

Cayman Islands

Cayman Islands financial law: a year of extreme makeovers

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The legislators of the Cayman Islands have been very busy recently, and 2009 saw an overhaul of the existing insolvency legislation, significant changes to the law on Exempted Limited Partnerships and the introduction of a new statutory regime for the merger and consolidation of companies.

Companies law

Some 80,000 companies are registered in the Cayman Islands, of which 68,000 are so-called exempted limited companies, meaning that they carry on their business internationally, but not in the Islands, and 22,000 are local companies. The Companies Law (2007) Revision is the principal corporate legislation. Originally based on the English Companies Act of 1948, it has continually evolved and has been updated to meet the needs of the offshore financial services industry and the particular requirements of creditors and shareholders in troubled economic times.

Insolvency

One of the most significant changes of 2009 was the extreme makeover of Part V of the Companies Law concerning the winding up of companies, through the Companies (Amendment) Law 2007, which came into force on March 1 2009. The new and improved Part V has been welcomed by law firms, insolvency practitioners, investors and creditors alike. The changes in the law fall into three main categories.

- The existing provisions dealing with the winding up of companies were simplified and updated and brought in line with modern international standards. While still very creditor-friendly (and thus suitable for use in cross-border financing transactions), investors will be consoled by the so-called unfair prejudice remedies (available to a minority shareholder in the UK under Section 459 of the Companies Act), which have now been made available to the Cayman Court when shareholders petition for winding up on just and equitable ground.
- The second main category of change is that for the first time the Cayman Islands has its own tailor-made company winding-up rules, whereas previously it had to make do with such of the UK Insolvency Rules 1986 as could be contrived to apply. As one can imagine, in many instances the rules were a very imperfect fit.
- The third and perhaps most dramatic change to the Cayman Insolvency Legislation is that the amending law also introduced specific provisions codifying the international co-operation in insolvency proceedings that already existed as a matter of judicial practice. The new part XVI of the Companies Law codifies the Grand Court's power to make orders in aid of foreign insolvency proceedings and reflects the general object of the UNCITRAL Model Law on cross-border insolvency but stops short of some of its provisions, such as the concept of Centre Of Main Interest (COMI), which is the foundation stone of Chapter 15 of the US Bankruptcy Code.

Mergers and consolidation

The Companies (Amendment) Law 2009, which came into force on May 2 2009, brought a new and much-needed statutory merger regime that does not require court application or approval. The new law brings the corporate regime into line with the statutory procedures of other offshore jurisdictions such as the British Virgin Islands. Any Cayman company (other than a segregated portfolio company) can be party to a merger or consolidation as well as any foreign company, providing the successor entity is a Cayman company. A merger is defined to be a process by which the assets, rights, obligations and liabilities of two companies are assumed by one of those companies, and a consolidation is where such assets and liabilities, among other things, of two or more companies are assumed by a new Cayman company. Both constituent companies must be in good standing and solvent, they must obtain the consent of the majority of their shareholders (representing 75% in value voting as one class) and that of secured creditors (unless the court waives this requirement) and each company must prepare and approve by board resolution

a written plan of merger.

Partnership law

Cayman Islands Exempted Limited Partnerships (ELPs) remain a popular choice of vehicle for the investment fund industry, most particularly in private-equity fund structures. On May 11 2009, the Exempted Limited Partnerships Law was significantly amended by the coming into force of The Exempted Limited Partnership (Amendment) Law 2009. One change that is especially welcomed by insolvency practitioners and creditors of ELPs is that the relevant provisions relating to the winding up of companies, as well as the winding-up rules (suitably adapted), now apply to ELPs.

Other changes of interest to both general and limited partners are: (i) new laws relating to the automatic dissolution of the ELP on the death, withdrawal or insolvency of the last remaining general partner. ELPs will no longer be dissolved immediately, but will be subject to the provisions of the Limited Partnership Agreement (LPA), or alternatively a 90-day period to allow the limited partners to find a new general partner; (ii) an expanded list of safe-harbour activities the limited partners can undertake without losing their limited liability status; (iii) the recognition of contractual provisions in LPAs concerning the transfer of limited-partner interests, without the need for GP approval; and (iv) the amendment of the statutory claw-back regime for limited partners.

Mutual funds

The Cayman Islands is a popular domicile for hedge funds. It has over 10,000 regulated funds, representing approximately 75% of the total number of offshore funds in existence. Funds are regulated by the Mutual Funds Law (which has not undergone any changes recently), and subject to regulation by the Cayman Islands Monetary Authority. The Securities Investment Business Law, revised in 2004, regulates the business of any Cayman incorporated company or partnership carrying on securities investment business anywhere in the world.

Other key legislation

Other important legislation for the financial sector includes the Banks and Trust Companies Law, the Insurance Law, The Proceeds of Crime Law, the Money Laundering Regulations and The Confidential Relationships (Preservation) Law.