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Companies Act amendments - Cayman Islands

MARCH 2024

The Companies Act (2023 Revision) will shortly be amended by The Companies (Amendment) Act, 2024 (Amendment Act), which has now been passed by the Cayman Islands Parliament.

The Amendment Act is not yet in force and will come into force by the making of a subsequent Cabinet order.

What are the key amendments?

Reduction share capital

Current position

The current law requires a special resolution of the shareholders of a company, as well as court approval to reduce a company's share capital.

Amendment Act

Under the Amendment Act, in addition to the existing court procedure under the current law, a company will have the ability to reduce its capital without court approval.

The new provisions will allow for a reduction of capital to be made by a special resolution which is supported by a solvency statement, provided that the company's articles of association permit the same.

Any existing company wishing to take advantage of this enhancement may need to consider amending their existing articles of association to enable the new regime to be utilised once the Amendment Act comes into force.

This is a welcomed enhancement to the current law as it will provide an attractive alternative to the court sanctioned regime as the time and expense of a court application can be avoided.

Eligibility requirements for continuations into the Cayman Islands

Current position

The current law, a body corporate existing under the laws of another jurisdiction wishing to apply to register by way of continuation as an exempted company in the Cayman Islands is required to have a share capital.

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Amendment Act

The requirement under the current position will be removed under the Amendment Act once in force.
Body corporates with or without a share capital will be able to migrate to the Cayman Islands as a company.

This amendment will provide welcomed flexibility to the continuations regime in the Cayman Islands, avoiding the need for foreign companies to restructure their capital structure in order to meet the eligibility requirements.

Offering of securities to the public in the Cayman Islands

Current position

The current law, 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 its securities.
Significantly, the term "public in the Islands" is not defined under the current law.

Amendment Act

The Amendment Act will provide for a much welcomed definition of the term "public in the Islands".
The definition expressly excludes commonly used vehicles such as exempted companies, limited liability companies (LLCs), foreign companies registered in the Cayman Islands and exempted limited partnerships.

It also expressly excludes persons that meet the definition of a sophisticated person or a high net worth individual from the definition.

This amendment will provide for helpful clarity on a position that has been somewhat ambiguous under the current law.

Conversions

Current position

The current laws do not provide the ability for LLCs and foundation companies to convert to an exempted company.

Amendment Act

The Amendment Act will provide for the ability to convert a LLC or a foundation company to an exempted company.

Noteworthy, the equivalent provisions already exist in the Limited Liability Companies Act (2023 Revision) to convert an exempted company to an LLC.

The additional flexibility is welcomed as such conversions will provide a useful option in many scenarios for entities to convert to a corporate form that meets their needs.

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These amendments reflect the Cayman Islands continued undertaking to meet the requirements of industry.

Please contact one of the key contacts on the right of this page for further details and assistance.

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