

CAYMAN ISLANDS



COMPANIES (AMENDMENT) ACT, 2021

(Act 6 of 2021)

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CAYMAN ISLANDS

(Act 6 of 2021)

I Assent,



Martyn Roper
Governor

Date: 15th day of December, 2021

COMPANIES (AMENDMENT) ACT, 2021

(Act 6 of 2021)

AN ACT TO AMEND THE COMPANIES ACT (2021 REVISION) TO PERMIT A COMPANY TO RESTRUCTURE UNDER THE SUPERVISION OF A RESTRUCTURING OFFICER; TO PROVIDE FOR A STAY OF PROCEEDINGS, OTHER THAN CRIMINAL PROCEEDINGS, WHERE A COMPANY IS RESTRUCTURING, WHERE A PROVISIONAL LIQUIDATOR IS APPOINTED OR WHERE A WINDING UP ORDER IS MADE; TO PROVIDE FOR AN APPLICATION TO A COURT IN WHICH CRIMINAL PROCEEDINGS ARE PENDING FOR A STAY OF THE CRIMINAL PROCEEDINGS WHERE A COMPANY IS RESTRUCTURING, WHERE A PROVISIONAL LIQUIDATOR IS APPOINTED OR WHERE A WINDING UP ORDER IS MADE; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title and commencement

- (1) This Act may be cited as the Companies (Amendment) Act, 2021.
- (2) This Act shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Act and in relation to different matters.

Amendment of section 86 of the Companies Act (2021 Revision) - power to compromise with creditors and members

- The *Companies Act (2021 Revision)*, in this Act referred to as the “principal Act”, is amended in section 86 as follows —



- (a) in subsection (1), by inserting after the words “member of the company”, the words “, or of a restructuring officer appointed in respect of the company”;
- (b) in subsection (2) as follows —
 - (i) by deleting the words “or members or class of members.”; and
 - (ii) by deleting the words “or on the members or class of members.”;
- (c) by inserting after subsection (2), the following subsection —

“(2A) If seventy-five per cent in value of the members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the members or class of members, as the case may be, and also on the company or, where a company is in the course of being wound up, on the liquidator and contributories of the company.”; and
- (d) in subsection (3), by inserting after the words “subsection (2)”, the words “or (2A)”.

Deletion and substitution of Part heading of PART V - winding up of companies and associations

3. The principal Act is amended in Part V, by deleting the Part heading and substituting the following Part heading —

“PART V- Company Restructuring and Winding up of Companies and Associations”.

Insertion of Division - company restructuring

4. The principal Act is amended by inserting after section 91, the following Division heading and sections —

“Company Restructuring

Interpretation of “company”

91A. For the purposes of sections 91B, 91C, 91D, 91E, 91F, 91G, 91H, 91I and 91J, “company” means —

- (a) any company liable to be wound up under section 91; or
- (b) any other entity or partnership to which the provisions of this Part apply in respect of the entity’s or partnership’s winding up.



Appointment of a restructuring officer

- 91B.**(1) A company may present a petition to the Court for the appointment of a restructuring officer on the grounds that the company —
- (a) is or is likely to become unable to pay its debts within the meaning of section 93; and
 - (b) intends to present a compromise or arrangement to its creditors (or classes thereof) either, pursuant to this Act, the law of a foreign country or by way of a consensual restructuring.
- (2) A petition under subsection (1) may be presented by a company acting by its directors, without a resolution of its members or an express power in its articles of association.
- (3) The Court may, on hearing a petition under subsection (1) —
- (a) make an order appointing a restructuring officer;
 - (b) adjourn the hearing conditionally or unconditionally;
 - (c) dismiss the petition; or
 - (d) make any other order as the Court thinks fit, except an order placing the company into official liquidation, which the Court may only make in accordance with sections 92 and 95 if a winding up petition has been presented in accordance with sections 91G and 94.
- (4) A restructuring officer appointed by the Court under subsection (3)(a) shall have the powers and carry out only such functions as the Court may confer on the restructuring officer in the order appointing the restructuring officer, including the power to act on behalf of the company.
- (5) Where the Court makes an order under subsection (3)(a), the Court shall set out in the order —
- (a) the manner and time within which the restructuring officer shall give notice of the restructuring officer's appointment to —
 - (i) the company's creditors, including any contingent or prospective creditors;
 - (ii) the company's contributories; and
 - (iii) the Authority, in respect of any company which is carrying on regulated business;
 - (b) the manner and extent to which the powers and functions of the restructuring officer shall affect and modify the powers and functions of the board of directors; and

- (c) any other conditions to be imposed on the board of directors that the Court considers appropriate, in relation to the exercise by the board of directors of its powers and functions.
- (6) Where a company which is carrying on a regulated business presents a petition under subsection (1), the directors of the company shall, immediately after presenting the petition, serve notice of the petition on the Authority.
- (7) A director who fails to comply with subsection (6) commits an offence and is liable to a fine of ten thousand dollars.

Appointment of an interim restructuring officer

- 91C.**(1) A company may, where it is in the interests of the company to do so, make an *ex parte* application to the Court for the appointment of a restructuring officer on an interim basis pending the hearing of the petition under section 91B(1).
- (2) An application under subsection (1) may be presented by a company acting by its directors without a resolution of its members or an express power in its articles of association.
 - (3) The Court may, on hearing an application under subsection (1), appoint a restructuring officer on an interim basis, on such terms and conditions as the Court thinks fit.
 - (4) A restructuring officer appointed on an interim basis by the Court under subsection (3) shall have the powers and carry out only such functions as the Court may confer on that restructuring officer in the order appointing the restructuring officer, including the power to act on behalf of the company.
 - (5) Where the Court makes an order under subsection (3), the Court shall set out in the order —
 - (a) the manner and time within which the restructuring officer shall give notice of the restructuring officer's appointment to —
 - (i) the company's creditors, including any contingent or prospective creditors;
 - (ii) the company's contributories; and
 - (iii) the Authority, in respect of any company which is carrying on regulated business;
 - (b) the manner and extent to which the powers and functions of the restructuring officer shall affect and modify the powers and functions of the board of directors; and



- (c) any other conditions to be imposed on the board of directors that the Court considers appropriate, in relation to the exercise by the board of directors of its powers and functions.
- (6) Where a company which is carrying on a regulated business makes an application under subsection (1), the directors of the company shall, immediately after making the application, serve notice of the application on the Authority.
- (7) A director who fails to comply with subsection (6), commits an offence and is liable to a fine of ten thousand dollars.

Restructuring officer

- 91D.**(1) A restructuring officer appointed under section 91B or 91C shall be a qualified insolvency practitioner.
- (2) Where two or more persons are appointed as restructuring officers under section 91B or 91C, they shall be authorised to act jointly and severally, unless their powers are expressly limited by an order of the Court.
 - (3) A restructuring officer appointed under section 91B or 91C is an officer of the Court.
 - (4) Notwithstanding subsection (1), where the Court has appointed a qualified insolvency practitioner to act as a restructuring officer, the Court may appoint a foreign practitioner to act as a restructuring officer in addition to the qualified insolvency practitioner.
 - (5) A foreign practitioner appointed by the Court to act as a restructuring officer shall not act as the sole restructuring officer of a company.
 - (6) The remuneration of a restructuring officer appointed under section 91B or 91C shall, on the application of the restructuring officer, be fixed by the Court from time to time in accordance with section 109.
 - (7) A restructuring officer, a creditor of the company, including a contingent or prospective creditor, or a contributory of the company may apply to the Court to determine any question arising in the course of carrying out the restructuring officer's functions.

Variation or discharge of the order appointing a restructuring officer

- 91E.**(1) At any time after the appointment of a restructuring officer by the Court under section 91B or 91C —
- (a) the company acting by its directors;
 - (b) a restructuring officer appointed under section 91B or 91C;

- (c) a creditor of the company, including a contingent or prospective creditor;
- (d) a contributory of the company; or
- (e) the Authority, in respect of any company which is carrying on a regulated business,

may apply by way of summons to the Court for the variation or discharge of the order appointing the restructuring officer.

- (2) An application under subsection (1)(a) may be presented by a company acting by its directors without a resolution of its members or an express power in its articles of association.
- (3) The Court may, on hearing an application under subsection (1) —
 - (a) vary the order appointing the restructuring officer;
 - (b) discharge or continue the order appointing the restructuring officer;
 - (c) adjourn the hearing conditionally or unconditionally;
 - (d) dismiss the application; or
 - (e) make any other order as the Court thinks fit, except an order placing the company into official liquidation, which the Court may only make in accordance with sections 92 and 95 if a winding up petition has been presented in accordance with sections 91G and 94.

Removal and replacement of restructuring officers

- 91F.**(1) A restructuring officer may be removed from office and replaced by an alternative restructuring officer by order of the Court made on the application of —
- (a) the company acting by its directors;
 - (b) a creditor of the company, including a contingent or prospective creditor;
 - (c) a contributory of the company; or
 - (d) the Authority, in respect of any company which is carrying on a regulated business.
- (2) An application under subsection (1)(a) may be presented by a company acting by its directors without a resolution of its members or an express power in its articles of association.
 - (3) A restructuring officer who has been removed and replaced pursuant to subsection (1) shall prepare a report and accounts for the restructuring officer replacing the removed restructuring officer, within twenty-one days of the date of removal and replacement.



Stay of proceedings**91G.(1)** At any time —

- (a) after the presentation of a petition for the appointment of a restructuring officer under section 91B, but before an order for the appointment of a restructuring officer is made, and when the petition has not been withdrawn or dismissed; and
- (b) when an order for the appointment of a restructuring officer is made, until the order appointing the restructuring officer has been discharged,

no suit, action or other proceedings, other than criminal proceedings, shall be proceeded with or commenced against the company, no resolution shall be passed for the company to be wound up and no winding up petition may be presented against the company, except with the leave of the Court and subject to such terms as the Court may impose.

- (2) Where at any time referred to in subsection (1), there are criminal proceedings pending against the company in a summary court, the Court, the Court of Appeal or the Privy Council —

- (a) the company acting by its directors;
- (b) a creditor of the company, including a contingent or prospective creditor;
- (c) a contributory of the company; or
- (d) the Authority, in respect of any company which is carrying on regulated business,

may apply to the court in which the proceedings are pending for a stay of the proceedings and the court to which the application is made, may stay the proceedings on such terms as it thinks fit.

- (3) In this section —

- (a) references to a suit, action or other proceedings include a suit, action or other proceedings in a foreign country; and
- (b) references to other proceedings include any court supervised insolvency or restructuring proceedings against the company.

Enforcement of creditors' security

91H. Notwithstanding the presentation of a petition for the appointment of a restructuring officer or the appointment of a restructuring officer by the Court under section 91B or 91C, a creditor who has security over the whole or part of the assets of the company is entitled to enforce the creditor's security without the leave of the Court and without reference to the restructuring officer appointed under section 91B or 91C.

Power to compromise with creditors and members within restructuring officer proceeding

- 91I.** (1) Where a restructuring officer is appointed to a company and a compromise or arrangement is proposed between the company and its creditors or any class of them, or the company and its members or any class of them, the Court may, on the application of the restructuring officer, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.
- (2) If a majority in number representing seventy-five per cent in value of the creditors or class of creditors, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, as the case may be, and also on the company.
- (3) If seventy-five per cent in value of the members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the members or class of members, as the case may be, and also on the company.
- (4) An order made under subsection (2) or (3) shall have no effect until a copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of association of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.
- (5) If a company makes default in complying with subsection (4), the company and every officer of the company who is in default shall be liable to a fine of two dollars for each copy in respect of which default is made.



- (6) In this section, “**arrangement**” includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

Provisions for facilitating reconstruction and amalgamation of companies

- 91J.**(1) Where an application is made to the Court under section 91I for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are specified in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purpose of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as “a transferor company”) is to be transferred to another company (in this section referred to as “the transferee company”) the Court, may either by the order sanctioning the compromise or arrangement or by any subsequent order make provision for —
- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
 - (b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
 - (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
 - (d) the dissolution, without winding up, of any transferor company;
 - (e) the provisions to be made for any person who within such time and in such manner as the Court directs dissents from the compromise or arrangement; and
 - (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.
- (2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee

company, and any such property shall, if the order so directs, be freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

- (3) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof to be delivered to the Registrar for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.
- (4) In this section —
- “**property**” includes property, rights and powers of every description;
- “**liabilities**” includes duties; and
- “**transferee company**” means any company or body corporate established in the Islands or in any other jurisdiction.”.

Amendment of section 94 - application for winding up

5. The principal Act is amended in section 94 by repealing subsection (2) and substituting the following subsections —
- “(2) Where expressly provided for in the articles of association of a company, the directors of a company incorporated before the commencement of this amending Act have the authority to —
- (a) present a winding up petition; or
- (b) where a winding up petition has been presented, apply for the appointment of a provisional liquidator,
- on behalf of the company without the sanction of a resolution passed at a general meeting.
- (2A) Subject to subsection (2B), the directors of a company incorporated after the commencement of this amending Act may present a winding up petition on behalf of the company on the grounds that the company is unable to pay its debts within the meaning of section 93 or where a winding up petition has been presented, apply on behalf of the company, for the appointment of a provisional liquidator.
- (2B) The articles of association of a company may expressly remove or modify the directors’ authority to present a winding up petition or apply for the appointment of a provisional liquidator on the company’s behalf.”.



Amendment of section 97 - avoidance of attachments and stay of proceedings

6. The principal Act is amended in section 97 as follows —

- (a) in subsection (1), by deleting the words “including criminal proceedings” and substituting the words “other than criminal proceedings”; and
- (b) by inserting after subsection (1), the following subsection —

“(1A) Where a winding up order is made or a provisional liquidator is appointed in respect of a company, and there are criminal proceedings pending against the company in a summary court, the Court, the Court of Appeal or the Privy Council —

- (a) the company;
- (b) a creditor of the company;
- (c) a contributory of the company; or
- (d) subject to section 94(4), the Authority, in respect of any company which is carrying on regulated business,

may apply to the court in which the proceedings are pending for a stay of the proceedings and the court to which the application is made, may stay the proceedings on such terms as it thinks fit.”.

Amendment of section 100 - commencement of winding up by the Court

7. The principal Act is amended in section 100 by repealing subsection (1) and substituting the following subsection —

“(1) If, before the presentation of a petition for the winding up of a company by the Court —

- (a) a resolution has been passed by the company for voluntary winding up;
- (b) the period, if any, fixed for the duration of the company by the articles of association has expired;
- (c) the event upon the occurrence of which it is provided by the articles of association that the company is to be wound up has occurred; or
- (d) a restructuring officer has been appointed pursuant to section 91B or 91C and the order appointing the restructuring officer has not been discharged,

the winding up of the company is deemed to have commenced at the time of passing of the relevant resolution or the expiry of the relevant period or the occurrence of the relevant event or the date of the presentation of the petition to appoint a restructuring officer pursuant to section 91B.”.

Amendment of section 104 - appointment and powers of provisional liquidator

8. The principal Act is amended in section 104 by repealing subsection (3) and substituting the following subsection —

“(3) An application for the appointment of a provisional liquidator may be made under subsection (1) by the company and on such an application the Court may appoint a provisional liquidator if it considers it appropriate to do so.”.

Amendment of section 109 - remuneration of official liquidators

9. The principal Act is amended in section 109 —

- (a) by deleting the section heading and substituting the following section heading —

“Remuneration of official liquidators and restructuring officers”;

- (b) in subsection (1), by inserting after the words “remuneration of the liquidator, are” the words “, subject to subsection (2),”; and

- (c) by repealing subsection (2) and substituting the following subsections —

“(2) Where a company is wound up, the expenses properly incurred in any petition for a restructuring officer and during the term of appointment of the restructuring officer appointed —

(a) under section 91B(3)(a); or

(b) on an interim basis under section 91C(3),

including the remuneration of the restructuring officer, are payable out of the company’s assets in priority to all other claims.

(3) There shall be paid to a restructuring officer, including a restructuring officer appointed on an interim basis, and the official liquidator, such remuneration, by way of percentage or otherwise, that the Court may direct acting in accordance with rules made under section 155.

(4) If more than one restructuring officer, including a restructuring officer appointed on an interim basis, is appointed by the Court under section 91B or 91C, the remuneration paid under subsection (3) shall be distributed among the restructuring officers in such proportions as the Court may direct.

(5) If more than one official liquidator is appointed by the Court when a company is wound up, the remuneration paid under subsection (3) shall be distributed among the official liquidators in such proportions as the Court may direct.”.



Amendment of section 110 - function and powers of official liquidators

10. The principal Act is amended in section 110 by repealing subsection (5) and substituting the following subsection —

“(5) For the purposes of exercising the powers specified under paragraph 3 of Part 1 of Schedule 3, a person shall be treated as related to a company if the person —

- (a) has acted for the company as a professional service provider;
- (b) is or was a shareholder or director of the company or of any other company in the same group as the company;
- (c) has a direct or indirect beneficial interest in the shares of the company; or
- (d) is a creditor or debtor of the company.”.

Amendment of section 116 - circumstances in which a company may be wound up voluntarily

11. The principal Act is amended in section 116(d) by deleting the words “as they fall due”.

Amendment of section 134 - fraud etc. in anticipation of winding up

12. The principal Act is amended in section 134(1) by inserting after the words “voluntary liquidator”, the words “, restructuring officer”.

Amendment of section 135 - transactions in fraud of creditors

13. The principal Act is amended in section 135 by inserting after the words “any officer”, the words “, restructuring officer, controller”.

Amendment of section 136 - misconduct in course of winding up

14. The principal Act is amended in section 136(1) by inserting after the words “was a director, officer”, the words “, restructuring officer, controller”.

Amendment of section 137 - material omissions from statement relating to company’s affairs

15. The principal Act is amended in section 137(1) by inserting after the words “a manager”, the words “, restructuring officer, controller”.

Amendment of section 145 - voidable preference

16. The principal Act is amended in section 145(1) by deleting the word “invalid” and substituting the words “voidable upon the application of the company’s liquidator”.

Amendment of section 148 - supply of utilities

17. The principal Act is amended in section 148 as follows —

- (a) in subsection (1) as follows —
 - (i) by inserting after the words “(including a provisional liquidator)”, the words “or a restructuring officer”; and
 - (ii) in paragraph (a), by inserting after the words “that the liquidator”, the words “(including a provisional liquidator) or restructuring officer”; and
- (b) in subsection (3) as follows —
 - (i) in paragraph (a), by deleting the word “or” appearing at the end of the paragraph;
 - (ii) in paragraph (b), by deleting the fullstop and substituting the words “; or”; and
 - (iii) by inserting after paragraph (b), the following paragraph —
 - “(c) the date on which the restructuring officer was appointed.”.

Amendment of section 154 - Insolvency Rules Committee

18. The principal Act is amended in section 154(1) as follows —

- (a) by deleting paragraph (c) and substituting the following paragraph —
 - “(c) two attorneys-at-law appointed by the Chief Justice on the recommendation of the Cayman Islands Legal Practitioner’s Association;”;
- (b) in paragraph (d), by deleting the word “and” appearing at the end of the paragraph;
- (c) in paragraph (e), by deleting the fullstop and substituting the words “; and”; and
- (d) by inserting after paragraph (e), the following paragraph —
 - “(f) a qualified insolvency practitioner appointed by the Chief Justice on the recommendation of the Recovery and Insolvency Specialists Association.”.

Passed by the Parliament the 8th day of December, 2021.

Hon. W. McKeeva Bush
Speaker

Zena Merren-Chin
Clerk of the Parliament

