

# Cayman Islands Exempted Companies

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This Briefing Note provides a summary of the main legal requirements and general principles applicable to the incorporation, operation and maintenance of exempted companies in the Cayman Islands. Additional considerations apply in respect of segregated portfolio companies, companies carrying on business as registrable investment funds, and those undertaking other licensed activities. These are covered in separate Ogier Briefing Notes.

This Briefing Note is intended to provide a general summary of the position in law as at the date shown on the cover, and is not to be taken as specific legal advice applicable to particular issues or circumstances. If such advice is required, please contact one of the Ogier partners listed here.

## 1. Companies Law

Exempted companies are the most common form of offshore company in the Cayman Islands and are incorporated or registered under the Companies Law (Revised) (**Companies Law**).

A company may apply to be registered as exempted if its objects are to be carried out mainly outside the Cayman Islands or pursuant to a licence to carry on business in the Cayman Islands and it submits a declaration to the Registrar of Companies (**Registrar**) to this effect. An exempted company may not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the exempted company carried on outside the Cayman Islands unless such exempted company holds a licence to carry on business in the Cayman Islands under any applicable law, nor may an exempted company own land in the Cayman Islands without the consent of the Financial Secretary of the Cayman Islands. In addition, an exempted company is prohibited from making any invitation to the public in the Cayman Islands to subscribe for any of its shares or debentures.

These restrictions do not prevent an exempted company which does not hold a licence to carry on business in the Cayman Islands effecting and concluding contracts in the Cayman Islands and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.

There is no prohibition on Cayman Islands resident individuals holding shares of an exempted company. The shares of an exempted company may be held by another exempted company, by a Cayman Islands exempted limited partnership, by a foundation company or by a limited liability company.

## 2. Legal Form

An exempted company is a body corporate which has separate legal personality capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit, and having perpetual succession.

## 3. Constitutional Documents

The constitution of an exempted company is contained in two documents, the memorandum of association and the articles of association (**Articles**).

### Memorandum of Association

The memorandum of association contains the following items:

(a) Company Name

The Registrar will not register a company the name of which is identical to the name of an existing company or so nearly resembles that name as to be calculated to deceive. There are certain other sensitive words which, in some cases, may not be included in a company's name at all and, in other cases, require the consent of the Registrar, for example 'bank', 'trust', 'insurance', 'royal'. There is no requirement for an exempted company to include any suffix such as 'Ltd', 'Limited' or 'Inc'. Following the commencement of the Limited Liability Companies Law (Revised) an exempted company may not be registered using the abbreviation 'LLC' or the words 'limited liability company' in its name.

An exempted company may be incorporated with a dual name in a foreign script (which need not be a translation of the company's English name).

(b) Registered Office

An exempted company must have a registered office in the Cayman Islands provided by a service provider licensed for such purpose in the Cayman Islands. The registered office of a company may be changed by resolution of its directors.

(c) Objects and Powers

The objects of a company may be listed in full and limited to those listed; or the objects may be unrestricted. If the business of a company is not restricted to particular objects, then the company will have full power and authority to carry out any object not prohibited by law. In the furtherance of those objects a company is capable of exercising all the functions of a natural person of full capacity irrespective of any question of corporate benefit.

(d) Declaration of Limited Liability

The liability of the shareholders is stated to be limited to the amounts from time to time unpaid on such shareholders' shares. It is possible to provide instead that the liability of the shareholders is limited to the amount they undertake to contribute to the company on its winding up (a company limited by guarantee) but this is uncommon.

(e) Authorised share capital

The memorandum of association will state the aggregate amount of the authorised share capital, together with details of the number of shares into which it is divided and the par value of those shares. The share capital and the par value of the shares may be expressed in one or more currencies. An exempted company may have a capital divided into shares of no par value, but may not have a capital divided into shares, some of which have a par value and some of which do not.

An exempted company may not issue bearer shares. Share certificates need not be issued in respect of any shares. Where share certificates are issued they are admissible in evidence as proof of ownership but generally the register of members will take precedence.

## Articles of Association

The Articles govern the administration of a company. They generally provide for:

- the issue, transfer and repurchase or redemption of shares;
- voting rights and members' meetings;

- the appointment directors and officers and their meetings, powers and indemnification;
- the payment of dividends; and
- the winding-up of the company.

A copy of the memorandum of association and the Articles must be made available to every member of the company on request.

Companies are normally incorporated with general purpose memorandum of association and Articles. Where necessary, these may be tailored for the specific purposes of the company after incorporation.

#### **4. Procedure for Incorporation**

There must be submitted to the Registrar the signed original memorandum of association and Articles, together with the appropriate incorporation fee and a declaration made by a subscriber of the company that the operation of the proposed exempted company will be conducted mainly outside the Cayman Islands or pursuant to a licence to carry on business in the Cayman Islands.

It typically takes 3-5 business days for the Registrar to register an exempted company if using the standard incorporation service. Upon payment of an express incorporation fee of US\$488, a company may be registered in 1-2 business days. The speed and efficiency of this process means that shelf companies are rarely used or available.

#### **5. Directors and Officers**

The Articles typically provide that there must be at least one director of a Cayman company. There is no requirement that any of the directors be ordinarily resident in Cayman. The initial director(s) are appointed by the subscriber(s) to the memorandum of association. Thereafter, the appointment and/or removal of directors will normally be effected in accordance with the provisions of the Articles.

Generally, the Articles will specify that the management of a Cayman company is the responsibility of, and is carried out by, its board of directors. Except as may be expressly provided in the company's Articles, the members can exercise control over the management of the company through their power to appoint and dismiss its directors.

Directors owe fiduciary duties to the company. These include a duty:

- of loyalty and to act in the best interests of the company;
- to act for a proper purpose;
- not to fetter the director's discretion;
- to avoid conflicts;
- not to make secret profits from the director's position as director;
- to act fairly as between different shareholders; and
- to act with skill and care.

These duties are owed to the company itself, and not generally to individual shareholders. In the event of a breach of duty, the directors may be personally liable to account to the company. For more information on directors, please see our Briefing Note entitled [Acting as a director of a Cayman Islands company.](#)

There is no Cayman Islands law requirement for an exempted company to appoint a company

secretary or any other officers of the company, though it may do so.

## 6. Share Capital

As noted above, the memorandum of association must specify the authorised share capital. This represents the notional maximum amount of share capital that the company may issue (although this maximum may be increased by an ordinary resolution of the shareholders). The authorised share capital is therefore to be distinguished from the issued share capital. There are no thin capitalisation rules in Cayman and no requirement for the issue of more than one share, or for an exempted company to have more than one shareholder. The Articles invariably permit an exempted company to issue fractions of a share. The Articles may provide for the share capital to be divided into classes with differing rights.

## 7. Dividends and Distributions

Subject to any contrary provisions in the Articles, a company may pay dividends out of profits or its share premium account, if shares have been issued at a premium. No dividend may be paid out of the share premium account unless immediately following the payment the company is able to pay its debts as they fall due in the ordinary course of business.

## 8. Redemption and Repurchase of Shares

A company may, if authorised by its Articles:

- issue shares which are to be redeemed or are liable to be redeemed at the option of the company or the member; and/or
- purchase its own shares, including any redeemable shares.

No redemption or purchase may take place unless the shares are fully paid, or if as a result of the redemption or purchase there would no longer be any other shares in issue.

Shares may be redeemed or repurchased using the profits of the company or the proceeds of a fresh issue of shares made for the purposes of the redemption or purchase. The premium, if any, payable on redemption or purchase must have been provided out of the company's profits or out of the share premium account before or at the time the shares are redeemed or purchased.

## 9. Continuing requirements

### Registers

Each exempted company is required to maintain the following registers:

#### (a) Register of Directors and Officers

This is required only to contain the names and addresses of the directors and officers, but normally also contains their dates of appointment and removal or resignation. This is the only register that the company is required to file with the Registrar.

#### (b) Register of Members

This must contain the names and addresses of the shareholders of the company, the numbers of shares held by each, the distinguishing numbers (if any) of those shares, the amount paid or agreed to be paid on the shares, whether such shares carry voting rights and if such rights are conditional, together with the date on which each person became and ceased to be a shareholder of the company. The register of members is prima facie evidence of the details

required to be inserted therein so it is essential to keep it current. An exempted company that is not licenced to carry on business in the Cayman Islands may keep its register of members outside of the Cayman Islands.

#### (c) Register of Mortgages and Charges

This must contain details of all mortgages and charges specifically affecting property of the company, including a short description of the property mortgaged or charged, the amount of the charge created and the names of the mortgagees or persons entitled to the charge.

In addition, unless falling within an exemption, an exempted company must maintain a beneficial ownership register at its registered office containing the information set out under **Beneficial Ownership Register** below.

#### Accounts

Every company is required to keep proper books of account with respect to its receipts and expenditures, sales and purchases and assets and liabilities. Those accounts must give a true and fair view of the state of the company's affairs and explain its transactions. The Companies Law does not require that accounts be audited or that the accounts be filed with any authority.

#### Filings

The Registrar must be notified if a company changes its registered office. The Registrar must also be notified of any appointments and resignations or removals of directors and officers within 30 days. A copy of any special resolution of the shareholders (necessary to change the memorandum of association or Articles, and for certain other purposes) must be filed with the Registrar within 15 days.

#### Meetings

There is no requirement for any annual meeting of shareholders or directors, unless otherwise prescribed in the Articles. Companies that are required to meet economic substance requirements described under **Economic Substance** below and regulated investment funds will be subject to different requirements.

#### Minutes

Exempted companies are required to keep written minutes of all resolutions and proceedings of its shareholders and its directors. The minute book is not required to be maintained in Cayman.

### 10. Annual Requirements

An exempted company that does not hold a licence to carry on business in the Cayman Islands must file an annual return, together with the appropriate annual filing fee with the Registrar in January of each year. The annual return confirms that the requirements of the Companies Law in relation to exempted companies have been complied with since the date of incorporation or, as the case may be, since the previous annual return.

### 11. Publicly Available Information

The only information which may be obtained by a member of the public from the Registrar in relation to any company is the type of company (i.e. ordinary or exempted), its date of incorporation, company number, status (i.e. active or dissolved) and the location of its registered office.

No other information is required to be made available to the public by an exempted company, although its register of mortgages and charges may be inspected by any shareholder or creditor of the company.

Where the exempted company causes its books and records to be kept at any place other than at the registered office of the exempted company or at any other place within the Cayman Islands, the exempted company shall, upon service of an order or notice by the Tax Information Authority pursuant to the Tax Information Authority Law, cause to make available at its registered office copies of its books of account or records as are specified in such order or notice.

## 12. Beneficial Ownership Register

Unless falling within an exemption, an exempted company must maintain a beneficial ownership register at its registered office and must take reasonable steps to identify any "registrable persons" whose details must be entered in such register. Broadly speaking a registrable person is (i) an individual holding, directly or indirectly, more than 25% of the shares or voting rights of the company or holding the right, directly or indirectly, to appoint or remove the directors or who has the right to exercise, or actually exercises, significant influence or control over the company, and (ii) a legal entity established or registered in the Cayman Islands which, by virtue of the shares it holds directly in the company or its direct control over the company, would be a beneficial owner if it were an individual.

Exempted companies are required to engage a licensed Cayman corporate services provider (**CSP**) to maintain an adequate, accurate and current beneficial ownership register for that exempted company at its registered office. The CSP is required by law to report this information to a secure, non-public centralised registry maintained by the competent authority in the Cayman Islands. An exempted company that falls within an exemption must provide written confirmation of its exempt status to the CSP.

Relevant changes in respect of registrable persons (including if they cease to be registrable persons) must be confirmed as soon as reasonably practicable. The company (or any registrable person who knows of a relevant change) must notify the registered office, at the latest within one month of the relevant change.

An exempted company that is itself a registrable person by virtue of its ownership and control of an underlying Cayman company may also be required to notify such underlying company of its status as such and to provide relevant particulars within one month of becoming aware that it may be a registrable person.

## 13. Cayman Islands Taxation

Exempted companies are not subject to any income, withholding or capital gains taxes in the Cayman Islands. Shareholders will not be subject to any income, withholding or capital gains taxes in the Cayman Islands with respect to their shares and dividends received on those shares, nor will they be subject to any estate or inheritance taxes in the Cayman Islands. There are no exchange controls in the Cayman Islands.

An exempted company is further entitled to apply under the Tax Concessions Law (Revised) for an undertaking that no law enacted in the Cayman Islands after the date of the undertaking imposing any tax to be levied on profits, income, gains or appreciations shall apply to the company or its operations, and that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable on or in respect of the shares, debentures or other obligations of the company or by way of

withholding in whole or in part on any dividend payment or other distribution of income or capital by the company to its members or to a payment of principal or interest or other sums due under a debenture or other obligation of the company.

The undertaking may be for a period not exceeding 30 years from the date of approval of the application. In practice, the undertaking is normally given for 20 years.

#### **14. Termination**

An exempted company may be wound up by the appointment of a liquidator either pursuant to a voluntary or compulsory liquidation, or may be struck off following an application to the Registrar.

##### **Voluntary Liquidation**

Where the exempted company has been active and has, or has had, substantial assets and liabilities a voluntary liquidation pursuant to the Companies Law would generally be the appropriate procedure. The voluntary winding up must be approved by the appropriate majority required for a special resolution of the shareholders as set out in the Articles, typically a two thirds majority of the shareholders present at a general meeting or alternatively, if permitted by the Articles, by a resolution in writing signed by all of the members entitled to vote. A copy of the special resolution is filed with the Registrar and notice of the winding up and appointment of the liquidator is published in the Cayman Islands Gazette. The Companies Law contains provisions for the application and distribution of the exempted company's assets on winding-up and following distribution to creditors any surplus shall be distributed to shareholders in accordance with the Articles. Once the affairs of the company are fully wound up, the liquidator is required to advertise the final general meeting of the company, which is to be held not less than one month after the date the notice is published, for the purposes of explaining the final accounts of the liquidation. The liquidator will prepare a return relating to the final meeting in the prescribed form which is filed with the Registrar. The exempted company will be deemed to be dissolved three months from the date of the filing of the return.

##### **Compulsory Liquidation**

An exempted company may be wound up following presentation of a winding up petition to the court by the company, one or more creditors and/or the shareholders. Such a petition will nominate a liquidator and briefly summarise the grounds for the winding up petition as set out in the Companies Law. An application may also be made for the winding up to be supervised by the court. Once the winding up is complete, and the assets of the company have been distributed, the dissolution of the company will be ordered by the court.

##### **Strike Off**

An exempted company may apply to the Registrar to be struck off and the Registrar has the power to strike off a company if the Registrar believes the company is no longer carrying on business. A creditor or shareholder who objects to the company being struck off may, for a period of up to 10 years following the date the company was struck off, apply to the court for the company to be reinstated.

The strike off provisions provide a convenient, simpler alternative to a winding up, avoiding the need for the appointment of a liquidator; but the reinstatement provisions mean that a strike off is a less certain method of dissolving an exempted company. For this reason, strike off tends to be appropriate only where a company has not operated, or has operated only as a



pass through vehicle without having had any external shareholders or without having incurred any liabilities to third parties.

## 15. Change of Form

An exempted company may apply to register as:

- (a) a segregated portfolio company;
- (b) a limited duration company;
- (c) a special economic zone company; or
- (d) a limited liability company.

We can provide additional information on any of these vehicles.

## 16. FATCA and the CRS

Under the US Foreign Account Tax Compliance Act (**FATCA**) certain foreign vehicles must disclose to the Cayman Islands Tax Information Exchange Authority the name, address and taxpayer identification number of certain United States persons that own, directly or indirectly, an interest in such vehicle pursuant to the terms of an intergovernmental agreement between the United States and the Cayman Islands (**US IGA**) and implementing legislation and regulations which have been adopted by the Cayman Islands. In addition, over 100 countries have signed the OECD Multilateral Competent Authority Agreement and Common Reporting Standard (**CRS**) for the implementation of the automatic exchange of tax information based on the OECD's Multilateral Convention on Mutual Administrative Assistance in Tax Matters. The CRS is similar in form and substance to the US IGA. It will be necessary to assess any exempted company's activities and to classify it under FATCA/CRS regardless of the location of its activities or its shareholders, to determine if any notification and reporting requirements exist. We can provide advice as to these matters in any particular circumstance and assist with an exempted company's compliance with such obligations.

## 17. Economic Substance

From 1 January 2019 the International Tax-Co-operation (Economic Substance) Law, 2018 (**Economic Substance Law**) came into effect in the Cayman Islands requiring in-scope entities (**Relevant Entities**) that carry on particular activities (**Relevant Activities**) to have demonstrable economic substance in the Cayman Islands. Relevant Entities will include most Cayman exempted companies except investment funds or entities through which investment funds directly or indirectly invest or operate. All Relevant Entities will have to make an annual declaration as to whether they have conducted any Relevant Activities in the preceding financial period. Relevant Activities are fund management, banking, insurance, finance and leasing, distribution and service centre business, headquarters business, intellectual property business, shipping, and holding company business. Relevant Entities are required to satisfy the economic substance test in relation to any Relevant Activity as set out in the Economic Substance Law. For a more detailed description of the requirements of the Economic Substance Law, see our client briefing [Cayman Islands Economic Substance Requirements](#).

## About Ogier

Ogier provides practical advice on BVI, Cayman Islands, Guernsey, Jersey and Luxembourg law through its global network of offices. Ours is the only firm to advise on these five laws. We regularly win awards for the quality of our client service, our work and our people.



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