

Transfer by way of continuation into the Cayman Islands – Exempted companies

GUIDE

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Introduction

A company incorporated outside the Cayman Islands may apply to be registered by way of continuation as an exempted company limited by shares under section 201 of the Companies Act (as amended, the **Act**). A company is capable of being registered by way of continuation as an exempted company under the Act if:

- it has limited liability and a share capital;
- 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 Act; and
- the Registrar of Companies (the **Registrar**) is not aware of any reason of public interest why it should not be registered.

Preparation steps

A number of steps need to be taken prior to registering:

- if the business of the company will require regulation under the laws of the Cayman Islands, the applicable licence or registration must be obtained prior to registering;
- the requisite corporate actions required by the charter documents must be taken (such as a shareholder resolution and/or a board resolution); and
- the proposed name of the incoming company should be checked and reserved with the Registrar.

If the proposed name is unacceptable it will have to be changed within 60 days of registration. Reasons for being unacceptable are set out in Section 30 of the Act and include being the same or very similar to an existing company in the Cayman Islands, or containing words which require consent (such as 'royal', 'bank' or 'insurance').

Application process

Upon registration, the fee payable to the Registrar is the same as that payable for the incorporation of a new exempted company. Such fees are charged on a sliding scale based on authorised share capital, currently ranging from US\$732 (for a company with an authorised share capital of US\$50,000 or less) to US\$3,100 (for a company with an authorised share capital of US\$2 million or more).

The documents which must be filed upon registration are:

- a certified copy of the company's certificate of formation or incorporation (or equivalent document) from the jurisdiction of origin;
- a certificate of good standing in respect of the company from the jurisdiction of origin dated within 30 days of its submission to the Registrar (if a certificate of good standing is not obtainable, a voluntary declaration or affidavit by a director of the company confirming that the company is in good standing in the jurisdiction of origin may be acceptable);

- 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 as to certain matters (detailed below) (the **Director's Declaration**);
- a statement of assets and liabilities of the company up to the latest practicable date before the Director's Declaration (and in any event within 30 days of its submission to the Registrar); and
- notice of the address of the company's proposed registered office in the Cayman Islands.

Director's Declaration

The Director's Declaration must state the following:

- the operations of the company will be conducted mainly outside the Cayman Islands;
- no petition or other similar proceeding has been filed and remains outstanding or order made or resolution adopted to wind up or liquidate the company in any jurisdiction;
- no receiver, trustee, 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;
- 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;
- the company is able to pay its debts as they fall due;
- the application for registration is *bona fide* and not intended to defraud existing creditors of the company;
- 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;
- the transfer is permitted by and has been approved in accordance with the charter documents of the company;
- the laws of the relevant jurisdiction with respect to transfer have been or will be complied with;
- 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; and
- the company will, upon registration, cease to be incorporated, registered or exist under the laws of the relevant jurisdiction.

If any of the matters included in the Director's Declaration are false, the director commits an offence and will be liable on summary conviction to a fine of US\$18,293 and five years' imprisonment.

Registration

The Registrar will grant the registration as of the date the documents are filed, provided that all documents are in order and will usually revert with confirmation within three to five business days of receipt of the documentation (subject to the Registrar's workload).

Within 90 days of registration, the company is required to pass a special resolution of its shareholders adopting memorandum and articles of association, which comply with the provisions of the Act relating to exempted companies. Until such filing is made, Section 203(4) provides that the company's charter documents will be deemed to be effective, as amended in order to comply with the Act. As this could lead to difficulties of construction and interpretation or to unwanted results, it is preferable for the Company to adopt a fully amended and restated memorandum and articles of association as soon as possible after registration rather than to wait the full 90 days allowed under the Act.

Upon registration, the company is continued as a body corporate in all respects; it is not a new legal entity.

The Registrar will give notice in the Cayman Islands Gazette of each registration, noting the jurisdiction of origin and the previous name of the company if the name has changed.

Further information

For further details in relation to Cayman Islands exempted companies, including continuing obligations, please see our full guide [here](#).

Contacts

To find out more, please get in touch with your usual Mourant contact, or alternatively, a full list of contacts specialising in corporate law can be found [here](#).