

(b) in other cases, as if the proceeding had been commenced under the new Law.

(3) In this section -

“the former Law” means the principal Law in force immediately before the date of commencement of this Law; and

“the new Law” means the principal Law as amended by this Law.

Passed by the Legislative Assembly the 5th day of December, 2002.

JULIANNA O’CONNOR - CONNOLLY

Speaker.

WENDY LAUER EBANKS

Clerk of the Legislative Assembly.

CAYMAN ISLANDS



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THE COMPANIES (AMENDMENT) (NO. 2) LAW, 2002

(LAW 26 OF 2002)

ARRANGEMENT OF SECTIONS

- 1. Short title.
- 2. Amendment of section 232 of the Companies Law (2002 Revision)- definitions in this Part.
- 3. Amendment of section 233 of the Companies Law (2002 Revision)- applications for registration.
- 4. Amendment of the principal Law - insertion of section 233A.
- 5. Amendment of section 236 - shares and dividends.
- 6. Repeal of section 237 and substitution- company to act on behalf of portfolios.
- 7. Amendment of section 238 - assets.
- 8. Amendment of section 240- segregation of liabilities.
- 9. Amendment of section 244 - applications for receivership order.
- 10. Amendment of section 245 - administration of receivership orders.
- 11. Savings and transitional provisions.

CAYMAN ISLANDS

Law 26 of 2002.

I Assent

B.H. Dinwiddy

Governor.

Date: 29 January, 2003

A LAW TO AMEND THE COMPANIES LAW (2002 REVISION)
RELATING TO THE FORMATION AND ADMINISTRATION OF
SEGREGATED PORTFOLIO COMPANIES; AND FOR RELATED AND
CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

- 1. This Law may be cited as the Companies (Amendment) (No. 2) Law, 2002. Short title
- 2. The Companies Law (2002 Revision), in this Law referred to as “the principal Law”, is amended in section 232 by inserting the following definition in its appropriate alphabetical order- Amendment of section 232 -definitions in this Part

““regulatory laws” means any one or more of the -

- (a) Banks and Trust Companies Law (2001 Revision);
- (b) Building Societies Law (2001 Revision);
- (c) Companies Management Law (2002 Revision);
- (d) Cooperative Societies Law (2001 Revision);
- (e) Insurance Law (2001 Revision);
- (f) Money Services Law, 2000;
- (g) Mutual Funds Law (2001 Revision);
- (h) Securities Investment Business Law, 2001,

and any other laws that may be prescribed by the Governor by regulations made under section 40 of the Monetary Authority Law (2002 Revision);”.

Amendment of section 233 of the Companies Law (2002 Revision)- applications for registration

3. The principal Law is amended in section 233 as follows-

- (a) by repealing subsections (1) and (2) and substituting the following-

“(1) Subject to subsection (2) and section 233A any exempted company may apply to the Registrar to be registered as an exempted segregated portfolio company.

(2) Nothing in this Part shall derogate from the Authority’s powers to determine where relevant whether a segregated portfolio company is suitable to be licensed under the regulatory laws.”; and

- (b) in subsection (3), by repealing paragraph (a).

Amendment of the principal Law- insertion of section 233A

4. The principal law is amended by inserting the following section after section 233-

“Conversions of existing companies

233A. (1) Where an exempted company has been registered prior to an application under section 233 (1) the company shall-

- (a) file with the Registrar a declaration made by at least two directors setting out an accurate statement -
 - (i) of the assets and liabilities of the company as at a date within three months prior to the date of the declaration;
 - (ii) of any transaction or event which , as at the date of the declaration, has occurred or is expected to occur, between the date of the statement of assets and liabilities prepared pursuant to subparagraph (i) and the date of registration of the company as a segregated portfolio company which if it had occurred before the date of the declaration would have caused material changes to the assets and liabilities disclosed in the declaration;
 - (iii) that the segregated portfolio company intends to operate and the assets and liabilities which the company proposes to transfer to each of those segregated

portfolios;

- (iv) that on registration as a segregated portfolio company, the company and each segregated portfolio will be solvent;

- (v) that each creditor of the company has consented in writing to the transfer of assets and liabilities into segregated portfolios or alternatively that adequate notice has been given in accordance with subsection (3) to all creditors of the company and that ninety-five percent by value of the creditors have consented to that transfer of assets and liabilities into segregated portfolios;

- (b) pass a special resolution authorising the transfer of assets and liabilities into segregated portfolios and attach a copy of such resolution to the declaration in subparagraph (a); and

- (c) where the company is licensed by the Authority under the regulatory laws, obtain the written consent of the Authority and attach a copy of such consent to the declaration referred to in subparagraph (a).

(3) For the purposes of subsection (1) (a) (v) adequate notice is given if notice in writing is sent to each creditor having a claim against the company exceeding \$1,000.

(4) A director who makes a declaration under subsection (1)(a) without reasonable grounds or who knowingly makes a false declaration is guilty of an offence and liable on summary conviction to a fine of \$5,000 or to imprisonment for one year.

(5) For the avoidance of doubt, the provisions of the Fraudulent Dispositions Law (1996 Revision) shall not apply to an initial transfer of assets and liabilities into segregated portfolios pursuant to an application under section 233 (1).”.

5. The principal Law is amended in section 236 as follows-

Amendment of section 236- shares and dividends

Repeal of section 237
and substitution-
company to act on
behalf of portfolios

- (a) in subsection (1)-
 - (i) by inserting after the word "classes" where it first appears the words "or series";
 - (ii) by inserting after the word "assets of" the words "and accounted for in";
- (b) in subsection (3), by inserting after the word "dividend" where it first appears the words "or other distribution";
- (c) in subsection (4), by inserting after the word "dividends" the words "or other distributions";

6. The principal Law is amended by repealing section 237 and substituting the following-

"237. (1) Any act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement which is to be binding on or to enure to the benefit of a segregated portfolio or portfolios shall be executed by or on behalf of the directors and on behalf of such segregated portfolio or portfolios which shall be identified or specified, and where in writing it shall be indicated that such execution is in the name of, or by, or for the account of, such segregated portfolio or portfolios.

(2) If a segregated portfolio company is in breach of subsection (1) the directors shall (notwithstanding any provisions to the contrary in the company's articles or in any contract with such company or otherwise) incur personal liability for the liabilities of the company and the segregated portfolio under the act, matter, deed, agreement, contract, instrument or arrangement that was executed.

(3) Notwithstanding subsection (2), the Court may relieve a director of all or part of his personal liability thereunder if he satisfies the Court that he ought fairly to be so relieved because-

- (a) he was not aware of the circumstances giving rise to his liability and, in being not so aware, he was not fraudulent, reckless or negligent, and did not act in bad faith; or
- (b) he expressly objected, and exercised such rights as he had as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his liability.

(4) Any indemnity given by a segregated portfolio company in favour of a director in respect of a liability incurred by such director on behalf of a segregated portfolio shall only be enforceable against the assets of the segregated portfolio in respect of which such liability arose."

7. The principal Law is amended in section 238 as follows-

Amendment of section
238- assets

- (a) in subsection (5), by inserting after the word "includes" the word "profits"; and
- (b) in subsection (6), by repealing paragraph (c) and substituting the following-
"(c) to ensure that assets and liabilities are not transferred between segregated portfolios otherwise than at full value."

8. The principal Law is amended in section 240 as follows-

Amendment of section
240- segregation of
liabilities

- (a) in subsection (1) (a) (ii) by inserting after the word "secondly" the words "unless specifically prohibited by the articles of association";
- (b) by repealing subsection (2) and substituting the following-

"(2) Where a liability of a segregated portfolio company to a person arises or is imposed otherwise than from a matter in respect of a particular segregated portfolio or portfolios such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the company's general assets."

9. The principal Law is amended in section 244 as follows-

Amendment of section
244- applications for
receivership order

- (a) in subsection (1)(e), by inserting at the beginning the words "in respect of a company licensed under the regulatory Laws"; and
- (b) in subsection (3)(b), by inserting at the beginning the words "in respect of a company licensed under the regulatory Laws".

10. The principal law is amended in section 245 by repealing subsection (5) and substituting the following-

Amendment of section
245- administration of
receivership orders-

"(5) When an application has been made for, and during the period of operation of, a receivership order, no suit, action or other proceedings shall be instituted against the segregated portfolio company in relation to the segregated portfolio in respect of which the receivership order was made except by leave of the Court, which may be conditional or unconditional."

11. (1) This Law does not affect any order or determination made by a court before the coming into force of this Law.

Savings and transitional
provisions

(2) Every proceeding commenced under the old law may be continued and completed-

- (a) if the proceeding had been wholly or partly heard, as if the former law was still in force; and