

CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, viewed from a low angle. The building is partially obscured by a semi-transparent blue overlay that contains the title text. The foreground shows a paved plaza with a pattern of light and dark tiles.

De-Registration of Cayman Islands Companies by way of Continuation into Bermuda

Preface

This publication has been prepared for the assistance of those who are considering the process of de-registering a Cayman Islands company to Bermuda. It deals in broad terms with the requirements and procedures under Cayman Islands and Bermuda law. It is not intended to be exhaustive but merely to provide an outline of the rules for the process of de-registration of a Cayman Islands company and continuation of the company to Bermuda. We hope this publication will be of use to the clients of Conyers Dill & Pearman.

Before proceeding with any process of de-registration or continuation, clients are advised to consider the implications in both jurisdictions and should consult with other professional advisers as appropriate.

We also recommend that our clients seek legal advice in Cayman and Bermuda on their specific proposals before taking steps to implement them.

Conyers

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1. INTRODUCTION

The Companies Act (as revised) of the Cayman Islands (the “**Cayman Act**”) provides that an exempted company incorporated and registered with limited liability and a share capital (including an exempted company that serves as a “**special purpose vehicle**” or “**SPV**”) which proposes to be registered by way of continuation as an exempted company in Bermuda, may apply to the Cayman Islands Registrar of Companies (the “**Cayman Registrar**”) to be de-registered.

The Companies Act 1981 of Bermuda (the “**Bermuda Act**”) outlines the steps necessary for a company incorporated outside of Bermuda to continue into Bermuda as a Bermuda exempted company (including an exempted company that serves as an SPV).

In order to ensure that a company will discontinue from the Cayman Islands and continue in Bermuda as a Bermuda exempted company at the same time, it is necessary for all the appropriate documentation to first be completed both in Bermuda and in the Cayman Islands and for the filing of the necessary applications to be co-ordinated in both jurisdictions. The end result should be that the company will de-register from the Cayman Islands and will continue into Bermuda at the same time.

2. CONTINUANCE INTO BERMUDA

2.1 Procedure

An application must initially be made to the Bermuda Monetary Authority (“**BMA**”) seeking permission for the shareholder of the Cayman Islands SPV to be the shareholder of the company upon its continuance in Bermuda. This application should include:

- (a) a statement of the proposed business of the company;
- (b) information concerning the beneficial owners of the company; and
- (c) a copy of the opinion of Cayman Islands counsel referred to below.

Prior to continuing into Bermuda, Conyers Dill & Pearman, the BMA and the Registrar of Companies (the “**Bermuda Registrar**”) must be supplied with an opinion of Cayman Islands counsel to the effect that all necessary authorisations under the laws of the Cayman Islands have been obtained to allow the company to continue into Bermuda. In addition, the financial statements for the company prepared for a period ending within twelve months of the proposed date of continuance will be required.

Once the relevant consent has been received from the BMA, a filing for registration of the company in Bermuda is made with the Bermuda Registrar. The filing must include:

- (a) the original signed Memorandum of Continuance;
- (b) the address of the registered office in Bermuda of the company;
- (c) a copy of the legal opinion issued by Cayman Islands counsel;
- (d) the financial statements;

- (e) the appropriate annual government fee; and
- (f) the required filing fee.

The Bermuda Registrar will register the memorandum of continuance on or after the date of filing, as requested in the filing, if satisfied that the company is in compliance with the Bermuda Act, and will issue a Certificate of Continuance.

Upon registration of the Memorandum of Continuance, the continuance will become effective and the Cayman Islands SPV will become a Bermuda exempted company to which the Bermuda Act and any other laws in Bermuda apply as if the Cayman Islands SPV had been incorporated in Bermuda on the date of the registration. The Memorandum of Continuance will be deemed to be the Memorandum of Association of the company in lieu of any of its previous constitutional documents. The Certificate of Continuance will be deemed to be the company's Certificate of Incorporation.

The company must forward a copy of the Certificate of Continuance issued by the Bermuda Registrar to the Cayman Registrar.

Every company that continues into Bermuda is required to ensure that it adopts bye-laws conforming to Bermuda law. Board and shareholder meetings (dealing with matters such as appointing a secretary and establishing a registered office in Bermuda) must also be held. It is our policy that these actions be carried out by Cayman Islands SPV prior to continuance, to be effective upon continuance, thus resulting in the company being in full compliance with Bermuda law upon its continuance in Bermuda.

2.2 Timing

A continuance of a Cayman company into Bermuda as a Bermuda exempted company is processed very quickly by the Bermuda Registrar, assuming all is in order. The Certificate of Continuance will be issued electronically by the Bermuda Registrar within 24 hours of the effective date specified.

2.3 Consequences of Continuance

Upon continuance of a Cayman company as an exempted company under the Bermuda Act:

- (a) the property of the company will continue to be its property;
- (b) the company will continue to be liable for its obligations;
- (c) any existing cause of action, claim or liability to prosecution in respect of the company will be unaffected;
- (d) any civil, criminal or administrative action or proceeding pending by or against the company may be continued by or against the company; and
- (e) any conviction against, or any ruling, order or judgment in favour of or against the company may be enforced by or against the company.

The continuance of a Cayman Islands SPV under the Bermuda Act does not create a new legal entity or prejudice or affect the continuity of the Cayman Islands SPV, now a Bermuda company continued in

Bermuda. In addition, the Bermuda courts will apply the laws of evidence and the rules of procedure with the intent that no claimant against the continued company shall be prejudiced in pursuing, in or under the laws of Bermuda, a *bona fide* claim that existed prior to the date of continuance and which could have been pursued under the laws then governing such company.

3. CONDITIONS TO BE SATISFIED PRIOR TO DE-REGISTRATION FROM THE CAYMAN ISLANDS

The Cayman Registrar will de-register a company if the following conditions are satisfied by the company:

- (a) it proposes to be registered by way of continuation in a jurisdiction which does not prohibit its transfer in the manner provided in the Cayman Act. The Bermuda Act does not prohibit the transfer of a company in the manner provided in the Cayman Act;
- (b) it has paid the Cayman Registrar a fee equal to three times the annual fee that would have been payable in the January immediately preceding the application for de-registration¹;
- (c) it has filed with the Cayman Registrar notice of any proposed change in its name and of its proposed registered office or agent for service of process in Bermuda;
- (d) no petition or other similar proceeding has been filed and remains outstanding or order made or resolution adopted to wind up or liquidate the company;
- (e) no receiver, trustee or administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the company, its affairs or its property or any part thereof;
- (f) no scheme, order or compromise or other similar arrangement has been entered into or made whereby the rights of creditors of the company are and continue to be suspended or restricted;
- (g) it is able to pay its debts as they fall due;
- (h) the application for de-registration is *bona fide* and not intended to defraud creditors of the company;
- (i) it has delivered to the Cayman Registrar an undertaking signed by a director that notice of the transfer has been or will be given within twenty-one days to any of its secured creditors;
- (j) any consent or approval to the transfer required by any contract or undertaking entered into or given by the company has been obtained, released or waived, as the case may be;
- (k) the transfer is permitted by and has been approved in accordance with the memorandum and articles of association of the company;

¹ Assuming the registered capital of the company has not changed.

- (l) the laws of Bermuda with respect to transfer have been or will be complied with;
- (m) if licensed under the Banks and Trust Companies Act, or the Insurance Act or, if so previously licensed and in respect of which such licence is suspended or revoked and not reinstated, has obtained consent of the Cayman Islands Monetary Authority to the transfer;
- (n) it will, upon registration under the laws of Bermuda continue as a body corporate limited by shares; and
- (o) the Cayman Registrar is not aware of any other reason why it would be against the public interest to de-register the company.

To satisfy the requirements in paragraphs (d) – (h), (j) – (n), a voluntary declaration or affidavit of a director of the company to the effect that, having made due enquiry, he or she is of the opinion that the requirements of those paragraphs have been met must be filed with the Cayman Registrar. The declaration or affidavit must include a statement of the assets and liabilities of the company made up to the latest practicable date before the making of the declaration or affidavit.

A director who makes such a declaration or affidavit without reasonable grounds is guilty of an offence and is liable on summary conviction to a fine and/or a term of imprisonment.

4. DOCUMENTATION REQUIRED FOR DE-REGISTRATION

The Cayman Registrar, once satisfied, will de-register the company on the receipt and completeness of the following documents:

- (a) Affidavit or Declaration of a Director of the company addressing the matters referred to in section 3 above and annexing a current statement of assets and liabilities;
- (b) Undertaking of a Director providing notice of transfer to secured creditors of the company (if any) or a Directors Certificate confirming that there are no secured creditors required to be notified of the transfer;
- (c) Directors Certificate regarding the new registered office/agent for service in Bermuda;
- (d) copy of current Memorandum and Articles of Association of the company (to check for provisions relevant to deregistration);
- (e) payment of the applicable fee;
- (f) evidence that the transfer is permitted by, and has been approved in accordance with, the memorandum and articles of association (typically a certified copy of resolutions of directors approving the deregistration and continuation and where shareholder approval is required by the articles of association, a certified copy of the resolutions of the shareholders approving the deregistration and continuation);
- (g) Certificate of Good Standing;

- (h) notice of any proposed change of name (if the company's name will be changed on continuation to Bermuda). If the name will be changed prior to deregistration this should (preferably) be dealt with before the deregistration application is filed;
- (i) if Conyers Trust Company (Cayman) Limited does not provide the company's registered office, it will be necessary to liaise with the registered office in respect of filing and collecting documents from the Cayman Registrar in respect of the company's de-registration;
- (j) confirmation as to whether the company requires any certified copies of the Certificates of Deregistration, as certified by the Cayman Registrar; and
- (k) filing fee, including the fee for express filing, if this route is taken. The express route is 24-36 hour turn-around by the Cayman Registrar. The normal route turn-around is approximately 3 to 5 business days, though the effective date of discontinuation will be the date the application is submitted.

5. PROCESS OF DE-REGISTRATION

Once all the paperwork is filed with the Cayman Registrar's office the company will be de-registered and the certificate of de-registration will be issued within approximately 3-5 business days, unless the company has applied for an express de-registration as described above. There is no pre-approval process available; however, it is possible to send specific queries to the Registrar's office in advance of the filing if there are any areas of uncertainty.

Upon de-registration being approved, the Cayman Registrar will issue a certificate under his hand and seal of office to the effect that the company has been de-registered as an exempted company and specifying the date of such de-registration. The Cayman Registrar is required to enter the date of de-registration in the register of companies. The Cayman Registrar will also give notice in the Cayman Gazette of the de-registration of the company, the jurisdiction under the laws of which the company has been registered by way of continuation (Bermuda) and the name of the company, if changed. From the date of the Certificate of De-registration, the company ceases to be a company for all purposes under the Cayman Act and continues as a company under the laws of Bermuda.

6. PROCEEDING TO THE NEXT STEP

Conyers Dill & Pearman is well placed to act on the de-registration of Cayman Islands SPVs to Bermuda. In order to proceed, we will require instructions together with a retainer to cover the Cayman de-registration fees, Bermuda continuation fees, and other disbursements. Any excess will be held on account of our professional legal fees. A specific estimate of costs can be provided upon request.

This publication is not intended to be a comprehensive statement of relevant laws in Bermuda or the Cayman Islands. Legal advice should be sought before commencing the de-registration/continuation process.

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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