



## Companies Act amendments enhances Cayman Islands companies law

June 2024

### Introduction

The Companies (Amendment) Bill, 2024 (“**Bill**”) of the Cayman Islands was published in the Cayman Islands in January 2024, and proposed to make a number of amendments to the Companies Act (2023 Revision) (the “**Act**”). In consideration of the changing market dynamics, the Bill, if passed into law as it was drafted, would have provided a more flexible approach in a number of areas to enhance the Cayman Islands’ financial services and to improve efficiency in a number of well-trodden processes.

The Companies (Amendment) Act, 2024 was published on 11 March 2024 (the “**Amendment Act**”). Whilst the Amendment Act will, when it comes into force, enact a number of the very useful proposals that were contained in the Bill, there are a number of amendments that were proposed in the Bill but which do not feature in the Amendment Act.

A summary of the key amendments contained in the Amendment Act are set out below, whilst we also briefly consider amendments that were proposed in the Bill and which did not make the final cut.

### Reduction in share capital

The Amendment Act, when in force, will simplify the process for a solvent company limited by shares or a solvent company limited by guarantee (with a share capital) to reduce its share capital. Whilst the traditional method by special resolution and confirmation by the Court will remain available, the process is simplified by the introduction of a new method which includes a special resolution supported by a solvency statement, consequently removing the need for Court confirmation.

To be accepted, the solvency statement (which is to be made by the directors of the company) must be made no more than 30 days before the date on which the special resolution approving a reduction of share capital is passed. A copy of the solvency statement must be sent or submitted to every member of the company at the same time or before the special resolution is provided to them.<sup>1</sup>

---

<sup>1</sup> Companies (Amendment) Act, 2024 cl 5, 14A(1)

The solvency statement will need to be provided to the Registrar within fifteen days after the special resolution is passed along with the minutes of the company reflecting (i) the amount of share capital of the company, (ii) the number of shares into which the share capital is to be divided and the amount of each share; and (iii) the amount deemed to be paid up on each share (if applicable).<sup>2</sup>

Failure to notify the Registrar within the 15-day allowance will require the company to apply to the Court by way of petition for an order confirming the reduction of share capital.<sup>3</sup>

This is a welcome development which will inevitably increase the efficiency of reductions in share capital.

### Issuance of fractions of shares

The Amendment Act will empower companies limited by shares or companies limited by guarantee (with a share capital) to redeem or repurchase fractions of shares.

### Re-registrations

The Amendment Act will make several changes to the provisions which relate to transfers by way of continuation and re-registration, as follows:

- companies with or without a share capital will be able to apply to be registered by way of continuation as an exempted company limited by shares in the Cayman Islands. Currently, this is only available to companies *with* a share capital<sup>4</sup>;
- exempted companies, which currently must conduct business mainly outside of the Cayman Islands, may re-register as an ordinary resident company by passing a special resolution and applying to the Registrar for re-registration. Previously, this was not possible. However, when such re-registration takes effect, any tax undertaking given to the company by the Cayman Islands Government under the Tax Concessions Act will cease to apply<sup>5</sup>;
- a limited liability company incorporated under the Limited Liability Companies Act may, with the written consent of (subject to the terms of its LLC Agreement) at least two-third of its members convert to an exempted company<sup>6</sup>; and
- a foundation company incorporated under the Foundation Companies Act may, upon the passing of a special resolution to this effect, convert to an exempted company<sup>7</sup>.

### Missed opportunities?

Finally, the Bill had also proposed the following amendments to the Act which will **not** take effect, as they do not feature in the Amendment Act:

---

<sup>2</sup> Companies (Amendment) Act, 2024 cl 5, 14B

<sup>3</sup> Companies (Amendment) Act, 2024 cl 5, 14B(6)

<sup>4</sup> Companies (Amendment) Act, 2024 cl 10

<sup>5</sup> Companies (Amendment) Act, 2024 cl 12

<sup>6</sup> Companies (Amendment) Act, 2024 cl 15, 233A

<sup>7</sup> Companies (Amendment) Act, 2024 cl 15, 233B

- a change to the procedure for shareholder to dissent from a proposed merger or consolidation. Under the current Act, the requirement is for shareholders to give written notice of their dissent prior to the vote on the proposal taking place. The company is then required to give notice of the authorisation of the proposed merger or consolidation to each shareholder who dissented. The Bill suggested a new “objection deadline” which would require a dissenting shareholder to give notice to the company within twenty days of the notice to propose a resolution authorising a plan of merger or consolidation. The company is then only required to give notice of the authorisation of the proposed merger or consolidation to those dissenting shareholders who gave notice of their dissent prior to the objection deadline; and
- a change to the requirements for passing a special resolution in writing (i.e. other than in a general meeting of the company). Under the Act, such a written resolution must be passed *unanimously*, whereas the Bill proposed to reduce this to a two-thirds majority to match the threshold that must be reached in a general meeting.

These changes have not been reflected in the Amendment Act. It isn't clear why these changes were left out of the Amendment Act, but they may be revisited in future amendments.

### When do the changes take effect?

The date that the amendments set out in the Amendment Act will become law will be such date as may be appointed by Order made by the Cabinet<sup>8</sup>. The Cabinet has yet to publish such an order and so the enactment date is unknown for the time being.

### Further Assistance

This publication is not intended to be a substitute for specific legal advice or a legal opinion. If you require further advice relating to the matters discussed in this Legal Update, please contact us. We would be delighted to assist.

*E: [gary.smith@loebsmith.com](mailto:gary.smith@loebsmith.com)*

*E: [robert.farrell@loebsmith.com](mailto:robert.farrell@loebsmith.com)*

*E: [ivy.wong@loebsmith.com](mailto:ivy.wong@loebsmith.com)*

*E: [cesare.bandini@loebsmith.com](mailto:cesare.bandini@loebsmith.com)*

*E: [elizabeth.kenny@loebsmith.com](mailto:elizabeth.kenny@loebsmith.com)*

*E: [edmond.fung@loebsmith.com](mailto:edmond.fung@loebsmith.com)*

*E: [vivian.huang@loebsmith.com](mailto:vivian.huang@loebsmith.com)*

*E: [faye.huang@loebsmith.com](mailto:faye.huang@loebsmith.com)*

*E: [yun.sheng@loebsmith.com](mailto:yun.sheng@loebsmith.com)*



<sup>8</sup> Companies (Amendment) Act, 2024 cl 1

## About Loeb Smith Attorneys

Loeb Smith is an offshore corporate law firm, with offices in the British Virgin Islands, the Cayman Islands, and Hong Kong, whose Attorneys have an outstanding record of advising on the Cayman Islands' law aspects and BVI law aspects of international corporate, investment, and finance transactions. Our team delivers high quality Partner-led professional legal services at competitive rates and has an excellent track record of advising investment fund managers, in-house counsels, financial institutions, onshore counsels, banks, companies, and private clients to find successful outcomes and solutions to their day-to-day issues and complex, strategic matters

