

CONYERS

De-Registration of Limited Liability Companies being Continued in a Foreign Jurisdiction

Pursuant to Section 55 of the Limited Liability Companies Act

Preface

This publication has been prepared for the assistance of those who are considering the process of de-registering a Limited Liability Company registered under section 5 of the Limited Liability Companies Act to a foreign jurisdiction. The publication addresses, in broad terms, the requirements of Cayman Islands Limited Liability Companies Act for the process of de-registration. This publication is not intended to be exhaustive but merely to provide an outline of the rules by which the process of de-registration of a Cayman Islands company for which we hope will be of use to the clients of Conyers.

Before proceeding with any process of de-registration in the Cayman Islands, clients are advised to consider the implications in their home jurisdiction and should consult with other professional advisers as appropriate.

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

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1. INTRODUCTION

The Limited Liability Companies Act (the “**Act**”) of the Cayman Islands (the “**Islands**”) provides that a limited liability company which proposes to be registered by way of continuation as a foreign entity under the laws of any jurisdiction outside the Islands (an “**Applicant**”) may apply to the Registrar of Limited Liability Companies (the “**Registrar**”) to be de-registered in the Islands.

2. CONDITIONS TO BE SATISFIED PRIOR TO DE-REGISTRATION

The Registrar will de-register an Applicant if the following conditions are satisfied:

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

- (l) the laws of the Relevant Jurisdiction with respect to the transfer have been or will be complied with;
- (m) the Applicant, if licensed or registered with the Cayman Islands Monetary Authority (“CIMA”) under any of the regulatory laws in force or, if so previously licensed or registered with CIMA and that licence or registration was suspended or revoked and not reinstated, has obtained consent of CIMA to the transfer;
- (n) the Applicant will upon registration under the laws of the Relevant Jurisdiction continue as a foreign entity; and
- (o) the Applicant is in good standing with the Registrar and the Registrar is not aware of any other reason why it would be against the public interest to de-register the Applicant.

To satisfy the requirements in paragraphs a, d – h and j – n, a voluntary declaration or affidavit of an authorised signatory of the Applicant to the effect that, having made due enquiry, they are of the opinion that the requirements of those paragraphs have been met must be filed with the Registrar.

The declaration or affidavit must include a statement of the assets and liabilities of the Applicant made up to the latest practicable date before the making of the declaration or affidavit.

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

3. PROCESS OF DE-REGISTRATION

Once all the paperwork is filed with the Registrar’s office the Applicant company will be de-registered and the certificate of de-registration will be issued within approximately 3-5 business days. There is no pre-approval process available; however, it is possible to send specific queries to the Registrar’s office in advance of the filing if there are any areas of uncertainty. The Applicant may apply for express de-registration by making the request in the application and paying the prescribed express fees. An express de-registration and certificate is obtained within 24-36 hours of submitting the relevant documents and fee to the Registrar’s office.

Upon the de-registration, the Registrar will issue a certificate to the effect that the Applicant has been de-registered as a limited liability company and specifying the date of such de-registration. The Registrar is also required to enter the date of de-registration in the Register of Limited Liability Companies. The Registrar will also give notice in the Cayman Gazette of the de-registration of the Applicant, the jurisdiction under the laws of which the Applicant has been registered by way of continuation and the name of the Applicant, if changed.

From the date of the de-registration certificate, the Applicant ceases to be a limited liability company for all purposes under the Act and continues as a foreign entity under the laws of the Relevant Jurisdiction. Note however, that de-registration will not operate:

- (a) to create a new legal entity;
- (b) to prejudice or affect the identity or continuity or of the Applicant as previously constituted;

- (c) to affect the property of the Applicant;
- (d) to affect any appointment made, resolution passed or any other act or thing done in relation to the Applicant pursuant to a power conferred by the LLC Agreement of the Applicant or by the laws of the Islands;
- (e) except to the extent provided by or pursuant to the Act, to affect the rights, powers, authorities, functions and liabilities or obligations of the Applicant or any other person; or
- (f) to render defective any legal proceedings by or against the Applicant, and any legal proceedings that could have been continued or commenced by or against the Applicant before its de-registration may, notwithstanding the de-registration, be continued or commenced by or against the Applicant after de-registration.

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

This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

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