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A Summary of the New Restructuring Officer Regime

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Later this year, amendments to Part V of the Cayman Islands Companies Act (the "Companies Act") will be introduced to commence a new restructuring officer regime available to companies in financial difficulty. Under the new regime, it will be possible to petition the Cayman Court to appoint "restructuring officers" and, from the time of filing, for the company to take the benefit of an automatic moratorium (i.e. akin to a US Chapter 11 stay or English administration moratorium). Once initiated, with the benefit of breathing space and expert guidance, the relevant company may endeavour to promote and implement a restructuring (e.g. via a scheme of arrangement, a parallel process in a foreign jurisdiction or a consensual compromise).

Some of the key features of the new regime will be:

- A company may seek the appointment of restructuring officers on the grounds that (i) the company is or is likely to become unable to pay its debts; and (ii) intends to present a compromise or arrangement to its creditors.
- The petition seeking the appointment of a restructuring officer may be presented by the directors of a company: (i) without a shareholder resolution and/or an express power to present a petition in its articles of association; and (ii) without the need to present a winding up petition.
- The moratorium will arise on presenting the petition seeking the appointment of restructuring officers, rather than from the date of the appointment of officeholders.
- The default position is that this will be an *inter partes* process with adequate notice to be given to all stakeholders.
- The powers of restructuring officers will be flexible and will be defined by the terms of the appointment order made by the Cayman Court. The extent to which the directors will continue to manage the affairs of the relevant company will be defined by the order and will depend on the facts of the particular case.
- During the restructuring proceedings, the company will be able to seek sanction of a scheme of arrangement without the need to initiate separate proceedings under section 86 of the Companies Act.
- Secured creditors with security over the whole or part of the assets of the company will still be entitled to enforce their security without the leave of the Court and without reference to the restructuring officers.

These amendments have been through a variety of consultation processes over several years and a dedicated restructuring procedure will be a significant addition to the toolkit available to local practitioners. This is an important development for those seeking to do business offshore and invest in / deal with Cayman Islands companies, including participants in the growing insurance and reinsurance industries.

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This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.