

Cayman schemes – where are we now? 开曼群岛重组安排计划—有什么好消息？

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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

近期有关取消《公司法》下股东重组安排计划人数测试的修订落实后，本所已协助两家香港上市公司中国宏泰产业市镇发展有限公司（“中国宏泰”）及利福国际集团有限公司（“利福”），成功召开法院强制会议，以批准其重组安排计划。中国宏泰的重组安排计划获开曼法院批准，并于 2022 年 12 月 5 日生效。此外，开曼法院也于 2022 年 12 月 15 日批准了利福的重组安排计划。我们相信它们为香港首家上市公司，成功根据开曼群岛无人测试的新制度完成重组安排计划。

取消人数测试大幅精简了计划会议的召开程序，使之与经中央管存买卖上市证券（如香港中央结算（代理人）有限公司以电子方式于香港买卖股份）的现代方法一致。

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开曼法院目前的做法是要求公司于法院会议中，提供投票支持及反对计划的适合信息。这些信息须关乎名列公司股东名册并以自身名义持有股份的计划股东及（就股份以香港中央结算（代理人）有限公司名义持有并予中央结算及交收系统买卖的香港上市实体而言）

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.

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. The Chinese translation of this article has been adapted from the English original, please refer to the original in case of ambiguity.

相关中央结算及交收系统参与者（投资者参与人及非投资者参与人）向香港中央结算（代理人）有限公司作出的投票指示。于考虑是否批准计划时，有关资料让法院信纳投票准确反映公司股东意愿。

因此，考虑以重组安排计划方式进行重组或私有化的开曼公司大可安心，新制度行之有效。

有意思的是，本所接获不少于人数测试依然适用的其他司法管辖区注册成立的公司查询，了解根据开曼群岛无人测试的新制度进行重组安排计划前，迁册注册成立地至开曼群岛是否可行。先不论任何适用地方法规（如香港《收购守则》）的影响，以及相关公司原注册成立地法律是否允许迁册至开曼群岛，从开曼角度而言，这个方法似乎不存在任何特别困难。

黄嘉恩（康德明律师事务所香港办事处合伙人）就中国宏泰产业市镇发展有限公司的重组安排计划担任法律代表。她的执业领域侧重于资本市场、香港、美国及台湾首次公开发售、合资企业、资本重组与重整、债务融资、私募股权和并购交易。

何礼泽（康德明律师事务所香港办事处合伙人）就利福国际集团有限公司的重组安排计划担任法律代表。他的执业领域涵盖企业法的各个方面，专长于企业融资，包括私募股权投资及首次公开发售前融资、英属维尔京群岛、开曼及百慕大公司股份于全球证券交易所（包括香港、韩国、伦敦和美国）首次公开发售及上市、并购、收购及私有化（含法定合并及重组安排计划）、重组实施及私募股权投资。

Erik Bodden（康德明律师事务所开曼群岛办事处合伙人）代表中国宏泰及利福在开曼群岛的法院出庭。

本文的内容并非详尽无遗，旨在提供简要概述和一般资料，而不应用于替代法律建议或法律意见。中文译本仅供参考，如有歧义，请以英文原文为准。

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