

Segregated portfolio companies in the Cayman Islands

October 2018

Part XIV of the Companies Law (2018 Revision) ("**Law**") provides for the registration upon incorporation, or subsequently, of an exempted company as a Segregated Portfolio Company ("**SPC**"). An SPC can create one or more different cells or segregated portfolios ("**portfolio**" or "**portfolios**") the assets and liabilities of which are legally separate from those of the other portfolios.

The Law enables the separation of risks within a single business entity. In effect, each portfolio operates like a separate limited liability company, but is actually a segregated part of a single company. The relatively low cost of establishing new portfolios, the statutory segregation of assets and liabilities between portfolios and simplified offering structure make the SPC a popular and effective vehicle for investment funds such as multi-class hedge funds, real estate investment funds and umbrella funds which would traditionally seek to ring-fence liabilities using multiple special purpose vehicles.

Key Features

Recognition

An SPC is a single legal entity and, although a portfolio must be separately identified, it does not constitute a legal entity separate from the SPC.

Designation

The name of an SPC must include the words "Segregated Portfolio Company" or the letters "SPC".

Creation of Portfolios

An SPC may create one or more portfolios in order to segregate the assets and liabilities of the SPC held within or on behalf of a portfolio from: (a) the assets and liabilities of the SPC held within or on behalf of any other portfolio; or (b) the assets and liabilities of the SPC which are not held within or on behalf of any portfolio.

Each portfolio must be separately identified, with its name including the words "Segregated Portfolio", "SP" or "S.P".

Shares and Dividends

The SPC may create and issue shares attributable to the SPC itself or any of its portfolios. The proceeds of the issue of shares attributable to a portfolio are included in the assets of the portfolio in respect of which the portfolio shares are issued. The proceeds of the issue of shares attributable to the SPC itself are included in the SPC's general assets.

Shares may be created and issued in one or more classes or series, including different classes or series relating to the same portfolio.

An SPC may also pay a dividend or other distribution on any class or series of share, regardless of whether a dividend is declared on any other class or series of share. Portfolio dividends or other distributions, however, can only be paid by reference to the accounts

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of, and to and out of the assets and liabilities of, the portfolio in respect of which the relevant portfolio shares were issued and otherwise in accordance with the rights of such shares.

Execution by Portfolios

The Law provides that any act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement which is to be binding on, or for the benefit of, a portfolio must be executed by the SPC on behalf of such portfolio. The relevant portfolio must be identified and such execution must specify that it is in the name of, or by, or for the account of, such portfolio.

If a document is executed by an SPC in contravention of the above, the Directors are obligated, immediately upon becoming aware of the breach, to: (a) make enquiries to determine the correct portfolio to which such act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement should be attributed; (b) make the correct attribution; and (c) notify, in writing, all affected parties. Any person notified who objects to the attribution may, within 30 days of receiving such written notice, apply to the Court for a re-attribution.

Indemnity of Directors for Portfolio Liabilities

Any indemnity given by an SPC in favour of a Director in respect of a liability incurred by them on behalf of a portfolio is only enforceable against the assets of the portfolio in respect of which the liability arose.

Assets and Liabilities

Assets of an SPC are either portfolio assets or general assets. Portfolio assets are the assets of the SPC held within or on behalf of the portfolios of the SPC, and for each portfolio, this comprises: (a) assets representing the share capital and reserves attributable to the portfolio; and (b) all other assets attributable to or held within the portfolio. The general assets of an SPC comprise the assets of the SPC which are not portfolio assets.

It is the duty of the Directors to establish and maintain (or cause to be established and maintained) procedures: (a) to segregate and keep segregated, portfolio assets separate and separately identifiable from general assets; (b) to segregate, and keep segregated, portfolio assets of each portfolio separate and separately identifiable from portfolio assets of any other portfolio; and (c) to ensure that assets and liabilities are not transferred between portfolios, or between a portfolio and the general assets, otherwise than at full value.

Where assets have been allocated to a particular portfolio, only persons who have entered into transactions with that portfolio, or who have otherwise become creditors of the portfolio concerned, will have recourse against that portfolio's assets.

Liabilities attributable to a particular portfolio only extend to, and recourse may only be had to: (a) the portfolio assets attributable to that particular portfolio; and (b) unless prohibited by the articles of association of the SPC, the SPC's general assets, but only to the extent that the portfolio assets attributable to that particular portfolio are insufficient to satisfy the liability, and to the extent that the general assets exceed any applicable prescribed minimum capital amounts. Such liabilities may not extend to, and recourse may not be had to, the portfolio assets attributable to any other portfolio.

Where a liability of an SPC arises otherwise than from a matter in respect of a particular portfolio or portfolios, the liability will extend only to, and recourse may only be had to the general assets. Liabilities of an SPC not attributable to any of the portfolios are discharged from the SPC's general assets. Similarly, income, receipts and other property or rights of or acquired by an SPC and not otherwise attributable to any particular portfolio are applied to and become part of the SPC's general assets.

Termination and reinstatement of a portfolio

A portfolio that has no portfolio assets or liabilities attributable to it can be terminated by a resolution of the Directors (or other approval as set out in the articles of association of the SPC), and reinstated in the same way.

Winding-up and Receivership

A liquidator of an SPC must deal with the SPC's assets in accordance with the general principle of protecting the particular assets of portfolios; and in discharging creditors' claims, must apply the SPC's assets only to those creditors entitled to have recourse against them under Part XIV of the Law.

The winding-up provisions of the Law relating to companies generally are to be regarded as modified in relation to SPCs in order to give effect to the general intention behind Part XIV of the Law.

A receivership order may be made by the Court in respect of one or more portfolios on the application of the SPC, any Director, any creditor or shareholder of a portfolio or the Cayman Islands Monetary Authority (for a regulated fund or other regulated entity only). where: (a) taking account of any general assets, the portfolio assets attributable to a particular portfolio are, or are likely to be, insufficient to discharge the creditors' claims in respect of that portfolio; and (b) it would achieve the orderly winding up of the business of that portfolio and the distribution of assets to those who have recourse against them.

Once a receiver has been appointed in respect of a particular portfolio, a secured creditor cannot enforce his security over assets held within that portfolio without Court approval. Whilst a receivership order is in operation, the functions and powers of the Directors cease in respect of the portfolio to which the order was made.

A receivership order may not be made if a liquidator has been appointed to act in respect of the SPC, and will cease to have effect on the commencement of any liquidation of the SPC. No resolution for the voluntary winding up of the SPC of which any portfolio is subject to a receivership order is effective without leave of the Court. The remuneration of a receiver, and his expenses, are payable only from the portfolio assets of the portfolio in respect of which he has been appointed.