies Law which made it difficult to locate a relevant fee and to determine whether a particular fee had been updated. Fees are now located in a schedule at the end of the law. There is also a schedule of approved stock exchanges.

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