

Transfer of Shares of Cayman Companies in Liquidation

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It is frequently the case that, at some point during a long running official liquidation, a client may wish to sell or transfer shares in a Cayman Islands company, or is seeking to purchase shares in such a company from another party. In those circumstances, the transfer of the shares would be void absent the validation of the Grand Court of the Cayman Islands, as a result of section 99 of the Companies Law (2013 Revision) ("Section 99"). Section 99 is in the following terms:

"99. When a winding up order has been made, any disposition of the company's property and any transfer of shares or alteration in the status of the company's members made after the commencement of the winding up is, unless the Court otherwise orders, void."

The Companies Winding Up Rules 2008 (the "CWR") include provisions which expressly address the transfer of shares of companies in liquidation. CWR Order 19 provides, at rules 4 and 5, that an application pursuant to Section 99 for an order validating the transfer or proposed transfer of any shares of a company may be made by its liquidator or by the transferor or transferee of the shares in question and may be made by a letter address to the Judge to whom the proceeding is assigned *"provided that the shares in question are fully paid and the liquidator does not object to the transfer"*. Such an application *"shall be supported by an affidavit, confirming that the shares are fully paid and that the liquidator has no objection to the transfer, and a draft of the order sought by the applicant."*^[1]

In cases where the two statutory pre-conditions are not met (i.e. the shares are not fully paid, or the liquidator objects to the transfer), the application for validation would have to be made by Summons and the supporting affidavit would have to contain a full explanation of the reason for the transfer and the applicant's response to the liquidator's objections. The Summons would then have to be served on the liquidator, and the matter would proceed to a hearing before the assigned Judge.

In most cases, however, the shares will be fully paid and the liquidator will not have any objection to the transfer of the shares. In those cases, the affidavit in support of the application will normally include a summary of the history of the shares (when the shares were subscribed for and when any partial redemptions were made) and details of the reason the transfer is sought (such as the sale of the shares, a transfer to a liquidating trust or a transfer from a custodian to the beneficial owner, in order to reduce administration costs). The application and the affidavit will usually be provided to the liquidator in draft form in the first instance, so that the liquidator can fully consider the proposed transfer, and, in the case of applications made by the transferor or the transferee, the liquidator will confirm that he does not object to the transfer by way of a letter which can then be exhibited to the affidavit in support.

If you have any questions in relation to the transfer of shares of Cayman Islands companies, or would like specific advice on a proposed transfer, please contact Rachael Reynolds or William Jones in our litigation team. Alternatively, please reach out to your usual contact at Ogier.

[1] These provisions are consistent with the longstanding common law practice of dealing with such applications administratively for the reasons explained by the Honourable Chief Justice in *In re Bayou Offshore Master Fund Limited* [2007] CILR 434: *"in order to save the costs of what are anticipated to be routine applications, any such application may be made in writing and may be considered administratively by a Judge"*.

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