

CAYMAN ISLANDS



Supplement No. 4 published with Gazette No. 10 dated
11 May, 1998.

**THE COMPANIES (AMENDMENT) (SEGREGATED PORTFOLIO
COMPANIES) LAW, 1998**

(Law 6 of 1998)

**THE COMPANIES (AMENDMENT) (SEGREGATED PORTFOLIO
COMPANIES) LAW, 1998**

ARRANGEMENT OF SECTIONS

1. Short title.
2. Insertion of Part XIV - Segregated portfolio companies.

SCHEDULE

Sections

229. Interpretation.
230. Applications for registration.
231. Designation.
232. Segregated portfolios.
233. Shares and dividends.
234. Company to act on behalf of portfolios.
235. Assets.
236. Segregation of assets.
237. Segregation of liabilities.
238. General liabilities and assets.
239. Winding-up of company.
240. Receivership orders.
241. Applications for receivership orders.
242. Administration of receivership orders.
243. Discharge of receivership orders.
244. Remuneration of receiver.

CAYMAN ISLANDS

Law 6 of 1998.

I Assent

JOHN OWEN

Governor.

24 April, 1998

**A LAW TO AMEND THE COMPANIES LAW (1995 REVISION) TO
PROVIDE FOR THE FORMATION, REGULATION AND WINDING UP
OF EXEMPTED COMPANIES HOLDING UNRESTRICTED “B”
INSURERS’ LICENCES WITH PORTFOLIOS WITH LIABILITIES AND
ASSETS SEGREGATED FROM THOSE OF OTHER PORTFOLIOS OF
THE COMPANY AND FROM THE GENERAL ASSETS AND
LIABILITIES OF THE COMPANY; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Companies (Amendment) (Segregated Portfolio Companies) Law, 1998. Short title

2. The Companies Law (1995 Revision) is amended by the insertion after Part XIII of the Part set out in the Schedule. Insertion of Part XIV -
Segregated portfolio
companies

SCHEDULE

Part XIV of the Companies Law (1995 Revision)

PART XIV

Segregated Portfolio Companies

Interpretation	<p>229. In this Part-</p> <p>“segregated portfolio company” means an exempted company which is registered under section 230(1);</p> <p>“segregated portfolio shares” means shares issued under the provisions of section 233(1);</p> <p>“segregated portfolio share capital” means the proceeds of the issue of segregated portfolio shares;</p> <p>“segregated portfolio share dividend” means a dividend paid under section 233(3);</p> <p>“receivership order” means an order made under section 240(1); and</p> <p>“receiver” means the person specified in a receivership order for the purposes specified in section 240(3).</p>
Applications for registration 1998 Revision	<p>230. (1) An exempted company which only undertakes business of a class which requires the company to hold either a Restricted or an Unrestricted Class “B” Insurer’s Licence granted under the Insurance Law (1998 Revision) may, at any time, apply to the Registrar to be registered as an exempted segregated portfolio company.</p> <p>(2) An application may also be made under subsection (1) at the same time as application is made-</p> <ul style="list-style-type: none">(a) to register a proposed company as an exempted company;(b) to re-register an ordinary non-resident company as an exempted company;(c) to register a company by way of continuation as an exempted company; or(d) to register as an exempted limited duration company.

(3) An application under subsection (1) shall, in addition to any other fee that may then be payable, be accompanied by a fee of \$500.

(4) A segregated portfolio company shall, on paying the annual fee payable under section 187, pay an additional annual fee of \$2,000 together with an additional annual fee of \$1,000 in respect of each segregated portfolio, both of which shall be tendered in accordance with section 187(2).

231. A segregated portfolio company shall include in its name the letters “SPC” or the words “Segregated Portfolio Company”. Designation

232. (1) A segregated portfolio company may create one or more segregated portfolios in order to segregate the assets and liabilities of the company held within or on behalf of a portfolio from the assets and liabilities of the company held within or on behalf of any other segregated portfolio of the company or the assets and liabilities of the company which are not held within or on behalf of any segregated portfolio of the company. Segregated portfolios

(2) A segregated portfolio company shall be a single legal entity and any segregated portfolio of or within a segregated portfolio company shall not constitute a legal entity separate from the company.

(3) Each segregated portfolio shall be separately identified or designated and shall include in such identification or designation the words “Segregated Portfolio”.

233. (1) A segregated portfolio company may create and issue shares in one or more classes (including different classes or series relating to the same segregated portfolio), the proceeds of the issue of which shall be included in the segregated portfolio assets of the segregated portfolio in respect of which the segregated portfolio shares are issued. Shares and dividends

(2) The proceeds of the issue of shares, other than segregated portfolio shares, shall be included in the segregated portfolio company’s general assets.

(3) A segregated portfolio company may pay a dividend in respect of segregated portfolio shares of any class or series and whether or not a dividend is declared on any other class or series of segregated portfolio shares or any other shares.

(4) Segregated portfolio dividends shall be paid on segregated portfolio shares by reference only to the accounts of and to and out of the segregated portfolio assets and liabilities of the segregated portfolio in respect of which the

segregated portfolio shares were issued and otherwise in accordance with the rights of such shares.

Company to act on
behalf of portfolios

234. (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 the segregated portfolio company for 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)-

- (a) 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; and
- (b) unless they were fraudulent, reckless, negligent or acted in bad faith, the directors shall have a right of indemnity in the case of a matter on behalf of or attributable to a segregated portfolio or portfolios against the assets of that portfolio or portfolios and, in the case of a matter not on behalf of or attributable to any segregated portfolio, against the general assets of such company.

(3) Notwithstanding the provisions of subsection (2)(a), 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) Where, pursuant to the provisions of subsection (3), the Court relieves a director of all or part of his personal liability under subsection (2)(a), the Court may order that the liability in question shall instead be met from such of the segregated portfolio or general assets of the segregated portfolio company as may be specified in the order.

(5) Any provision in the articles of a segregated portfolio company, and any other contractual provision under which the segregated portfolio company

may be liable, which purports to indemnify directors in respect of conduct which would otherwise disentitle them to an indemnity by virtue of subsection 2(b), shall be void.

235. (1) The assets of a segregated portfolio company shall be either segregated portfolio assets or general assets. Assets

(2) The segregated portfolio assets comprise the assets of the segregated portfolio company held within or on behalf of the segregated portfolios of the company.

(3) The general assets of a segregated portfolio company comprise the assets of the company which are not segregated portfolio assets.

(4) The assets of a segregated portfolio comprise-

- (a) assets representing the share capital and reserves attributable to the segregated portfolio; and
- (b) all other assets attributable to or held within the segregated portfolio.

(5) For the purposes of subsection (4), “reserves” includes retained earnings, capital reserves and share premiums.

(6) It shall be the duty of the directors of a segregated portfolio company to establish and maintain (or cause to be established and maintained) procedures-

- (a) to segregate, and keep segregated, portfolio assets separate and separately identifiable from general assets;
- (b) to segregate, and keep segregated, portfolio assets of each segregated portfolio separate and separately identifiable from segregated portfolio assets of any other segregated portfolio; and
- (c) where relevant, to apportion or transfer assets and liabilities between segregated portfolios, or between segregated portfolios and general assets of the company.

236. Segregated portfolio assets-

Segregation of assets

- (a) shall only be available and used to meet liabilities to the creditors of the segregated portfolio company who are creditors in respect of that segregated portfolio and who shall thereby be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio for such purposes; and
- (b) shall not be available or used to meet liabilities to, and shall be absolutely protected from, the creditors of the segregated

portfolio company who are not creditors in respect of that segregated portfolio, and who accordingly shall not be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio.

Segregation of liabilities 237. (1) Where a liability of a segregated portfolio company to a person arises from a matter, or is otherwise imposed, in respect of or attributable to a particular segregated portfolio -

- (a) such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to-
 - (i) firstly the segregated portfolio assets attributable to such segregated portfolio; and
 - (ii) secondly the segregated portfolio company's general assets, to the extent that the segregated portfolio assets attributable to such segregated portfolio are insufficient to satisfy the liability, and to the extent that the segregated portfolio company's general assets exceed any minimum capital amounts lawfully required by a regulatory body in the Islands; and
- (b) such liability shall not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to the segregated portfolio assets attributable to any other segregated portfolio.

(2) Where a liability of a segregated portfolio company to a person-

- (a) arises otherwise than from a matter in respect of a particular segregated portfolio or portfolios; or
- (b) is imposed otherwise than 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.

General liabilities and assets 238. (1) Liabilities of a segregated portfolio company not attributable to any of its segregated portfolios shall be discharged from the company's general assets.

(2) Income, receipts and other property or rights of or acquired by a segregated portfolio company not otherwise attributable to any segregated portfolio shall be applied to and comprised in the company's general assets.

Winding-up of company 239. (1) Notwithstanding any statutory provision or rule of law to the contrary, in the winding-up of a segregated portfolio company, the liquidator-

- (a) shall deal with the company's assets only in accordance with the procedures set out in section 235(6); and
- (b) in discharge of the claims of creditors of the segregated portfolio company, shall apply the company's assets to those entitled to have recourse thereto under the provisions of this Part.

(2) Sections 111 and 135 shall be modified so that they shall apply in relation to protected segregated portfolio companies in accordance with the provisions of this Part and, in the event of any conflict between the provisions of this Part and those of sections 111 and 135, the provisions of this Part shall prevail.

240. (1) Subject to the provisions of this section, if in relation to a segregated portfolio company the Court is satisfied- Receivership orders

- (a) that the segregated portfolio assets attributable to a particular segregated portfolio of the company (when account is taken of the company's general assets, unless there are no creditors in respect of that segregated portfolio entitled to have recourse to the company's general assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that segregated portfolio; and
- (b) that the making of an order under this section would achieve the purposes set out in subsection (3),

the Court may make a receivership order under this section in respect of that segregated portfolio.

(2) A receivership order may be made in respect of one or more segregated portfolios.

(3) A receivership order shall direct that the business and segregated portfolio assets of or attributable to a segregated portfolio shall be managed by a receiver specified in the order for the purposes of-

- (a) the orderly closing down of the business of or attributable to the segregated portfolio; and
- (b) the distribution of the segregated portfolio assets attributable to the segregated portfolio to those entitled to have recourse thereto.

(4) A receivership order-

- (a) may not be made if the segregated portfolio company is in winding up; and

- (b) shall cease to be of effect upon commencement of the winding up of the segregated portfolio company, but without prejudice to prior acts of the receiver or his agents.

(5) No resolution for the voluntary winding up of a segregated portfolio company of which any segregated portfolio is subject to a receivership order shall be effective without leave of the Court.

Applications for
receivership orders

241. (1) An application for a receivership order in respect of a segregated portfolio of a segregated portfolio company may be made by-

- (a) the company;
- (b) the directors of the company;
- (c) any creditor of the company in respect of that segregated portfolio;
- (d) any holder of segregated portfolio shares in respect of that segregated portfolio; or
- (e) the Cayman Islands Monetary Authority.

(2) The Court, on hearing an application-

- (a) for a receivership order; or
- (b) for leave, pursuant to section 240(5), for a resolution for voluntary winding up,

may make an interim order or adjourn the hearing, conditionally or unconditionally.

(3) Notice of an application to the Court for a receivership order in respect of a segregated portfolio of a segregated portfolio company shall be served upon-

- (a) the company;
- (b) the Cayman Islands Monetary Authority; and
- (c) such other persons (if any) as the Court may direct,

each of whom shall be given an opportunity of making representations to the Court before the order is made.

Administration of
receivership orders

242. (1) The receiver of a segregated portfolio-

- (a) may do all such things as may be necessary for the purposes set out in section 240(3); and
- (b) shall have all the functions and powers of the directors in respect of the business and segregated portfolio assets of or attributable to the segregated portfolio.

(2) The receiver may at any time apply to the Court-

- (a) for directions as to the extent or exercise of any function or power;
- (b) for the receivership order to be discharged or varied; or
- (c) for an order as to any matter acting in the course of his receivership.

(3) In exercising his functions and powers the receiver shall be deemed to act as the agent of the segregated portfolio company, and shall not incur personal liability except to the extent that he is fraudulent, reckless, negligent, or acts in bad faith.

(4) Any person dealing with the receiver in good faith is not concerned to enquire whether the receiver is acting within his powers.

(5) When an application has been made for, and during the period of operation of, a receivership order-

- (a) no proceedings may be instituted or continued by or against the segregated portfolio company in relation to the segregated portfolio in respect of which the receivership order was made; and
- (b) no steps may be taken to enforce any security or in the execution of legal process in respect of the business or segregated portfolio assets of or attributable 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.

(6) During the period of operation of a receivership order-

- (a) the functions and powers of the directors shall cease in respect of the business of or attributable to, and the segregated portfolio assets of or attributable to, the segregated portfolio in respect of which the order was made; and
- (b) the receiver of the segregated portfolio shall be entitled to be present at all meetings of the segregated portfolio company and to vote at such meetings, as if he were a director of the segregated portfolio company, in respect of the general assets of the company, unless there are no creditors in respect of that segregated portfolio entitled to have recourse to the company's general assets.

243. (1) The Court shall not discharge a receivership order unless it appears to the Court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

Discharge of
receivership orders

(2) The Court, on hearing an application for the discharge or variation of a receivership order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

(3) Upon the Court discharging a receivership order in respect of a segregated portfolio of a segregated portfolio company on the ground that the purpose for which the order was made has been achieved or substantially achieved, the Court may direct that any payment made by the receiver to any creditor of the company in respect of that segregated portfolio shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that segregated portfolio, and the creditor's claims against the company in respect of that segregated portfolio shall be thereby deemed extinguished.

Remuneration of receiver 244. The remuneration of a receiver and any expenses properly incurred by him shall be payable, in priority to all other claims, from the segregated portfolio assets attributable to the segregated portfolio in respect of which the receiver was appointed but not from any other assets of the segregated portfolio company.

Passed by the Legislative Assembly the 9th day of March, 1998.

MABRY S. KIRKCONNELL

Speaker.

GEORGETTE MYRIE

Clerk of the Legislative Assembly.