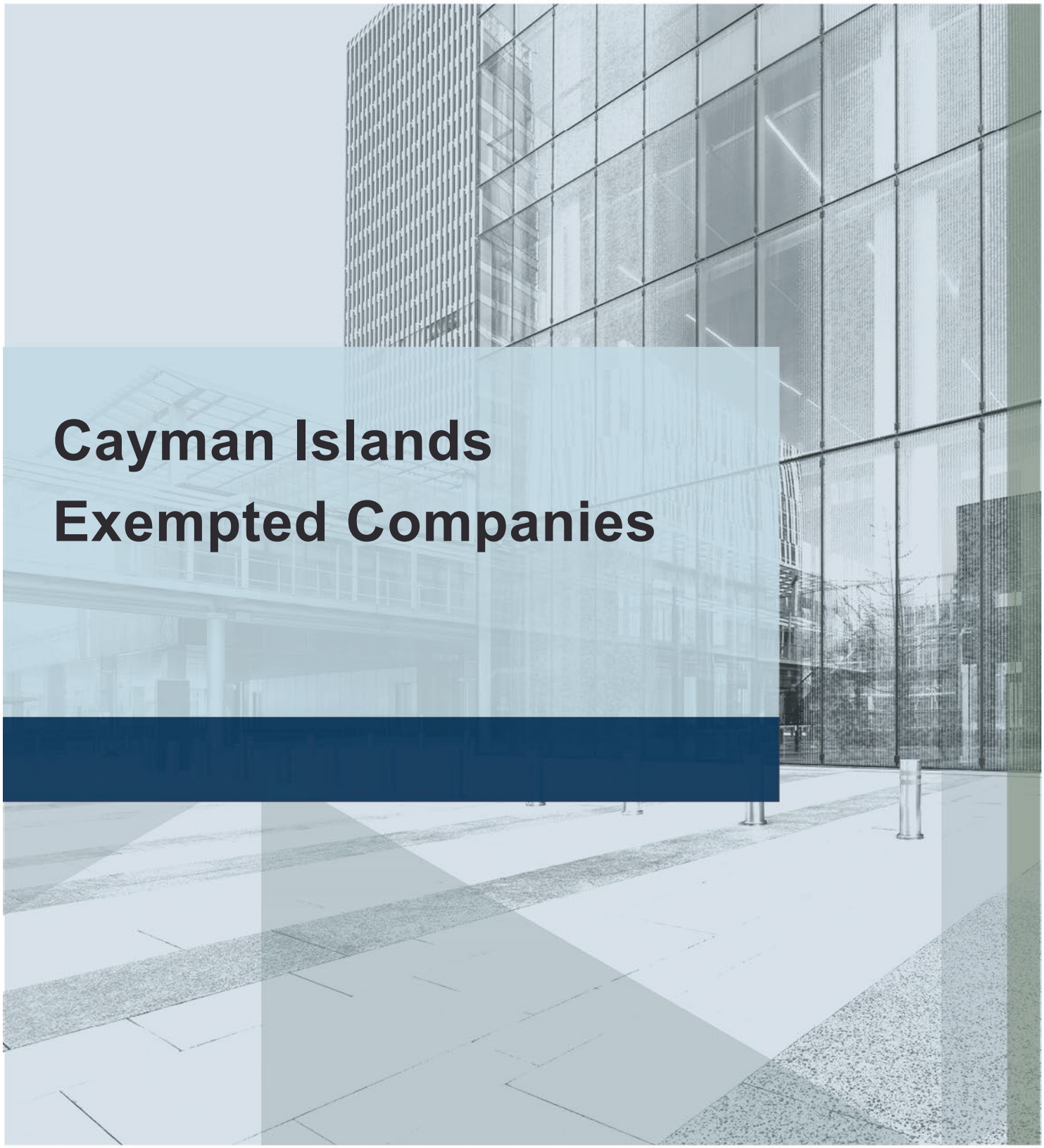
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Cayman Islands Exempted Companies

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Preface

This publication has been prepared for the assistance of those who are considering the formation of companies in the Cayman Islands ("**Cayman**"). It deals in broad terms with the requirements of Cayman law for the establishment and operation of such entities. 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 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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1. INTRODUCTION

The principal statute governing the formation and operation of Cayman companies is the Companies Act.

The Companies Act distinguishes between local companies, which are required to be predominantly owned by Cayman residents, and exempted companies, which are not. Generally, only local companies can carry on and compete for business within Cayman. Exempted companies, while resident in Cayman, are not permitted to carry on a trade or business in Cayman, except in furtherance of their business activities outside Cayman, unless they hold a licence to carry on business in Cayman under applicable laws. This publication is concerned only with the formation and operation of exempted companies carrying on business from, yet external to, Cayman.

2. PRE-INCORPORATION MATTERS

2.1. Company Name

On payment of a small fee, the proposed name of the company can be reserved with the Registrar for a limited time. No company may be incorporated with a name that is the same as, or substantially similar to, the name of another company on the register. The use of certain words in company names such as “royal”, “chartered” and “bank” is restricted.

An exempted company may be incorporated with a dual name in a foreign script. There is no requirement that the dual name be a translation of the company’s English name.

2.2. Contracts

Where a person purports to enter into a contract in the name of, or on behalf of, a company which has not yet been incorporated, they will be personally liable under the contract unless the agreement itself provides otherwise. After incorporation, the company may ratify the contract and by doing so will become bound by and entitled to the benefit thereof. Such ratification by the company will have the effect of releasing the person who purported to act on the company’s behalf from personal liability.

2.3. Types of Exempted Companies

The Companies Act provides for various types of exempted companies, each having slightly different constitutional characteristics.

Exempted Companies - Exempted companies are not entitled to trade in Cayman with any person except in furtherance of business “carried on outside” Cayman. A proposed exempted company applying for registration must submit a declaration to that effect. An exempted company is not prohibited from effecting or concluding contracts in Cayman or exercising any of its powers in Cayman for the carrying on of the company’s business outside Cayman. It is, however, prohibited from making any invitation to the public in Cayman to subscribe for any of its shares or debentures.

Exempted Limited Duration Companies - Exempted limited duration companies are limited by their memorandum of association to a life span of 30 years or less. At the end of its specified life span, the company will normally be voluntarily wound up and dissolved. A limited duration company must have at

least two subscribers or two members. The name of a limited duration company must end with the words "LDC" or "Limited Duration Company".

Segregated Portfolio Companies - Only an exempted company can seek registration as a segregated portfolio company. The segregated portfolio corporate structure allows a company to separate the assets and liabilities held within one portfolio from those held within another and/or from the general assets of the company not attributable to any particular portfolio. To register as a segregated portfolio company one must apply to the Registrar and pay an additional application fee. The applicant must also furnish a notice containing the names of each segregated portfolio to be created. There is an additional annual fee payable for each segregated portfolio.

2.4. Other Types of Companies

As mentioned above, the Companies Act provides for the existence of local companies, which are permitted to conduct business in Cayman. In addition, the Companies Act provides for "ordinary non-resident companies". Such companies are similar to exempted companies in that they are incorporated in, but must conduct their business external to, Cayman unless appropriate licensing is obtained to conduct business in Cayman.

It is possible to re-register an existing ordinary non-resident company as an exempted company (but not vice-versa). Certain actions such as registration as a segregated portfolio company or de-registration by way of continuation to another jurisdiction will require the ordinary non-resident company to re-register as an exempted company.

3. REQUIREMENTS OF CAYMAN LAW

3.1. Memorandum of Association

The memorandum of association and the articles of association form the constitution of a Cayman company. In addition to the name of the proposed company, the memorandum of association must contain the following information:

- the names of the initial subscribers to the memorandum, which may or may not be represented by a nominee, and the number of shares for which each has subscribed (minimum of one subscriber and one share);
- the objects of the company, which are generally unrestricted;
- the location of the company's registered office;
- a declaration confirming that the liability of the company's members is limited; and
- the company's authorised share capital divided into shares of a certain fixed amount, which may be denominated in any one or more currencies.

Whilst it is permissible to register a company with capital divided into shares without nominal or par value (which instead just show the aggregate consideration) it is not possible for an exempted company to divide its capital into bother shares of a fixed amount and shares without nominal or par value.

The issue of bearer shares is prohibited.

3.2. Articles of Association

The articles of association provide for the internal regulation of a company's affairs and are generally filed along with the memorandum of association. The articles of association generally provide for:

- the issue, transfer and repurchase or redemption of shares;
- voting rights;
- members' meetings;
- the appointment of directors and officers and their meetings, powers and indemnification;
- financial year end;
- the payment of dividends; and
- the winding-up of the company.

If the articles of association are filed at the same time as the memorandum of association, they must be signed by each subscriber to the memorandum of association and witnessed.

A copy of the memorandum of association and the articles of association must be made available to every member of the company on request.

3.3. Ultra Vires

No act of a company may be invalidated by reason only that the company was without the capacity or power to perform the act; that is, the ultra vires rule does not apply. The facility for internal actions against the company and/or its directors is however retained. Members, directors or the company itself are still entitled to take action when the company purports to act beyond the limits of its constitution.

3.4. Registered Office

Every company must have a registered office in Cayman, its location to be recorded by the Registrar and published by public notice. The directors of the company may, by resolution, change the location of the registered office. Within 30 days of the resolution being passed, the company must deliver to the Registrar a certified copy of the resolution.

3.5. Directors

There must be at least one director of a Cayman company. There is no requirement that any of the directors be ordinarily resident in Cayman. The initial director(s) are appointed by the subscriber(s) to the memorandum of association. Thereafter, the addition and/or removal of directors will normally be effected in accordance with the provisions of the articles of association.

The liability of the directors may, if so provided by the memorandum of association, be unlimited.

The names and addresses of the directors and officers must be entered on a register of directors and officers and kept at the registered office. A copy of the register must be sent to the Registrar within 60 days of the first appointment of any director or officer of the company. Notice of any change in directors or officers must be filed with the Registrar within 30 days of any such 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 maintain a list of the names of current directors and alternate directors and will make the list available for inspection by any person upon payment of a fee of CI$50/US$61.

3.6. Officers

The appointment of officers is optional. A company secretary is ordinarily appointed but this is not a legal requirement.

3.7. Bankers

A company may open and maintain bank accounts in or out of Cayman. Additional legislation and regulations aimed at detecting and preventing money laundering will generally apply to movements of funds through any banking facility maintained in Cayman. This is a highly technical area of law and further legal advice should be sought if required.

3.8. Books of Account

Whilst there are no detailed requirements as regards accounting records, a Cayman company must keep proper records of account with respect to revenue flows, expenditure and its assets and liabilities. The records need not be kept in Cayman, but if not kept in Cayman will need to be made available at the registered office annually and if an order or notice for production under the Tax Information Authority Act ("**TIAA**") is made.

3.9. Auditors

Unless the company is subject to certain registration or licensing legislation as a result of its proposed activities, there is no requirement that it appoint auditors or file financial statements with the Registrar or any other governmental authority.

3.10. Seal

The seal of the company may be affixed to documents and duplicate seals may be created for use in another jurisdiction, if required. However, the Companies Act does not require that a physical seal be affixed to documents which are executed under seal.

3.11. Financial Year End

A Cayman company may specify a date for its financial year end.

3.12. Register of Members

The register of members may, but need not be, kept at the registered office, and it need not be available for inspection by the public or any governmental authority in Cayman. Branch registers may be kept in any country or territory. If the register is not kept at the registered office in Cayman, it will need to be made available there if an order for production under the TIAA is made.

The register of members must include the names and addresses of the members and a statement of the shares held by each member, including the share number, amount paid or agreed to be considered as paid, number and category of shares and whether each relevant category of shares holds voting rights (including the right to vote at general meetings and/or the right to appoint or remove directors) and, if so, whether such voting rights are conditional. The date on which a person's name was entered on the register and the date on which any person ceased to be a member must also be included.

A company in default of complying with the requirement to maintain a register of members or the requirement to make changes to the branch register 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. A failure to comply with an order or notice of the Tax Information Authority ("**TIA**") 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.

3.13. Beneficial Ownership Register

Unless exempted by, for example, being listed or registered or licensed under a Cayman regulatory law, each company has an obligation to create and maintain a register of its beneficial owners to be kept at its registered office and, in particular, is required to take reasonable steps to identify any individual who is a beneficial owner of the company and all Cayman incorporated or registered legal entities that would be beneficial owners if they were individuals.

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.

There are significant financial penalties for failure to establish or maintain a beneficial ownership register. Penalties under the Administrative Fines Regime apply to 'in-scope' entities who 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 legislation 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 may strike the company from the register if a fine remains unpaid by a company for ninety days.

3.14. 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.

4. INCORPORATION

4.1. Application

An application is effected by the delivery of two signed copies of the memorandum of association and articles of association (if any) of the company to the Registrar. The company is deemed incorporated on the filing of the memorandum and the Registrar will issue a certificate of incorporation which confirms the date of incorporation and is conclusive evidence of compliance with the Companies Act as it relates to the incorporation.

Once the company is incorporated, it will be "organised" pursuant to initial meetings of the subscribers to the memorandum and thereafter by the first directors.

4.2. Appointment of Directors

The subscribers to the memorandum of association of the company appoint the first directors of the company. For administrative ease, it is usual for the first directors to be representatives of the Cayman incorporation agent. The first directors will commonly resign at the first meeting of the directors and would normally be replaced by those persons proposed by the instructing party.

4.3. First Meeting of Directors

The first meeting of the directors will deal with certain post-incorporation administrative matters, including:

- appointing the board of directors and officers;
- approving the transfer of the shares held by the subscriber to the memorandum to the members proposed by the instructing party;
- approving the financial year end of the company;
- appointing the accountants, bankers, attorneys, etc. to the company;
- approving the application for a tax undertaking pursuant to the Tax Concession Act (Revised) of the Cayman Islands; and
- adopting the seal of the company, if applicable.

Following the first meeting of the directors, the company will be in a position to commence its business operations. Further meetings and/or resolutions of the board may be required to approve other documents, agreements, business proposals, appointments, resignations, etc. Board meetings and/or resolutions will be held and/or effected in accordance with the articles of association of the company.

5. OPERATION OF A CAYMAN COMPANY

5.1. General Management

The management of a Cayman company is the responsibility of and is carried on by its board of directors. Except as may be expressly provided in the company's articles of association, the members can exercise control over the management of the company's officers through their power to appoint and dismiss its directors.

A company can generally effect any transaction, subject to any express limitation in its objects or powers and provided that the transaction is not itself illegal. As noted above, in relation to third parties dealing with the company, no act of the company shall be invalid by reason alone of the lack of capacity or power on the part of the company to enter into the transaction. However, a third party dealing with the directors in circumstances where the third party knows or has cause to suspect that the act or transaction is beyond the powers of the directors will not be able to treat the act or transaction as binding against the company.

5.2. Annual Filings

In January of each year each exempted company must furnish to the Registrar a return declaring whether there has been an alteration in the memorandum of association, confirming that the operations of the company have been conducted mainly outside Cayman and that the company has not traded in Cayman except in furtherance of its business carried on outside Cayman. Every exempted company must pay an annual fee to the government calculated on a sliding scale by reference to the amount of its authorised share capital as at December 31st in the immediately preceding year.

5.3. Directors' Meetings

The quorum for a meeting of directors or any committee thereof may be one or any greater number specified by the articles of association.

5.4. Members' Meetings

Exempted companies are not required to hold annual general meetings. The articles of association generally specify voting rights and the requirements relating to summoning a meeting, but if none are specified, every member has one vote per share, and a meeting shall be duly summoned if five days' notice has been given to members.

The quorum for a members' meeting may be one member or any greater number specified by the articles of association. Minutes must be taken of the meeting but the minute book need not be kept in Cayman.

The Companies Act requires that certain corporate activities be approved by a special resolution (see below) of the members in general meeting. Such activities include:

- altering the memorandum of association;
- reducing share capital;
- adopting articles of association (if not registered upon incorporation);
- altering the articles of association;
- changing the name of the company;
- voluntarily winding up of the company; and
- re-registering an ordinary non-resident company as an exempted company.

In order to be approved, a special resolution must be passed by a majority of not less than two-thirds (or such greater number as specified in the articles of association) of the members who vote in person or by proxy at a meeting. The articles of association may specify a different (higher) voting threshold for different matters. Notice of the meeting must specify the intention to propose a special resolution. A special resolution may, if authorised in the articles of association, be approved by all members (i.e. 100%) in writing rather than at a physical meeting. The effective date of the resolution will be the date on which the resolution, or the last of the resolutions, if signed in counterparts) are executed. When the members adopt a special resolution, the Registrar must be notified and a copy of the resolution must be filed within 15 days.

6. 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 and 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 ("**ESN**") which must be filed prior to an entity filing its annual return with the General Registry's CAP. As general partnerships are not registered through CAP, the Department of International Tax Compliance (the "**DITC**") has advised that general partnerships must file an ESN in the form of a spreadsheet to registered office service providers for submission to the DITC's Economic Substance Team at DITC.EScompliance@gov.ky[1].

[1] This manual process for general partnerships has been adopted on the basis of advice from the DITC on 29 March 2023.

A relevant entity is subject to the ES Act from the date on which it commences a relevant activity. 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.

6.1. 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.

6.2. 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 related 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 Companies Act and have adequate human resources and premises in the Cayman Islands for holding and managing equity participations in other entities.

It should be noted that all Cayman legal entities will be required to notify the Registrar of their status under the ES Act as a pre-requisite to filing an annual return.

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.

6.3. 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 DITC so that the DITC can independently verify the engagement and nature of the services provided.

7. TRANSACTIONS INVOLVING SHARES OF A CAYMAN COMPANY

7.1. Issue of Shares

In the case of an exempted company, shares may be:

- with or without nominal or par value;
- issued at a premium over par value;
- issued in fractions of a share (carrying the corresponding fraction of liabilities and rights); and/or
- issued with preferred, deferred, or other special rights, whether in regard to dividend, voting, return of share capital or otherwise.

Shares in an exempted company may only be issued in registered (non-negotiable) form.

A share certificate is prima facie evidence of the ownership of shares by a member, but shares may also be issued without certificates.

Where a company issues shares at a premium, i.e. above par value, whether for cash or otherwise, a sum equal to the aggregate amount of the premium on those shares must be transferred to the "share premium account". Subject to any restrictions in the company's memorandum of association or articles of association, the share premium account may be applied for any purpose approved by the company.

Where an exempted company issues shares without nominal or par value, the consideration received is considered paid up share capital of the company.

There are no statutory provisions prohibiting the provision of financial assistance by a company in connection with an acquisition of its shares.

A company has the power to pay commission to any person who subscribes or agrees to subscribe for any shares in the company, provided that the articles of association authorise the payment.

7.2. Transfer of Shares

Shares of a company may be transferred if expressly or impliedly provided for in the company's articles of association. The articles of association may contain restrictions on transfer, such as the right of the directors to decline to register any transfer of shares to a person of whom they do not approve, or to decline to register any transfer of shares on which the company has a lien.

7.3. Redemption and Purchase of Shares

A company may, if authorised by its articles of association, (i) issue shares which are to be redeemed or are liable to be redeemed at the option of the company or the member and/or (ii) purchase its own shares, including any redeemable shares. No redemption or purchase may take place unless the shares are fully paid, or if as a result of the redemption or purchase, there would no longer be any other member of the company.

Shares may be redeemed or repurchased using the profits of the company or the proceeds of a fresh issue of shares made for the purposes of the redemption or purchase. The premium, if any, payable on redemption or purchase must have been provided out of the company's profits, or out of the share premium account before or at the time the shares are redeemed or purchased.

When a company is about to redeem or purchase shares, it has the power to issue shares up to the nominal value of the shares redeemed or purchased as if those shares had never been issued.

Shares redeemed or purchased may be treated as cancelled and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly, or they may be held by the company as treasury shares. The redemption or purchase is not to be taken as reducing the amount of the company's authorised share capital.

7.4. Dividends and Distributions

Subject to any contrary provisions in the articles of association, a company may pay dividends out of profits or its share premium account. No dividend may be paid out of the share premium account unless immediately following the payment the company is able to pay its debts as they fall due in the ordinary course of business.

8. REGISTER OF CHARGES

A company must maintain at its registered office a register of all mortgages, charges and other securities over the assets of the company. The register of charges must be open to inspection by members and creditors at all reasonable times.

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

If 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.

9. AVAILABILITY OF RECORDS OF A CAYMAN COMPANY

The memorandum of association and articles of association, as well as any special resolutions of the company are not available to the public.

The Companies Act contains provisions whereby the court may appoint a person to examine the affairs of a company. In addition, the members may by special resolution appoint an inspector for similar purposes.

As noted at 3.5 and 3.14 above, a list of the names of the directors/alternate directors and certain other company particulars are available from the Registrar upon payment of a fee.

10. CHANGES TO A COMPANY'S MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION

10.1. Memorandum of Association

A company may, by special resolution of the members, alter its memorandum of association with respect to any of the objects, powers or other matters specified therein. The amended memorandum of association and a copy of the special resolution must be filed with the Registrar.

10.2. Increase of Authorised Capital

A company may, if authorised by its articles of association and by ordinary resolution of the members of the company, alter the conditions of its memorandum of association to:

- increase its share capital;
- consolidate and divide all or any of its share capital;
- convert all or any of the company's paid-up shares into stock and reconvert that stock into paid-up shares of any denomination,
- subdivide the shares; and/or

- cancel shares which have not been taken or agreed to be taken by any person and accordingly diminish the amount of share capital by the amount of those cancelled shares.

10.3. Reduction of Capital

Subject to the provisions in the Companies Act as to the repurchase of shares, and subject to confirmation by the Court, a company may, if so authorised by the articles of association, by special resolution reduce the company's share capital in any way, and in particular may:

- extinguish or reduce liability on any shares in respect of share capital not paid-up;
- either with or without extinguishing or reducing liability on any shares, cancel any paid-up share capital which is lost or unrepresented by available assets; and/or
- either with or without extinguishing or reducing liability of any shares, pay off any paid-up share capital which is in excess of the wants of the company,
- and may, if and so far as is necessary, alter the memorandum of association by reducing the amount of its share capital and the company's shares accordingly.

Where a company has passed a resolution for reducing share capital, it must apply to the Court for an order confirming the reduction. However, where the proposed reduction involves diminution of liability in respect of unpaid share capital or the payment to any member of any paid up share capital, then the Court may make an order entitling the company's creditors to object to the reduction. The Court shall settle the list of creditors entitled to object.

A copy of the order of the Court confirming the reduction of the share capital of a company and a minute of reduction showing the amount of the reduced capital, the number of shares and the amount paid up on each must be registered with the Registrar and notice of the registration shall be published in such manner as the Court may direct.

A member of the company, past or present, is not liable to pay any call or contribution which exceeds the difference between the amount of the share as fixed by the minute of reduction and the amount paid. However, if any creditor entitled to object to the share reduction is not entered on the list of creditors, by reason of his ignorance of the proceedings for reduction, and the company is unable to pay the amount of his debt or claim, members shall be liable to contribute to the payment of the debt. If the company is wound up the Court may settle a list of persons liable to contribute.

10.4. Articles of Association

A company may by special resolution, but subject otherwise to the memorandum of association, alter or add to the articles of association. On an amendment to the articles of association, the amended version of the articles of association must be registered with the Registrar within 15 days.

11. CONTINUANCE AND DISCONTINUANCE

11.1. Continuance into Cayman

A body corporate incorporated outside of Cayman may apply to the Registrar for permission to continue into Cayman as an exempted company. The Registrar requires to be satisfied on a number of points regarding the applicant's status before the company can be registered in Cayman, although the Companies Act provides that some of these points can be satisfactorily confirmed by a declaration or affidavit signed by a director of the applicant.

11.2. Discontinuance from Cayman

The Companies Act contains provisions whereby an exempted company incorporated in Cayman may be de-registered as a Cayman company and continued as a body corporate under the law of any other jurisdiction by application to the Registrar. The Registrar must be satisfied of a number of matters, many of which can be confirmed by a voluntary declaration or affidavit of a director.

12. MERGER AND CONSOLIDATION

The Companies Act provides a mechanism for court approved schemes of arrangement. These procedures are best suited to complex mergers. In addition, an efficient and cost-effective mechanism exists for simple mergers and consolidations between Cayman Islands companies and between Cayman companies and foreign companies.

For the purposes of this simplified procedure, "merger" means the merging of two or more constituent companies and the vesting of their undertaking, property and liabilities in one of such companies as the surviving company. "Consolidation" is defined as the combination of two or more constituent companies into a consolidated company and the vesting or the undertaking, property and liabilities of such companies in the consolidated company. The essential difference is that a consolidation produces a new company different from either of its constituent companies, while in a merger one of the constituent companies will continue to exist as the other is merged into it. The procedure does not apply to segregated portfolio companies. The surviving company may be a Cayman company or a foreign company.

The procedure to effect a merger or consolidation involves both director and member approval of a written plan, which must include certain prescribed information including the terms and conditions of the proposed merger or consolidation, the manner and basis of converting shares in each constituent company into shares in the consolidated or surviving company; and the rights and restrictions attaching to the shares in the consolidated company. A proposed merger between a Cayman parent company and its Cayman subsidiary or subsidiaries will not require authorisation by member resolution. The consent of each holder of a fixed or floating security interest of a constituent company in a proposed merger or consolidation is required unless the court (upon the application of the constituent company that has issued the security) waives the requirement for consent.

Provision is made for a dissenting member of a Cayman constituent company to be entitled to payment of the fair value of his shares upon dissenting to the merger or consolidation. Where the parties cannot agree on the price to be paid to the dissenting member, either party may file a petition to the court to

determine fair value of the shares. These rights are not generally available where an open market exists on a recognised stock exchange for the shares of the class held by the dissenting member.

13. OVERSEAS COMPANIES

A company incorporated outside of Cayman may apply to establish a place of business in Cayman. In the case of an overseas company, the following documentation is required to be registered and filed with the Registrar:

- a certified copy of the company's constitutional documents;
- the certificate of incorporation or other instrument constituting or defining the constitution of the foreign company;
- the name and address of each director of the company; and
- the names and addresses of one or more persons resident in Cayman who are authorised to accept service of process and any notice on behalf of the company.

A full description of overseas companies is beyond the scope of this publication. However, further information is available on request.

14. GOVERNMENT FEES AND TAXATION

The government fees applicable to exempted companies are based on the authorised capital of the company. The current fees are available upon request.

Cayman has no corporation tax, income tax, capital gains tax, inheritance tax, gift tax, wealth tax, or any other tax applicable to a company conducting off-shore business. Certain documents are subject to stamp duty which is generally nominal. All exempted companies are, upon payment of a fee, entitled to receive from the government a "Tax Exemption Undertaking" exempting them from any possible future Cayman taxes for a period of twenty years. Ordinary non-resident companies are not able to take advantage of the Tax Exemption Undertaking

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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