

Transfer by way of continuation into the Cayman Islands – Limited liability companies

GUIDE

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Introduction

A foreign entity incorporated outside of the Cayman Islands may apply to be registered by way of continuation as a limited liability company (LLC) under section 54 of the Limited Liability Companies Act (as amended, the **Act**). A foreign entity is capable of being registered as an LLC under the Act if:

- it is formed, registered, incorporated or existing in a jurisdiction which permits or does not prohibit such a transfer (a **relevant jurisdiction**);
- its charter documents permit such a transfer;
- it is constituted in a form that has separate legal personality;
- the Registrar of Companies in the Cayman Islands (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 incoming entity 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 manager resolutions/consents); and
- the proposed name of the incoming entity should be checked and reserved with the Registrar.

If the proposed name is unacceptable it will have to be changed within 6 weeks of registration. Reasons for being unacceptable are set out in Section 6 of the Act and include being the same or very similar to an existing company in the Cayman Islands.

Application process

Upon registration, the following documents must be filed with the Registrar, together with a fee of US\$976:

- an application containing the:
 - date on which, and jurisdiction where, the entity was formed, registered or incorporated;
 - current name of the entity and proposed name upon registration as a Cayman Islands LLC;
 - proposed date of continuation; and
 - jurisdiction of the entity's principal place of business or central administration immediately prior to filing the application
- a registration statement containing the following in respect of the LLC:
 - name;
 - address of the registered office in the Cayman Islands;
 - names and addresses of the initial members;
 - nature of business;

- date of its financial year end;
- term of the LLC (if not formed for an unlimited duration); 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 as to certain matters (detailed below) (the **Voluntary Declaration**); and
- a statement of assets and liabilities up to the latest practicable date before the Voluntary Declaration (and in any event within 30 days of its submission to the Registrar).

Voluntary Declaration

The Voluntary Declaration must state the following:

- the operations of the incoming entity will be conducted mainly outside the Cayman Islands;
- no petition or other similar proceeding has been filed and remains outstanding or an order or resolutions adopted to wind up or liquidate the entity in any jurisdiction;
- no receiver, trustee, administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the incoming entity, 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 incoming entity are and continue to be suspended or restricted;
- the incoming entity 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 incoming entity;
- any consent or approval to the transfer required by any contract or undertaking entered into or given by the incoming entity 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;
- the laws of the relevant jurisdiction with respect to transfer have been or will be complied with;
- the incoming entity is constituted in a form that has separate legal personality;
- where applicable, confirmation that any requisite licence or registration has been obtained;
- the incoming entity will, upon registration as an LLC, cease to be incorporated, registered or exist under the laws of the relevant jurisdiction.

If any of the matters included in the Voluntary Declaration are false, the authorised person making the declaration commits an offence and will be liable on summary conviction to a fine of US\$18,293 or five years imprisonment, or both.

Registration

The Registrar will grant the registration as of the date the documents are filed (or a future date requested in the application), 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 LLC is required to make such amendments, alterations, modifications, variations, deletions and additions, to its charter documents that as are necessary to ensure they comply with the requirements of the Act as they relate to an LLC.

Upon registration, the LLC shall continue as an LLC for all purposes as if incorporated and registered as an LLC under the Act. It is not a new legal entity.

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

Further information

For further details in relation to Cayman Islands limited liability 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](#).

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