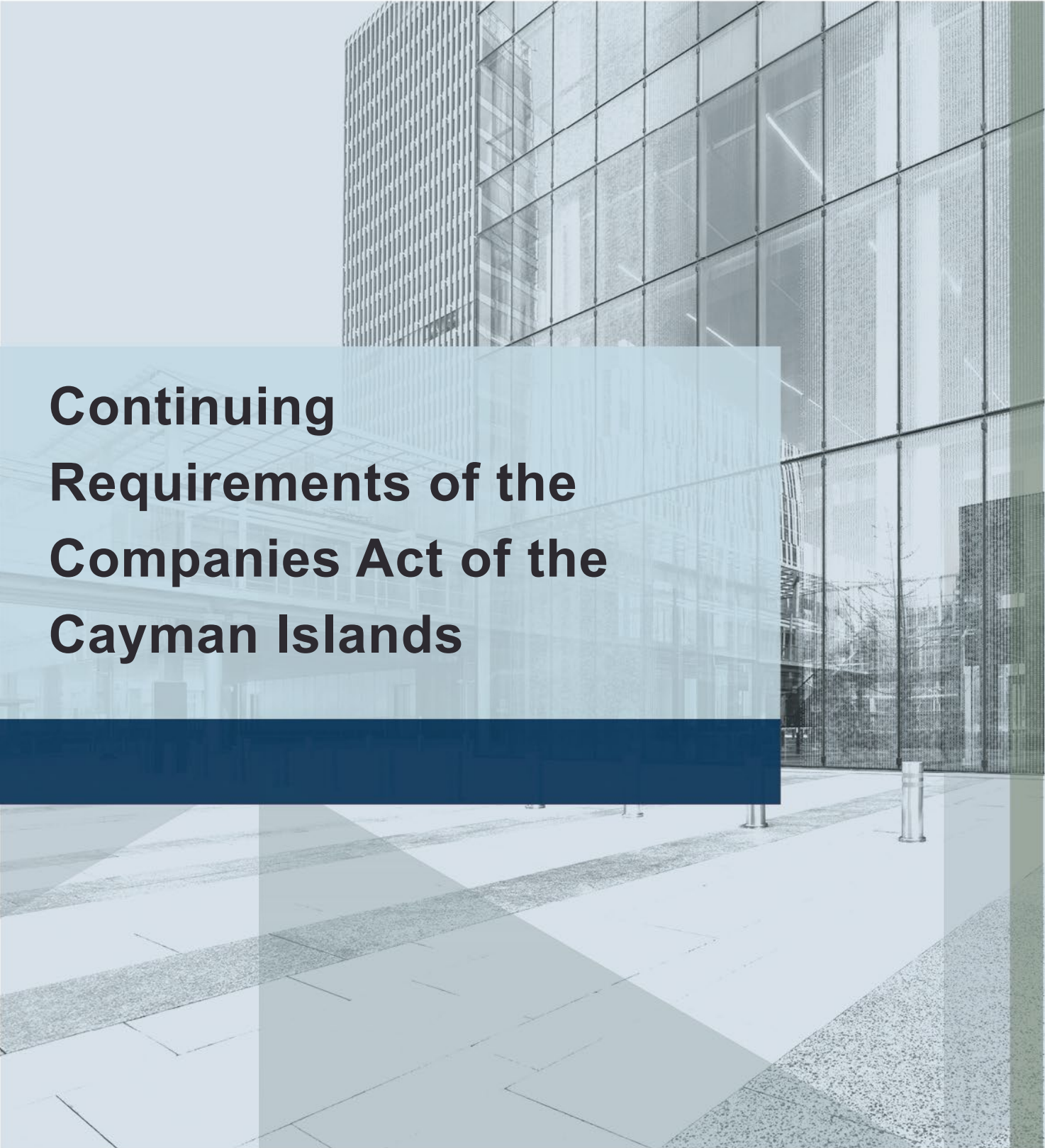


CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, reflecting the sky and surrounding environment. The building is set against a clear blue sky. In the foreground, there is a paved plaza with a pattern of light and dark tiles. A semi-transparent blue rectangle is overlaid on the left side of the image, containing the title text. Below the title, there is a solid dark blue horizontal bar.

Continuing Requirements of the Companies Act of the Cayman Islands

Preface

This publication has been prepared for the assistance of those who are considering the operation of companies in the Cayman Islands (“**Cayman**”). It deals in broad terms with the requirements of Cayman law and 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 Cayman on their specific proposals before taking steps to implement them.

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

Persons considering establishing companies to carry on regulated activities such as insurance or fund business should request separate publications prepared by this Firm on these topics.

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TABLE OF CONTENTS

1.	INTRODUCTION	4
2.	CORPORATE RECORDS	4
3.	ECONOMIC SUBSTANCE	7
4.	BOOKS OF ACCOUNT	9
5.	NAME	9
6.	CHANGES IN DIRECTORS OR OFFICERS	9
7.	SHARE TRANSACTIONS	9
8.	FILING REQUIREMENTS	10
9.	SEAL	10
10.	COMPANY MEETINGS	10
11.	ANNUAL REQUIREMENTS	10

1. INTRODUCTION

The Cayman Islands Companies Act (the “**Act**”) imposes continuing obligations on all types of companies. Those companies which carry on business as trust companies, banks, company managers, insurance companies, insurance managers, mutual fund administrators and most mutual funds are subject to additional regulation governing those activities, details of which are available on request.

2. CORPORATE RECORDS

The Act prescribes certain documents and records that a company must maintain.

2.1. Register of Members

Every company must keep a Register of Members containing the names and addresses of the members of the company, the number and category of shares held by each member, the amount paid or agreed to be paid on the shares, whether each category of shares carries voting rights (including the right to vote at general meetings and/or the right to appoint or remove directors) under the articles of association and, if so, whether such voting rights are conditional, the date on which each person became a member and the date on which each member ceases to be a member.

The issuance of bearer shares is prohibited by virtue of the Companies (Amendment) (No. 3) Act, 2020 (the “**Amendment Act**”) and any bearer shares issued prior to the commencement of the Amendment Act are deemed void.

A company in default of complying with the requirement to maintain a Register of Members shall incur a penalty of CI\$5,000 / US\$6,098. Any director or manager of the company who knowingly and wilfully authorises or permits such default shall also incur a CI\$5,000 / US\$6,098 penalty.

An exempted company may, but is not required to, maintain one or more branch registers of such category or categories of members as the exempted company may determine. A branch register is deemed to be part of the exempted company’s register of members and, as such, must be kept in the same manner in which a principal register is required to be kept. In addition, a copy of each branch register must be kept with the principal register.

An exempted company in default of the requirement to maintain a copy of the branch register or the requirement to make changes to the branch register will be liable to pay a CI\$5,000 / US\$6,098 penalty. Any director or manager of the company who knowingly and wilfully authorises or permits such default shall also incur the CI\$5,000 / US\$6,098 penalty.

A company must make available, at its registered office, the Register of Members and any branch register as may be required by service of an order or notice by the Tax Information Authority. A failure to comply with an order or notice of the Tax Information Authority without reasonable excuse will result in a penalty of CI\$500 / US\$610 and a further penalty of CI\$100 / US\$122 for every day during which the non-compliance continues.

2.2. Register of Directors and Officers

Every company must keep a Register of Directors and Officers containing the names and addresses of its directors, including alternate directors, and officers. A copy of the Register of Directors and Officers must be sent to the Registrar within sixty (60) days of the first appointment of any director or officer of the company.

Notification of any change to the Register of Directors and Officers must be sent to the Registrar within thirty (30) days of the change taking place.

A company in default of complying with the above requirements shall incur a penalty of CI\$500 / US\$610. In addition, if the Registrar is satisfied that a breach has been knowingly and wilfully authorized or permitted, a company shall incur a CI\$1,000 / US\$1,220 penalty and every director and officer shall incur a penalty of CI\$1,000 / US\$1,220 as well as a further penalty of CI\$100 / US\$122 for every day during which the default continues.

The Registrar will make available the names of the current directors and, if applicable, alternate directors for inspection by any person upon payment of a fee of CI\$50/US\$61.

2.3. Register of Mortgages and Charges

Every limited company must keep a Register of Mortgages and Charges at its registered office. The Register of Mortgages and Charges must include a short description of the property mortgage or charged, the amount of the charge created and the names of the mortgagees or persons entitled to such charge.

Any director, manager or other officer of the company who knowingly and wilfully authorizes or permits the omission of such entry, shall incur a penalty of CI\$100 / US\$122.

The Register of Mortgages and Charges must be open to inspection by any creditor or member of the company at all reasonable times. If such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorising or knowingly and wilfully permitting such refusal shall incur a penalty of CI\$4 / US\$5 for every day during which such refusal continues and a Judge sitting in chambers may compel an immediate inspection of the register.

A collection of the various documents and records, generally referred to as the “Minute Book”, will normally contain, in addition to the registers noted above, the following items:

- (a) Certificate of Incorporation;
- (b) Memorandum and Articles of Association;
- (c) Minutes of all directors’ and members’ meetings (including written resolutions, if any) and any documents tables and/or approved at these meetings;
- (d) Annual Return;
- (e) Copies of share certificates;

- (f) Financial statements; and
- (g) The tax undertaking (if an exempted company).

2.4. Beneficial Ownership Register

Unless exempted by, for example, being listed, each company has an obligation to maintain a register of its beneficial owners (the “**Register**”) to be kept at its registered office.

Beneficial owner details are uploaded to the General Registry via its Corporate Administration Platform (“**CAP**”) system. The information is encrypted upon submission and further encrypted upon receipt. The data is then deleted from CAP and goes to a non-internet facing, offline server only accessible by a Government authorised competent authority.

If a company becomes aware of a relevant change with respect to a registrable person whose required particulars are entered in its Register, the company shall give notice to the registrable person, as soon as reasonably practicable after it learns of the change or first has reasonable cause to believe that the change has occurred, requesting confirmation of the change. If the person to which the notice is sent confirms the change, the company shall record the details of the change and instruct the registered office provider, to enter in its Register (a) the details of the relevant change confirmed by the company; (b) the date on which the change was made; and (c) whether there are further alterations to the Register that should to be made.

Significant penalties apply for non-compliance with the beneficial ownership legislation. Where a company or legal entity is guilty of an offence, and it is proved that the offence was committed with the consent or concurrence of, or was attributable to wilful default on the part of a director or other officer concerned in the management of the company or legal entity, the director or other officer is guilty of the same offence and liable to the same penalty as the company or legal entity. The Registrar of Companies also has the power to impose fines for a number of breaches under amendments to the beneficial ownership regime which introduced further penalties under the Administrative Fines Regime and came into force on 29 June 2020. Penalties under the Administrative Fines Regime apply to 'in-scope' entities that fail to take reasonable steps to identify beneficial owners and relevant legal entities, fail to ensure their beneficial ownership register remains up to date and/or fail to provide particulars of registrable persons to their corporate services providers or certain notices to their registrable persons. Entities exempted from the primary obligations of the beneficial ownership regime may still be in breach if they fail to provide written confirmation of their exemption and instructions to file such exemption, or if they incorrectly report that they are an exempted entity. Of particular note, Cayman Islands companies and limited liability companies whose beneficial ownership register indicates a status of 'enquiries pending' for three uninterrupted months will be presumed to be in breach and liable to fines under the Administrative Fines Regime. There are a number of other technical breaches for which companies, limited liability companies and/ or their corporate service providers may be fined. The Registrar of Companies may strike the company from the register if a fine remains unpaid by a company for ninety days.

2.5. Registered Particulars

The Registrar keeps a register of required particulars in respect of each company which includes, amongst other things, the company name, registered office, share capital, subscribers to the memorandum, date of the financial year end, and the nature of the company's business. The Registrar will make this register available for inspection by any person upon payment of a fee of CI\$50/US\$61.

Further, the following entities may require information from the Registrar: (a) the Financial Intelligence Unit; (b) the Financial Reporting Authority; (c) the Customs and Border Control Service; (d) the Cayman Islands Monetary Authority ("**CIMA**"); (e) the Anti-Corruption Commission; (f) the Cayman Tax Information Authority ("**TIA**"); and (g) a Competent Authority as defined under section 2(1) of the Proceeds of Crime Act (2020 Revision).

3. ECONOMIC SUBSTANCE

The International Tax Co-Operation (Economic Substance) Act (2021 Revision) (as amended) (the "**ES Act**") applies to a defined class of relevant entities including exempted companies, exempted partnerships, foreign companies and foreign partnerships registered in Cayman, limited liability companies, general partnerships (other than local partnerships) and limited liability partnerships that are required, subject to what is said below, to maintain economic substance in the Cayman Islands unless they are (i) tax resident outside the Cayman Islands; (ii) an investment fund (including entities through which any such fund invests or operates); or (iii) a not-for-profit company.

The ES Act requires that all Cayman Islands entities notify the TIA of, amongst other things, whether or not it is carrying on a "relevant activity" (as defined in the ES Act and as discussed further below) and, if so, whether or not it is a "relevant entity". The notification to the TIA is by way of an Annual Economic Substance Notification which must be filed prior to an entity filing its Annual Return with the General Registry's Corporate Administration Portal. Reporting of compliance with the ES Act is then required for relevant entities carrying on one or more relevant activities on an annual basis thereafter. Reporting is due within 12 months of the relevant financial year end.

Relevant entities (corporate entities and limited liability partnerships) were subject to the ES Act from the date on which they commenced a relevant activity unless the entity was in existence prior to 1 January 2019 in which case they were required to comply with the ES Act by 1 July 2019. Separate commencement rules apply to exempted, foreign and general partnerships which were brought within the scope of the economic substance regime on 30 June 2021. Non-compliance with the ES Act will result in significant financial penalties and continued non-compliance may result in an application by the TIA to the Grand Court for an order that the entity is defunct.

3.1. Relevant Activities

Relevant entities will be required to meet the economic substance test ("**ES Test**") in respect of their relevant activities in the Cayman Islands. The categories of relevant activities include the following which are further defined in the ES Act:

- (a) Banking business;

- (b) Distribution and service centre business;
- (c) Financing and leasing business;
- (d) Fund management business;
- (e) Headquarters business;
- (f) Holding company business;
- (g) Insurance business;
- (h) Intellectual property business; and
- (i) Shipping business.

3.2. Economic Substance Requirements

For relevant entities carrying on relevant activities, the ES Act requires that they:

- (a) conduct core income generating activities (“**CIGAs**”) (see further below) in relation to the relevant activity;
- (b) be directed and managed appropriately in the Cayman Islands in relation to the relevant activity; and
- (c) with regard to the level of relevant income from the relevant activity carried out in the Cayman Islands, have an adequate:
 - (i) amount of operating expenditure incurred in the Cayman Islands;
 - (ii) physical presence (including maintaining a place of business or plant, property and equipment) in the Cayman Islands; and
 - (iii) number of full-time employees or other personnel with appropriate qualifications in the Cayman Islands.

Relevant entities carrying on the business of a pure equity holding company (one that only holds equity participations in other entities and only earns dividends and capital gains) will have reduced requirements such that they will need to comply with all filing requirements under the Act and have adequate human resources and premises in the Cayman Islands for holding and managing equity participations in other entities.

Each relevant entity that is carrying on a relevant activity and is required to satisfy the ES Test will be required to file an annual return with the TIA in respect of their status under the ES Act.

3.3. Core Income Generating Activities

CIGAs are defined in the ES Act to mean activities that are of central importance to a relevant entity in terms of generating income and that are being carried out in the Cayman Islands. CIGAs may be

outsourced provided that the relevant entity is able to monitor and control the carrying out of the CIGA. The TIA will only accept the relevant entity's claim to have satisfied the ES Test by means of domestic outsourcing if the information is verified by the service provider. Such verification must be made within thirty days of the relevant entity providing the same information to the TIA.

Service providers undertaking outsourcing functions are required to register with the Cayman Islands Department of Information Tax Co-operation ("**DITC**") so that the DITC can independently verify the engagement and nature of the services provided.

4. BOOKS OF ACCOUNT

All companies must keep proper books of account. Subject to what is said below, they need not be kept at the Registered Office. The books of account must be such as are necessary to give a fair and true view of the state of the company's affairs and explain its transactions. Accounts need not be audited unless the company conducts a regulated activity (bank, trust company, insurance company, corporate manager, mutual fund administrator or regulated mutual fund).

A company that keeps its books of account outside of the Cayman Islands is required to provide its Registered Office with information regarding its books of account on an annual basis. Failure to do so without reasonable excuse will result in a penalty of CI\$500 / US\$610 and a further penalty of CI\$100 / US\$122 for every day during which such non-compliance continues. This requirement does not apply to Cayman regulated entities that are already required to file information regarding their accounts with CIMA.

5. NAME

The name of the company must be displayed outside the company's Registered Office and every other place of business maintained by it. An exempted company may have a dual foreign name in non-Roman script.

6. CHANGES IN DIRECTORS OR OFFICERS

The Articles of Association of a company will generally contain provisions relating to the removal, resignation and appointment of directors. Typically, members' resolutions are required to appoint or remove directors and officers. Copies of any such resolutions should be added to the Minute Book, the Register of Directors and Officers updated and a filing made with the Registrar.

7. SHARE TRANSACTIONS

New shares are usually issued by resolution of the directors. The Articles of Association typically contain restrictions on, and procedural requirements relating to, the issue of new shares. A copy of the minutes of the meeting at which the resolution is passed should be added to the Minute Book.

If existing shares are transferred, a share transfer form must be signed and a copy placed in the Minute Book. The old share certificates should be returned to the Registered Office for cancellation. Save in the case of a public company, the directors will normally be required to pass a resolution approving a share transfer and the issue of a new share certificate.

Companies with shares listed on appointed stock exchanges may provide, either in the Articles of Association or by special resolution of the members, for paperless transfers.

8. FILING REQUIREMENTS

On the occurrence of certain events a notice is required to be sent to the Registrar. There are statutory time constraints for such notifications to be filed. These are indicated in brackets below.

- (a) Change in directors or officers (30 days);
- (b) Increase in the authorised capital of the company (30 days);
- (c) Change to the name of the company (15 days);
- (d) Alteration of the Memorandum or Articles of Association (15 days);
- (e) Change of location of the Registered Office (30 days); and
- (f) Any special resolution passed by the members (15 days).

9. SEAL

A company may, but is not required to, have a common seal. If it has one it would usually be kept at its Registered Office. If there will be documents to be sealed outside Cayman the company's common seal may be sent overseas. The seal must bear the name of the company and may also contain the company's foreign dual or translated name.

10. COMPANY MEETINGS

Generally, meetings may be called by the board of directors or by requisition of a certain proportion of members. The Articles of Association will set out the procedure for the calling of general meetings.

Members may be represented at meetings by proxy. Forms of proxy should be delivered to (and will usually be organised by) the Registered Office of the company.

Notice of all meetings of members, directors or of any committee of the directors should be given to all those entitled to attend and vote at the meetings. The Articles of Association will set out the period of notice required.

An exempted company is not obliged to hold an annual general meeting.

11. ANNUAL REQUIREMENTS

An annual return must be submitted to the Cayman Government in January of every year together with the prescribed fee. A current listing of the annual government fees is available upon request.

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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