

General information - Companies

1.1.1 Types of Corporate Structure

Although an exempted company is required to keep a register of members, it does not have to file an annual return of members with the Registrar of Companies nor maintain the Register in the Cayman Islands.

There are two basic categories of companies:

- ❖ an Ordinary company; and
- ❖ an Exempted company.

Within these types of company it may be registered as a company of limited duration which may have advantageous foreign tax consequences for the shareholders in that the company if it is treated as a partnership. Or be registered as a Segregated Portfolio Company. Please contact us if you wish to discuss LDC or SPC companies in more detail.

The Companies Law gives 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 Cayman.

Of particular importance are the following in relation to Cayman exempted company:

- ❖ The Company may apply to the Governor of the Cayman Islands and receive a written undertaking that should taxes ever be introduced in the Cayman Islands, the company will remain tax-free, the company will not be taxed for a period of up to thirty years from the date of obtaining the Undertaking. An ordinary company cannot apply for this guarantee.
- ❖ No requirement to keep its register of members in the Cayman Islands.
- ❖ No requirement to file a list of its shareholders with the Registrar of Companies.
- ❖ No requirement to permit the inspection of its register of members by the public, and, therefore, its shareholders can keep their affairs confidential. In the case of an exempted company, the register of members remains confidential. (In the case of an ordinary company, the register of members must be open to the inspection of any member without charge and to the inspection of any other person on the payment of no more than ten dollars, or such lesser sum as the company may specify.)
- ❖ Permitted to issue bearer shares, provided they are not issued to a person other than a custodian and may have a capital divided into shares without nominal or par value.
- ❖ No requirement to have an annual general meeting of its shareholders, unless otherwise provided for in its regulations whereas an ordinary company must do so.
- ❖ May transfer its situs of registration to another jurisdiction by way of continuation.
- ❖ No requirement to have the addition of the word "Limited or the abbreviation "Ltd." as the last word of its name. It follows that an exempted company can have "Limited Liability Company" or "LLC in its name.
- ❖ However, if an exempted company is registered as a limited duration company, it must have as the last word of its name "Limited Duration Company or "LDC". An exempted company is not required to have the addition of the word "Limited" or the abbreviation "Ltd." as the last word of its name. However, if an exempted company is registered as a Limited Duration Company, it must have as the last word of its name "Limited Duration Company" or "LDC" similarly in the case of a Segregated Portfolio Company it must have the words "Segregated Portfolio Company" or "SPC".
- ❖ The capital may be expressed in any foreign currency.

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- ❖ The annual return of an exempted company filed with the Registrar is merely to the effect that:
- ❖ There have been no other changes in the company's Memorandum of Association other than those which have already been notified to the Registrar.
- ❖ The operations of the company have been mainly outside the Cayman Islands.
- ❖ The provisions of the section 193 (requiring it to conduct business mainly off the Islands) have been complied with.
- ❖ Bearer shares, if any, must be kept by an approved custodian.
- ❖ An exempted company may not trade in the Cayman Islands with any person, firm or corporation except in furtherance of its business carried on outside the Islands. An exempted company is not prevented however from effecting and concluding contracts in the Islands and exercising business outside the Islands. The Memorandum of Association of an exempted company will therefore contain a clause on the following lines:

...AND IT IS HEREBY DECLARED that the company will not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Islands. Provided that nothing in this section shall be construed as to prevent the company effecting and concluding contracts in the Islands and exercising in the Islands all of its powers necessary for the carrying on of its business outside the Islands.
- ❖ An exempted company is prohibited from making any invitation to the public in the Islands to subscribe for any of its shares or debentures.

A company incorporated in the Cayman Islands as an ordinary non-resident company may apply to re-register as an exempted company. A body corporate incorporated, registered or existing with limited liability and a share capital under the laws of any jurisdiction outside the Islands, may apply to be registered by way of continuation as an exempted company limited by shares under the Companies Law.

1.1.2 Ongoing Corporate Governance

The Companies Law requires company directors to ensure that a company maintains corporate records and attends to any necessary filings with the Registrar of Companies. We maintain the original minute book at the registered office and ensure any necessary filings are made and also to expedite any certifications or legal opinions that may be required. We will attend an annual returns required by the Registrar of Companies for exempted companies and pay an annual fee in January of each year following incorporation.

1.1.3 Minute Book

The Companies Law requires company directors to ensure that a company maintains corporate records and attends to any necessary filings with the Registrar of Companies. Most companies maintain the original minute book at the registered office and we strongly recommend they do so to enable the registered office to ensure any necessary filings are made and also to expedite any certifications or legal opinions that may be required.

The minute book should contain:

- ❖ The Certificate of Incorporation (and any Certificates identifying any subsequent name change)
- ❖ The Memorandum and Articles of Association and any amendments relating thereto

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- ❖ Originals or copies of all director and shareholder resolutions together with any relating agreements or documents
- ❖ Originals or copies of directors' acceptance and/or resignation letters
- ❖ Copies of any issued share certificates
- ❖ Annual Returns
- ❖ Statutory Registers to include Directors, Officers, Members and Mortgages and Charges. It should be noted that the Register Directors and Officers is required to be maintained at the registered office. The Register of Mortgages and Charges must also be maintained at the registered office and it is to be made available for public inspection upon payment of the requisite fee. In the case of Ordinary Companies the Register of Members must also be maintained at the registered office to be made available for inspection if required.

1.1.4 Books of Account

The Companies Law requires all companies to maintain proper books of account. What is considered to be proper books of account may vary from company to company, but the books of account should give a true fair view of the company's affairs and explain its transactions. Only companies that are registered or licensed by the Cayman Islands Monetary Authority are required by law to have audited financial statements.

1.1.5 Annual Filing requirements

All exempted companies must file an annual return to the Registrar of Companies and pay an annual fee in January of each year following incorporation. The Annual Return and Declaration confirms:

- (i) there have been no other changes in the company's Memorandum of Association other than those which have already been notified to the Registrar;
- (ii) the operations of the company have been mainly outside the Cayman Islands;
- (iii) the provisions of the section 165 (requiring it to conduct business mainly off the Islands) have been complied with; and
- (iv) bearer shares, if any, are kept by an approved custodian.

As the registered office, Paget-Brown Trust Company will prepare and file the Annual Return and Declaration which is part of the service provided in the basic annual maintenance fee charged.

It is worth noting the Registrar assesses penalties for late payment of annual fees or late filing of annual returns as follows:

| | |
|------------------------------|--------|
| Up to 31 st March | Nil |
| 1 April to 30 June | 33.33% |
| 1 July to 30 September | 66.67% |
| 1 October to 31 December | 100% |

It therefore is imperative that annual government fees are paid promptly to avoid the assessment of any penalties.

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1.1.6 Other Filing Requirements

It is common practice for the Registered Office in the Cayman Islands to make any filings with the Registrar of Companies in Cayman. It therefore is imperative that copies of any resolutions of the directors and shareholders are provided to the Registered Office in a timely manner to enable any relevant filings to be done.

The Registrar of Companies has filing requirements for due notification as follows:

| Description | Filing Requirement |
|--|--------------------|
| Special resolutions passed by shareholders, including but not limited to changes to authorized share capital, company name changes, amendments to Memorandum and Articles of Association, etc. | 15 days |
| Change of location of registered office | 30 days |
| Changes of directors and officers | 60 days |

The Registrar of Companies will assess a penalty of CI\$500 (US\$610) for a breach of the regulations. Where multiple changes to the Register in respect of a single company occur within a 60 day period, then such breaches will be penalised as a single breach (capped at CI\$500 (US\$610)) if the Registrar is notified of such changes on the same day.

Where there are changes to the Register with respect to a group of five or more companies (for example, subsequent to a change in control), then the aggregate penalty for all breaches shall not exceed CI\$2,500 (US\$3,049), with the penalty to be borne equally by each of the affected group companies.

The Law also provides that where the Registrar is satisfied that a breach of the applicable statutory provisions has been intentional, then the company and every director and officer who knowingly and wilfully authorised or permitted such default, will be subject to a separate and additional penalty payment.