



Rebecca Hume on the Unsettled Questions of Cayman's Section 238

August 21, 2020

Publication: *CTFN*

With increased activity among U.S.-listed, Cayman-based Chinese companies as a result of U.S. scrutiny, section 238 of the Cayman Islands' Companies Law has garnered fresh interest. Kobre & Kim's Rebecca Hume looks at the law as part of an analysis by *CTFN*.

Section 238 allows minority investors in a company subject to a cash takeover to petition to the Cayman Islands Grand Court to determine the "fair value" of their shares. Dissenting shareholders are able to file a written notice of objection to the company, at which point their shares no longer have any rights. If a private agreement between the dissenters and the acquiring company is not reached, the courts can step in.

Only four cases have progressed to a final order, so although there is some clarity in certain areas, other aspects of the law are still up in the air. One area that is unsettled is on the question of minority discount, Hume explains: "There is still a wide scope for argument about whether a minority discount should apply – and if so, the amount of the discount – so it's certainly an area where you wouldn't be able to confidently say what the court is likely to adopt."

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