



Cayman Islands Continuations – Exempted Companies

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Preface

This publication has been prepared for the assistance of those who are considering the continuation or redomiciling of a company to the Cayman Islands. It deals in broad terms with the requirements of Cayman law concerning such a continuation. 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 the Cayman Islands on their specific proposals before taking steps to implement them.

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

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1. INTRODUCTION

Modern company, trust, banking, insurance and other related laws have made the Cayman Islands (“**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, as well as economic and political stability.

The principal statute governing the formation and operation of Cayman companies is the Companies Act (the “**Act**”).

Cayman law 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 carry on and compete for business which is in Cayman. Exempted companies 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 law.

2. TRANSFER BY WAY OF CONTINUATION

Subject to any prohibition or limitation under the laws of its place of incorporation, a company incorporated with limited liability and a share capital under the laws of any jurisdiction outside Cayman may apply to the Cayman Registrar of Companies (the “**Registrar**”) to be registered by way of continuation as an exempted company limited by shares under the Act.

There are often preliminary steps that should be taken by the company prior to applying for such registration, including obtaining any required Cayman licenses (if applicable), taking any corporate action required by the constitutional documents of the company and checking / reserving the proposed name of the company with the Registrar.

3. APPLICATION FOR REGISTRATION

The application for registration must include the following documents:

- (a) a certified copy of the 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), or, if the relevant authority does not issue such certificates of good standing, a declaration signed by a director of the company that the company is in good standing with the relevant authority, in either case, dated no earlier than one month prior to the date of its delivery to the Registrar;
- (c) a certified copy of any charter, bye-laws or memorandum or articles of association or other constitutional document (howsoever called) of the foreign company that is required to be filed with the relevant authority under the laws of the relevant jurisdiction in connection with the incorporation or formation of the company;

- (d) a list of the company's directors, containing the names and addresses of each director;
- (e) notice of the address of the company's proposed registered office in Cayman;
- (f) a declaration signed by a director of the company stating that the operations of the company will be conducted mainly outside Cayman;
- (g) copies (certified by a director, the company secretary, or the Cayman attorney) of the board and shareholder resolutions approving the continuation of the company into Cayman;
- (h) an undertaking by a director of the company that notice of the transfer of the company to Cayman has been or will be given within 21 days to the secured creditors of the company;
- (i) a declaration or affidavit signed by a director of the company stating that after having made due enquiry, the director is of the opinion that:
 - (i) no petition or similar proceeding has been filed and remains outstanding or order made or resolution adopted to wind up or liquidate the company in any jurisdiction;
 - (ii) no receiver, trustee or administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the company, its affairs or its property or any part thereof;
 - (iii) no scheme, order, compromise or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the company are and continue to be suspended or restricted;
 - (iv) the company is able to pay its debts as they fall due;
 - (v) the application for registration is *bona fide* and not intended to defraud existing creditors of the company;
 - (vi) any consent or approval to the transfer required by any contract or undertaking entered into or given by the company has been obtained, released or waived, as the case may be;
 - (vii) the transfer is permitted by and has been approved in accordance with the charter documents of the company;
 - (viii) the laws of the jurisdiction of incorporation of the company permit the transfer by the company and have been or will be complied with; and
 - (ix) the company will, upon registration under the Act, cease to be incorporated, registered or exist under the laws of the place of its incorporation.

The declaration must also be accompanied by a statement of the assets and liabilities of the company made up to the latest practicable date before making the declaration.

The application to the Registrar must also be accompanied by the payment of a fee which is calculated on a sliding scale based on the registrant's proposed registered capital upon continuation into Cayman.

4. REGISTRATION

The Registrar will register the company as an exempted company limited by shares by way of continuation in Cayman, provided that:

- the company is constituted in a form, or substantially a form, which could have been incorporated as an exempted company limited by shares under the Act;
- the company has obtained all requisite licenses for carrying on business in Cayman (if it is, or will when registered by way of continuation be, carrying on its business in or from within Cayman); and
- the Registrar is not aware of any other reason why it would be against the public interest to register the company.

Upon registration, the Registrar will issue a certificate confirming that the company is registered by way of continuation as an exempted company and specifying the date of the registration. From the date of registration, the company continues as a body corporate for all purposes as if incorporated and registered as an exempted company under the Act.

It is possible to apply for the continuation to be effective as at a future date. In such circumstances, the resolutions should state the future effective date and the filing should be submitted at least one day in advance as certificates are processed manually.

Additional fees are also payable in such circumstances. There is also a procedure for provisional registration by way of continuation. Further information on this procedure is available on request.

5. OTHER CONSIDERATIONS FOR CONTINUING ENTITIES

- 5.1. During the process of the continuation, the registrant should consider whether it will need to be registered or licensed in the Cayman Islands under any other applicable law, such as the banking, insurance, trust, or private or mutual funds law. The registrant should also consider any relevant requirements and its obligations under the applicable Cayman regulatory regimes such as:
 - (a) Economic substance;
 - (b) Beneficial ownership;
 - (c) FATCA/CRS; and
 - (d) Anti-money laundering
- 5.2. These considerations will be dependent on the registrant's business activities, corporate structure, nature of business amongst other considerations, once the registrant has been registered in the Cayman Islands.

5.3. If the registrant must make any amendments or changes to its constitutional documents post-continuation this will need to be completed within 90 days of the registration into the Cayman Islands.

If you require further information on the continuations of entities into the Cayman Islands, please reach out to one of our Conyers Corporate lawyers for further information.

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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