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101 on Segregation Rules Applicable to SPCs

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A recurring "old chestnut" for those of you dealing with segregated portfolio companies (SPCs) is the manner in which the segregation principles apply to segregated portfolios established by the SPC.

The following is a quick refresher on the segregation rules applicable to SPCs to ensure you have these requirements front of mind, particularly when a transfer of assets or declaration of a dividend is next contemplated by the SPC:

- segregation principles applicable to the general assets held by SPCs and those assets attributable to any segregated portfolio are set out in the Companies Act of the Cayman Islands (the "Act") and the Articles of Association of the SPC (the "Articles");
- where assets have been attributed to a particular segregated portfolio, those assets are held as a separate fund which is not part of the general assets of the company itself;
- the assets of a segregated portfolio comprise:
    - i. assets representing the share capital and reserves ("reserves" includes profits, retained earnings, capital reserves and share premiums) attributable to the segregated portfolio; and
    - ii. all other assets attributable to or held within the segregated portfolio;
- the general assets of a SPC comprise the assets which are not segregated portfolio assets;
- assets attributable to a segregated portfolio should be kept segregated and be separately identifiable from the general assets of the SPC and from the assets of any other segregated portfolio;
- assets attributable to a segregated portfolio are not available to meet the general liabilities of a SPC and cannot be made available to satisfy the liabilities attributable to other segregated portfolios;
- assets and liabilities should not transferred between segregated portfolios otherwise than at "full value";
- in order for a SPC to declare and pay dividends out of general assets or segregated portfolio assets, as relevant, it must:
    - i. ensure the requirements of the Act and the Articles are followed and correctly documented;
    - ii. have "profits" or "share premium" to pay the dividends out of;
    - iii. ensure that immediately following payment of a dividend, the SPC shall be able to pay its debts as they fall due in the ordinary course of business; and
    - iv. ensure that necessary corporate approvals (eg. board resolutions) are obtained.

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