

UPDATE

Migration to the Cayman Islands and the SEC private fund adviser rules

Following recent proposed changes to the regulation of private fund advisers in the United States, we have seen an increase in enquiries in relation to migrating US entities to the Cayman Islands. This update provides a high-level summary of the process, with hyperlinks to more detailed entity-specific guides.

Introduction

The recent adoption of new and amended rules applicable to advisers of private funds (the **Private Fund Adviser Rules**) by the US Securities and Exchange Commission's (SEC), clarified in the [Adopting Release](#) that in most cases the Private Fund Adviser Rules would not apply to advisers located outside of the US in respect of non-US private funds. As a result, we have seen an uptick in clients exploring the mechanisms of migrating US fund vehicles to the Cayman Islands.

This update provides an overview of the types of entities that can be migrated into the Cayman Islands by way of continuation or re-registration. A brief summary of the process for each entity type is set out below. Full guides are available for each and can be accessed [here](#).

Exempted company

A company incorporated, registered or existing with limited liability and a share capital in a jurisdiction outside of the Cayman Islands may apply to the Registrar of Companies in the Cayman Islands (the **Companies Registrar**) to be registered by way of continuation as an exempted company limited by shares provided:

- it is incorporated, registered or existing in a jurisdiction which permits such a transfer;
- its charter documents permit such a transfer;
- it is constituted in a form which could have been incorporated as an exempted company under the Companies Act (as amended) of the Cayman Islands; and
- the Companies Registrar is not aware of any reason of public interest why it should not be registered.

The application process is straightforward with the following documents to be filed:

- a certified copy of the company's certificate of formation or incorporation from the jurisdiction of origin;
- a certificate of good standing in respect of the company from the jurisdiction of origin;
- a certified copy of the company's constitutional documents from the jurisdiction of origin;
- a register of current directors of the company;
- an undertaking that notice of the transfer has been or will be given within 21 days to the secured creditors of the company;
- a declaration or affidavit by a director of the company confirming certain matters in relation to the company (see our [full guide](#));
- a statement of assets and liabilities of the company up to the latest practicable date before the declaration or affidavit; and
- notice of the address of the company's proposed registered office in the Cayman Islands,

together with payment of the registration fee which is determined according to the share capital of the company.

The Companies Registrar will grant the registration as of the date the documents are filed and will usually revert with confirmation within three to five business days of receipt of the documentation.

Limited liability company

A foreign entity which is incorporated, registered, formed or existing in a jurisdiction outside the Cayman Islands, may apply to the Companies Registrar to be registered by way of continuation as a limited liability company (**LLC**) in the Cayman Islands under the equivalent conditions as those for an exempted company provided it has a separate legal personality.

The process and timing of the application is similar to that of an exempted company, with the following documents required:

- an application containing the date on which, and jurisdiction where, the entity was formed, registered or incorporated, the current name of the entity and proposed name upon registration, the proposed date of continuation and the jurisdiction of the entity's principal place of business;
- a registration statement containing the following in respect of the LLC:
 - name;
 - registered office address in the Cayman Islands;
 - names and addresses of the initial members;
 - nature of business;
 - financial year end date;
 - term (if applicable); and
 - a declaration that the LLC will not undertake business with the public in the Cayman Islands other than so far as may be necessary to conduct business exterior to the Cayman Islands;
- an undertaking that a notice of the transfer has been or will be given within 21 days to the secured creditors of the entity;
- a voluntary declaration or affidavit by an authorised person on behalf of the entity confirming certain matters in relation to the entity (see our [full guide](#)); and
- a statement of assets and liabilities of the entity up to the latest practicable date before the voluntary declaration or affidavit,

together with payment of the registration fee of US\$976.

Exempted limited partnership

A partnership established under the laws of a jurisdiction outside the Cayman Islands may apply to the Registrar of Exempted Limited Partnerships (the **Partnerships Registrar**) to be re-registered as an exempted limited partnership (**ELP**) in the Cayman Islands. The process of re-registration of a partnership is less onerous than that of a transfer by way of continuation of a company.

As a preliminary step the partnership must ensure that, where necessary, appropriate amendments are made to its partnership agreement to comply with the Exempted Limited Partnership Act (as amended) of the Cayman Islands.

The application for re-registration is made by filing a statement signed by or on behalf of the general partner of the partnership containing the following in respect of the ELP:

- name;
- general nature of business;
- registered office address in the Cayman Islands;
- term (if applicable) and the date of its commencement;
- full name and address of the general partner; and
- a declaration that the ELP will not undertake business with the public in the Cayman Islands other than so far as may be necessary to conduct business exterior to the Cayman Islands,

together with payment of the registration fee of US\$1,220.

The Partnerships Registrar will grant the registration as of the date that the statement is filed and will usually revert with confirmation within three to five business days of receipt.

Regulatory considerations and further information

Before making an application to migrate to the Cayman Islands, it should be noted that it is likely that the relevant fund vehicle will fall to be regulated under either the Private Funds Act or the Mutual Funds Act in the Cayman Islands (depending on whether it is open-ended or closed-ended). For more information on this process, please see our guides to [Private funds in the Cayman Islands](#) and [Mutual funds in the Cayman Islands](#).

For more detailed individual guides on the process and documentation required for the migration of each of an exempted company, LLC or partnership, as applicable, please click [here](#).

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