

Transfer by way of continuation out of the Cayman Islands

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1. Introduction

This client briefing provides an overview of the procedures in the Cayman Islands for transferring an exempted company limited by shares (**Exempted Company**) out of the Cayman Islands by way of continuation.

The Companies Act (Revised) (the **Companies Act**) provides that an Exempted Company which proposes to be registered by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Cayman Islands may apply to the Cayman Islands Registrar of Companies (the **Registrar**) to be de-registered in the Cayman Islands.

Other Cayman vehicles such as the limited liability company and exempted limited partnership may transfer out of the Cayman Islands by way of continuation pursuant to the Limited Liability Companies Act (Revised) and the Exempted Limited Partnership Act (Revised), respectively. The migration procedures and documentation are similar to that of the continuation of an Exempted Company.

2. Initial considerations

In advance of carrying out a proposed transfer by way of continuation out of the Cayman Islands, there are some initial considerations for the Exempted Company:

1. the Exempted Company is in good standing with the Registrar and there are no outstanding fees and penalties
2. the constitutional documents of the Exempted Company (memorandum and articles of association) permit a transfer by way of continuation out of the Cayman Islands, if not, a special resolution would be required to amend the memorandum and articles of association

3. whether the proposed new jurisdiction for the Exempted Company (the **Relevant Jurisdiction**) permits migrations from the Cayman Islands, and whether such jurisdiction requires any form of legal opinion from Cayman legal counsel and/or a form of pre-approval from the Registrar; and
4. if the Exempted Company is registered or licensed with the Cayman Islands Monetary Authority (**CIMA**), the company would be required to obtain the consent of CIMA and should initiate the de-registration process with CIMA in advance

3. Straight-forward process

Subject to any prohibitions, restrictions and/or requirements under the laws of the Relevant Jurisdiction, the Cayman Island's statutory procedure is very straightforward.

The Registrar will de-register an Exempted Company if:

- a. the Relevant Jurisdiction permits or does not prohibit the transfer of the Exempted Company in the manner provided in the Companies Act
- b. the Exempted Company has filed with the Registrar the required documents as set out in the below section titled "Documentation"
- c. no petition or other similar proceeding has been filed and remains outstanding or order made, or resolution adopted to wind up, dissolve or liquidate the Exempted Company in any jurisdiction
- d. no receiver, trustee or administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the Exempted Company, its affairs or its property or any part thereof
- e. no scheme, order, compromise or other similar arrangement has been entered into or made whereby the rights of creditors of the Exempted Company are and continue to be suspended or restricted
- f. the Exempted Company is able to pay its debts as they fall due
- g. the application for de-registration is bona fide and not intended to defraud creditors of the Exempted Company
- h. any consent or approval to the transfer required by any contract or undertaking entered into or given by the Exempted Company has been obtained, released or waived, as the case may be
- i. the transfer is permitted by and has been approved in accordance with the memorandum and articles of association of the Exempted Company

- j. the laws of the Relevant Jurisdiction with respect to transfer have been or will be complied with
- k. where the Exempted Company is licensed or registered with CIMA under any of the regulatory laws in force in the Cayman Islands the Exempted Company has obtained the consent of CIMA
- l. the Exempted Company will upon registration under the laws of the Relevant Jurisdiction continue as a body corporate limited by shares
- m. the Registrar is not aware of any other reason why it would be against the public interest to de-register the Exempted Company; and
- n. the Exempted Company has paid to the Registrar a fee equal to three times the annual fee that would have been payable in the January immediately preceding the application for de-registration

Documentation

The following documents are required to be filed with the Registrar in respect of the application by the Exempted Company for de-registration in the Cayman Islands:

- a. notice of any proposed change in its name and of its proposed registered office or equivalent in the Relevant Jurisdiction
- b. a declaration or affidavit of a director of the Exempted Company, to the effect that, having made due enquiry, that person is of the opinion that certain requirements under the Companies Act have been met, including (amongst others): no petition or other similar proceeding has been filed and remains outstanding; the Exempted Company is able to pay its debts as they fall due; and the application for de-registration is bona fide and not intended to defraud creditors. Further, such declaration or affidavit must include a statement of the assets and liabilities of the Exempted Company made up to the latest practicable date before making the declaration or affidavit; and
- c. an undertaking signed by a director on behalf of the Exempted Company that notice of the transfer has been or will be given within twenty-one days to the secured creditors of the Exempted Company

Further, copies of the board resolutions and special resolutions of the Exempted Company approving of the transfer by way of continuation out of the Cayman Islands should be filed with the Registrar as part of the application.

4. De-registration of an Exempted Company

If the Registrar is satisfied that the requirements for de-registration have been complied with,

the Registrar shall issue a certificate that the Exempted Company has been de-registered as an Exempted Company and specify the date of such de-registration.

The Registrar will give notice in the Gazette of the de-registration of the Exempted Company under the Companies Act, the jurisdiction under whose laws the Exempted Company has been registered by way of continuation and the name of the Exempted Company if different from the current name.

5. Effect of de-registration of an Exempted Company

From the date of de-registration of the Exempted Company, the Exempted Company shall cease to be a company for all purposes under the Companies Act and will continue as a company under the laws of the Relevant Jurisdiction. This shall not operate:

- a. to create a new legal entity
- b. to prejudice or affect the identity or continuity of the Exempted Company as previously constituted
- c. to affect the property of the Exempted Company
- d. to affect any appointment made, resolution passed or any other act or thing done in relation to the Exempted Company pursuant to a power conferred by the memorandum and articles of association of the Exempted Company, or by the laws of the Cayman Islands
- e. except to the extent provided by or pursuant to the Companies Act, to affect the rights, powers, authorities, functions and liabilities or obligations of the Exempted Company or any other person; or
- f. to render defective any legal proceedings by or against the Exempted Company, and any legal proceedings that could have been continued or commenced by or against the Exempted Company before its de-registration may, notwithstanding the de-registration, be continued or commenced by or against the Exempted Company after de-registration

As of the effective date of de-registration of the Exempted Company, the Exempted Company will continue as a company under the laws of the Relevant Jurisdiction. However, this continuation will not absolve the Exempted Company from certain post-migration filing obligations. For example, reporting and notice filing obligations under the Cayman Economic Substance regime will apply to the Exempted Company up to the effective date of the migration, which will require reporting and notice filings to be submitted after the effective date.

If you require further information, please speak to your usual Ogier contact or one of our corporate specialists as detailed on this page.

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Regulatory information can be found under [Legal Notice](#)

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