

CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, reflecting the sky and surrounding environment. The building is partially obscured by a semi-transparent blue overlay containing text. The foreground shows a paved plaza with geometric patterns and a few small, cylindrical metal bollards.

Registration of Foreign Companies in the Cayman Islands

Preface

This publication has been prepared for the assistance of those who are considering registration of a foreign company in the Cayman Islands. It deals in broad terms with the requirements of Cayman Islands law. It is not intended to be exhaustive but merely to provide general information to our clients and their professional advisers.

Before proceeding with the registration of a foreign company in the Cayman Islands, persons are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

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

Persons considering registration of a foreign company to carry on insurance, banking, mutual fund, or securities business in the Cayman Islands should request separate publications prepared by Conyers on these topics.

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1. INTRODUCTION

An overseas company, being a company incorporated outside of the Cayman Islands, which establishes a place of business or commences carrying on business within the Cayman Islands, is required to register with the Registrar of Companies in the Cayman Islands (the “**Registrar**”) as a foreign company under Part 9 of the Cayman Islands Companies Act (the “**Act**”).

The Act sets out a non-exhaustive list of what constitutes ‘establishing a place of business’ or ‘carrying on business’ in the Cayman Islands. The list includes (i) the sale by or on behalf of an overseas company of its shares or debentures and (ii) offering, by electronic means, and subsequently supplying, real or personal property, services or information from a place of business in the Islands or through an internet provider or other electronic service provider located in the Cayman Islands. Given the non-exhaustive definition, advice should be sought as to whether an action constitutes establishing a place of business or carrying on business within the Cayman Islands for the purposes of the Act.

In addition to the above, overseas companies commonly register as a foreign company in the Cayman Islands in order to:

- (a) act as a general partner of a Cayman Islands exempted limited partnership;
- (b) carry out securities investment business in the Cayman Islands;
- (c) act as a branch operation in accordance with the insurance, bank, and trust laws of the Cayman Islands;
- (d) act as a mutual fund administrator; and
- (e) hold land in the Cayman Islands.

Consideration should be given to the scope of the business activities undertaken by the foreign company in the Cayman Islands and the extent to which other regulatory laws and local companies laws of the Cayman Islands are relevant. Those foreign companies which carry on insurance, banking, mutual fund, and/or securities business are subject to additional regulation governing those activities, details of which are available on request.

2. THE REGISTRATION PROCESS

Within one month of becoming a foreign company, every foreign company is required to deliver to the Registrar the following documentation for registration:

- (a) a certified copy of the foreign company's certificate of formation or incorporation, or the equivalent document issued by the relevant authority as evidence of its formation or incorporation;
- (b) a certificate of good standing issued by the relevant authority (or a certified copy thereof) dated within one month of the filing;
- (c) a certified copy of the constitutional documents of the foreign company;

- (d) a list of its directors together with the address of each director and the date of appointment and, where relevant, the date of the director's resignation;
- (e) the names and addresses of one or more persons resident in the Cayman Islands authorised to accept on its behalf service of process and any notices required to be served on it;

and must pay the prescribed fee.

Once complete documentation has been received by the Registrar, the Registrar will issue a certificate that the foreign company is duly registered under Part 9 of the Companies Act. Such certificate is usually issued within five to ten business days of the date of filing.

3. ECONOMIC SUBSTANCE

The International Tax Co-Operation (Economic Substance) Act (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 fall within one of the exemptions which include being tax resident outside the Cayman Islands or operating as an investment fund (including entities through which any such fund invests or operates).

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 as discussed further below) and, if so, whether or not it is a “relevant entity”. The notification to the TIA by companies, partnerships, exempted limited partnerships, and foreign limited partnerships 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 Corporate Administration Portal (“**CAP**”).

A foreign company registered in Cayman will be 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 con-compliance may result in an application by the TIA to the Grand Court for an order that the entity is defunct.

3.1. 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.

3.2. Economic Substance Requirements

For relevant entities carrying on relevant activities, the ES Act requires that they:

- (i) conduct core income generating activities (“**CIGAs**”) (see further below) in relation to the relevant activity;
- (ii) be directed and managed appropriately in the Cayman Islands related to the relevant activity; and
- (iii) with regard to the level of relevant income from the relevant activity carried out in the Cayman Islands, have an adequate –
 - amount of operating expenditure incurred in the Cayman Islands;
 - physical presence (including maintaining a place of business or plant, property and equipment) in the Cayman Islands; and
 - 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.

3.3. 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 Cayman Islands Department of Information Tax Co-operation (“**DITC**”) so that the DITC can independently verify the engagement and nature of the services provided.

4. ONGOING REQUIREMENTS

4.1. Alterations to information

If any alteration is made in, or to, any document or other information filed with the Registrar at the time of registration, the foreign company is required, within thirty days after the date of such alteration, to deliver to the Registrar a return containing the particulars of the alteration. Penalties are payable in the event that the filings are not made in a timely manner.

In the case of a change of registered office, all that is required to be filed with the Registrar is a copy of the authorising resolutions.

4.2. Disclosure of foreign company details

Every foreign company is required to state the name of the country in which the foreign company is incorporated:

- (a) in every prospectus inviting subscriptions for its shares or debentures in the Cayman Islands;
- (b) on every place where it carries on business in the Cayman Islands; and
- (c) on all bill heads, letter paper, notices, advertisements and other official publications.

Where the liability of the members of the foreign company is limited, notice should be given on every place where it carries on business in the Cayman Islands, on every prospectus, and on all bill heads, letter paper, notices and other official publications in the Cayman Islands.

4.3. Service on the foreign company

Any process or notice for service on a foreign company shall be sufficiently served if addressed to the person authorised to accept service on its behalf as notified and filed with the Registrar from time to time.

4.4. Fees

An annual fee payable to the Registrar is due in January of each year. Details of the prescribed fees are available on request.

5. CESSATION

In the event that the foreign company ceases to carry on or have a place of business in the Cayman Islands, it is required to give notice to the Registrar and upon the date of such filing, the obligation of the foreign company to deliver documentation to the Registrar ceases.

6. TAXATION

The Cayman Islands has no corporation tax, income tax, capital gains tax, inheritance tax, gift tax, wealth tax or any other tax applicable to a foreign company. 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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