

CAYMAN ISLANDS



COMPANIES (AMENDMENT) BILL, 2024

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A BILL FOR AN ACT TO AMEND THE COMPANIES ACT (2023 REVISION) TO VARY THE PROCEDURE FOR THE REDUCTION OF SHARE CAPITAL; TO PROVIDE FOR THE REPURCHASE OR REDEMPTION OF FRACTIONAL SHARES; TO VARY THE PROCEDURE FOR PASSING A SPECIAL RESOLUTION; TO PROVIDE FOR THE CONVERSION OF A LIMITED LIABILITY COMPANY OR A FOUNDATION COMPANY TO AN EXEMPTED COMPANY; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Ministry of Financial Services and Commerce (FSC)



Memorandum of OBJECTS AND REASONS

This Bill seeks to amend the Companies Act (2023 Revision) (“the principal Act”) to provide for, among other things, the adjustment of the procedure for the reduction of share capital, the repurchase or redemption of fractional shares, the variation of the procedure for the passing of a special resolution and the conversion of a limited liability company or foundation company to an exempted company.

Clause 1 provides the short title of the legislation.

Clause 2 provides for general amendments to the principal Act to remove the use of roman numerals in part headings.

Clause 3 provides for the insertion of new definitions into the principal Act including the definitions of “high net worth person”, “solvency statement” and “sophisticated person”.

Clause 4 provides for amendments to section 14 of the principal Act to, among other things, permit companies limited by shares or by guarantee to reduce their share capital by special resolution supported by a solvency statement. The clause also provides for the amendment of section 14 to refer to the special resolution as a “special resolution for reducing share capital”.

Clause 5 provides for the insertion of sections 14A and 14B into the principal Act. The new section 14A provides for reduction in share capital which is supported by a solvency statement. The new section 14B provides the procedure for the registration where both the solvency statement and the minute of reduction are delivered to the Registrar within fifteen days after a special resolution for reducing share capital is passed. Where the solvency statement and the minute of reduction are registered, the Registrar shall publish this in the Gazette.

Clauses 6 and 7 provide for the amendment of section 15(1) and section 16(2) of the principal Act, respectively, to refer to the resolution for reducing share capital as a “special resolution for reducing share capital”.

Clause 8 provides for amendment of section 37 of the principal Act to empower companies limited by shares or limited by guarantee, if authorised to do so by their articles of association, to issue fractions of shares.

Clause 9, among other things, provides for the amendment of the meaning of the words “special resolution” in section 60 of the principal Act.

Clause 10 provides for the repeal and substitution of section 88(1) of the principal Act and the insertion of new subsection (1A) in section 88 of the principal Act. The amendments are to clarify that shares held by the transferee company or its nominees or subsidiaries are not to be included in the calculation of the “ninety per cent in value” of the shares for which



an offer has been made. The insertion provides for the transfer of shares from shareholders to the transferee company.

Clause 11 provides for the amendment of section 201 of the principal Act to enable bodies corporate with or without a share capital under the laws of any jurisdiction outside of the Islands to apply to be registered by way of continuation as an exempted company limited by shares under the principal Act.

Clause 12 provides for the deletion and substitution of the Part heading for Part XIII.

Clause 13 provides for the insertion of sections 211A and 211B in the principal Act. The new section 211A provides for the re-registration of an exempted company as an ordinary resident company where the company passes a special resolution in support of the re-registration and an application for re-registration is delivered to the Registrar together with the necessary documents and fee. The new section 211B sets out the effects that follow where an exempted company is re-registered as an ordinary resident company. The new section 211B provides, among other things, that the issue of a certificate of re-registration shall not operate to create a new legal entity, affect the property of the company, affect any appointment made or any resolution passed nor does it affect the rights, powers, liabilities or obligations of the company. The section also provides that the issue of a certificate of re-registration shall not operate in such a manner as to render defective any legal proceedings by or against the company.

Clause 14 provides for the deletion and substitution of the Part heading for Part XVI.

Clause 15 provides for the amendment of section 232 of the principal Act by the insertion of definitions for the words “foundation company” and “LLC agreement”.

Clause 16 provides for the amendment of section 233 of the principal Act which deals with mergers and consolidation. The new subsection (13) in section 233 provides for the determination of the effective date of a merger or a consolidation.

Clause 17 provides for the insertion of sections 233A and 233B. The new section 233A provides for the conversion of a limited liability company to an exempted company. The new section 233B provides for the conversion of a foundation company to an exempted company.

Clause 18 provides for the variation of the procedure under section 238 of the principal Act for exercising a member’s entitlement to payment of fair value for shares where that member dissents from a merger or consolidation. Within twenty days, immediately following the date of the authorisation, the constituent company is required to give written notice of the authorisation received for the plan of merger or consolidation to each dissenting member who made a written objection within the objection deadline.

Clause 19 provides for the amendment of section 239 of the principal Act as a consequence of the amendment to section 238 to introduce an objection deadline. As such, the amendment provides that the rights relating to dissenters under section 238 shall not be available on the expiry of the objection deadline.



Clause 20 provides for the amendment of section 252(5) by the repeal of the definitions of the words “ordinary non-resident company” and “ordinary resident company” as the definitions are proposed to be inserted in section 2 of the principal Act by virtue of the amendments contained in clause 3 of this legislation.



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ENACTED by the Legislature of the Cayman Islands.

Short title and commencement

1. (1) This Act may be cited as the Companies (Amendment) Act, 2024.
- (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.

General amendments to the Companies Act (2023 Revision) - references to Parts

2. The *Companies Act (2023 Revision)*, in this Act referred to as the “principal Act” is amended as follows —
 - (a) by deleting the words “PART I” or “Part I” wherever they appear and substituting the words “PART 1” and “Part 1” respectively;

- (b) by deleting the words “PART II” or “Part II” wherever they appear and substituting the words “PART 2” and “Part 2” respectively;
- (c) by deleting the words “PART III” or “Part III” wherever they appear and substituting the words “PART 3” and “Part 3” respectively;
- (d) by deleting the words “PART IV” or “Part IV” wherever they appear and substituting the words “PART 4” and “Part 4” respectively;
- (e) by deleting the words “PART V” or “Part V” wherever they appear and substituting the words “PART 5” or “Part 5” respectively;
- (f) by deleting the words “PART VI” or “Part VI” wherever they appear and substituting the words “PART 6” and “Part 6” respectively;
- (g) by deleting the words “PART VII” or “Part VII” wherever they appear and substituting the words “PART 7” and “Part 7” respectively;
- (h) by deleting the words “PART VIII” or “Part VIII” wherever they appear and substituting the words “PART 8” and “Part 8” respectively;
- (i) by deleting the words “PART VIIIA” or “Part VIIIA” wherever they appear and substituting the words “PART 8A” and “Part 8A” respectively;
- (j) by deleting the words “PART IX” or “Part IX” wherever they appear and substituting the words “PART 9” and “Part 9” respectively;
- (k) by deleting the words “PART X” or “Part X” wherever they appear and substituting the words “PART 10” and “Part 10” respectively;
- (l) by deleting the words “PART XI” or “Part XI” wherever they appear and substituting the words “PART 11” and “Part 11” respectively”;
- (m) by deleting the words “PART XII” or “Part XII” wherever they appear and substituting the words “PART 12” and “Part 12” respectively;
- (n) by deleting the words “PART XIV” or “Part XIV” wherever they appear and substituting the words “PART 14” and “Part 14” respectively;
- (o) by deleting the words “PART XV” or “Part XV” wherever they appear and substituting the words “PART 15” and “Part 15” respectively;
- (p) by deleting the words “PART XVII” or “Part XVII” wherever they appear and substituting the words “PART 17” and “Part 17” respectively;
- (q) by deleting the words “PART XVIIA” or “Part XVIIA” wherever they appear and substituting the words “PART 17A” and “Part 17A” respectively;
- (r) by deleting the words “PART XVIIIB” or “Part XVIIIB” wherever they appear and substituting the words “PART 17B” and “Part 17B” respectively; and
- (s) by deleting the words “PART XVIII” or “Part XVIII” wherever they appear and substituting the words “PART 18” and “Part 18” respectively.



Amendment of section 2 - definitions and interpretation**3.** The principal Act is amended in section 2 as follows —

- (a) in subsection (1), by inserting, in the appropriate alphabetical sequence, the following definitions —

“**high net worth person**” has the meaning assigned by section 2 of the *Securities Investment Business Act (2020 Revision)*;

“**ordinary non-resident company**” means a company designated by the Financial Secretary as a non-resident company in accordance with section 2(3) of the *Local Companies (Control) Act (2019 Revision)*;

“**ordinary resident company**” means a company which carries on business in the Islands in accordance with section 2(2) of the *Local Companies (Control) Act (2019 Revision)*;

“**solvency statement**” means a statement made in the prescribed form to the effect that a full enquiry into the company's affairs has been made and to the best of the directors' knowledge and belief the company will be able to pay its debts as they fall due in the ordinary course of business commencing on the date of the statement; and

“**sophisticated person**” has the meaning assigned by section 2 of the *Securities Investment Business Act (2020 Revision)*,” and

- (b) by inserting after subsection (5), the following subsection —

“(6) For the purpose of this Act, “**public in the Islands**” does not include —

- (a) a sophisticated person;
- (b) a high net worth person;
- (c) a person specified in paragraph 3 of Schedule 4 to the *Securities Investment Business Act (2020 Revision)*;
- (d) an exempted or ordinary non-resident company registered under this Act, a foreign company registered under Part 9 of this Act, or a limited liability company registered under the *Limited Liability Companies Act (2023 Revision)* or any such company acting as general partner of an exempted limited partnership registered under the *Exempted Limited Partnership Act (2021 Revision)* or any director or officer acting in that capacity;
- (e) an exempted limited partnership registered under section 9(1) of the *Exempted Limited Partnership Act (2021 Revision)*;
- (f) a limited liability partnership registered under the *Limited Liability Partnership Act (2023 Revision)*; or

- (g) the trustee of any trust registered or capable of registration under section 74 of the *Trusts Act (2021 Revision)* acting in that capacity.”.

Amendment of section 14 - special resolution for reduction of share capital

4. The principal Act is amended in section 14 as follows —

- (a) by repealing subsection (1) and substituting the following subsections —
 - “(1) Subject to section 37, a company limited by shares or a company limited by guarantee and having a share capital, if so authorised by its articles —
 - (a) may reduce its share capital in any way —
 - (i) by special resolution and confirmation by the Court; or
 - (ii) by special resolution supported by a solvency statement in accordance with section 14A; and
 - (b) in particular, without prejudice to the generality of the power under paragraph (a), may either —
 - (i) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
 - (ii) with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
 - (iii) with or without extinguishing or reducing liability of any of its shares, pay off any paid-up share capital which is in excess of the needs of the company,
and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.
 - (1A) For the purposes of subsection (1), the reduction of shares in a company as —
 - (a) part of a merger or consolidation pursuant to section 233; or
 - (b) part of a surrender of shares pursuant to section 37B,
is not a reduction of share capital.”; and
 - (b) in subsection (2), by deleting the words “a resolution for reducing share capital” and substituting the words “a special resolution for reducing share capital”.

Insertion of sections 14A and 14B — reduction supported by solvency statement; registration of solvency statement and minute of reduction

5. The principal Act is amended by inserting after section 14, the following sections —



“Reduction supported by solvency statement

- 14A.**(1) A reduction of capital is supported by a solvency statement if the directors of the company make a solvency statement no more than thirty days before the date on which the special resolution for reducing share capital passed.
- (2) Where a special resolution for reducing share capital has been approved in writing by a company pursuant to section 60(1)(b), a copy of the solvency statement shall be sent or submitted to every member at or before the time at which the proposed special resolution for reducing share capital is sent or provided to them.
- (3) Any director who knowingly makes a solvency statement under this section without having reasonable grounds to believe that the company will be able to pay its debts in full as they fall due in the ordinary course of business commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for two years.

Registration of solvency statement and minute of reduction

- 14B.**(1) Where a reduction of capital is supported by a solvency statement under section 14A, the company shall within fifteen days after the special resolution for reducing share capital is passed, deliver to the Registrar —
- (a) a copy of the solvency statement; and
- (b) a minute showing in respect of the company, the information specified in subsection (2).
- (2) The minute referred to under subsection (1)(b) shall state with respect to the company’s reduction of capital by the special resolution for reducing share capital —
- (a) the amount of share capital of the company;
- (b) the number of shares into which the share capital is to be divided and the amount of each share; and
- (c) the amount, if any, deemed to be paid up on each share.
- (3) The Registrar, on receipt of the copy of the solvency statement and the minute in accordance with subsections (1) and (2), shall —
- (a) register the solvency statement made under section 14A and the minute; and
- (b) issue to the company, a certificate stating that the solvency statement made under section 14A and the minute have been registered.

- (4) The Registrar shall publish by notice in the Gazette the registration of the solvency statement made under section 14A and the minute.
- (5) Where a company fails to deliver the items required under section 14B(1) to the Registrar within fifteen days after the passing of the special resolution for reducing share capital, the Registrar shall not register the items.
- (6) Where the Registrar, in accordance with subsection (5), does not register the items, the company may apply to the Court, by way of petition, for an order confirming the reduction of share capital under section 15(1).
- (7) A certificate issued under subsection (3)(b) shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of the company is as stated in the minute.
- (8) The minute, when registered under subsection (3)(a), shall be deemed to be substituted for the corresponding part of the memorandum of association and shall be valid and alterable as if it had been contained in the memorandum of association on the effective date of the reduction of capital.
- (9) The special resolution for reducing share capital shall take effect on the date of registration of the solvency statement made under section 14A and the minute.”.

Amendment of section 15 - application to court for confirming order, objections by creditors

6. The principal Act is amended in section 15(1) by deleting the words “resolution for reducing share capital” and substituting the words “special resolution for reducing share capital”.

Amendment of section 17 - registration of order and minute of reduction

7. The principal Act is amended in section 17(2) by deleting the words “resolution for reducing share capital” and substituting the words “special resolution for reducing share capital”.

Amendment of section 37 - redemption and purchase of shares

8. The principal Act is amended in section 37(1) as follows —
 - (a) by inserting after the words “issue shares”, the words “or fractions of shares”;
 - (b) by inserting after the words “to any shares”, the words “or fractions of shares”; and



- (c) by inserting after the words “such shares”, the words “or fractions of shares”.

Amendment of section 60 - definition of special resolution

9. The principal Act is amended in section 60 as follows —

- (a) in subsection(1), by repealing paragraph (b) and substituting the following paragraph —

“(b) if so authorised by its articles of association, it has been approved in writing by —

- (i) a majority of at least two-thirds of the members being entitled to vote at a general meeting of the company ;
or
(ii) a majority greater than two-thirds of the members being entitled to vote at a general meeting of the company that a company may specify in its articles of association,

in one or more instruments each signed by one or more of the members on the condition that the notice regarding the special resolution is —

- (A) proposed as a written resolution and has been sent to all members who are entitled to vote at a general meeting of the company; and
(B) the effective date of the special resolution shall be the date on which the instrument (or the last of the instruments, if more than one) is executed by members constituting the relevant majority.”;
- (b) by inserting after subsection (1) the following subsections —
- “(1A) Notice specifying the intention to propose the special resolution shall, for the purposes of this section, be considered as sent whenever the notice is sent in a manner prescribed by the regulations of the company.
- (1B) The validity of the special resolution, if passed, is not affected by a failure to comply with subsection (1A).”; and
- (c) in subsection (4), by deleting the words “a poll is demanded” and substituting the words “a poll is demanded or where the special resolution is passed in writing pursuant to subsection 1(b)”.

Amendment of section 88 - power to acquire shares of dissentient shareholders

10. The principal Act is amended in section 88 as follows —



- (a) by deleting the section heading and substituting the following section heading —
- “Power to acquire shares of dissenting shareholders”**; and
- (b) by repealing subsection (1) and substituting the following subsections —
- “(1) Subject to subsection (1A), where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as “the transferor company”) to another company, whether a company within the meaning of this Act or not (in this section referred to as “the transferee company”) has after the making of the offer in that behalf by the transferee company been approved by the holders of not less than ninety per cent in value of the shares for which the offer has been made, the transferee company may, at any time within two months after the approval by the said holders, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire that shareholder’s shares.
- (1A) Where the notice under subsection (1) is given, the transferee company shall be bound to acquire those shares on the terms on which the shares of the approving shareholders are to be transferred to the transferee company except where an application is made to the Court by a dissenting shareholder within one month after the date on which the notice was given and the Court thinks fit to order otherwise.”.

Amendment of section 201 - application for continuation

11. The principal Act is amended in section 201 as follows —
- (a) in subsection (1), by deleting the words “and a share capital” and substituting the words “and with or without a share capital”;
- (b) in subsection (3), by deleting the words “making the declaration or affidavit” and substituting the words “making the declaration or affidavit and subsection (4) shall apply, with any necessary changes, in respect of that declaration or affidavit”; and
- (c) by repealing subsection (7).

Amendment of Part XIII - re-registration as a means of an ordinary non-resident company becoming exempted

12. The principal Act is amended in Part XIII by deleting the Part heading and substituting the following Part heading —



“PART 13 - Re-registration as a Means of Ordinary Non-resident Company Becoming Exempted or Exempted Company Becoming Ordinary Resident”.

Insertion of sections 211A and 211B - exempted company may be re-registered as an ordinary resident company; effect of re-registration of an exempted company as an ordinary resident company

13. The principal Act is amended by inserting after section 211, the following sections —

“Exempted company may be re-registered as an ordinary resident company

211A.(1) Subject to this section and section 211B, an exempted company may be re-registered as an ordinary resident company if —

- (a) the company passes a special resolution that it should be so re-registered; and
 - (b) an application for re-registration is delivered to the Registrar together with the necessary documents and fee set out in subsections (4) and (5) respectively.
- (2) A special resolution under subsection (1)(a) shall —
- (a) make alterations in the company’s memorandum of association as are necessary to bring it in substance and in form into conformity with the requirements of this Act with respect to the memorandum of association of an ordinary resident company; and
 - (b) make alterations in the company’s articles of association as are requisite in the circumstances.
- (3) A special resolution under subsection (1)(a) may change the exempted company’s name to any name by which an ordinary resident company is able to be registered.
- (4) An application under subsection (1)(b) shall be signed by a director of the company and accompanied by a copy of the memorandum and articles as altered by the special resolution under subsection (1)(a).
- (5) An application under subsection (1)(b) shall be accompanied by a re-registration fee equal to the fee payable on the registration of an ordinary resident company under section 26.

Effect of re-registration of an exempted company as an ordinary resident company

- 211B.**(1) If, on an application under section 211A, the Registrar is satisfied that an exempted company may be re-registered as an ordinary resident company, the Registrar shall —
- (a) retain the application and other documents delivered by an applicant under section 211A(4); and
 - (b) issue to the company a certificate of re-registration stating that the company has been re-registered as an ordinary resident company.
- (2) Subject to subsection (4), upon the issue of a certificate of re-registration to a company under subsection (1)(b) —
- (a) the company, by virtue of the issue of that certificate, becomes an ordinary resident company; and
 - (b) any alterations in the memorandum and articles set out in the special resolution take effect accordingly.
- (3) Any tax undertaking given to the company pursuant to section 6 of the *Tax Concessions Act (2018 Revision)* shall not apply from the date of the re-registration.
- (4) The issue of a certificate of re-registration to a company under subsection (1)(b) shall not operate —
- (a) to create a new legal entity;
 - (b) to prejudice or affect the identity or continuity of the company;
 - (c) to affect the property of the company;
 - (d) to affect any appointment made, resolution passed or any other act or thing done in relation to the company pursuant to a power conferred by the memorandum and the articles of association of the company or by the laws of the Islands;
 - (e) to affect the rights, powers, authorities, functions and liabilities or obligations of the company or any other person; or
 - (f) to render defective any legal proceedings by or against the company.
- (5) Any legal proceedings that could have been continued or commenced by or against the company before its re-registration may, notwithstanding the re-registration, be continued or commenced by or against the company after re-registration.
- (6) A certificate of re-registration issued under subsection (1)(b) is conclusive evidence —



- (a) that the requirements of this Act in respect of registration and of matters precedent and incidental to the registration have been complied with; and
- (b) that the company is an ordinary resident company.”.

Amendment of Part XVI - merger and consolidation

14. The principal Act is amended in Part XVI by deleting the Part heading and substituting the following Part heading —

“PART 16 - Merger, Consolidation and Conversion”.

Amendment of section 232 - definitions in this Part

15. The principal Act is amended in section 232 by inserting, in the appropriate alphabetical sequence, the following definitions —

“**“foundation company”** means a company which is issued a declaration that it is a foundation company under section 5 of the *Foundation Companies Act, 2017*; and

“**LLC agreement**” has the meaning assigned by section 2 of the *Limited Liability Companies Act (2023 Revision)*;”.

Amendment of section 233 - merger and consolidation

16. The principal Act is amended in section 233 by repealing subsection (13) and substituting the following subsection —

“(13) Subject to section 234, a merger or consolidation shall be effective on the date that the plan of merger or consolidation is registered by the Registrar where that date is not prior to the objection deadline specified in section 238(17) unless the plan of merger or consolidation is authorised by way of a special resolution and the special resolution has been approved —

- (a) unanimously by all members entitled to vote in person or by proxy (where proxies are allowed at the general meeting of the company); or
- (b) unanimously, in writing, by all the members entitled to vote at a general meeting.”.

Insertion of sections 233A and 233B - conversion of a limited liability company to an exempted company; conversion of a foundation company to an exempted company

17. The principal Act is amended by inserting after section 233, the following sections —

“Conversion of a limited liability company to an exempted company

233A.(1) Subject to this section, a limited liability company (the “conversion applicant”) may be re-registered as an exempted company if —

- (a) the conversion applicant —
 - (i) resolves to be so re-registered upon the affirmative vote or written consent of at least two-thirds of the members of the conversion applicant; or
 - (ii) is expressly permitted in the conversion applicant’s LLC agreement to provide an alternative vote, written consent or any other form of authorisation for the conversion (the “conversion consent”) as may be provided for in the agreement; and
 - (b) the conversion applicant applies to the Registrar for re-registration and submits the documents under subsection (3).
- (2) The conversion consent under subsection (1)(a) shall adopt —
- (a) a registration declaration for the conversion applicant as an exempted company; and
 - (b) memorandum and articles of association in conformity with the requirements of this Act to take effect upon re-registration of the conversion applicant.
- (3) The application shall be signed by a manager or authorised person of the conversion applicant and accompanied by a copy of the registration declaration under subsection (2)(a) and a certificate of good standing for the conversion applicant.
- (4) The conversion applicant shall submit with an application under subsection (1)(b) a re-registration fee equal to the annual fee payable by an exempted company pursuant to section 169(1).
- (5) If, on an application under this section, the Registrar is satisfied that a conversion applicant may be re-registered under this section as an exempted company, the Registrar shall —
- (a) retain (in a form that the Registrar may determine) the application and other documents delivered to the Registrar under this section;
 - (b) issue to the conversion applicant a certificate of re-registration stating that the conversion applicant has been re-registered as an exempted company; and
 - (c) enter details in the Register in respect of the exempted company’s re-registration as the Registrar considers appropriate.



- (6) Subject to subsection (7), upon the issue of a certificate of re-registration to an exempted company under subsection (5)(b) —
- (a) the conversion applicant, by virtue of the issue of that certificate, becomes an exempted company;
 - (b) the memorandum and articles of association adopted in the conversion consent shall take effect, the conversion applicant shall cease to be registered as a limited liability company (and the register of limited liability companies shall be updated accordingly) and the LLC agreement of the conversion applicant shall cease to have effect;
 - (c) the members of the conversion applicant shall be deemed shareholders of the exempted company and shall receive shares with a nominal or par value, at a discount or at a premium as is provided in the conversion consent under subsection (1)(a); and
 - (d) any tax undertaking given to the conversion applicant pursuant to section 58 of the *Limited Liability Companies Act (2023 Revision)* shall not apply from the date of the re-registration and the exempted company may apply for an undertaking pursuant to section 6 of the *Tax Concessions Act (2018 Revision)*.
- (7) Subsection (6) shall not operate —
- (a) to create a new legal entity;
 - (b) to prejudice or affect the identity or continuity of the conversion applicant;
 - (c) to affect the property of the conversion applicant;
 - (d) to affect any appointment made, resolution passed or any other act or thing done in relation to the conversion applicant pursuant to a power conferred by the LLC agreement of the conversion applicant or by the laws of the Islands;
 - (e) except to the extent provided by or pursuant to subsection (6)(b), to affect the rights, powers, authorities, functions and liabilities or obligations of the conversion applicant or any other person; or
 - (f) to render defective any legal proceedings by or against the conversion applicant.
- (8) Any legal proceedings that could have been continued or commenced by or against the conversion applicant before its re-registration under this section may, notwithstanding the re-registration, be continued or commenced by or against the conversion applicant after re-registration.

- (9) A certificate of re-registration issued under this section is conclusive evidence that —
- (a) the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with; and
 - (b) the conversion applicant is an exempted company.

Conversion of a foundation company to an exempted company

- 233B.**(1) Subject to this section, a foundation company (the “conversion applicant”) may be re-registered as an exempted company if —
- (a) the conversion applicant passes a special resolution that it should be so re-registered; and
 - (b) the conversion applicant applies to the Registrar for re-registration and submits the documents specified by the Registrar under subsection (3).
- (2) The special resolution under subsection (1)(a) shall adopt —
- (a) a registration declaration for the conversion applicant as an exempted company; and
 - (b) memorandum and articles of association in conformity with the requirements of this Act to take effect upon re-registration of the conversion applicant.
- (3) An application under subsection (1)(b) shall be signed by a director or authorised person of the conversion applicant, and accompanied by a copy of the registration declaration under subsection (2)(a) and a certificate of good standing for the conversion applicant.
- (4) The conversion applicant shall submit with an application under subsection (1)(b), a re-registration fee equal to the annual fee payable by an exempted company pursuant to section 169(1).
- (5) If, on an application under this section, the Registrar is satisfied that a conversion applicant may be re-registered under this section as an exempted company, the Registrar shall —
- (a) retain (in such form as the Registrar may determine) the application and other documents delivered to the Registrar under this section;
 - (b) issue to the conversion applicant a certificate of re-registration stating that the conversion applicant has been re-registered as an exempted company; and
 - (c) enter such details in the Register in respect of the exempted company’s re-registration as the Registrar considers appropriate.



- (6) Subject to subsection (7), upon the issue of a certificate of re-registration to an exempted company under subsection (5)(b) —
- (a) the conversion applicant, by virtue of the issue of that certificate, becomes an exempted company;
 - (b) the memorandum and articles of association adopted in the special resolution shall take effect and the conversion applicant shall cease to be registered as a foundation company (and the register of foundation companies shall be updated accordingly) and the memorandum and adopted articles of the conversion applicant shall cease to have effect; and
 - (c) any tax undertaking given to the conversion applicant shall not apply from the date of the re-registration and the exempted company may apply to the Cabinet for an undertaking pursuant to section 6 of the *Tax Concessions Act (2018 Revision)*.
- (7) Subsection (6) shall not operate —
- (a) to create a new legal entity;
 - (b) to prejudice or affect the identity or continuity of the conversion applicant;
 - (c) to affect the property of the conversion applicant;
 - (d) to affect any appointment made, resolution passed or any other act or thing done in relation to the conversion applicant pursuant to a power conferred by the memorandum and the adopted articles of the conversion applicant or by the laws of the Islands;
 - (e) except to the extent provided by or pursuant to subsection (6)(b), to affect the rights, powers, authorities, functions and liabilities or obligations of the conversion applicant or any other person; or
 - (f) to render defective any legal proceedings by or against the conversion applicant, and any legal proceedings that could have been continued or commenced by or against the conversion applicant before its re-registration hereunder may, notwithstanding the re-registration, be continued or commenced by or against the conversion applicant after re-registration.
- (8) A certificate of re-registration issued under this section is conclusive evidence that —
- (a) the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with; and

- (b) the conversion applicant is an exempted company.

Amendment of section 238 - rights of dissenters

18. The principal Act is amended in section 238 as follows —

- (a) by repealing subsection (2) and substituting the following subsection —
“(2) A member who desires to exercise that person's entitlement under subsection (1) shall give to the constituent company, written objection to the merger or consolidation before the objection deadline.”;
- (b) by repealing subsection (4) and substituting the following subsection —
“(4)The constituent company shall, within twenty days immediately following the date of the authorisation, give written notice of the authorisation received for the plan of merger or consolidation to each member who made a written objection within the objection deadline.”; and
- (c) by inserting after subsection 16 the following subsection —
“(17)For the purposes of this section, “objection deadline” means twenty days after —
- (a) the duly given notice specifying the intention to propose a special resolution to authorise a plan of merger or consolidation at the general meeting of the company; or
- (b) the duly given notice specifying the proposal to approve in writing a special resolution to authorise the plan of merger or consolidation.”.

Amendment of section 239 - limitation on rights of dissenters

19. The principal Act is amended in section 239(1) by deleting the words “date of the period allowed for written notice of an election to dissent under section 238(5)” and substituting the words “of the objection deadline under section 238(17)”.



Amendment of section 252 - duty to establish and maintain beneficial ownership register

20. The principal Act is amended in section 252 by repealing subsection (5).

Passed by the Parliament the day of , 2024.

Speaker

Clerk of the Parliament