



REDEMPTIONS FROM CAYMAN FUNDS

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Liquidity and Cayman Funds

Prior to investing in a Cayman Islands investment fund, it is customary for a proposed investor to ask the Cayman fund's directors or investment manager to confirm the liquidity terms of the Cayman fund. By "liquidity", the investor is referring to the possibility and frequency that the Cayman fund's shares may be redeemed. The investor is also interested in the mechanics of a redemption, in particular when it may be deemed effective.

In order to determine when a redemption of redeemable shares of a Cayman corporate fund is deemed effective, it is useful to observe some of the provisions of the Companies Law of the Cayman Islands and the judgment passed down by the Judicial Committee of the Privy Council in the Cayman case of *Culross Global SPC Limited v Strategic Turnaround Master Partnership Limited* ("Strategic Turnaround").

What the Companies Law says

Section 37(1) of the Companies Law states that:

"Subject to this section, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles of association, issue shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder and, for the avoidance of

doubt, it shall be lawful for the rights attaching to any shares to be varied, subject to the provisions of the company's articles of association, so as to provide that such shares are to be or are liable to be so redeemed."

Section 37(2) goes on to say the following:

"Subject to this section, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles of association, purchase its own shares, including any redeemable shares."

Lastly, section 37(3) states as follows:

- a. "No share may be redeemed or purchased unless it is fully paid.
- b. A company may not redeem or purchase any of its shares if, as a result of the redemption or purchase, there would no longer be any issued shares of the company other than shares held as treasury shares.
- c. Redemption or purchase of shares may be effected in such manner and upon such terms as may be authorised by or pursuant to the company's articles of association.
- d. If the articles of association do not authorise the manner and terms of the purchase, a company shall not purchase any of its own shares unless the manner and terms of purchase have first been authorised by a resolution of the company."

"Having looked at what is required., it is now useful to examine what was determined in Strategic Turnaround regarding the effective date of a redemption and when redeeming investors become creditors of a Cayman fund."

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“...Lord Mance stated that it is a basic principle of company law that capital subscribed to a company may not be returned to shareholders otherwise than as prescribed by statute.”

Having looked at what is required under the Companies Law to permit a redemption of shares, it is now useful to examine what was determined in Strategic Turnaround regarding the effective date of a redemption.

Strategic Turnaround: When a redemption of shares is legally effected

In delivering the opinion of the Privy Council in Strategic Turnaround, Lord Mance stated that it is a basic principle of company law that capital subscribed to a company may not be returned to shareholders otherwise than as prescribed by statute.

In this regard, reference was made by Lord Mance to the above-mentioned sections 37(1) and 37(3)(c) of the Cayman Companies Law. In a nutshell:

- if authorised to do so by its articles of association, a Cayman fund may issue

shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder; and

- the manner in which any redemption may be effected must be authorized by or pursuant to the articles of association.

Accordingly, if (i) a Cayman fund is authorised by its articles of association to issue redeemable shares (ii) the Cayman fund issues redeemable shares pursuant to the authority in the articles of association (iii) redeemable shares are redeemable at the option of the company or the shareholder and (iv) the articles of association describe the authorised manner and the terms upon which any redemption may be effected, then the redemption will be effective if executed in the manner authorised by the articles of association.

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