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Turning the tide:
Introducing the new
Restructuring Regime in
the Cayman Islands

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The changes

After several years in the making, the new Cayman Islands restructuring legislation is here. In 2022, several significant amendments to the Companies Act have been implemented making proceedings even more flexible whilst remaining both debtor and creditor friendly. The main change is that “Restructuring Officer” proceedings have replaced the traditional “Provisional Liquidation” regime, that has historically been used in circumstances where a company intends to pursue a restructuring.

These amendments will be welcomed by debtor companies and their stakeholders. We believe they will place the Cayman Islands in an even stronger position to facilitate international restructurings, building on the success of the jurisdiction under the former regime. Overall, this is a positive step for the Cayman Islands and its role in cross border restructuring. We outline the main changes and advantages of the new proceedings in this document. Feel free to reach out to us should you have any questions.





The key components of the new Restructuring legislation are as follows:



Appointment of a Restructuring Officer

A company may present a petition to the Grand Court of the Cayman Islands (the "Court") without a resolution of its members for the appointment of a Restructuring Officer on the grounds that i) the company is or is likely to become unable to pay its debts, and ii) it intends to present a compromise or arrangement to its creditors.

There is now no requirement for a winding up petition to be filed in advance of the restructuring regime being accessed.



Moratorium on creditor claims

At the presentation of a petition for the appointment of a Restructuring Officer, there will be an automatic statutory moratorium on any suit, action or other proceedings against the company.

Secured creditors (over part or whole of the company's assets) maintain their ability to enforce their security without leave of the Court or reference to the Restructuring Officer.



Restructuring Officer requirements

An appointed Restructuring Officer will act as an officer of the Court and must be an independent qualified Cayman Islands insolvency practitioner. A foreign practitioner can also be appointed to act as joint appointee with the Cayman Islands insolvency practitioner.



Implementing the Restructuring

The Restructuring Officer has the ability to achieve a consensual restructuring or can promote a restructuring by way of a scheme of arrangement.

A majority in number representing 75% in value of the creditors (or classes) and 75% in value of the members (or classes) present and voting is required to agree to any compromise or arrangement.



Role of Restructuring Officer

The Court has wide discretion and flexibility in Restructuring Officer proceedings. The appointment can be light touch with existing management retaining control of operations, whilst the Restructuring Officer acts as an independent specialist to oversee the implementation of the restructuring plan.



Advantages of the amendments



Streamlined process

The new Restructuring regime does not require the presentation of a winding up petition prior to the application for the appointment of Restructuring Officers, as was required under the Provisional Liquidation regime.



Flexibility

The regime is flexible and allows for a restructuring to take the form of a Cayman led Scheme of Arrangement, a consensual deal with creditors, or in support of foreign proceedings.



Breathing space

An automatic moratorium on unsecured creditor action will be triggered once the restructuring petition is filed. The moratorium will have extraterritorial effect.



Urgent situations

In time sensitive situations, it is possible to appoint an interim Restructuring Officer on an *ex-parte* basis.



Powers of the Restructuring Officer

A Restructuring Officer's role may be tailored to meet the needs of the restructuring, and can be light touch with company's management remaining in control of the company and the day-to-day operations. The Restructuring Officer would be responsible for providing independent assistance to management in respect of the formulation of a restructuring plan and negotiating with the company's stakeholders.



Transparency and oversight

The Restructuring Officer appointment is made by the Court and the Restructuring Officers act as officers of the Court. It is a requirement that at least one of the Restructuring Officers be an independent qualified Cayman Islands insolvency practitioner.



Simplification of scheme approvals

In a shareholder scheme, the majority in number requirement has been removed and it will only be necessary to obtain approval from 75% in value of members (or classes). Creditor schemes retain the current 50% in number, 75% in value approval thresholds.



Rights of creditors

Creditors have a right to be heard at the hearing of the Restructuring Officer petition and can still present a winding up petition, but leave of the Court must be obtained in advance.



Our Turnaround & Restructuring Team

Our Cayman Islands team would be happy to assist



Stuart Sybersma

T: +1 (345) 814 3337

E: ssybersma@deloitte.com



Mike Green

T: +1 (345) 743 6279

E: michaelgreen@deloitte.com



Grant Hiley

T: +1 (345) 743 6265

E: granthiley@deloitte.com



Derek Lai
Global Leader,
Contingency Planning
& Insolvency (CP&I)

T: +852 2852 1647

E: derlai@deloitte.com.hk

Across the globe, Deloitte has over 2,500 Turnaround & Restructuring professionals who can support you seamlessly across jurisdictions, capital structures, time zones and industries.

Africa

Jo Mitchell-Marais

T: +27 (0)71 677 4038

E: jmitchellmarais@deloitte.co.za

China & Hong Kong

Wesley Kong

T: +86 1085 207115

E: wkong@deloitte.com.cn

Luxembourg

Oliver Peter

T: +352 661452707

E: opeter@deloitte.lu

Spain

Arturo Gayoso

T: +34 653817874

E: agayoso@deloitte.es

Australia

Sal Algeri

T: +61 3 9671 7362

E: saalgeri@deloitte.com.au

Glen Ho

T: +852 2852 1643

E: gleho@deloitte.com.hk

Middle East

David Stark

T: +971 4506 4739

E: dastark@deloitte.com

United Kingdom

Lucy Julian

T: +41 58 279 6650

E: [ljjudian@deloitte.ch](mailto:ljudian@deloitte.ch)

Brazil

Luis Vasco

T: +55 11 5186 1777

E: luisvasco@deloitte.com

France

Jean-Pascal Beauchamp

T: +33 15 837 9344

E: jebeauchamp@deloitte.fr

Netherlands

Eddie van Dinther

T: +31 88 288 0681

E: evandinther@deloitte.nl

Nick Edwards

T: +44 20 7007 3013

E: nedwards@deloitte.co.uk

Canada

Phil Reynolds

T: +1 416 956 9200

E: philreynolds@deloitte.ca

Sandrine Grils-Prats

T: +33 12 261 6341

E: sgrilprats@deloitte.fr

Singapore & South-East Asia

Andrew Grimmett

T: +65 6530 5555

E: agrimmett@deloitte.com

Glen Fietta

T: +44 7971 694182

E: gfietta@deloitte.co.uk

Bermuda/ British Virgin Islands

Rachelle Frisby

T: +1 441 299 1303

E: Rachelle.Frisby@deloitte.com

Germany

Thomas Mazur

T: +49 892 903 68022

E: thmazur@deloitte.de

Minnie Chunhagsikarn

T: +65 2 034 0000

E: kchunhagsikarn@deloitte.com

United States

Ryan Maupin

T: +1 973 602 6379

E: rmaupin@deloitte.com

Italy

Matteo Uggetti

T: +39 02 8332 5304

E: muggetti@deloitte.it

Siew Kiat Khoo

T: +60 3 7610 8888

E: skkhoo@deloitte.com

Michael Epstein

T: +1 617 437 2304

E: mjepstein@deloitte.com



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