

ADVISORY
Industry Information

Update on Cayman Islands Legislative Amendments

1 October 2019

This advisory summarises key changes arising from various minor but important legislative amendments to the Companies Law (2018 Revision) (“Companies Law”), the Limited Liability Companies Law (2018 Revision) (“LLC Law”) and the Limited Liability Partnerships Law, 2017 (“LLP Law”) passed recently by the Cayman Islands Government, along with minor amendments to a number of sector specific regulatory laws, to implement recommendations arising from the Caribbean Financial Action Task Force’s Mutual Evaluation Report published earlier this year.

Companies: Register of members

Background

Section 40 of the Companies Law already requires every company to keep a register of members containing the names and addresses of the members of the company and, in the case of a company having a capital divided into shares, a statement of the shares held by each member. This statement must distinguish each share by its number (so long as the share has a number) and confirm the amount paid, or agreed to be considered as paid on the shares of each member. The register must also contain the date on which any person was entered on the register as a member and the date on which any person ceased to be a member.

Changes

Pursuant to the Companies (Amendment) Law, 2019 (“Companies Law Amendment”), in addition to the above, the register of members must also confirm the number and category of shares held by each member and whether each relevant category of shares held by a member carries voting rights under the articles of association of the company, and if so, whether such voting rights are conditional.

- » For these purposes “voting rights” means rights to vote at general meetings of the entity on all or substantially all matters. In other words, where a shareholder has the right to vote only on certain matters, the right will not be regarded as a “voting right”. For an entity that does not have general meetings at which matters are decided by the exercise of voting rights, the rights conferred upon shareholders or members are equivalent to those of a person entitled to exercise voting rights in a company.



- > A voting right is conditional where the voting right arises only in certain circumstances. In other words, if a shareholder has an unrestricted right to vote at general meetings of the entity on all or substantially all matters, the voting right will not be conditional. However, if a shareholder only has a right to vote at general meetings of the entity on all or substantially all matters only in certain circumstances, the voting right will be conditional.

Next steps

Companies should review and categorise their share classes in order to ensure that their registers of members can be correctly updated. A company which is incorporated or registered after 8 August 2019 must comply on or before 7 November 2019. A company which is already incorporated or registered as at 8 August 2019 must comply on or before 7 February 2020.

For those clients where Walkers Corporate Limited maintains the principal register of members in its capacity as registered office service provider, your contact at Walkers will work with the registered office to review and categorise the share classes.

Companies and limited liability companies: Filing deadline for updates to list of directors and officers and managers

Background

The Companies Law and LLC Law already require every company and limited liability company to keep at its registered office a register containing the names and addresses of its directors, including alternate directors, and officers (in the case of companies) and managers (in the case of limited liability companies). Section 55 of the Companies Law (applied to limited liability companies pursuant to section 62 of the LLC Law) requires companies and limited liability companies to send a copy of such register to the Cayman Islands General Registry (“Registrar”) following first appointment and to notify the Registrar of any change in such directors or officers or managers including a change of the name of such directors or officers or managers.

Changes

Pursuant to the Companies Law Amendment, the deadline to notify the Registrar of any change in such directors, officers or managers including a change of the name of such directors, officers or managers has changed from sixty to thirty days.

Next steps

Companies should ensure that any changes in directors, officers or managers including a change of the name of such directors, officers or managers is promptly notified to their registered office provider, so that the Registrar can be notified within the required timeframe.

Companies, limited liability companies and limited liability partnerships: Beneficial ownership regimes

Background

The Companies Law, LLC Law and LLP Law already contain penalties for breaches of the beneficial ownership regime.

Changes

Pursuant to the Companies Law Amendment, the LLC Law Amendment and the Limited Liability Partnership (Amendment) Law, 2019 (“LLP Law Amendment”), the penalties for failure by a company, limited liability company or limited liability partnership to establish or maintain a beneficial ownership register, failure by any person to comply with notices and failure by any person to provide information, including changes to required particulars already provided by registrable persons, have all increased. While maximum periods of imprisonment remain unchanged at two years, fines have increased to a maximum of KYD 100,000, which is just over USD 120,000. Third offences may result in entities being struck off the register by the Registrar.



Next steps

Companies and other persons should already be compliant with the beneficial ownership regime, in which case no further steps need be taken to comply. However, companies should continue to ensure, on an ongoing basis, that any relevant changes in respect of registrable persons are entered in the company's beneficial ownership register and that action is taken in relation to any changes to circumstances requiring a company, limited liability company or limited liability partnership to maintain a beneficial ownership register.

Companies, limited liability companies and limited liability partnerships: Registrar to provide information

Changes

Pursuant to the Companies Law Amendment, the LLC Law Amendment and the LLP Law Amendment, new sections 26A, 4A and 44A have been added to the Companies Law, LLC Law and LLP Law respectively which require the Registrar, upon request in writing by certain specified Cayman Islands regulatory and law enforcement bodies, to provide any information it holds to enable such bodies to discharge any function or exercise any power under the Anti-Corruption Law (2019 Revision), the Monetary Authority Law (2018 Revision), the Proceeds of Crime Law (2019 Revision), or the Tax Information Authority Law (2017 Revision). Bodies which receive such information from the Registrar are subject to restrictions on the use, retention and disclosure of the information.

Next steps

This is an obligation of the Registrar. No steps need be taken by companies, limited liability companies or limited liability partnerships.

Companies and limited liability companies: Inspection of list of names

Changes

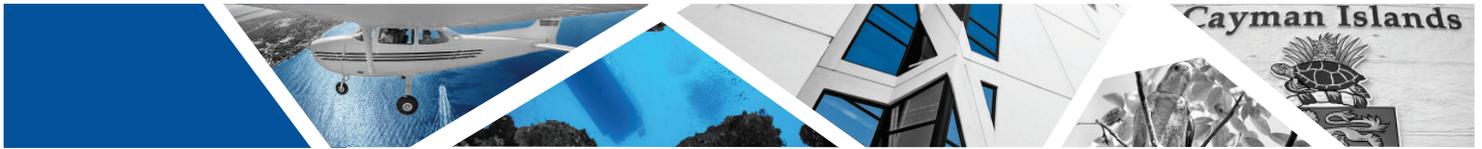
Pursuant to the Companies Law Amendment and the Limited Liability Companies (Amendment) Law, 2019 ("LLC Law Amendment"), new sections 55A and 34A have been added to the Companies Law and LLC Law respectively which require the Registrar to make a list of the names of current directors and, where applicable, the current alternate directors (in the case of companies) and current managers (in the case of limited liability companies) available for inspection. Inspection may be by any person on payment of a fee which is specified at KYD 50, which is just over USD 60. Any inspection must be at the location of the Registrar at the Government Administration Building and will be subject to such conditions as the Registrar may impose with each request needing to be done in person and under the oversight of the Registrar. The new sections came into force on 1 October 2019.

Next steps

This is an obligation of the Registrar. Companies may wish to review their current directors and limited liability companies may wish to review their current managers in connection with the new inspection provisions.

Conclusion

This advisory provides a summary of key changes for companies, limited liability companies and limited liability partnerships. Other more minor amendments have been made with respect to the LLP Law and to a number of sector specific regulatory laws to enhance their effectiveness. Walkers' Regulatory & Risk Advisory practice group comprises a global team of dedicated specialist lawyers who will be happy to advise on the amendments and the regulatory laws generally.



Contacts

For further information please do not hesitate to contact your usual Walkers contact or any of the following:

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