



Segregated Portfolio Companies – Cayman Islands

Friday October 22nd, 2021

A segregated portfolio company ("**SPC**") is a form of exempted company that is registered under section 213 of the Companies Act (2021 Revision) of the Cayman Islands (the "**Act**").

Under the Act, the following entities may apply for registration as a SPC:

- any exempted company
- an ordinary non-resident company re-registering as an exempted company
- a company registering by way of continuation as an exempted company
- a company registering as an exempted limited duration company

Registration

The following documents are required to be submitted to the Registrar of Company (the "**Registrar**") for registration of a SPC by an exempted company:

- Memorandum and articles of association
- Notice to the Registrar of Companies with the names of each segregated portfolio to be created.

Where an exempted company has been registered prior to an application for registration as a SPC, the company shall convert to an SPC by filing the following documents with the Registrar:

- Declaration made by at least two (2) directors setting out an accurate

statement:

- of the assets and liabilities of the company as at a date within three months prior to the date of the declaration;
 - of any transaction or event which, as at the date of the declaration, has occurred or is expected to occur between the date of the statement of assets and liabilities prepared pursuant to subparagraph (i) and the date of registration of the company as a SPC which, if it had occurred before the date of the declaration, would have caused material changes to the assets and liabilities disclosed in the declaration;
 - that the SPC intends to operate, and the assets and liabilities that the company proposes to transfer to each of those segregated portfolios;
 - that on registration as a SPC, the company and each segregated portfolio will be solvent; and
 - that each creditor of the company has consented in writing to the transfer of assets and liabilities into segregated portfolios or alternatively that notice has been given to all creditors with a claim exceeding US\$1,220 and that 95 % by value of the creditors have consented to the transfer of assets and liabilities into segregated portfolios.
- Special resolution authorising the transfer of assets and liabilities into segregated portfolios.
 - Written consent from the Cayman Islands Monetary Authority (“CIMA”) (where the company is licensed by CIMA).

Creation of segregated portfolios

Under the Act, a SPC may create one or more segregated portfolios in order to segregate the assets and liabilities of the SPC held within or on behalf of a segregated portfolio from the assets and liabilities of the SPC held within or on behalf of any other segregated portfolio of the SPC or the assets and liabilities of the SPC which are not held within or on behalf of any segregated portfolio of the SPC.

Subject to the terms of the constitutional documents, the creation or designation of the above segregated portfolios may be achieved by the passing of resolutions of the directors of the SPC.

Status as a single legal entity

A SPC is a single legal entity. Any segregated portfolio of or within a SPC shall not constitute a legal entity separate from the SPC.

Name restrictions

A SPC shall include in its name the letters “SPC” or the words “Segregated Portfolio Company”.

Each segregated portfolio shall be separately identified or designated and shall include in such identification or designation the words “Segregated Portfolio” or “SP” or “S.P.”.

Assets of each segregated portfolio must be kept separate

The assets of a SPC shall be either segregated portfolio assets or general assets.

The segregated portfolio assets comprise the assets of the SPC held within or on behalf of the segregated portfolios of the company. The assets of a segregated portfolio comprise-

- assets representing the share capital and reserves attributable to the segregated portfolio; and
- all other assets attributable to or held within the segregated portfolio.

The general assets of a SPC comprise the assets of the company which are not segregated portfolio assets.

Statutory duty of directors to keep assets segregated

It shall be the duty of the directors of a SPC to establish and maintain (or cause to be established and maintained) procedures:

- to segregate, and keep segregated, portfolio assets separate and separately identifiable from general assets;
- to segregate, and keep segregated, portfolio assets of each segregated portfolio separate and separately identifiable from segregated portfolio assets of any other segregated portfolio; and
- to ensure that assets and liabilities are not transferred between segregated portfolios or between a segregated portfolio and the general assets otherwise than at full value.

Where the SPC is an investment fund and a fund administrator is appointed in respect of a segregated portfolio, the above segregation procedures are normally undertaken by the fund administrator (by way of delegation of the tasks by the directors to the fund administrator).

Issue of shares

A SPC may create and issue shares in one or more classes or series (including different classes or series relating to the same segregated portfolio), the proceeds of the issue of which shall be included in the segregated portfolio assets of and accounted for in the segregated portfolio in respect of which the segregated portfolio shares are issued.

The proceeds of the issue of shares, other than segregated portfolio shares, shall be included in the segregated portfolio company's general assets.

Dividends

A SPC may pay a dividend or other distribution in respect of segregated portfolio shares of any class or series and whether or not a dividend is declared on any other class or series of segregated portfolio shares or any other shares.

Segregated portfolio dividends or other distributions shall be paid on segregated portfolio shares by reference only to the accounts of and to and out of the segregated portfolio assets and liabilities of the segregated portfolio in respect of which the segregated portfolio shares were issued and otherwise in accordance with the rights of such shares.

Treatment of claims in relation to segregated portfolios

Under the Act, segregated portfolio assets:

- shall only be available and used to meet liabilities to the creditors of the SPC and holders of segregated portfolio shares who are creditors or holders of segregated portfolio shares in respect of that segregated portfolio and who shall thereby be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio for such purposes.
- shall not be available or used to meet liabilities to, and shall be absolutely protected from, the creditors of the SPC and holders of segregated portfolio shares who are not creditors or holders of segregated portfolio shares in respect of that segregated portfolio, and who accordingly shall not be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio.

Segregation of Liabilities

Where a liability of a SPC to a person arises from a matter, or is otherwise imposed, in respect of or attributable to a particular segregated portfolio-

- such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to-
 - firstly, the segregated portfolio assets attributable to such segregated portfolio.
 - secondly, unless specifically prohibited by the articles of association, the SPC's general assets, to the extent that the

segregated portfolio assets attributable to such segregated portfolio are insufficient to satisfy the liability, and to the extent that the SPC's general assets exceed any minimum capital amounts lawfully required by a regulatory body in the Cayman Islands.

- such liability shall not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to the segregated portfolio assets attributable to any other segregated portfolio.

Where a liability of a SPC to a person arises or is imposed otherwise than from a matter in respect of a particular segregated portfolio or portfolios, such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to, the company's general assets.

Execution of agreements, limited recourse language and indemnities

- Any act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement which is to be binding on or to enure to the benefit of a segregated portfolio shall be executed by the SPC on behalf of such segregated portfolio which shall be identified or specified, and such execution shall specify that it is in the name of, or by, or for the account of, such segregated portfolio.
- It is recommended that, when drafting an agreement on behalf of the relevant segregated portfolio, limited recourse language be included in the relevant agreement to limit any claims² (which may arise in respect of such segregated portfolio) to the assets of such segregated portfolio.
- Any indemnity given by a SPC in favour of a director in respect of a liability incurred by such director on behalf of a segregated portfolio shall only be enforceable against the assets of the segregated portfolio in respect of which such liability arose.

Registration fees

The registration fee for an SPC is on sliding scale based on the authorized share capital. The fee ranges between US\$1,341.46 (for authorized share capital not exceeding US\$50,000) to US\$3619.52 (for authorized share

capital of exceeding US\$2,000 0001).

Annual fees and requirements

A SPC shall pay an annual fee of based on the authorized share capital. An SPC with an authorized share capital, the annual fee is US\$3,292.68 plus \$365.85 in respect of each segregated portfolio it has created (other than those in respect of which notice of termination has been given under the Act) up to a maximum of US\$1,829.

At the same time as it tenders the fees in accordance with the above, a SPC shall furnish to the Registrar a notice containing the names of each segregated portfolio it has created (other than those in respect of which notice of termination has been given hereunder in a prior year) and indicating those which have been terminated under since the date of the last notice under the Act.

Termination of a segregated portfolio

Where a segregated portfolio has no segregated portfolio assets or liabilities of the SPC attributable to it, the SPC may by resolution of its directors (or such other authority as may be provided for in, and subject to the provisions of, its articles of association) terminate such segregated portfolio.

A SPC may by resolution of its directors (or such other authority as may be provided for in, and subject to the provisions of, its articles of association) reinstate a segregated portfolio which has been terminated.

If you require further information, please contact:

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Please note that this briefing is intended to provide a very general overview of the matters to which it relates and is not intended as legal advice and should not be relied upon as such.

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