

Continuing requirements for Cayman Islands companies

This briefing paper has been prepared as a summary of the law as at April 2021 and is for general guidance only. It is not intended to be, nor should it be used for, a substitute for specific legal advice on any particular transaction or set of circumstances.

Overview

The Cayman Islands' Companies Act (as revised) (the "**Act**") requires that Cayman Islands companies maintain certain records and make certain filings. This briefing paper provides a summary of the principal requirements of the Act. References to section numbers refer to sections within the Act.

Types of company

Cayman Islands companies may broadly be divided into two categories: **exempted companies**, the objects of which must be carried out mainly outside the Cayman Islands; and **ordinary companies**, which may, subject to certain restrictions, carry on business in the Cayman Islands. Exempted companies have traditionally been used as the standard "offshore" vehicle.

Registered office and name

All companies must maintain a registered office in the Cayman Islands (s 50). The name of the company must be displayed outside every office in which the business of the company is carried on, including the registered office, and must appear on all notices and other communications, cheques, etc. issued by the company (s 52).

Minute book

Minutes of directors' meetings and shareholders' meetings must be maintained (s 73), typically in a minute book. Although there is no requirement that the minute book be maintained at the registered office, in practice, it is generally kept and maintained at the registered office.

Company registers

Each company is required to keep a register of directors and officers, a register of members and a register of mortgages and charges. All three registers must be kept and maintained at the registered office, except in the case of an exempted company in which case the register of members may be kept at any place within or outside the Cayman Islands (s 44). In relation to these registers:

1. The register of directors and officers must contain the names and addresses of the directors and officers, and normally also contains their dates of appointment and removal or resignation (s 55).
2. The register of members (i.e. shareholders) must contain the names and addresses of the shareholders of the company, the number and category of shares held by each member, the distinguishing numbers (if any) of those shares, the amount paid or agreed to be paid on the shares, whether each relevant category of shares held carries voting rights under the articles of association of the company and, if so, whether those rights are conditional, together with the date on which each shareholder became and ceased to be a shareholder of the company (s 40).

Failure to record the proper and correct information in the register of members can incur a penalty of CI\$5,000 (US\$6,000) for both the company and any director or manager who knowingly and wilfully authorises or permits such default.

3. The register of mortgages and charges 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 (s 54).

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. The accounts must give a true and fair view of the state of the company's affairs, explain its transactions and be retained for a minimum period of 5 years (s 59). A CI\$5,000 (US\$6,097.60) penalty applies for knowingly or wilfully failing to comply.

There is no requirement that accounts be audited or filed with the Registrar of Companies (the "Registrar"). However, the accounts must be made available, if so ordered, to the Tax Information Authority and failure to do so will incur a CI\$500 (US\$609.76) penalty, with a further CI\$100 (US\$121.95) daily penalty for each day of non-compliance.

A company which keeps its books of account outside of the Cayman Islands must provide information regarding its books of account to its registered office each year in the form and manner prescribed. Failure to comply, without reasonable excuse, will incur a CI\$500 (US\$609.76) penalty, with a further CI\$100 (US\$121.95) daily penalty for each day of non-compliance. However, the form and manner have not yet been prescribed and this will not apply to any company that files its accounts with CIMA in accordance with any regulatory law.

Filings and penalties for late filings

The Registrar must be notified of the following matters:

1. Any change of a company's registered office must be notified within 30 days and is not effective until the Registrar has received notification (ss 11, 50, 51). A penalty of CI\$10.00 (US\$12.20) per day is imposed for late reporting, although the Registrar has discretion to cap the penalty at CI\$500.00 (US\$609.76) (s 199);
2. The appointment, removal or resignation of any director or officer of a company must be notified within 30 days. A penalty of CI\$500 (US\$609.76) applies to late reporting. Where the late reporting is deemed to have been made knowingly or wilfully, a penalty of CI\$1,000.00 (US\$1,219.51) applies to both the company and every director or officer to which the breach relates (with a further per diem penalty for directors or officers of CI\$100.00 (US\$121.95) for each day of non-compliance) (ss 55, 56);
3. A copy of any special resolution of the shareholders (necessary to change the company's memorandum or articles of association, name of the company or reduce the company's share capital, etc.) must be filed with the Registrar within 15 days. A further copy must be annexed or embodied in every copy of the company's articles of association (ss 62- 63); and
4. Any increase in the stated authorised share capital of the company must be notified within 30 days (s 45). Again, a per diem penalty of CI\$10.00 (US\$12.20) is imposed for late reporting.

Annual filing requirements

Every exempted company must file an annual return that confirms the company has complied with various provisions of the Act relating to exempted companies since the date of the previous annual return. The annual return is filed with the Registrar, together with the appropriate annual filing fee which varies (depending on the authorised share capital of the company) between CI\$700.00 and CI\$2,568.00 (US\$853.66 and US\$3,131.71) (ss 168-169).

Every ordinary company, whether local or non-resident, must hold an Annual General Meeting of shareholders (s 58). Within 21 days after the Annual General Meeting, the company must file an annual return listing the names and addresses and shares held by all members of the company on the 14th day after the Annual General Meeting, and those who have ceased to be members of the company since the last list was made. The annual return must also contain details of the company's share capital. The annual return must be filed with the Registrar in January of each year, together with the appropriate annual fee which varies (depending on whether the company is classed as "resident" or "non-resident" and on the authorised share capital) between CI\$300.00 (US\$365.85) and CI\$915.00 (US\$1,115.85) (s 41).

For both exempted and ordinary companies, penalties for late filing are imposed if the annual return and fee is not paid before 1 April each year. If the annual return or fee is filed or paid between 1 April and 30 June, the penalty is 1/3 of the annual fee; if filed or paid between 1 July and 30 September, the penalty is 2/3 of the annual fee; and if filed or paid after 1 October, the penalty is 100% of the annual fee (ss 42, 169).

It is important to note that the Registrar will only issue a certificate of good standing for a company if all fees and penalties under the Act have been paid, all annual returns have been filed, and the Registrar has no knowledge of any default (s 200A).

Information available publicly and to shareholders and creditors

Only limited information on Cayman Islands companies is publicly available, consisting of the type of company (i.e. ordinary or exempted), the location of its registered office, the company number, the date of incorporation, whether the company is active or not active, the nature of the company's business and the date of the end of the company's financial year.

A company's list of current directors must be maintained and made available for public inspection at the Companies Registry. Inspections will incur a fee of CI\$50/US\$61 per company (s55A).

Both exempted and ordinary companies are required to make their register of mortgages and charges available for inspection by any shareholders or creditors (s 54).

In addition, an ordinary company is required to make its register of members available for inspection by any member of the public on payment of a nominal fee of CI\$10.00 (US\$12.20) and if requested provide a copy of such register at the cost of CI\$1 (US\$1.22) per page (s 44). Accordingly, it is usual for shares in Cayman Islands ordinary companies to be held by nominees.

The register of members of an exempted company is not publicly available. However, it must, as with an ordinary company, be made available to the Cayman Islands Tax Information Authority upon the service of any order or notice pursuant to the Tax Information Act (2017 Revision). Failure to comply incurs a CI\$500 (US\$609.76) penalty with a further CI\$100 (US\$121.95) daily penalty for each day of non-compliance (s 44).

Beneficial ownership register

All Cayman Islands companies (including LLCs) except those that are "out of scope" (see below) are required to implement and maintain beneficial ownership registers ("**UBO Registers**") that record details of the individuals who ultimately own or control 25% or more of the equity interests or voting rights, or who have rights to appoint or remove a majority of the company directors, or LLC managers, together with details of any direct intermediate holding company (ss 245, 247).

A corporate services provider must keep the UBO Register for "in scope" companies at the registered office in the Cayman Islands (s 252). The company's corporate services provider will report the information contained in the UBO Register to the Competent Authority in the Cayman Islands.

The Competent Authority will keep the register on the centralised beneficial ownership digital search platform maintained by the Competent Authority. The Registrar will keep all information on the centralised platform confidential. The centralised platform will only be searchable where a proper and lawful request has been made by either a law enforcement authority of a country that has entered into an agreement with the Cayman Islands or by certain Cayman Islands regulatory bodies, such as the Cayman Islands Monetary Authority (s 262). Currently, the only country to have entered into reciprocal arrangements is the United Kingdom.

Companies are “out of scope” if they are:

- 1 listed on the Cayman Islands Stock Exchange or an approved stock exchange;
- 2 registered or hold a licence under a regulatory law;
- 3 managed, arranged, administered, operated or promoted by an approved person as a special purpose vehicle, private equity fund, collective investment scheme or investment fund (including where the vehicle, fund or scheme is a Cayman Islands exempted limited partnership);
- 4 regulated in a jurisdiction whose Anti- Money Laundering legislation is deemed to be equivalent to the Anti-Money Laundering legislation of the Islands;
- 5 a general partner of a vehicle, fund or scheme referred to in paragraph 3, which vehicle, fund or scheme (i) is registered or holds a licence under a regulatory law; or (ii) is managed, arranged, administered, operated or promoted by an approved person;
- 6 holding directly a legal or beneficial interest in the shares of a legal entity which holds a licence under the Banks and Trust Companies Act, the Companies Management Act, the Insurance Act, Part III of the Mutual Funds Act, or the Securities Investment Business Act.

If an out of scope company has a direct or indirect subsidiary in which it owns or controls 75% or more of the equity interests or voting rights, or has the right to appoint or remove a majority of the company directors, that subsidiary will also be out of scope.

Out of scope companies are not required to maintain UBO Registers but must provide written confirmation identifying grounds for exemption in a prescribed form to their corporate services provider who will in turn file the written confirmation with the Competent Authority (s 253).

The UBO Register must contain prescribed information on any beneficial owners and registrable relevant legal entities, together with the date on which the individual or entity became a “registrable person” in respect of the company (and, for former beneficial owners, the date the individual or entity ceased to be so). If a company does not have any registrable persons, then a nil return should be entered in the company’s UBO Register. A company is required to update the UBO Register within 30 days of becoming aware of a change to the information contained in it (ss 253- 255).

A company knowingly and wilfully failing to establish a UBO Register commits an offence and is liable on summary conviction for each such contravention to, in the case of a first offence, a fine of CI\$25,000 (US\$30,000) or, in the case of a second or subsequent offence, to a fine of CI\$100,000 (US\$121,951). Where a company is convicted of a third offence, the court may order that the company be struck off the register of companies by the Cayman Islands Court. Other penalties apply to persons and range on conviction (summary and indictment) to fines of between CI\$5,000 (US\$6,000) and CI\$50,000 (US\$60,976) and terms of imprisonment ranging from 1-2 years or both (ss 274 to 278).

Recent amendments to the Act have introduced an administrative fine regime for breaches of the respective beneficial ownership provisions. The Registrar of Companies now has the power to impose administrative fines on persons who breach any provision listed in Schedule 7 of the Act.

Economic Substance

The International Tax Co-operation (Economic Substance) Act (as revised) (the “**ES Act**”) was introduced in the Cayman Islands in response to OECD’s Base Erosion and Profit Shifting framework and related EU initiatives in relation to what are known as ‘Geographically Mobile Activities’. The ES Act is supplemented by the Guidance Notes issued by the Cayman Islands Tax Information Authority (the “**TIA**”) on Economic Substance for Geographically Mobile Activities. Under the ES Act any ‘relevant entity’ which carries on a ‘relevant activity’ and receives ‘relevant income’ in a financial period must satisfy the economic substance test in relation to that activity and make an annual filing with the TIA. Please see our [briefing](#) in respect of Economic Substance in the Cayman Islands for further details of the ES Act.

Tax exemption

An exempted company is entitled to apply under Section 6 of The Tax Concessions Act (as 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 granted for a period not exceeding 30 years from the date of approval of the application and, in practice, the undertaking is normally given for 20 years.

Further information

Campbells can advise and assist on these matters. For further information on the matters referred to in this briefing paper, please contact your usual Campbells contact or visit our [website](#) for contact information.