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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 containing text. The foreground shows a paved plaza with a pattern of light and dark tiles.

Cayman Islands Special Economic Zone Companies

Preface

This publication has been prepared for the assistance of those who are considering the registration of an exempted company as a special economic zone company in the Cayman Islands (“**Cayman**”). It deals in broad terms with the requirements of Cayman law for the establishment and operation of such entities, including the requirements applicable to all exempted companies. 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 and/or registration of a special economic zone 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 insurance or mutual fund business should request separate publications prepared by this Firm on these topics.

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1. INTRODUCTION

1.1. General

Company, trust, banking, insurance and related laws have made Cayman a leading offshore financial centre. The government's attitude towards and open communication with the private sector encourages the promotion and maintenance of Cayman's offshore business. Cayman enjoys a sophisticated telecommunications system, an abundance of professional service providers, and economic and political stability.

Special economic zones are regions specially established in a country, for which government concessions have been made in order to stimulate economic growth. The Cayman Islands launched a special economic zone intended to attract global science, technology, commodities and derivatives, maritime, media and educational entities to the country (the "**Cayman SEZ**"). The Cayman SEZ represents an unprecedented combination of financial incentives within a tax-neutral environment which offers the ultimate legislative, geographic and lifestyle benefits.

1.2. Special Economic Zone Companies

A new or an existing exempted company may, if it satisfies the special economic zone requirements, be registered as a special economic zone company ("**SEZ company**"). The principal statute governing the formation and operation of Cayman exempted companies is the Companies Act. Absent an express exemption, the Companies Act applies to all SEZ Companies.

The Companies Act distinguishes between local companies (i.e. ordinary resident companies), which are generally required to be predominantly owned and controlled by Caymanians, 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, must carry on their business activities external to Cayman. In rare circumstances, an exempted company may obtain a licence to carry on business activities in Cayman.

The principal statute governing the formation and operation of Cayman SEZ companies is The Special Economic Zone Act (the "**SEZ Act**"). The SEZ Act requires that a SEZ company have, as its principal purpose, the carrying on of business mainly outside Cayman. International businesses establishing within the SEZ will not be permitted to trade in Cayman outside of the Cayman SEZ.

This publication is therefore concerned only with the Companies Act requirements applicable to exempted companies carrying on business from, yet external to, Cayman and the SEZ Act requirements specifically applicable to SEZ Companies.

1.3. Cayman Enterprise City

Cayman Enterprise City Limited ("**CEC**") is the developer of "Cayman Enterprise City" which has been designated as the Cayman SEZ pursuant to The Special Economic Zones (Cayman Enterprise City) Order (2020 Revision). Cayman Enterprise City will, in due course, constitute a state-of-the-art campus of innovative and sustainable architecture designed to complement and respect the local environment.

While the Cayman Enterprise City campus is under development, existing facilities have been designated to function temporarily as the Cayman SEZ.

There are seven types of business authorized to be carried on in the Cayman SEZ:

Cayman Internet Park: designed to attract information technology and software businesses, with the intention of creating the largest Information and Communications Technology cluster in the region;

Cayman Science and Technology Park: designed to attract businesses specialized in natural sciences, specifically focused on biotechnology (research and application of technology that uses biological systems, living organisms or derivatives thereof, to make or modify products or processes for specific use), development of biomedical devices, development of pharmaceuticals and environmental technology (research and application of technology to monitor, model and conserve the natural environment and resources, and to curb the negative impacts of human involvement);

Cayman Media Park: designed to attract electronic media and integrated media-related businesses with the intention of creating the largest media and marketing related cluster in the region;

Cayman Commodities & Derivatives Park: designed to create a centralised global commodity and derivatives market in Cayman, with the intention of being the first dedicated commodities and derivatives centre in the Americas' time zone;

Cayman Outsource Park: The intent of this park is to facilitate the production and manufacturing, for special economic zone based businesses, of products in other jurisdictions. Please note, however, this park is not open to businesses other than the developer specified in paragraph 3 of The Special Economic Zones (Cayman Enterprises City) 2015 Order, a subsidiary of the developer, or businesses working in a formal partnership with the developer, and offering services only to businesses established within any of the parks in the special economic zone;

Cayman International Academic Park: designed to attract higher education institutions with a focus on the areas of technology underlying the other parks, that is, information technology, biotechnology, environmental technology, and integrated media and new media technology. This park also includes higher education institutions related to the Cayman Maritime Services Park; and

Cayman Maritime & Aviation Services Park: designed to attract maritime and aviation services businesses to assist in the establishment of the Cayman Islands as the largest maritime and aviation services cluster in the region.

CEC will work with potential SEZ companies to determine the nature of their business, along with space and staffing requirements, to ensure that the company will fit into the Cayman SEZ under one of the categories outlined above. The company must enter into a licence agreement with CEC outlining the terms of arrangement.

Once this process is complete, the company can incorporate or register as a SEZ company and apply for a Trade Certificate (see discussion at 3. Incorporation and Registration Process below).

1.4. Benefits and Exemptions

The Cayman SEZ application process has been streamlined to guarantee incorporation within ten days. A SEZ company located in the Cayman SEZ will also benefit from guaranteed protection of intellectual property and will be exempt from direct or indirect taxes, certain import duties and fees and work permit requirements. Employees of SEZ companies are granted five (5) year work/residency visas.

There are no restrictions on the transfer of any investment in or by a SEZ company within a special economic zone nor shall a SEZ company be restricted to investing in any other SEZ company. More particularly, a non-Caymanian may own, hold, freely transfer, securitize, finance, raise security or list the legal or beneficial title of any or all of his equity in any SEZ company.

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 of Companies (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.

A SEZ company must include the words “Special Economic Zone Company” or the letters “SEZC” in its name.

A 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, he 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.

3. INCORPORATION AND REGISTRATION PROCESS

3.1. Cayman Enterprise City Requirements

Prior to incorporation, the CEC will examine the nature of the company’s proposed business to ensure that it fits into one of the types of business authorized to be carried on in the Cayman SEZ.

CEC will also work with the company to determine space and staffing requirements for the purpose of identifying a suitable space in the Cayman SEZ.

The company will then enter into a licence agreement with CEC which outlines the terms of the arrangement.

3.2. Incorporation/Registration

Once the company has received approval from CEC, the incorporation/registration process will commence. An application for registration as a SEZ company requires the payment of a small fee in addition to that required from all exempted companies.

(a) Incorporation of New SEZ Company

An application for incorporation and registration of a new SEZ company 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. As noted below, the memorandum of association of the company must contain the requisite provision relating to the business of the company including special economic zone business.

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.

(b) Registration of Existing Exempted Company

An application for incorporation and registration of an existing exempted company as a SEZ company is effected by the delivery of two copies of a special resolution of the company altering its memorandum of association to carry on special economic zone business to the Registrar of Companies. The Registrar will issue a certificate of incorporation or a certificate stating that the company is registered as a special economic zone company.

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 (see discussion at 5. Organisation below).

3.3. Application for Trade Certificate

A company will not be entitled to carry on a special economic zone business within the Cayman SEZ, nor is it entitled to the benefits of the SEZ Act, until it obtains a valid trade certificate. Once the SEZ company is incorporated, it must apply for a trade certificate, specifying which special economic zone business it intends to conduct. An application for a trade certificate is effected by delivering a completed application form, along with the prescribed fee, to the Special Economic Zone Authority (“**SEZA**”).

In determining whether to grant a trade certificate, SEZA will take into consideration the guiding principles for criteria outlined in Schedule 3 of The Special Economic Zones Regulations (as amended).

Once the trade certificate is issued, a SEZ company will be entitled to the benefits set out in the SEZ Act relating to the specific zone in the Cayman SEZ as specified in the trade certificate.

A SEZ company must notify the SEZA of any change to its address, corporate identity or the scope of its business. Material changes to business activities, controllers, directors or shareholders must be notified within twenty one (21) days of such change.

3.4. Immigration/Visa Requirements

Following incorporation/registration, the CEC will assist with preparation of immigration paperwork for submission to SEZA. Employees of SEZ companies will be granted five year work/residency visas. The process has been streamlined so that the visas are granted in five days.

4. REQUIREMENTS OF CAYMAN LAW

4.1. Memorandum of Association

The memorandum of association and the articles of association form the constitution of the company. In addition to the name of the proposed company, the memorandum of association of every Cayman company 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 shareholders is limited; and
- the company's authorised share capital, which may be denominated in any one or more currencies.

As noted above, the memorandum of association of a newly incorporated SEZ company must also specify that the business of the company includes special economic zone business. If an exempted company is already registered prior to applying to become registered as a SEZ company, a special resolution of the company altering its memorandum of association to provide for the carrying on of special economic zone business must be provided to the Registrar.

4.2. 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;
- shareholders' meetings;
- the appointment of directors and officers and their meetings, powers and indemnification;

- 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 shareholder in the company on request.

4.3. 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. Shareholders, directors or the company itself are still entitled to take action when the company purports to act beyond the limits of its constitution.

4.4. 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. The company must exhibit its name on the outside of the registered office and at every other place at which it carries on business.

4.5. Directors

There must be at least one director of the 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 and notice of any amendments must be filed with the Registrar within 30 days of any 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 authorised 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.

As a SEZ company, it will generally be a condition of the license that the company notify the SEZA of any change in director within 30 days of the change. If the SEZA board determines that the director is not a fit and proper person it may require the company to replace the director within 90 days.

4.6. Officers

The appointment of officers is optional. A company secretary is ordinarily appointed.

4.7. 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.

4.8. 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 is made.

4.9. Auditors

Unless the company is subject to certain 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.

4.10. Seal

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

4.11. Financial Year End

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

4.12. Register of Shareholders

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 Tax Information Authority Act 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 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 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.

4.13. Beneficial Ownership Register

Unless exempted by, for example, being listed, 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 in relation to the company 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. 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. 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 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 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.

5. ORGANISATION

5.1. 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.

5.2. 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 shareholders 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.

6. OPERATION OF COMPANY

6.1. General Management

The management of every 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 shareholders 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.

6.2. Annual Filings

On or before 31 January of each year, each company must furnish to the Registrar an annual 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 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. SEZ Companies will also pay a small annual trade certificate fee.

6.3. 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.

6.4. Shareholders' Meetings

Cayman 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 shareholder has one vote per share, and a meeting shall be duly summoned if five days' notice has been given to shareholders.

The quorum for a shareholders' meeting may be one shareholder 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;
- voluntary 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 shareholders 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 shareholders (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 shareholders adopt a special resolution, the Registrar must be notified and a copy of the resolution must be filed within 15 days.

7. TRANSACTIONS INVOLVING SHARES

7.1. Issue of Shares

In the case of a SEZ 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 shareholder, 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 SEZ 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.

As a SEZ company, it will generally be a condition of the license that the company notify the SEZA of any change in beneficial owner within 30 days of the change. If the SEZA board determines that the beneficial owner is not a fit and proper person it may require the company to replace the beneficial owner within 90 days.

7.3. Redemption and Purchase of Shares

The 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 shareholder 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 shareholder 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, the 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

The SEZ 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 shareholders and creditors at all reasonable times.

9. AVAILABILITY OF RECORDS

SEZA will maintain a public register recording details of all trade certificates and SEZ companies.

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 shareholders may by special resolution appoint an inspector for similar purposes.

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

10.1. Memorandum of Association

The company may, by special resolution of the shareholders, alter its memorandum of association with respect to any of the objects, powers or other matters specified therein except for the provision relating to the carrying on of special economic zone business. The amended memorandum of association and a copy of the special resolution must be filed with the Registrar.

10.2. Increase of Authorised Capital

The company may, if authorised by its articles of association and by ordinary resolution of the shareholders 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, the 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 shareholder 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 shareholder 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, shareholders 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.

11. ECONOMIC SUBSTANCE

The International Tax Co-Operation (Economic Substance) Act (2024 Revision) (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 Cayman Tax Information Authority (“**TIA**”) of, amongst other things, whether or not it is carrying on a “relevant activity” (as defined in the ES Act) 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.ky¹.

Entities operating within the Cayman SEZ are required to consider whether they are relevant entities for the purpose of the ES Act and, if so, whether they are carrying on relevant activities and required to satisfy the economic substance test under the ES Act.

For further information on the ES Act, see our publication “[Economic Substance Requirements](#)” or contact your usual Conyers attorney.

12. ANTI-MONEY LAUNDERING, COUNTER TERRORIST FINANCING AND COUNTER PROLIFERATION FINANCING

The SEZA may, to the extent that information is required and requested by a Supervisory or competent authority or of its own volition, share information for the purposes of anti-money laundering, counter terrorist financing or counter-proliferation financing.

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

13. SEZA POWERS AND OFFENCES

The SEZA may revoke or suspend a SEZ company's trade certificate, substitute or remove a controller or officer, impose administrative penalties or require a SEZ company to take steps to rectify any matter where a SEZ company (i) is carrying on business detrimental to the public interest; (ii) has failed to comply with a condition of its trade certificate; (iii) has a controller, director or senior officer who is found not to be a fit and proper person; (iv) has had regulatory, disciplinary or criminal action taken against it or one of its officers; (v) is under the control or ownership of a person who is not considered to be a fit and proper person; (vi) or its controller or officer has failed to comply with any SEZA requests or (vii) has contravened the SEZ Act. Where the SEZA revokes a SEZ company's trade certificate, it shall not approve a subsequent application from the same SEZ company for three years from the date of the revocation.

A person who fails to comply with any requirement or request of the SEZA, commits an offence and is liable on summary conviction to a fine of CI\$10,000/US\$12,200 or on conviction on indictment to a fine of CI\$100,000/US\$122,000. If the offence continues after conviction, the person is liable to a fine of CI\$10,000/US\$12,200 for every day the offence continues. Where a person knowingly or recklessly furnishes information or provides a false or misleading statement or explanation to the SEZA, the same fines apply, however, imprisonment for six months and imprisonment for five years apply respectively to each type of conviction.

14. GOVERNMENT FEES AND TAXATION

The government fees applicable to all exempted companies are based on the authorised capital of the company whereas the additional government fees applicable to SEZ companies are fixed. 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. A SEZ company located in the Cayman SEZ will also be exempt from direct or indirect taxes, certain import duties and fees and work permit requirements. Certain documents are subject to stamp duty which is generally nominal.

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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