

Cayman Islands Local
Companies Carrying on
Business in the Cayman
Islands

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Preface

This publication has been prepared for the assistance of those who are considering the formation of a local company in the Cayman Islands. It outlines in broad terms the requirements under Cayman Islands law for the establishment and operation of such entities. 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 the incorporation of a company in the Cayman Islands, 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 Conyers on these topics.

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1. INTRODUCTION

When establishing and registering companies in the Cayman Islands, a distinction is made between those companies which carry on business within the Islands and those companies which carry on business external to the Islands.

Ordinary companies (often referred to as “**Local Companies**”) are generally formed in the Cayman Islands by persons wishing to carry on business in the Cayman Islands. Local companies must be distinguished from non-resident companies¹ and exempted companies². A Local Company will not apply for a tax exemption certificate since its business is in the Cayman Islands only. Local Companies³ may carry on business in the Cayman Islands subject to being duly licensed or otherwise complying with the requirements of the Local Companies (Control) Act (the “**LCCA**”) and the Trade and Business Licensing Act (the “**TBLA**”). The LCCA imposes restrictions and controls over who may own and control a Local Company. The TBLA requires all entities carrying on business within the Cayman Islands to have a licence and pay a fee depending upon the type of trade or business practised.

This publication outlines the key statutory and corporate documents and annual requirements under the Companies Act (the “**Companies Act**”) and licensing under the LCCA and the TBLA that must be maintained for Local Companies in the Cayman Islands.

2. LOCAL COMPANIES CARRYING ON BUSINESS IN THE CAYMAN ISLANDS

2.1. General

The LCCA provides that no company may carry on business in the Cayman Islands unless it is so empowered by its memorandum of association and:

- (a) it is licensed under the Banks and Trusts Companies Act⁴;
- (b) it is operating under a franchise granted by the Government of the Cayman Islands;
- (c) it is a local or exempted company which is Caymanian⁵ controlled, at least sixty per cent of its shares are beneficially owned by Caymanians and at least sixty per cent of its directors are Caymanians (the “**60/40 Rule**”) or is a wholly owned subsidiary of such a company; or

¹ A non-resident ordinary company is an ordinary company which has applied to be non-resident pursuant to section 2(3) of the LCCA. An ordinary company may apply to be non-resident on the basis that it does not carry on business in the Cayman Islands.

² Exempted companies generally only carry on business in the Cayman Islands to further their business external to the Cayman Islands. They may, however, carry on a trade or business in the Cayman Islands if they hold an appropriate licence to do the same.

³ For this purpose, Local Company includes foreign companies who have registered in the Cayman Islands under Part IX of The Companies Act and which carry on business in the Cayman Islands subject to the requirements of certain Cayman Islands laws.

⁴ Further, pursuant to various regulatory laws of the Cayman Islands, entities licensed under the Mutual Funds Act, the Insurance Act, the Banks and Trust Companies Act, the Companies Management Act, and the Securities Investment Business Act respectively are exempt from the requirements of the LCCA and TBLA in respect of their licensed business.

⁵ For this purpose, the term Caymanian means a person who has Caymanian status.

- (d) the company has been granted a licence under the LCCA (a “**LCCA Licence**”) and under the TBLA, and is carrying on business in accordance with the terms and conditions imposed in such licence and not otherwise.

2.2. Carrying on business in the Cayman Islands

The term “carry on business in the Islands” is defined in the LCCA to include carrying on business of any kind or type whatsoever by that company, either alone or in partnership or otherwise, except:

- (a) carrying on, from a principal place of business in the Islands, business exterior to the Islands;
- (b) doing business in the Islands with any person, firm or corporation in furtherance only of the business of that company carried on exterior to the Islands;
- (c) buying or selling or otherwise dealing in shares, bonds, debenture stock, obligations, mortgages or other securities, issued or created by any exempted company, a foreign partnership or a resident corporation incorporated abroad;
- (d) transacting banking business in the Islands with and through a licensed bank;
- (e) effecting or concluding contracts in the Islands and exercising in the Islands all other powers, so far as may be necessary for the carrying on of the business of that company exterior to the Islands;
- (f) the business of an exempted company with another exempted company, a foreign partnership or a resident corporation incorporated abroad where the carrying on of business, in each case, is in furtherance only of business carried on exterior to the Islands;
- (g) the administration of mutual funds by a person licensed as a mutual fund administrator under the Mutual Funds Act; or
- (h) business carried on by a mutual fund, as defined by the Mutual Funds Act, in the course of the acquisition, holding, management or disposal of investments.

2.3. Companies which are Sixty per cent Caymanian Owned

Most Local Companies with a street front presence in the Cayman Islands are those that are permitted to do business in the Islands by virtue of the fact that they are in compliance with the 60/40 Rule. Where the Local Company meets the requirements of the 60/40 Rule, an LCCA Licence is not required.

The 60/40 Rule must be valid for all purposes; any arrangement, artifice or device which in any way waters down or seeks to circumvent this requirement will result in serious penalties.

2.4. Companies with Foreign Control

As noted above, a company which is not in compliance with the 60/40 Rule, whether a foreign registered company or an ordinary non-resident company (hereinafter referred to as “**Foreign Controlled**”), may carry on business in the Cayman Islands if it is so empowered by its memorandum of association and:

- (a) it is licensed under the LCCA and the TBLA and, at the relevant time, is carrying on such business in accordance with the terms and conditions imposed in such licence and not otherwise it is licensed under the Banks and Trust Companies Act or other regulatory laws⁶; or
- (b) it is a company operating under a franchise granted by the Government.

2.5. Companies Holding Property

Local Companies are permitted to hold land, as defined under the Companies Act, without further permission being required, however, companies holding property should note that any transfer or issuance of shares in the company can trigger stamp duty obligations.

3. CORPORATE RECORDS

The Companies Act prescribes certain documents and records that a Local Company must maintain.

3.1. Register of Members

Every company must keep a Register of Members containing the names and addresses of the members of the company, the number and category of shares held by each member, the amount paid or agreed to be paid on the shares, whether each category of shares carries voting rights (including the right to vote at general meetings and/or the right to appoint or remove directors) under the articles of association and, if so, whether such voting rights are conditional, the date on which each person became a member and the date on which each member ceases to be a member.

A company in default of complying with the requirement to maintain a Register of Members 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 Local Company must make its Register of Members available for inspection at its registered office, as outlined in section 44 of the Companies Act.

3.2. Register of Directors and Officers

Every company must keep a Register of Directors and Officers containing the names and addresses of its directors, including alternate directors, and officers, resignations and removals, dates of appointment and cessation of office.

A copy of the Register of Directors and Officers must be sent to the Registrar within sixty (60) days of the first appointment of any director or officer of the company.

Notification of any change to the Register of Directors and Officers must be sent to the Registrar within thirty (30) days of the change taking place.

⁶ See footnote 1 above.

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 authorized 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 make available the names of the current directors and, if applicable, alternate directors for inspection by any person upon payment of a fee of CI\$50/US\$61.

3.3. Register of Mortgages and Charges

Every company must keep a Register of Mortgages and Charges at its registered office. The Register of Mortgages and Charges must include a short description of the property mortgage or charged, the amount of the charge created and the names of the mortgagees or persons entitled to such charge.

The Register of Mortgages and Charges must be open to inspection by any creditor or member of the company at all reasonable times. If such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorising or knowingly and wilfully permitting such refusal shall incur a penalty of CI\$4 / US\$5 for every day during which such refusal continues and a Judge sitting in chambers may compel an immediate inspection of the register.

3.4. Minute Book

A collection of the various documents and records, generally referred to as the “Minute Book”, will normally contain, in addition to the registers noted above, the following items:

- (a) Certificate of Incorporation;
- (b) Memorandum and Articles of Association;
- (c) Minutes of all directors’ and members’ meetings (including written resolutions, if any) and any documents approved at these meetings;
- (d) Annual Returns;
- (e) Copies of share certificates; and
- (f) Financial statements.

3.5. Books of Account

The Companies Act instructs all companies to maintain proper books of account that give a true and fair view of the state of the company’s affairs. The accounts for each year should be maintained for a minimum of five years. The accounts do not currently have to be held at the registered office, however, the Cayman Tax Information Authority (the “TIA”) has power to order the company to make its accounts available at the registered office.

3.6. Beneficial Ownership Register

Unless exempted by, for example, being listed, each company has an obligation to maintain a register of its beneficial owners (the “**Register**”) to be kept at its registered office.

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.

Significant penalties apply for non-compliance with the beneficial ownership legislation. Where a company or legal entity is guilty of an offence, and it is proved that the offence was committed with the consent or concurrence of, or was attributable to wilful default on the part of a director or other officer concerned in the management of the company or legal entity, the director or other officer is guilty of the same offence and liable to the same penalty as the company or legal entity.

The Registrar of Companies also has the power to impose fines for a number of breaches under the Administrative Fines Regime. Penalties under the Administrative Fines Regime apply to 'in-scope' entities that 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. The Registrar of Companies may strike the company from the register if a fine remains unpaid by a company for ninety days.

3.7. Registered Particulars

The Registrar keeps a register of required particulars in respect of each company which includes, amongst other things, the company name, registered office, share capital, subscribers to the memorandum, date of the financial year end, and the nature of the company’s business. The Registrar will make this register available for inspection by any person upon payment of a fee of CI\$50/US\$61.

4. KEY ANNUAL REQUIREMENTS

Local Companies must hold an annual general meeting (“**AGM**”) of the shareholders in each calendar year. The rules relating to this should be contained in the Company’s Articles of Association. The Local Company must also record its financial year in the Articles of Association and circulate financial statements to all shareholders no later than 180 days after the end of the Company’s financial year. Local Companies must also notify the Department of International Tax Cooperation (“**DITC**”) with regards to economic substance (see 5. below).

5. ECONOMIC SUBSTANCE

Domestic companies are excluded from the definition of “relevant entity” and therefore not required to report on their activities under the International Tax Co-operation (Economic Substance) Act (the “**ES Act**”). However, the ES Act requires that all Cayman Islands entities notify the Cayman Islands 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”. This notification must be made by way of an Annual Economic Substance Notification and filed prior to a local company filing its annual return with the General Registry’s Cayman Business Portal.

A “Domestic Company” is a company that is not part of an MNE Group and that is:

- (a) only carrying on business in the Cayman Islands and which complies with section 4(1) of the LCCA or section 3(a) of the TBLA; or
- (b) a company referred to in section 80 of the Companies Act.

5.2. Relevant Activities

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.

5.3. Economic Substance Requirements

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

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

- (iii) 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.

Each relevant entity, whether or not carrying on a relevant activity will be required to file an annual report with the TIA in respect of their status under the ES Act.

5.4. 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 including, in relation to insurance business, (i) predicting or calculating risk or oversight of prediction or calculation of risk; (ii) insuring or re-insuring against risk; and (iii) preparing reports or returns, or both, to investors or the Cayman Islands Monetary Authority, or both. Reinsurance business is also in-scope for the ES Act. 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 DITC so that the DITC can independently verify the engagement and nature of the services provided.

6. LOCAL COMPANIES (CONTROL) ACT LICENSING

6.1. General

An applicant for a LCCA Licence must submit an application, in prescribed form, along with the requisite processing and licensing fees to the Trade and Business Licensing Board established under the TBLA (the "**Board**") as the Board is responsible for the provision of licences under both the LCCA and the TBLA. Licensees are required to pay prescribed annual licence fees on the grant and on or before the anniversary date of the grant of the initial licence. Licences are generally granted for a maximum period of twelve years.

An application for a licence granted under the TBLA ("**TBLA Licence**") should be submitted at the same time (see further discussion below for Trade and Business Licence requirements) as the application for a LCCA Licence.

6.2. Cover Letter

A cover letter must be provided with the application form setting out the details of the proposed business. It should also address the criteria that will be taken into account by the Board when considering the application. The LCCA provides that the Board must, when determining whether to grant a LCCA Licence, consider the following:

- (a) the economic situation of the Islands and the due protection of persons already engaged in business in the Islands;
- (b) the nature and previous conduct of the company and the persons having an interest in that company whether as directors, shareholders or otherwise;
- (c) the advantage or disadvantage which may result from that company carrying on business in the Islands;
- (d) the desirability of retaining in the control of Caymanians the economic resources of the Islands;
- (e) the efforts made by the company to obtain Caymanian participation;
- (f) the number of additional people from outside the Islands who would be required to reside in the Islands were the application to be granted;
- (g) whether the company, its directors and employees have and are likely to continue to have the necessary professional, technical and other knowledge to carry on the business proposed by the company;
- (h) the finances of the company and the economic feasibility of its plans;
- (i) whether the true ownership and control of the company have been satisfactorily established; and
- (j) the environmental and social consequences that could result from the carrying on of the business proposed to be carried on by the company.

The applicant's covering letter, therefore, should address the foregoing matters.

6.3. Return of Shareholdings

A Local Company must submit a return of shareholdings prior to commencing business and annually thereafter. The return of shareholdings must set out the following information:

- (a) the number and par value of each class of shares issued by the company;
- (b) the voting and other rights attached to each class of shares;
- (c) a statement of the number and par value of each class of shares beneficially owned by Caymanians;
- (d) a statement of the number and par value of each class of shares held by other persons; and
- (e) a statement that the effective control of the company is not, either directly or indirectly or by reason of any artifice or device, vested in or permitted to pass to persons other than as specifically shown in the return of shareholdings.

6.4. Documents

Certified copies of the following documents should also be provided:

- (a) Certificate of Incorporation;
- (b) Certificate of Change of Name (if necessary);
- (c) Memorandum and Articles of Association; and
- (d) Register for each of the directors, officers and members.

6.5. Advertisements

The LCCA requires the Board to consider the applicant's efforts to obtain Caymanian participation in the company. Advertisements in the local media seeking such participation must be posted prior to submitting an application. The applicant should provide, with the application, proof of such advertisements and should outline how it has dealt with any responses.

6.6. References

The Board is also required to take into account the previous conduct of the persons having an interest in the company. A licence application must therefore be accompanied by, with respect to every non-Caymanian director and shareholder:

- (a) a character reference from a person who is not related to, and who has known, the person concerned for at least three years;
- (b) a financial reference from a bank or other similar institution where an account has been maintained for not less than three years;
- (c) a police clearance certificate from the place where the person concerned has lived for the previous six months; and
- (d) a certified true copy of the picture page of the individual's passport.

7. LOCAL COMPANIES' ONGOING REQUIREMENTS UNDER THE LCCA

7.1. Shareholdings

As noted above, a Local Company is required to submit a return of shareholdings annually.

Consent is also required in respect of an allotment or transfer. An application for an allotment of shares in a Local Company must set out whether the applicant is Caymanian or not. Similarly, an application in respect of a transfer must set out whether both the transferor and the transferee are Caymanian.

No allotment or transfer of shares in a Local Company shall be made or registered if it will result in the number of shares beneficially owned by persons who are not Caymanian exceeding forty per cent of the total number of the shares issued by the company, unless written consent is given by the Board.

Whenever an allotment or a transfer of shares is made or registered, as the case may be, the company must file a return in accordance with the LCCA.

7.2. Fees

As stated above, every licensed company is required to pay a government licence fee on the grant of the licence and annually thereafter. Failure to pay the fee may result in summary conviction and fines being imposed.

7.3. Information

The Board may also require the directors of a Local Company to forward to it such information regarding the directors of, and shareholdings (including the classes of shares and the voting and other rights attached to each class) in, the company as the Board may specify. Failure to provide the information requested by the Board or to verify ownership requirements in compliance with the LCCA may result in the company's LCCA Licence being revoked. It may also result in criminal charges and, on conviction, fines and/or imprisonment.

8. TRADE AND BUSINESS LICENSING

8.1. General

An individual or corporation engaging in business within the Cayman Islands will also generally be required to be licensed under the TBLA. Pursuant to the TBLA, the applicant, if an individual, must either be Caymanian, be the holder of a residency certificate conferring such a right or hold a work permit; the applicant, if a corporation, must either satisfy the 60/40 Rule or hold an LCCA Licence. Banking, trust business, insurance, mutual funds, mutual fund administration, corporate management and securities investment business are not dealt with under the TBLA, but rather are licensed under the respective relevant statutes (as noted above).

The TBLA does not apply to the sale of agricultural products by Caymanian producers; artisans, craftsmen and other persons who do not carry on a business of their own but are themselves employed by other persons; self-employed Caymanian fisherman and corporations or bodies formed for purposes of social or public welfare, religion, charity, art or science and that applies its income and profits solely for promoting such purposes and does not permit the payment of any dividends to its members.

The application for a TBLA Licence should be submitted, in the prescribed form, to the Board at the same time as the application for the LCCA Licence (as noted above). A licence is required for each type of trade or business that the licensee is carrying on and in respect of each location from which such trade or business is being carried on.

8.2. Application

An application for a TBLA licence must be accompanied by the application fee and the licence or renewal fee (or a waiver of the licence fee if applicable) as well as the following:

- (a) in the case of a company the following particulars:

- (i) the number and par value of each class of shares issued by the company;
 - (ii) the voting and other rights attached to each class of shares;
 - (iii) a statement of the number and par value of each class of shares beneficially owned by Caymanians;
 - (iv) a statement of the number and part value of each class of shares held by persons who are not Caymanian; and
 - (v) a statement that the effective control, benefit and effective control of the company is not either directly or indirectly or by reason of any artifice or device vested in or permitted to pass to persons other than as specifically shown in the return of shareholdings;
- (b) in the case of a company that is at least one year old, a stamped copy of the company's annual return and a return of shareholdings containing the particulars listed in (i)-(v) above;
- (c) evidence of status as a Caymanian, if any, of:
- (i) the applicant, where the applicant is an individual;
 - (ii) any individual who has a legal or beneficial interest in the company, where the applicant is a company; or
 - (iii) each individual who is a partner in the firm, where the applicant is a firm;
- (d) in the case of an applicant who is not a Caymanian, a reference for the applicant from a financial institution or a current bill in the applicant's name for the provision of utility services;
- (e) in the case of an application for the grant of a licence only, a police clearance certificate for:
- (i) any applicant, where the applicant is an individual;
 - (ii) any individual who has a significant interest in, or who is a director of, the company, where the applicant is a company other than a listed entity; or
 - (iii) any individual who is a partner in the firm, where the applicant is a firm;
- (f) in the case of an application for the grant of a licence only, a bank reference for the applicant;
- (g) where the applicant will be carrying on business in a public place, evidence of the approval of the relevant authority to carry on business in such a place;
- (h) planning permission, where required (see further discussion below); and

- (i) evidence of compliance with Cayman law relating to pensions and health insurance, where the application is for renewal.

A TBLA licence will be evidenced by a certificate which must be framed and publicly displayed on the premises to which such licence relates.

8.3. Business Address

As with the LCCA Licence application, the full address, including street number, as well as the block and parcel number of the location of the business should be provided on the application form.

8.4. Government Employees

Where the applicant, or a director or shareholder of the company for which the application is being made, is a civil servant (including Cayman Islands police officers), permission must be obtained in writing from the relevant civil service Chief Officer. Employees of statutory bodies such as the Water Authority and Civil Aviation Authority should consult the head of their organization for guidance.

8.5. Inspection

Certain types of business premises require inspection by one or more government departments or agencies prior to licensing and/or prior to commencing business. Such businesses include, but are not limited to, mobile food vendors, restaurants, beauty salons, barber shops, horse stables, storage of hazardous material, and mobile car washes. If you are in doubt as to whether your business requires inspection, your Conyers contact can provide additional information upon request.

8.6. Planning Permission

Planning permission may be required for an established location if the intended use differs significantly from that for which it was originally granted permission. Planning issues relevant to change of use should be fully explored prior to applying for a TBLA Licence.

8.7. Business from a Residential Address

The use of a home as an office may be permitted subject to conditions restricting or limiting the scope of activities that may be performed at that address. If the home office is located in an apartment or condominium, written approval must be obtained from the landlord and/or manager of the apartment complex or strata corporation and provided with the licence application. Further details regarding applicable conditions are available upon request.

The Board, however, is generally reluctant to allow private homes to be used as a place of business and applicants should ordinarily obtain a business address and location appropriate for their proposed activities.

8.8. Standard Conditions

The Board maintains an extensive list of standard conditions that are typically imposed upon the grant or renewal of various categories of licence. The Board, however, retains the discretion to impose additional conditions as it sees fit. Further details of this list are available upon request.

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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