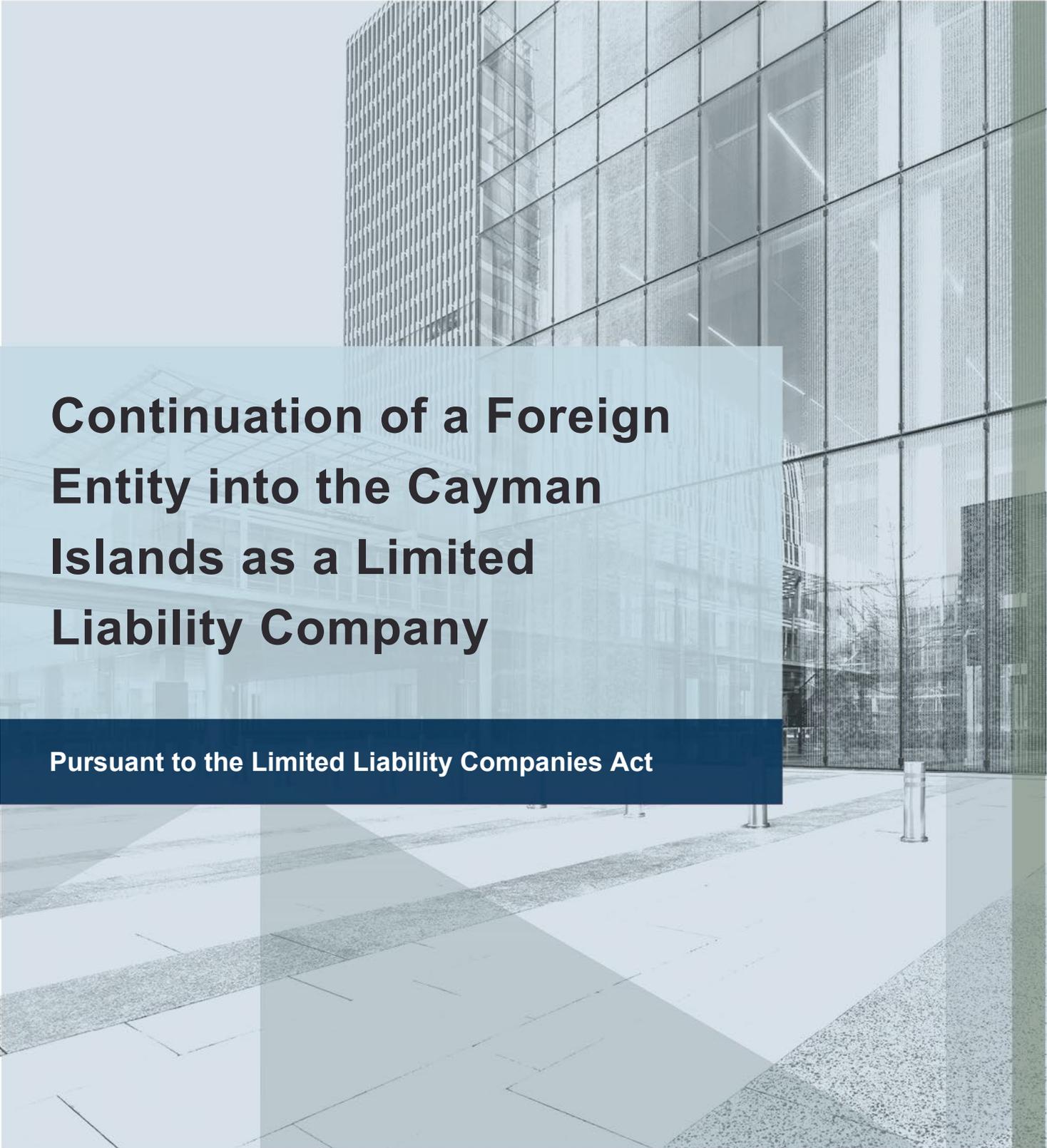


CONYERS



Continuation of a Foreign Entity into the Cayman Islands as a Limited Liability Company

Pursuant to the Limited Liability Companies Act

Preface

This publication has been prepared for the assistance of those foreign entities who are considering the continuation to the Cayman Islands as a limited liability company under the Limited Liability Companies Act. It deals in broad terms with the requirements of Cayman Islands law concerning such a continuation. It is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients and prospective clients seek legal advice in the Cayman Islands on their specific proposals before taking steps to implement them.

Before proceeding with a continuation to the Cayman Islands, persons are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

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1. INTRODUCTION

Modern company, trust, banking, insurance and other related laws have helped make the Cayman Islands (“**Cayman**”) a leading offshore financial centre and the government’s positive attitude towards and open communication with the private sector encourages the promotion and maintenance of Cayman’s offshore business. Cayman enjoys world class telecommunications and IT systems, an abundance of professional service providers, as well as economic and political stability.

The principal statute governing the formation and operation of a Cayman limited liability company (an “**LLC**”) is the Limited Liability Companies Act (the “**Act**”).

2. INWARD TRANSFER BY A FOREIGN ENTITY

Subject to any prohibition or limitation under the laws of its place of formation, incorporation or registration, a foreign entity that is constituted in a form that has separate legal personality may apply to the Cayman Registrar of Limited Liability Companies (the “**Registrar**”) to be registered by way of continuation as an LLC under the Act.

3. APPLICATION FOR REGISTRATION

The application for continuation as an LLC must be executed by one or more authorized persons and state:

- (a) The date on which and jurisdiction where the entity was first formed, registered, incorporated, created or otherwise came into being and the dates on which and the jurisdiction to which the foreign entity may have been subsequently migrated;
- (b) The name of the foreign entity immediately prior to the filing of the application for the continuation of an LLC;
- (c) The name of the LLC as specified in the registration statement filed;
- (d) The future effective date or time of the continuation as an LLC, if it is not to be effective upon the filing of the application, and the registration statement with the Registrar; and
- (e) The jurisdiction that constituted the principal place of business or central administration of the foreign entity or any other equivalent thereto under applicable law, immediately prior to the filing of the application for continuation as an LLC.

4. REGISTRATION STATEMENT

A registration statement executed by one or more authorized persons must be filed with the Registrar together with the application. The registration statement must contain:

- (a) The name of the LLC and, if applicable, its dual foreign name together with its translated name;
- (b) The address in Cayman of the registered office of the LLC;

- (c) The term if any for which the LLC is formed; and
- (d) A declaration that the LLC shall not undertake business with the public in the Islands other than so far as may be necessary for the carrying on its business outside the Islands in accordance with the Act.

5. DIRECTOR'S AFFIDAVIT

The application for registration must also include the following documents:

- (a) An undertaking by a director of the company that notice of the transfer of the company to Cayman has been or will be given within 21 days to the secured creditors of the foreign entity;
- (b) Payment of the prescribed fee;
- (c) A voluntary declaration or affidavit of an authorized person of the foreign entity stating that, after having made due enquiry, such authorized person is of the opinion that:
 - (i) no petition or similar proceeding has been filed and remains outstanding or order made or resolution adopted to wind up or liquidate (or to take any analogous steps) the foreign entity in any jurisdiction;
 - (ii) no receiver, trustee, liquidator or administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the foreign entity, its affairs or its property or any part thereof;
 - (iii) no scheme, order, compromise or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the foreign entity are and continue to be suspended or restricted;
 - (iv) the foreign entity has confirmed that it is able to pay its debts as they fall due;
 - (v) the application for registration is bona fide and not intended to defraud existing creditors of the foreign entity;
 - (vi) any consent or approval to the transfer required by any contract or undertaking entered into or given by the foreign entity has been obtained, released or waived, as the case may be;
 - (vii) the transfer is permitted by and has been approved in accordance with the charter documents of the foreign entity;
 - (viii) the foreign entity is formed, registered, incorporated or existing in a relevant jurisdiction and the laws of such relevant jurisdiction with respect to transfer have been or will be complied with;
 - (ix) the foreign entity is constituted in a form that has separate legal personality;

- (x) the foreign entity will, upon registration under the Act, cease to be formed, registered, incorporated or exist under the laws of the relevant jurisdiction; and
 - (xi) the foreign entity is not required to be licensed or regulated in the Cayman Islands or has (or will conditional upon registration under the Act) obtained the necessary regulatory licences or registrations.
- (d) The declaration must also be accompanied by a statement of the assets and liabilities of the foreign entity made up to the latest practicable date before making the declaration or affidavit.

In addition, where the registrant seeks to be registered as a mutual fund in Cayman, the Cayman Islands Monetary Authority will also require, in addition to the standard mutual fund filing documents:

- An affidavit of a member or the manager (as appropriate) confirming that each of the existing investors in the foreign entity has, in aggregate, subscribed for not less than CI\$82,000 / US\$100,000 (or the equivalent in another currency) in the purchase of units; and
- Audited accounts of the foreign entity for the last two financial periods.

6. REGISTRATION

The proposed name of the foreign entity on continuation into Cayman must be acceptable to the Registrar on the standard criteria of avoiding excess similarity with existing registered companies and not including certain restricted words. The Registrar will register the foreign entity as an LLC by way of continuation provided that:

- the foreign entity is constituted in the correct form;
- the foreign entity has obtained all requisite licenses for carrying on business in Cayman; and
- the Registrar is not aware of any other reason why it would be against the public interest to register the foreign entity.

Upon registration, the Registrar will issue a certificate confirming that the foreign entity is registered by way of continuation as an LLC and specifying the date of the registration. From the date of registration, the foreign entity will continue as an LLC for all purposes as if incorporated and registered as an LLC under the Act.

7. PROCESS OF CONTINUATION

From the date of registration, the Company will have, without limitation:

- (i) the capacity to perform all the functions of an LLC;
- (ii) the capacity to sue and be sued and to defend legal proceedings in its name;
- (iii) perpetual succession; and

- (iv) the power to acquire, hold and dispose of property.

The member(s) of the LLC shall have such liability to contribute to the assets of the company as provided in the LLC Agreement and the Act.

Registration by way of continuation does not operate to:

- (a) create a new legal entity
- (b) prejudice or affect the identity or continuity of the foreign entity as previously constituted;
- (c) affect the propriety of the foreign entity;
- (d) affect any appointment made, resolution passed, vote cast, consent granted to or any other act or thing done in relation to the foreign entity pursuant to a power conferred by any charter documents of the foreign entity or by the laws of the jurisdiction under which the foreign entity was previously formed, registered, incorporated or existing;
- (e) except to the extent provided by or pursuant to the Act, to affect the rights, powers, authorities, functions and liabilities or obligations of the foreign entity or any other person incurred prior to its continuation as an LLC in the Islands, or the personal liability of any person; or
- (f) render defective any legal proceedings by or against the foreign entity and any legal proceeding that could have been continued or commenced by or against the foreign entity before its registration under the Act may, notwithstanding the registration, be continued or commenced by or against the foreign entity after registration.

This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

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