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The New Face of Cayman Islands Insolvency Regime

A new insolvency regime, resulting from the introduction of The Companies (Amendment) Law 2007 (the "Law"), enacted in 2007, will come into force on March 1, 2009. This new legislation, long awaited by the Cayman Islands' insolvency practitioners, provides clear and tailored rules and guidance to the insolvency industry.

Historically, insolvency procedures in the Cayman Islands has been governed principally through the application of the United Kingdom's Insolvency Rules 1986 insofar as such rules are not inconsistent with the Law. This solution, although manageable, has been far from ideal. A key issue has been that there are significant differences between the insolvency law between England and Cayman Islands, rendering a large proportion of the English law irrelevant.

Extensive work was carried out by a committee of experienced Cayman Islands insolvency specialists, and the country's Law Reform Commission who released in 2006 a report which made recommendations to deal with the deficiencies of the existing insolvency law. The three key recommendations came out of the review: first, the existing law on corporate insolvency was too complex and out-dated, and should be repealed and replaced; secondly, tailored rules relevant to the jurisdiction were required; and finally, that existing judicial co-operation in cross-border cases should be codified. These concerns have been addressed by the new laws.

The new legislation also addresses the controversial issues surrounding the remuneration and qualifications required to act as liquidator of a company, by introducing specific criteria to eligibility and formalizing the rules governing liquidator's remuneration. Previously, the Grand Court in the Cayman Islands had the authority to appoint such persons as liquidators as it thought fit.

The new regime is a major enhancement to the Cayman Islands' legislative framework, promoting the Cayman Islands' judiciary as one of the leading offshore jurisdictions for its understanding of the corporate and commercial issues that arise in business today.

Click to view the copies of the relevant laws, rules and regulations:

Companies (Amendment) Law, 2007
The Grand Court (Amendment No. 2) Rules 2008
The Companies Winding Up Rules 2008
The Insolvency Practitioner's Regulations 2008
The Foreign Bankruptcy Proceedings (International Corporation) Rules 2008

If you have any question on the above, please do not hesitate to contact Kenneth Krys (kenneth.krys@krysandassoc.com), 345-815-8401) or Margot McInnis (margot.mcinis@krysandassoc.com, 345-815-8404).