

Cayman Islands welcomes amendments to the Companies Act to streamline the capital reduction process for listed companies

Insights - 05/03/2024

A Court-approved reduction of capital is one of the corporate reorganisation tools that has been successfully deployed by listed companies domiciled in the Cayman Islands in order to manage debt and liquidity.

Following recent amendments to the Companies Act (2023 Revision), which are discussed in further detail by Bradley Kruger and Ridhiima Kapoor [here](#), the straightforward process is set to be further streamlined for companies able to establish their solvency, obviating the need for a court hearing altogether.

Capital reduction applications

The Companies Act provides that, upon application by petition, the Court, subject to being satisfied the interests of creditors will not be prejudiced (or where there is no diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital) may make an order confirming the reduction on such terms and conditions as it thinks fit.

The Court has identified five well-established criteria that it will apply in determining whether or not to confirm a capital reduction:^[1]

- whether the shareholders will be treated equitably by the capital reduction;
- whether proper information has been provided to shareholders;
- whether the interests of creditors have been safeguarded;
- the court being satisfied that the capital reduction was for a "discernible purpose" (which requires more than demonstrating a company had some actual objective in mind; the Court should be given a proper understanding of the commercial rationale for the overall

transaction of which the capital reduction formed part); and

- that the resolution reducing capital must be a validly passed special resolution.

Amendments to the capital reduction process

The Companies (Amendment) Bill 2024^[2] seeks to ease the obligations on companies who wish to reduce their capital as part of a corporate reorganisation by removing the requirement for Court approval altogether, in appropriate circumstances.

The most significant amendment means that, pursuant to a new section 14A, a company, if so authorised by its articles, may reduce its share capital by special resolution supported by a solvency statement and without the need for a confirmation hearing before the Grand Court.

Section 14A will require that (i) the solvency statement be made by the directors no more than thirty days before the date on which the special resolution for reducing the share capital was passed; and (ii) a director must not knowingly make a solvency statement without having reasonable grounds to believe that the company will be able to pay its debts in full as they fall due.

Delivery of solvency statement and minute of reduction

After the passage of the special resolution, the solvency statement and minute of reduction (which must set out the amount of share capital of the company, the number of shares into which the share capital is to be divided and the amount of each share; and the amount, if any, deemed to be paid up on each share) must then be delivered to the Registrar within 15 days after the special resolution pursuant to section 14B.

Registration of solvency statement and minute of reduction

The Registrar will register the solvency statement and minute, issue a certificate stating that the solvency statement and minute have been registered and publish a notice in the Gazette of the registration.

Issuance of certificate

The certificate issued by the Registrar shall be conclusive evidence that all of the requirements of the Act in relation to reduction of share capital have been complied with and that the share capital is as stated in the minute and the minute, when registered, is deemed to be substituted for the corresponding part of the memorandum of association.

Then, the special resolution for reducing the share capital takes effect on the date of registration.

Outcomes for companies

The effect of these changes is that the capital reduction process for solvent companies will become more cost effective and time efficient. Where a company cannot provide the solvency statement outlined in section 14A, it may still reduce its share capital by special resolution and confirmation by the court, consistent with the existing process.

[1] *Re Santiago Pipelines Company and New Santiago Pipelines Company* [2012] (2) CILR 343; *China Agrotech Holdings Limited (in Liquidation)* [2019] (2) CILR 356; *Re Man Group plc* [2019] EWHC 1392. *Re Nature Home Holding Company Limited* (Unreported, 19 October 2021).

[2] Gazetted on 26 January 2024 and presented to Parliament on 28 February 2024. The amendments will come into force on a date to be gazetted.

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