

# Carrying on business in the Cayman Islands

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## Introduction

Generally, any person that carries on a trade or business in the Cayman Islands must hold a licence (a **T&B licence**) issued under the Trade and Business Licensing Act (as amended, the **T&BL Act**) in respect of each location from which such trade or business is being carried on.

To obtain a T&B licence to carry on business in the Cayman Islands, a company will need to be able to demonstrate that it:

- is Caymanian owned and controlled<sup>1</sup>;
- holds, or has applied for, a licence (a **LCC licence**) under the Local Companies (Control) Act (as amended, the **LCC Act**); or
- is a non-LCC Act company<sup>2</sup>.

This guide provides an overview of the requirements for, and implications of, obtaining a T&B licence and a LCC licence in order to conduct business in the Cayman Islands. There are circumstances in which a company may be required to hold a licence under the T&BL Act in order to carry on business from within the Cayman Islands, as opposed to in the Cayman Islands. Please contact us if you would like advice in this regard.

## T&B licence

### Who is required to obtain a T&B licence?

Any person that carries on a trade or business in the Cayman Islands must apply for, and hold, a T&B licence, unless excluded from application of the T&BL Act.

The T&BL Act does not apply to:

- any trade or business licensed or registered to be carried on as a trade or business under another Cayman Islands law without reference to the T&BL Act;
- Caymanians who produce and sell agricultural products or cottage industry products;
- any Caymanian who is self-employed and who creates for sale artistic, dramatic, musical or literary works;
- 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 fishermen; and

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<sup>1</sup> Under the LCC Act, a company is considered Caymanian owned and controlled if at least 60% of a company's shares are beneficially owned by Caymanians and at least 60% of its directors are Caymanians. 'Caymanian' means a person who has Caymanian status within the meaning assigned to that expression by section 20 of the Immigration Act (as amended) of the Cayman Islands.

<sup>2</sup> This term is defined in the T&BL Act as a company exempted by the Cabinet under section 4(3) of the LCC Act. The Cabinet will only grant an exemption in exceptional circumstances, after considering any public interest issues.

- any corporation or body which satisfies the Trade and Business Licensing Board (the **Board**) that it has been formed for purposes of social or public welfare, religion, charity, art or science and that it applies its income and profits solely for promoting such purposes and does not permit the payment of any dividends to its members.

### What is trade or business?

For purposes of the T&BL Act, trade or business includes:

- a trade or business in a category set out in Part B of Schedule 1 to the T&BL Act (as listed in the **Schedule** to this Guide) and any other business or trade not otherwise specified in which a service is offered for reward;
- the carrying out of the following, whether online, seasonally, occasionally or otherwise:
  - a profession, calling, vocation or occupation or trade;
  - a manufacture, mercantile, wholesale or retail operation; or
  - any kind of undertaking; and
- the carrying out of property development.

### What is the T&B licence application process?

Under the T&BL Act, an applicant for a T&B licence must submit an application to the Board through the Department of Commerce and Investment (the **DCI**) in the **prescribed form**, together with, among other things:

- evidence of Caymanian status, if any, of the applicant, the applicant's legal or beneficial owners, or the applicant's partners (as applicable);
- if the applicant is not Caymanian, a reference from a financial institution or a current utility bill in the applicant's name;
- 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;
- a non-refundable application fee of CI\$75 (US\$92);
- the annual licence fee specified in Schedule 1 to the T&BL Act (which varies depending on the activity to be carried out by the applicant);
- where the applicant is a company:
  - certain particulars regarding the shares issued by the company, the voting and other rights attached to such shares, the Caymanian and non-Caymanian holders of such shares and a statement as to the effective control and benefit of the applicant; and
  - a copy of the applicant's annual return and a return of shareholdings (if the applicant was registered 12 or more months prior to the application);
- subject to certain exceptions, if requested by the Board, a police clearance certificate in respect of the applicant, any individual who has a significant interest in, or who is a director of, the applicant or the applicant's partners (as applicable); and
- such other information relating to the application as may be deemed necessary by the Board for the consideration of the application or as may be prescribed.<sup>3</sup>

The Board may, within 28 days of the receipt of an application, request additional information from the applicant that it deems necessary for the purpose of considering the application.

### How long does it take for a T&B licence application to be processed?

Under the T&BL Act, the Board must, within 90 days of submission of an application for a new T&B licence or the receipt of additional information requested by the Board (whichever is later), grant or refuse the licence, notify the applicant of the grant or refusal and give written reasons where the licence is refused.

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<sup>3</sup> The Board's T&B licence application checklist, which sets out additional documentation that must be submitted in support of a T&B licence application may be accessed [here](#).

In practice, application turnaround time is often quicker than the timeline prescribed by statute and it is possible to reduce the period to five business days by the payment of an expedited licence fee of CI\$400 (US\$488).

### What are grounds for refusal of a T&B licence?

Under the T&BL Act, the Board must not grant a T&B licence under certain circumstances, including where the Board is satisfied that:

- the applicant is a person who is not Caymanian and does not hold a work permit;
- the applicant is adjudged bankrupt or suspended payment to or compounded with the applicant's creditors;
- the applicant is a company that is not Caymanian owned and controlled, the holder of a LCC licence or a non-LCC Act company;
- the Chief Medical Officer has, on the grounds of public health in relation to the premises in which the applicant proposes to carry on the trade or business, objected to the grant of a T&B licence to the applicant; or
- the grant of the T&B licence would be contrary to the public interest.

In addition, the Board may refuse to grant a T&B licence where, in the Board's opinion, the person is intending to carry on trade or business under a name which is likely to mislead persons because, for example, it is identical to the name of any other person carrying on trade or business (whether in the Cayman Islands or not) or it is calculated to suggest, falsely, the patronage of or connection with some person or authority (whether in the Cayman Islands or not).

### For how long is a T&B licence valid?

A T&B licence is valid for the period specified in the licence, generally twelve months, and is renewable annually on the anniversary of the licence date.

### What are the ongoing obligations of a T&B licensee under the T&BL Act?

Under the T&BL Act, a T&B licensee is required, among other things, to:

- comply with the conditions and restrictions attached to its T&B licence;
- frame and publicly display the T&B licence on the premises to which the licence relates;
- apply to renew its T&B licence at least 28 days before (but not more than three months before) the licence expiry date and pay its renewal fee within 28 days after the licence expiry date;
- notify the Board of any change in address, corporate identity or scope of its trade or business within 30 days after such change; and
- notify the Board and surrender its T&B licence within 30 days of voluntarily ceasing to carry on a trade or business.

## LCC licence

### Who is required to obtain a LCC licence?

Any company that carries on a trade or business in the Cayman Islands and that is not Caymanian owned and controlled or a non-LCC Act company must apply for, and hold, a LCC licence.

### What must an applicant do before submitting a LCC licence application?

Before submitting a LCC licence application, an applicant must run advertisements in the local media seeking Caymanian participation in the applicant. The advertisements must:

- be published in at least two issues of a newspaper published and circulated in the Cayman Islands with at least seven days but not more than ten days between the issues;
- include details regarding:
  - the name, nature and location of the proposed or existing business, project or development;
  - the total capital investment required; and
  - where the applicant's proposed business activities are to be phased, details as to the capital requirements and timing of each phase; and

- specifically instruct Caymanian investors to send letters of their interest both to the applicant and the Board.

### What is the LCC licence application process?

Under the LCC Act, an application for a LCC licence must be made to the Board in the **form** and manner specified by the Board. The application must be accompanied by:

- an application fee of CI\$500 (US\$610);
- a LCC licence fee of CI\$12,500.00 (US\$15,244);
- a copy of the applicant's memorandum and articles of association;
- a statement setting out the nature of the business the applicant proposes to carry on; and
- such other information as the Board may require.<sup>4</sup>

The LCC licence application should be submitted to the Board through the DCI simultaneously with the corresponding T&B licence application.

### How long does it take for a LCC licence application to be processed?

There is no timeline prescribed by statute for the Board to grant or refuse a LCC licence. However, in practice a LCC licence application will be considered at the same time as the corresponding T&B licence application. See 'How long does it take for a T&B licence application to be processed' above.

### What factors does the Board consider when deciding whether or not to grant a LCC licence?

Under the LCC Act, subject to any general directions which the Cabinet may give, the Board must, in deciding whether or not to grant a LCC licence, have regard to, among other things, the following matters:

- the economic situation of the Cayman Islands and the due protection of persons already engaged in business in the Cayman Islands;
- the nature and previous conduct of the applicant and the persons having an interest in that applicant whether as directors, shareholders or otherwise;
- the advantage or disadvantage which may result from that applicant carrying on business in the Cayman Islands;
- the desirability of retaining the economic resources of the Cayman Islands in the control of Caymanians;
- the efforts made by the applicant to obtain Caymanian participation;
- the number of additional people from outside the Cayman Islands who would be required to reside in the Cayman Islands were the application to be granted;
- whether the applicant, 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 applicant;
- the finances of the applicant and the economic feasibility of its plans;
- whether the true ownership and control of the applicant have been satisfactorily established; and
- the environmental and social consequences that could result from the carrying on of the business proposed to be carried on by the applicant.

If the Board is of the opinion that it would not be in the public interest to grant a LCC licence, it may refuse to grant one without giving any reason for such refusal.

Under the LCC Act, the Cabinet may, from time to time, issue policy directions to the Board for its guidance in the exercise of its powers, duties and functions under the LCC Act, and it is the duty of the Board to carry out such directions. The Board currently adheres to the following general policies:

- Every application will be considered on its own merit and although there are, at present, no specific businesses reserved exclusively for Caymanians by law or by direction from the Governor-in-Cabinet,

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<sup>4</sup> The Board's LCC licence application checklist, which sets out additional documentation that must be submitted in support of a LCC licence application, may be accessed [here](#). Such additional documentation includes copies of the advertisements seeking Caymanian participation in the applicant and details of the letters of interest received in response.

the Board is required by law and will have regard to the due protection of persons already engaged in business in the Cayman Islands and in particular Caymanians. Consequently, the Board will take into account while considering any application whether the business or proposed business of the applicant is one that has been traditionally enjoyed primarily by Caymanians or is one in which Caymanians have a substantial representation.

- Foreign investment in the Cayman Islands will continue to be encouraged and welcomed, and licences will continue to be granted where it is appropriate to do so.

#### **For how long is a LCC licence valid?**

Under the LCC Act, a LCC licence may not be issued for longer than 12 years without the consent of the Cabinet.

#### **What are the ongoing obligations of a LCC licensee under the LCC Act?**

Under the LCC Act, a LCC licensee is required to, among other things:

- comply with the conditions subject to which the LCC licence was granted;
- comply with any directive or requirement of the Board; and
- pay an annual licence fee of CI\$12,500 (US\$15,244) on or before each anniversary of the date on which the LCC licence was granted.

#### **Contact**

A full list of contacts specialising in the T&BL Act and LCC Act can be found [here](#).

## Schedule

### Trade and business categories listed in Part B of Schedule 1 to the T&BL Act

<b>Professional</b>		
accountant	accountancy firm	agency providing temporary employees
agent (airline, shipping, travel, salesman, immigration, advertising, consultant)	auctioneer	broker
computer specialist	firm of professionals in the construction sector	property developer
real estate agent or agency	recruitment and selection agency	
<b>Trades and technical</b>		
baker	barber	building and engineering trade
car and scooter rental	car wash	courier services
dealer in precious metals and stones	graphic and web design	gardening
health and fitness business	hairstylist or massaging spa operator	janitorial
job printer	launderer	music and dance schools
payday lending	photography and videography services	pre-school care and child care
property management or maintenance	recycling	retailer
security and investigation	service station, garage or marina	shoe repairs
super cargo	tailor	training (education and career guidance)
undertaker	weddings, event planning, disc jockeys, entertainment	
<b>Commerce</b>		
bulk fuel installation	contractor	merchants and wholesaler
restaurateur	second hand dealer	vendor of intoxicating liquor
<b>Industry, agriculture and primary activities</b>		
agricultural production and agro based industries	block making, quarrying and building materials	jewellery manufacture
miscellaneous manufacture	newspaper printer	transportation (land or sea)
utility services		

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](https://www.mourant.com). © 2023 MOURANT OZANNES ALL RIGHTS RESERVED