

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

GUIDE

Last reviewed: January 2023

Introduction

An exempted company (a **Company**) incorporated in the Cayman Islands may apply to be deregistered by way of continuation pursuant to section 206 of the Companies Act (the **Act**). A Company is capable of being deregistered pursuant to the Act if:

- it has limited liability and a share capital;
- it is to be registered by way of continuation to a jurisdiction which permits or does not prohibit such a transfer;
- its memorandum and articles of association permit such a transfer;
- it is in good standing with the Registrar of Companies (the **Registrar**); and
- the Registrar is not aware of any reason of public interest why it should not be deregistered.

Preparation steps

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

- if the Company is licensed under the Banks and Trust Companies Act or the Insurance Act (or if such licence has been suspended or revoked and not reinstated), the consent of the Cayman Islands Monetary Authority must be obtained; and
- the requisite corporate actions required by the memorandum and articles of association must be taken (such as a shareholder resolution and/or a board resolution).

Application process

Upon application for deregistration, the Company must file the following documents with the Registrar, together with the **deregistration fee** (which is equal to three times the annual fee):

- an **undertaking** signed by a director that notice of the transfer has been or will be given within 21 days to the secured creditors of the Company;
- **notices** in relation to:
 - any proposed change of name;
 - the proposed address of the registered office provider or agent for service of process in the new jurisdiction;
- a **voluntary declaration** or affidavit by a director of the Company stating the following:
 - 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 deregistration is *bona fide* and not intended to defraud existing creditors of the Company;
 - notice of the transfer has been or will be given within twenty-one days to the secured 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 memorandum and articles of association of the Company;
 - the laws of the relevant jurisdiction with respect to transfer have been or will be complied with; and
 - the Company will, upon registration under the laws of the new jurisdiction, continue as a body corporate limited by shares; and
- a **statement of assets and liabilities** up to the latest practicable date¹ before the voluntary declaration.

A director who makes a voluntary declaration or affidavit without reasonable grounds commits an offence and will be liable on summary conviction to a fine of approximately US\$18,000 and five years' imprisonment.

Deregistration process

The Registrar will grant the deregistration 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. Notice of the deregistration will be posted in the Gazette, detailing the jurisdiction to which the Company has been continued and the new name of the Company, if the name has changed.

Upon deregistration, the Company is continued as a body corporate in all respects; it is not a new legal entity. If the Company continues to carry on business in the Cayman Islands after its deregistration, it must register as a foreign company in accordance with the provisions of Part IX of the Act.

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](#).

¹ In practice, this must be within 30 days of submission to Registrar.