



Take-Private Transactions
Cayman Islands Law
Considerations

December 2022

Introduction

Take-private transactions have long been a feature of the legal landscape in the Cayman Islands, whether as a tool for acquiring a company or in order to re-list the company on a more favourable or convenient stock exchange.

The Companies Act (Revised) of the Cayman Islands (the **Companies Act**) provides certain avenues to take private a Cayman Islands company - from the traditional court approved schemes, to simpler and more cost-effective mechanism for mergers and consolidations.

This document sets out an overview of the different options for stakeholders and the key considerations in respect of each option to assist in determining which mechanism might best suit the needs of particular companies.

Ogier has been involved in a number of recent high value take private transactions in the Cayman Islands. Our corporate specialists also work closely with our cross jurisdictional dispute resolution teams who have significant expertise in the area of shareholder and valuation disputes.

With Cayman Islands specialists based in the Caribbean, Asian and European time-zones, Ogier is able to provide its clients with seamless round the clock advice on take private matters.

Our lawyers and professional staff based in Hong Kong speak English, Cantonese and Mandarin to better service our Asia-based clients in their native languages.

Take-private methods

Shareholder considerations

| Take-private option | Companies Act reference | Required Approvals | Indicative timing | Court process? |
|-----------------------------------|-------------------------|---|--|---|
| Statutory merger | Sections 232-239 | Special resolution of the shareholders of each company (being 66%, unless higher in the articles of association). | Provided no litigation for fair value appraisal, process can be completed in a short time-frame (as little as 1 to 2 months). | Generally no Court approval necessary. However, dissenting shareholders could invoke fair value appraisal rights under section 238 of the Companies Act which could result in uplift for dissenting shareholders' shares. |
| Tender offer & squeeze-out | Section 88 | Need to have approval of 90% of independent shareholders (ie those not already owned by the bidder or its affiliates). | At least 4 to 6 months following the tender offer being made. | The Court will generally not intervene unless an application is made by the dissenting shareholders (and even then it will only intervene in limited circumstances) |
| Tender offer & streamlined merger | Section 233(7) | Provided the bidder has acquired (directly or indirectly) 90% of the shares in the target company, no specific shareholder approval required. | Once the tender offer process is complete, the streamlined merger can take place shortly thereafter (as soon as within 1 month). | The Court will generally not intervene unless an application is made by the dissenting shareholders (and even then it will only intervene in limited circumstances). |
| Scheme of arrangement | Sections 86-88 | Requires the approval of 75% in value of the members or class of members, as the case may be. | Between 3 to 6 months (but could be longer depending on number of classes of shares, court availability etc.) | Yes. This process requires the approval of the court of the scheme before it can be implemented. There will be at least two hearings (a convening hearing and a sanction hearing). |

Advantages and disadvantages

| Take-private option | Advantages | Disadvantages |
|-----------------------------------|---|---|
| Statutory merger | Where no dissenting shareholders, can be completed quickly and efficiently. | <ul style="list-style-type: none"> • Dissenter rights available • Fair value appraisal could jeopardise commercial viability of acquisition • Fair value appraisal process could require Court involvement which could be costly and add time to the process |
| Tender offer & squeeze-out | No fair value appraisal right for dissenting shareholders who will be bought out at the tender offer value. | <ul style="list-style-type: none"> • High initial threshold for shareholder approval (90%) • The process can take quite a long time to implement |
| Tender offer & streamlined merger | <ul style="list-style-type: none"> • Can be implemented quickly and efficiently • No specific shareholder approval required, just circulation of the plan of merger | Requires the bidder to be holding at least 90% of the shares in target. |
| Scheme of arrangement | <ul style="list-style-type: none"> • If sanctioned by the Court, the proposed scheme becomes binding on all members to whom it applies, irrespective of whether those members approved the scheme in the meeting • As well as effecting a take-private transaction, you can also incorporate other elements into a scheme (for example, corporate restructurings) | <ul style="list-style-type: none"> • Higher approval threshold than a statutory merger • Because of the court process, it is relatively expensive and can take quite a long time to implement |

Our Experience

New Frontier Public Holding Ltd

Ogier is acting as Cayman Islands counsel to the investor consortium comprising New Frontier Public Holding Ltd., Vivo Capital Fund IX (Cayman), L.P., Fosun Industrial Co., Limited, the Private Equity business within Goldman Sachs Asset Management, certain affiliate of Warburg Pincus LLC and certain other investors, in the proposed US\$1.58 billion take private of New Frontier Health Corporation (NYSE: NFH).

51job, Inc.

Ogier advised DCP Capital Partners, Ocean Link Partners Limited and Mr. Rick Yan, the Chief Executive Officer of 51job, Inc. in US\$5.7 billion take private of 51job, Inc., a NASDAQ listed company and a leading provider of integrated human resource service in China.

Xiezhong International

Ogier advised Xiezhong International Holdings Limited on its privatisation by way of a scheme of arrangement and delisting from the Hong Kong Stock Exchange. The plan was approved by shareholders pursuant to an approximately US\$31.3 million (equivalent to approximately HK\$242.3 million) offer by Brilliance International Holding Limited and Golden Fair Chemical (Holding) Limited. Xiezhong International delisted from the Hong Kong Stock Exchange.

Transocean Ltd

Ogier advised Transocean Ltd on the Cayman law aspects of its acquisition (by way of statutory merger) of Ocean Rig UDW Inc., valued at approximately US\$2.7 billion. The cash and stock merger was one of the largest in the oil and gas industry in 2018.

Borr Drilling Limited

Ogier advised Borr Drilling Limited on the Cayman law aspects of its acquisition (by way of tender offer and statutory merger) of Paragon Offshore Limited, valued at approximately US\$212 million.

JSR Corporation

Ogier acted as the Cayman legal advisor to JSR Corporation in connection with its NTD12 billion (US\$400 million) acquisition of the Taiwan listed Crown Bioscience International, a global drug discovery and development services company providing translational platform to advanced medical research, by way of a Cayman statutory merger. This acquisition marks JSR's largest life sciences-focused investment to date.

MOGU Holdings Limited

Ogier acted as Cayman Islands counsel to MOGU Holdings Limited in its strategic merger with Meiliworks Inc., valuing the combined company at US\$3 billion.



Strong communication and guidance allows us to operate efficiently and stay ahead of changes to Cayman law.

Legal 500 Caribbean, 2022



A highly competent, professional and organised firm with a strong team of partners and associates who work cohesively together.

Chambers Global, 2022

Contacts

Hong Kong



Nathan Powell
Partner, Global Head of Corporate
+852 3656 6054
nathan.powell@ogier.com



Florence Chan
Partner
+852 3656 6061
florence.chan@ogier.com



Rachel Huang
Partner
+852 3656 6073
rachel.huang@ogier.com



Cecilia Li
Partner
+852 3656 6010
cecilia.li@ogier.com

Cayman Islands



Cynthia Anandajayasekeram
Partner
+1 345 815 1846
cynthia.anandajayasekeram@ogier.com



Angus Davison
Partner
+1 345 815 1788
angus.davison@ogier.com



Bradley Kruger
Partner
+1 345 815 1877
bradley.kruger@ogier.com

Legal Services

Beijing
British Virgin Islands
Cayman Islands
Guernsey
Hong Kong
Ireland
Jersey
London
Luxembourg
Shanghai
Singapore
Tokyo

Ogier provides practical advice on British Virgin Islands, Cayman Islands, Guernsey, Irish, Jersey and Luxembourg law through our global network of offices. Ours is the only firm to advise on these six laws. We regularly win awards for the quality of our client service, our work and our people. Regulatory information can be found at ogier.com