

Cayman schemes – where are we now?

Author: Richard Hall, Partner | Flora Wong, Partner

Following the implementation of the recent amendments to the Companies Act to remove the head count test for shareholder schemes of arrangement, Conyers has assisted two Hong Kong listed companies (China Vast Industrial Urban Development Company Limited (“China Vast”) and Lifestyle International Holdings Limited (“Lifestyle”) to successfully hold their Court mandated meetings to approve their schemes of arrangement. The scheme of arrangement of China Vast was approved by the Cayman Court and became effective on 5 December 2022, whilst the scheme of arrangement of Lifestyle’s scheme of arrangement was approved by the Cayman Court on 15 December 2022. We believe they are the first two Hong Kong listed companies to successfully complete a scheme of arrangement under the new, no head count test, regime in the Cayman Islands.

The removal of the head count test has greatly streamlined the procedures for the holding of scheme meetings, and brought them into line with the modern methods of trading listed securities through a central depository, such as HKSCC Nominees Limited for shares trading electronically in Hong Kong.

The single approval threshold, namely the approval of “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” has done away with the inconsistencies associated with HKSCC Nominees Limited (as the common nominee in respect of shares held in the Central Clearing and Settlement System (“CCASS”) and trading electronically on the Hong Kong Stock Exchange) and the need to withdraw shares from CCASS to count in the head count test.

The current approach of the Cayman Court is to require the company to provide it with appropriate information on the votes cast for and against the scheme at the Court meeting, both in relation to the Scheme Shareholders who hold shares in their own name in the register of members of the company and, in the case of a Hong Kong listed entity whose shares are held in the name of HKSCC Nominees Limited and trading in CCASS, the voting instructions given to HKSCC Nominees Limited by underlying CCASS participants (both Investor Participants and Non-Investor Participants). Such information allows the Court to be satisfied, when considering whether or not to sanction the scheme, that the voting accurately reflects the wishes of the shareholders of the company.

As such, Cayman companies considering restructuring or privatising by way of a scheme of arrangement can take comfort from the knowledge that the new regime is working successfully.

Interestingly, Conyers has received a number of enquiries from companies incorporated in other jurisdictions (where the head count test still applies) about the feasibility of re-domiciling their place of incorporation to the Cayman Islands ahead of undertaking a scheme of arrangement under the new, no head count test, regime in the Cayman Islands. Subject to the impact of any applicable local regulations (such as the Takeovers Code in Hong Kong, for example), and the laws of the original place of incorporation of the relevant company allowing a re-domiciliation to the Cayman Islands, there don’t seem to be any insurmountable issues, from a Cayman perspective, with such approach.

Flora Wong, who acted on the scheme of arrangement for China Vast Industrial Urban Development Company Limited, is a partner in the Hong Kong office of Conyers. Flora’s practice focuses on capital markets, initial public offerings in Hong Kong, the US and Taiwan, joint venture, capital restructuring and reorganisation, debt financing, private equity and mergers and acquisitions transactions.

Richard Hall, who is acting on the scheme of arrangement of Lifestyle International Holdings Limited, is a partner in the Hong Kong office of Conyers. Richard’s practice includes all aspects of corporate law with specialist expertise in corporate finance, including private equity investments and pre-IPO financings, initial public offerings and listings of shares of BVI, Cayman and Bermuda companies on stock exchanges globally, including Hong Kong, Korea, London and the United States of America, mergers and acquisitions, takeovers and privatisations (including by way of statutory merger and scheme of arrangement), restructuring exercises and private equity investment.

Erik Bodden, a partner in the Cayman Islands office of Conyers, appeared before the Court in the Cayman Islands on behalf of China Vast and Lifestyle.

Authors:

Richard Hall
Partner, Hong Kong
richard.hall@conyers.com
+852 2842 9530

Flora Wong
Partner, Hong Kong
flora.wong@conyers.com
+852 2842 9521

Other Contact:

Erik Bodden
Partner, Cayman Islands
erik.bodden@conyers.com
+1 345 814 7754

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.

For further information please contact: media@conyers.com