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Comparison of Laws in Bermuda and the Cayman Islands Relating to Offshore Companies

Preface

This publication has been prepared for the assistance of those who are considering the formation of a company in an offshore jurisdiction for the conduct of business outside such jurisdiction, such as an exempted company established in Bermuda under the Companies Act, 1981 of Bermuda (the "Bermuda Act"), or an exempted company in the Cayman Islands ("Cayman") established under the Companies Act of the Cayman Islands (the "Cayman Act").

This publication does not deal with all types of companies that may be formed in either of the above jurisdictions, or with the laws and regulations which may be applicable to certain business activities. It deals principally with the more common corporate forms and activities. Certain procedures are summarised but they may require a number of intermediate steps. For the sake of convenience, certain abbreviations are used, such as referring to "governmental approvals", without specifying the particular body or its function.

This publication deals in broad terms with the requirements of each jurisdiction for the establishment and operation of a company. 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 seek legal advice in relation to each jurisdiction on their specific proposals before taking steps to implement them.

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

For current listings of the government fees for each jurisdiction, please contact Conyers.

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1. TYPES OF COMPANIES		
Companies are generally incorporated with limited liability existence. An exempted company may also take the form of a company, a company limited by guarantee, an unlimited liab mutual fund company, a mutual company, or a segregated acc	a limited duration pility company, a	Companies are generally incorporated with limited liability and perpetual existence. An exempted company may also take the form of a limited duration company, a company limited by guarantee, a company limited by shares and guarantee, an unlimited liability company, and a segregated portfolio company.
2. INCORPORATION APPROVALS		
The approval of the Bermuda Monetary Authority (the "BMA") r in connection with the issue or transfer of shares of all exem Signed Personal Declarations from each of the proposed ul owners of the company who will own, directly or indirectly, 109 required for submission to the BMA. The beneficial owners' ic instances be disclosed. Certain business activities may req special approvals.	pted companies. timate beneficial % or more will be dentity must in all	No governmental approval is required for the incorporation of a company. Certain business activities may require licensing or registration.
3. INCORPORATION PROCEDURE		
An application for permission to issue shares of an exempted company, together with the appropriate declarations, is submitted to the BMA. In certain cases, where a company seeks to carry out restricted business activities the consent of the Minister of Finance must also be obtained. On receipt of such permission and, if necessary, consent, the memorandum of association is registered with the Registrar who issues a certificate of incorporation. Once all customer due diligence documentation is received, the incorporation process can generally be completed within 24 hours.		There is no requirement to publicise an intention to incorporate. A company is generally incorporated by delivery of two signed copies of the memorandum of association and articles of association, if any, to the Registrar. A proposed director of the relevant exempted company must submit to the Registrar a signed declaration to the effect that operation of the proposed exempted company will be conducted mainly outside Cayman. The incorporation process can be completed on an express basis within 24 hours.
4. CONTINUATIONS AND DISCONTINUATI	ONS	
Bermuda law provides that companies may continue into, and of, Bermuda. Procedures similar to those on incorporation company apply to a foreign company applying to continue Certain governmental approvals and creditor protection requir an exempted company applying to discontinue out of Bermud	of an exempted e into Bermuda. rements apply to	Cayman law provides that companies may continue into and discontinue out of Cayman.
5. BUSINESS RESTRICTIONS		
An exempted company may not carry on business within Be	rmuda except in	An exempted company is not entitled to trade in Cayman with any person

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so far as may be necessary for the carrying on of its business with persons outside Bermuda, and certain other limited activities.	except in furtherance of business "carried on outside" Cayman unless the exempted company holds a licence to carry on business in Cayman under any applicable law and it may not offer any of its securities to the public in Cayman, unless it is listed on the Cayman Islands Stock Exchange. Shares of an exempted company may be acquired by other Cayman exempted companies, Cayman non-resident companies and exempted limited partnerships in Cayman.
6. ECONOMIC SUBSTANCE	
Entities within the scope of the legislation ('registered entities') include exempted and local companies, permit companies, exempted and local LLCs and partnerships that elect to have separate legal personality, where those entities are carrying on a 'relevant activity'. Those registered entities which carry on as a business any one or more of the following relevant activities will be in scope and must comply with economic substance requirements: • banking	"Relevant entities" carrying on a "relevant activity" will need to comply with economic substance requirements in Cayman. "Relevant entities" include companies (other than domestic companies), partnerships (other than local partnerships) LLCs, LLPs, ELPs, and foreign registered companies and partnerships unless they are tax resident outside Cayman, or an investment fund, or a not-for-profit. "Relevant activities" include:
insurance	banking
fund management	distribution and service centre
finance and leasing	financing and leasing
headquarters	fund management
intellectual property	headquarters
distribution and service centres	holding company
holding entity	• insurance
	intellectual property
	shipping
7. NAMES	
The proposed name of the company can be reserved with the Registrar. The name reservation can usually be confirmed within 24 hours. The reservation of the name will subsist for a period of three months from the date of reservation. Thereafter, the reservation may be renewed. The Bermuda Act contains certain restrictions on names. The name of an exempted company must generally end with the word "Limited" or "Ltd".	The proposed name of the company can be reserved with the Registrar on a monthly basis for a maximum of 3 months at a time. A small fee is payable for each month the name is reserved. The Cayman Act contains certain restrictions on names. An exempted company need not have the word "Limited" or "Ltd" at the end of its name. A company may have a dual foreign name in something other than Roman script.

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A Bermuda company can adopt a secondary name in non-Roman script.	
8. REGISTERED OFFICE	
Every company must have a registered office in Bermuda, the address of which is registered with the Registrar. The situation of the office is a matter of public record. A post office box cannot be used as a registered office.	
9. DIRECTORS, OFFICERS AND REPRESENTATIVES	
Each Bermuda exempted company is required to have at least one director and a secretary. A secretary of an exempted company may be an individual or a company. A director of an exempted company may be an individual or any type of legal person (including any company or association or body of persons, whether corporate or unincorporate). For practical reasons, it is most common for the office of director to be filled by an individual or a company.	requirement that any of the directors be resident in Cayman. Corporate directors are permitted. An exempted company may in its articles provide that a director must hold at least one share in the company. An exempted company
To satisfy the residency requirement contained in the Companies Act, the secretary or one of the directors must be ordinarily resident in Bermuda. Alternatively, a company may satisfy the residency requirement by appointing either an individual or a company to act as its resident representative in Bermuda.	
10. SHAREHOLDERS	
An exempted company must have at least one shareholder. Nomineers shareholders are permitted. The names of all shareholders of an exempted company must be maintained in a register of members. The register of members of an exempted company must generally be kept at its registered office and, except in the case of a mutual fund company, is open to public inspection.	shareholders are permitted. The names of all shareholders of an exempted company must be maintained in a register of members. The register of members of an exempted company need not be kept at the registered office,
11. BENEFICIAL OWNERSHIP	
Unless exempted by, for example, being listed or regulated, 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	or licensed under a Cayman regulatory law, each company has an obligation

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steps to identify in relation to the company any individual wh owner of the company and all Bermuda incorporated or registe that would be beneficial owners if they were individuals.	
12. CONSTITUTIONAL DOCUMENTS	
 The constitutional documents of an exempted company are in of association and bye-laws. The memorandum of association objects of the exempted company, which may be unrestrict company has the powers of a natural person, subject to memorandum of association. The memorandum of association Registrar and is available for public inspection. The bye-law prescribe the rights and duties as between the company, the st the directors. Under section 13(2A) of the Companies Act every Bermuda company having a share capital must file will Registrar of Companies the information that the company is re in its bye-laws as prescribed by subsections 13 (2)(a), (e) and (f) of the Act is the: (a) transfer of shares and the registration of estate registered estates and the secretary to the company; and (f) number of shareholders required to constitute a quorum meeting of the shareholders of the company. Information filed with the Bermuda Registrar of Companies wavailable for public inspection. 	and articles of association. The memorandum of association must specify the ted. A Bermuda of anything in its on is filed with the we will generally shareholders and 1981 ('the Act'), ith the Bermuda equired to include d (f) of the Act. For subsections 13 presentatives of the company shall have full power and authority to carry out any objects, then the company shall have full power and authority to carry out any object not prohibited by law. An exempted company may register articles. The articles of association are registered with the Registrar, the regulations of Table A of the Cayman Act will apply as the company's articles. In either case, the applicable regulation of Table A apply as the company's articles. The articles of association are not available for inspection by the public. Where
The shareholders of an exempted company must appoint a	

The shareholders of an exempted company must appoint an auditor of the	
company and such auditor must audit the financial statements of the company.	there is no requirement that an exempted company appoint an auditor or file
However, these requirements may be waived if all of the shareholders and all	financial statements with the Registrar or any other governmental authority.
of the directors, either in writing or at a general meeting, agree that there shall	Standard articles may provide for the presentation of financial statements and
be no auditor. An exempted company is not generally required to file accounts	a directors' report at annual general meetings and may provide that this
with the Registrar.	requirement may be waived by the shareholders.

14. BOOKS OF ACCOUNT AND OTHER RECORDS OF THE COMPANY

An exempted company must keep proper records of account with respect to its	An exempted company must keep proper records of account with respect to all

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business activities. These records, together with minutes resolutions, must be kept at the registered office or at such ot directors think fit, and are required to be available for inspectior at any time. Where the books of account are kept outsid company must maintain sufficient records in Bermuda as directors to ascertain with reasonable accuracy the financia company at the end of each quarter. The records must be ke five years from the date on which they were prepared.	her place as the by the directors e Bermuda, the will enable the I position of the	monies received and expended and the matters in respect of which the receipt and expenditure takes place, all sales and purchases of goods, and the assets and liabilities of the company, as necessary to give a true and fair view of the state of the company's affairs and explanation of its transactions. Articles may provide that the company must keep books of account at its registered office or such other place as the directors decide. If kept outside Cayman, such books and records must be made available at the registered office annually and if an order for production of same is made under the Tax Information Authority Act.
15. DIRECTORS' MEETINGS		
Meetings of the directors may be held in or outside Bermuda generally provide that the directors may meet for the transact and regulate their affairs as they see fit. Notice of a meeting must be given to all directors. A meeting of directors may be with two directors.	tion of business of the directors	Where a meeting is to be held, voting may be undertaken by proxy where the articles permit. Notice of a meeting of the directors must be given in accordance with the articles. A meeting of directors or any committee thereof may be validly convened, subject to the articles, with only one director present in person.
16. INDEMNIFICATION OF DIRECTORS AND	OFFICERS	
The Bermuda Act provides, inter alia, that the bye-laws of a company, or any contract or arrangement between a company and any officer, may exempt such officer, or indemnify him in respect of any loss arising or liability arising or liability attaching to such officer by virtue of any rule of law in respect of any negligence, default, breach of duty or breach of trust for which the officer may be guilty in relation to the company. However, any provision, whether in the bye-laws of the company or any contract or arrangement, which exempts such officer from, or indemnifies him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any fraud or dishonesty of which he may be guilty in relation to the company shall be void.		The Cayman Act does not limit the extent to which a company's articles of association may provide for the indemnification of officers and directors, except to the extent that such provision may be held by Cayman courts to be contrary to public policy (for instance, for purporting to provide indemnification against the consequences of committing a crime). As such, an officer or director may not be indemnified for his own dishonesty or wilful neglect or default. If the memorandum of association of an exempted company so provides, the liability of its directors, managers and the managing director may be unlimited.
17. SHAREHOLDERS' MEETINGS		
An exempted company must hold an annual general meetin calendar year unless this requirement is waived by resolution A meeting of shareholders may be validly convened, subject with at least one person present representing the shareholders Act provides that the minimum notice with respect to the calli general meeting or any special general meeting is five days periods require special agreement of the members. The bye- extend this notice period. Upon the request of shareholders ho of the request not less than 10% of the paid up capital of th directors are required to convene a special general meeting	of the members. to the bye-laws, s. The Bermuda ng of the annual - shorter notice laws may further blding at the date ne company, the	An exempted company is not required to hold an annual general meeting. A meeting of shareholders, or a class of shareholders, may be validly convened and business conducted, subject to the memorandum and the articles, with only one shareholder present in person, or as the articles provide, on such notice to shareholders as the articles prescribe. Articles may provide for general meetings of shareholders to be called only by the directors or at the written request of shareholders in accordance with the articles. Where there is no contrary provision in the articles, a meeting shall be duly summoned where 5 days' notice is served on every member, 3 members are competent to summon the meeting, and any person elected by the members present is competent to preside as chairman. Shareholders' meetings need not be held

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meetings need not be held in Bermuda.	in Cayman.
18. VOTING	
Shareholders may vote at general meetings in person (which includes by telephone or other electronic means) or by proxy. The holder of a proxy may, but need not, be a shareholder. A corporate shareholder of an exempted company may appoint such person as it thinks fit to be its representative at general meetings. The holder of more than one share may appoint more than one proxy. Unless the bye-laws provide otherwise, resolutions of shareholders generally require to be approved by a simple majority. Resolutions may be approved by written consent of the necessary majority of shareholders.	Shareholders may vote at general meetings in person. In so far as the company's articles provide, shareholders may vote by proxy; the holder of a proxy may, but need not, be a shareholder and a corporate shareholder of the company may appoint such person as it thinks fit to be its representative at any general meeting of the company or class of shareholders of the company. The Cayman Act requires that certain decisions of the shareholders in general meeting must be approved by a "special resolution". A resolution will be a special resolution when passed by at least two-thirds (or such greater number as specified in the articles) of the shareholders who vote in person or by proxy at a general meeting and notice of the meeting specified the intention to propose a special resolution. The articles may specify a higher threshold for certain special resolutions. A special resolution will also be made when, if authorised in the articles, a special resolution in writing is approved and signed by all shareholders entitled to vote at a general meeting. Except as aforesaid, resolutions require to be approved by simple majority. Where no regulations are made as to voting, every member has one vote.
19. PUBLIC RECORDS	
The following documents are of public record: the notice of registered office, memorandum of association, certificate of incorporation, register of charges, any filed prospectuses, register of members (except in the case of mutual fund companies and mutual insurance companies), register of directors and officers. Under section 92 B of the Companies Act 1981 every company must file with the Registrar of Companies a list of its Directors. The list of Directors must contain the following particulars with respect to each Director:	The notice of registered office is a public record. The register of mortgages is open to creditors and shareholders. A list of the name of the current directors may be inspected at the Registry upon payment of a fee. A register of companies maintained by the Registrar and containing certain required company particulars under the Cayman Act is also available for inspection by any person on payment of a fee, subject to any conditions the Registrar may impose.
• In the case of an individual, his or her present first name, surname and address; and	
• In the case of a company, its name and the address of its registered office.	
Currently, the public is entitled to view a company's Register of Directors at the company's registered office or to request a copy of such from the company.	
20. REGISTER OF MORTGAGES AND CHARGES	
The Registrar maintains a register of charges in respect of every company.	An exempted company must maintain at its registered office a register of all

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Any charge over the assets of a company may be submitted for registration against an exempted company. Failure to r invalidate a charge. Registration constitutes notice to the publ interest in or over the charged assets. Any registered charge over any subsequently registered charge and unregistered of charge created prior to 11th July, 1984). Priority is based of registration and not the date of creation of the charge.	egister does not lic of the charged will have priority charge (except a	mortgages, charges and other securities over the assets of the company. The register of charges is open to inspection by shareholders and creditors at all reasonable times. Common law provisions apply to priority.
21. SHARE CAPITAL		
There is no minimum authorised or issued share capital, sa companies. Bearer shares and shares of no par value are n fractional shares may be issued. Shares may be issued fully,	ot permitted, but	There is no minimum authorised or issued share capital. The minimum annual government fee is payable on an authorised share capital of up to \$50,000. Fractional shares and shares of no par value may be issued. Shares may be issued fully, partly or nil paid. Bearer shares are not permitted.
22. PROSPECTUSES AND PUBLIC OFFERS	;	
The Bermuda Act does not require the issue or publication where an exempted company offers shares to the public. T requires local companies offering shares to the public to prep the Registrar a prospectus unless the company's shares are an appointed stock exchange or accepted by a competent reg Exemptions also exist where (i) the shares are to be issued persons, (ii) the offer is of a private character, or (iii) the offer professionals. The contents provisions require the disclosure information concerning the company, the shares and the offer	he Bermuda Act bare and file with already listed on ulatory authority. It to less than 35 r is made only to e of certain basic	The Cayman Act does not require the issue or publication of a prospectus where an exempted company offers shares to the public. However, in the context of regulated mutual fund companies, a prospectus may be required under the Mutual Funds Act and, if required, then a copy of the same must be filed with the Cayman Islands Monetary Authority. An exempted company (other than one which is listed on the Cayman Islands Stock Exchange) is prohibited from making any invitation to the "public" in Cayman to subscribe for any its securities.
23. TRANSFER OF SHARES		
Unless the bye-laws provide otherwise, shares of an exempted be transferred by a standard instrument of transfer signed by the transferor and, usually, the transferee. The transferee mapproved by the BMA. Paperless share transfers are permitted on appointed stock exchanges.	y or on behalf of nust generally be	An exempted company can transfer its shares if a transfer is expressly or impliedly permitted by the company's articles and any restriction or condition on the transfer set out in the company's articles is observed. The articles may provide for transfers to be effected by a standard instrument of transfer signed by or on behalf of the transferor and the transferee. Paperless transfers of listed shares are permitted.
24. REDEMPTION AND RE-PURCHASE OF S	SHARES	
Where an exempted company has the power to redeem or pur the manner of effecting such redemptions or purchases must bye-laws. A redemption or purchase must be made out of th thereon and any related share premium, or profits, or the pro-	be set out in the e capital paid up	An exempted company may, if authorised by its articles, issue shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder, and it may purchase its own shares, including any redeemable shares. A redemption or purchase may be made out of profits,

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issue of shares. No redemption or purchase may take place if such redemption or purchase, the issued and outstanding company would represent less than the minimum authorised ca are reasonable grounds for believing that the company would be its liabilities as they become due. Shares redeemed or purch held as treasury shares or may be treated as cancelled, in which available for reissue.	shares of the apital or if there a unable to pay chased may be	share premium, the proceeds of a fresh issue of shares made for the purpose of the redemption or purchase or, under certain circumstances, out of capital. 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 holding shares. Shares redeemed may be held in treasury or may be cancelled and are available for reissue.
25. INCREASE OF SHARE CAPITAL		
The authorised share capital of the company may be increase by its bye-laws and by resolution of shareholders in general memorandum of increase must be filed within 30 days of the inc Registrar.	al meeting. A	A company can increase its share capital if authorized by its articles. The articles may provide that this be done by ordinary resolution of the shareholders in general meeting.
26. REDUCTION OF SHARE CAPITAL		
A company may reduce its share capital if authorised by a gene shareholders, provided there are no reasonable grounds for be company is, or after the reduction would be, unable to pay its lia become due. A memorandum of reduction of share capital mu the Registrar.	lieving that the abilities as they	Subject to the provisions of the Cayman Act and to confirmation by the court, a company, if so authorized by its articles, may reduce its share capital by special resolution of its shareholders. After the resolution is passed, the company must apply to the court for an order confirming the reduction. A copy of the order of the court and a minute approved by the court setting out particulars prescribed in the Cayman Act must be registered with the Registrar. A notice of the registration must be published in the manner directed by the court.
27. DIVIDENDS		
An exempted company may, subject to its bye-laws, by res directors declare and pay a dividend, or make a distribution out surplus, provided there are reasonable grounds for believing that payment (a) the company will be solvent and (b) the realisat assets will be greater than its liabilities.	t of contributed t after any such	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.
28. STAMP DUTY		
No stamp duty is payable in respect of any instrument exempted company or in respect of an instrument relating to an exempted company. Stamp duty may be payable in respect involving Bermuda property.	n interest in an	Certain documents are subject to stamp duty which is generally a nominal amount. Generally, stamp duty is only payable if the document in question is executed in the Cayman Islands or brought into the Islands.

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29. TAXATION	
No taxes are imposed in Bermuda on an exempted of shareholders, other than on shareholders ordinarily resident if exempted company may apply for and is likely to receive from Finance an assurance that, in the event of there being enacted legislation imposing tax computed on profits or income, or co- capital assets, gain or appreciation, or any tax in the nature of inheritance tax, such tax shall not until March 2035 be a company or to any of its operations or to the shares, debe obligations of the company except insofar as such tax app ordinarily resident in Bermuda and holding such shares, debo obligations of the company or any land leased or let to the com-	n Bermuda. An n the Minister of in Bermuda any omputed on any of estate duty or pplicable to the entures or other blies to persons entures or other
30. EXCHANGE CONTROL	
There are exchange controls in Bermuda applicable part persons and businesses. Exempted companies are designat for exchange control purposes.	

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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