

Cayman Islands exempted companies

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Introduction

A Cayman Islands exempted company limited by shares is a flexible and versatile vehicle that is quick to set up and easy to maintain. As such, exempted companies formed under the Companies Act (as amended, the **Companies Act**) are the most commonly used company for offshore vehicles in the Cayman Islands.

A company may apply to be registered as an exempted company if its operations will be conducted mainly outside of the Cayman Islands or pursuant to a licence to carry on business in the Cayman Islands. The incorporating subscriber must provide the Registrar of Companies (the **Registrar**) with a signed declaration to that effect.

Companies which are not registered as 'exempted' under the Companies Act are commonly known as 'ordinary' resident or non-resident companies. Limited liability companies or 'LLCs' may also be formed under the Limited Liabilities Companies Act (as amended). Please see our guide to [Cayman Islands limited liability companies](#) for further details. This guide will focus on exempted companies and any references to a 'company' in this guide include an exempted company.

Advantages

The Companies Act offers an exempted company a number of advantages which make it a desirable vehicle for those incorporating in the Cayman Islands for the purpose of engaging in business outside of the Cayman Islands. These advantages include:

- no requirement to keep its register of members open for public inspection;
- no requirement to hold an annual general meeting;
- no requirement for Cayman resident directors;
- no requirement to include the word 'Limited' or the abbreviation 'Ltd.' after its name;
- shares may be issued with nominal or no par value;
- capital may be expressed in any currency or in multiple currencies;
- flexibility to transfer the company by way of continuation from another jurisdiction to the Cayman Islands and *vice versa*; and
- flexibility to alter the memorandum and articles of association without restriction (although the Registrar must be notified of any changes).

An exempted company may also apply for a written undertaking that should taxes ever be introduced in the Cayman Islands, the company will remain tax-free for a period of up to 30 years from the date of the undertaking.

Prohibitions

An exempted company is prohibited from: (a) trading in the Cayman Islands except in furtherance of its business carried on outside of the Cayman Islands (unless it holds a licence to carry on business in the

Cayman Islands under any applicable law); and (b) making any invitation to the public in the Cayman Islands to subscribe for any of its securities unless it is listed on the Cayman Islands Stock Exchange.

Incorporation

Any one or more persons associated for any lawful purpose may generally incorporate a Cayman Islands company.

Timing

Cayman Islands companies can be formed on a same day basis. No prior Government consents or approvals are required. Incorporation documents will usually be returned by the Registrar within five to seven working days, although there is an express service available (for an additional fee) under which documents will be returned within 24 hours.

Name

There are no restrictions on the choice of name save that it must not resemble too closely a name already on the register. It is advisable to check name availability in advance. Certain words are restricted without the requisite regulatory approval, such as bank, insurance, etc.

Share capital

The fees payable to the Cayman Islands Government on incorporation are based on the authorised share capital of the company. There is no minimum or maximum amount prescribed for authorised, issued or paid up share capital (although at least one share must be in issue at all times). Companies may have share capital designated in various currencies and may issue fractional shares.

A company may, if authorised to do so by its articles, purchase its own shares, including any redeemable shares. Shares may be redeemed or purchased out of the profits of the company, or out of capital provided that, in the case of a payment out of capital, the company remains solvent.

Memorandum and articles of association

The memorandum of association is required to contain certain basic information about the company, including its registered office, its authorised share capital and the objects for which it is incorporated. The objects are typically stated as being unrestricted, which means the company is able to carry on any lawful business, as long as it is carried out mainly outside the Cayman Islands. If the company intends to carry on local business, then an ordinary resident company is required.

The memorandum of association must be filed with the Registrar, together with the following details (which will be open to inspection by the public for a fee):

- the name of the company (and, if applicable, the dual foreign name and translated name);
- the jurisdiction of the registered office, being the Cayman Islands;
- the company number;
- the dates of execution and filing of the memorandum of association;
- the names and addresses of the initial subscribers to the memorandum (and the number of shares taken by each subscriber);
- the amount of capital of the company (and, in the case of a company having its share capital divided into shares of a nominal or par value, the number of shares into which it is divided and the fixed amounts thereof);
- the nature of the business;
- the date of the company's financial year end; and
- if applicable, a statement that the company is limited by guarantee or is unlimited (such companies may omit any particulars in this list which are irrelevant or inappropriate).

The articles of association set out the rights attaching to the company's shares and its internal rules of governance (including powers of directors, conduct of meetings, etc). They are generally drafted so as to provide a permissive and flexible governance regime. The company's articles of association will be filed with the memorandum of association.

Registered office

A company is required to maintain a registered office in the Cayman Islands, which fulfils certain statutory functions (see '[Continuing obligations](#)' below). Our affiliate Mourant Governance Services (Cayman) (**MourantGS**) will typically provide the registered office for companies we incorporate; this allows easy access to corporate documents when providing legal advice.

Any member of the public shall be entitled to be informed by the Registrar upon request of the location of the registered office of any company.

Directors

A company is required to have at least one director. There are no statutory restrictions on the minimum or maximum number of directors of a Cayman Islands company, although for registered funds the Cayman Islands Monetary Authority (**CIMA**) requires at least two individual directors. Directors need not be resident in the Cayman Islands nor have any other qualifications. However, directors of companies acting as mutual funds or carrying out securities investment business are required to be registered with or licensed by CIMA under the Director Registration and Licensing Act (as amended). See our guide on the [Director Registration and Licensing Regime in the Cayman Islands](#) for more details.

Decisions of directors are taken by a simple majority at board meetings or unanimously by written resolution. The manner of appointment of directors and the number of directors is regulated by the articles of association. It is possible to have member managed exempted companies; however, the memorandum and articles of association for these companies require special drafting.

Company secretary

There is no requirement under Cayman Islands law for a company secretary. If a company prefers to have a company secretary, it will generally be appointed by the board of directors. Registered office providers are able to undertake this function.

Continuing obligations

Registers

Register of members: an exempted company is required to keep a register of members containing the names and addresses of the members of the company. The register of members need not be, but is usually, kept at the registered office. It is not open to inspection by the public.

Register of directors: an exempted company must maintain a register of directors and officers at its registered office. A copy of the register of directors must be filed with the Registrar, with any change to be filed within 30 days. The Registrar will maintain a list of the names of current directors, and any alternates, of a company which is open to public inspection for a fee.

Register of mortgages and charges: an exempted company must maintain a register of all mortgages and charges over its property at its registered office. This register does not need to be filed with the Registrar.

Beneficial ownership: unless falling within an exemption, an exempted company must maintain a beneficial ownership register at its registered office. Further details are set out in '[Beneficial ownership](#)' below.

Accounts

An exempted company is not obliged to have its accounts audited, or to file annual accounts with the Cayman Islands authorities (unless it is a registered fund or otherwise licensed or regulated). However, an exempted company is required to keep books of account which give a true and correct view of its affairs. The books of account can be held anywhere.

The Banks and Trust Companies Act, Insurance Act, Mutual Funds Act, Private Funds Act and Companies Management Act (each as amended) contain provisions for the filing of audited accounts for companies registered or licensed under those laws. In all other cases, the articles of association will usually set out what is required by the company in respect of accounts.

Filings

An exempted company must notify the Registrar of any changes to its memorandum and articles of association or its directors and officers. It must also pay an annual fee and file a short declaration in January each year. The declaration confirms that the company has notified the Registrar of any changes to its memorandum or articles of association and has not conducted any local business within the Cayman Islands. As part of its service as registered office provider, MourantGS will attend to any filings required under Cayman Islands laws (provided it is first notified by the company of the matter in respect of which the filing is required).

Meetings

An exempted company is not required to hold annual general meetings of its shareholders, although meetings can be held either within or outside the Cayman Islands if desired. The board of directors is not required to meet in the Cayman Islands and, generally speaking, is free to discharge its responsibilities as it considers fit.

Should it be necessary for shareholders to meet on special matters during the year, an extraordinary general meeting may be called. Notice requirements for meetings are generally prescribed by the articles of association of the company. If the articles of association contain no provisions as to notice, then five days' notice is required under the Companies Act. There are no restrictions under the Companies Act on the place where meetings may be held.

Resolutions at company meetings are of two kinds, ordinary and special. Ordinary resolutions may be passed by a simple majority of those voting in person or by proxy, and are used for all matters not requiring a special resolution. Special resolutions require a two thirds majority of those voting, unless a greater majority is specified in the company's articles of association, and are required, for example, to alter the articles of association, reduce the share capital or change the name of the company. Written resolutions of members are permitted.

Economic substance

Every entity incorporated or registered in the Cayman Islands will be required to notify the Cayman Islands Tax Information Authority (TIA) annually, via the General Registry and as a prerequisite to filing the annual return, of whether or not it is carrying on a 'relevant activity' for the purposes of the Cayman Islands economic substance regime. The definition of 'relevant activity' excludes 'investment fund business' (meaning the business of operating as an investment fund), and entities that are tax resident outside of the Cayman Islands. Such entities will still be required to make a corresponding notification to that effect.

Please see our guide on [Economic substance in the Cayman Islands](#) for further details.

Beneficial ownership

Companies incorporated or registered by way of continuation under the Companies Act are required to maintain a beneficial ownership register (BOR) containing adequate, accurate and current particulars of 'registrable persons' in relation to the entity.

Registrable persons will include:

- an individual 'beneficial owner' holding, directly or indirectly, 25% or more of the shares or voting rights in the company or holding, directly or indirectly, the right to appoint or remove a majority of the board of directors of the company; or
- a 'relevant legal entity' that is incorporated, formed or registered (including by way of continuation as a foreign company) in the Cayman Islands under the law of the Cayman Islands, which would be a beneficial owner if it were an individual.

BORs are not public documents, though BOR information may be searched by certain official bodies.

The BOR must be kept at the registered office of the in-scope entity in the Cayman Islands. The company's corporate services provider (usually the registered office provider) will maintain the BOR or, if the company is exempt from the BOR requirements, file the written confirmation of exemption with the competent authority. Please see our guide on [Cayman's beneficial ownership register regime](#) for further details of which entities are exempt.

Automatic exchange of financial information

The Cayman Islands has automatic exchange of information regimes in place for reporting under the US Foreign Account Tax Compliance Act (**FATCA**) and the OECD's common reporting standard (**CRS**). Cayman Islands vehicles classified as 'Cayman Reporting Financial Institutions' are subject to registration, reporting, due diligence and administrative obligations.

In addition to the registration and reporting required:

- each 'Cayman Reporting Financial Institution' under CRS is also required to establish, maintain and implement written policies and procedures, even where the performance of CRS obligations has been delegated to a third party;
- each entity required to register with the TIA must appoint a 'principal point of contact' (**PPOC**) for the TIA to communicate with and a person authorised to notify the TIA of any changes to the PPOC; and
- each entity registering with the United States' Internal Revenue Service must appoint a 'Responsible Officer' who provides certifications regarding compliance with FATCA.

Other considerations

Dividends and distributions of capital

Dividends may be paid out of profits or from the company's share premium account provided that the company remains solvent after the payment. Capital distributions are permitted by the redemption of redeemable shares or the company purchasing its own shares. There are no restrictions under the Companies Act on a Cayman Islands company giving financial assistance for the purpose of the acquisition of its own shares or shares in any holding company.

Investigations

The members of a company may apply to the court for the appointment of one or more competent inspectors to examine the affairs of the company and to report thereon. Such an application will be made where, for example, the persons managing the affairs of the company are alleged to have been guilty of misconduct towards the company, or the company's business is alleged to have been conducted in a manner detrimental to the members, or the members have not been given reasonable information as to the company's affairs. The inspector may call for the production of all books and documents from officers and agents of the company.

Migration of companies

A foreign corporation, with limited liability and share capital, incorporated in a jurisdiction the laws of which permit or do not prohibit the change of *situs* of a corporation, may become a Cayman Islands exempted company by making application to the Registrar. The corporation must be constituted in a form or substantially in a form which could have been incorporated as an exempted company limited by shares. Similarly, an exempted company may apply for authorisation to seek continuance as a company incorporated under the laws of another jurisdiction, provided that the transfer is permitted by and has been approved in accordance with the memorandum and articles of association of the applicant. For more details, see our guides on [Transfer by way of continuation into the Cayman Islands](#) and [Transfer by way of continuation out of the Cayman Islands](#).

Taxation

There are no forms of direct taxation applicable to companies in the Cayman Islands (although stamp duty may be payable on original documents executed in or brought to the Cayman Islands).

As noted above, an exempted company may apply for an undertaking from the Financial Secretary of the Cayman Islands that the company will be exempted for a period of up to 30 years from any legislation imposing taxes on profit, capital gains or inheritance should such legislation be introduced in the Cayman Islands. In practice, the undertaking is usually given for an initial 20 year period which may then be extended for a further 10 years.

Other types of exempted company

An exempted company may also be registered as a limited duration company or as a segregated portfolio company.

Limited duration company

A limited duration company (**LDC**) is a form of exempted company which continues until the terminal time or event specified in its memorandum of association has occurred, which must not exceed 30 years. Upon its duration expiring, an LDC is deemed to have automatically commenced voluntary winding up and dissolution. However, an LDC may be wound up voluntarily at an earlier date if the members pass a special resolution to that effect. Creditors and members may also apply for compulsory liquidation, as provided for by the Companies Act.

An LDC must have at least two members and its name must include 'Limited Duration Company' or 'LDC'. The articles of association of an LDC may provide that the management of the company is vested in the members who are then to be considered as the directors of the company. Such members can delegate management to a board of directors.

Segregated Portfolio Companies

A segregated portfolio company (**SPC**) is a form of exempted company which allows for the segregation of the assets and liabilities of individual portfolios (sometimes referred to as cells) from the general assets of the company as well as from other portfolios. Each portfolio is not seen as a separate legal entity.

An SPC must include either 'Segregated Portfolio Company' or 'SPC' in its name. In addition to the annual return required for an exempted company, an SPC is required to file a return stating all movements on its portfolio during the year.

For more detail on SPCs, please see our guide on [Cayman Islands segregated portfolio companies](#).

Contacts

A full list of contacts specialising in Cayman Islands corporate law can be found [here](#).