

# Cayman Islands exempted companies

One of the reasons why the Cayman Islands is a leading offshore jurisdiction is the flexibility of Cayman Islands companies. The main legislation regulating the formation and operation of companies in the Cayman Islands is the Companies Act. English common law and equitable principles and precedents are also followed in the Cayman Islands, where applicable.

## Overview

Under the Companies Act a limited company can be incorporated as either:

- An “exempted company” - a company which has been registered as an exempted company on the basis of a declaration by the incorporating subscriber that the operations of the company are to be carried on mainly outside the Cayman Islands
- An “ordinary company” - a term not directly defined by the Companies Act but being the commonly used term for companies incorporated in the Cayman Islands and not registered as an “exempted company”

Limited liability companies (**LLCs**) can also be incorporated in the Cayman Islands under the Limited Liability Companies Act, in a form closely aligned to the Delaware LLC. Please see our [guide to Cayman Islands limited liability companies](#) for more details.

## Benefits of exempted companies

Exempted companies enjoy a number of privileges and exemptions when compared to ordinary companies and limited liability companies in other jurisdictions and so are frequently used to facilitate offshore financial and trust business. These advantages include:

- minimal annual reporting requirements
- no requirement for Cayman resident directors or shareholders
- the register of shareholders does not have to be kept at the registered office and is not open to public inspection
- no requirement to hold an annual meeting of its shareholders
- ability to issue shares with or without nominal or par value
- the company's name does not need to end in the word “Limited” or “Ltd.” (please see below for name requirements for a segregated portfolio company and limited duration company)
- an ability to deregister itself from the Cayman Islands and transfer by way of continuation into another jurisdiction where the laws of that other jurisdiction allow, or if incorporated outside the Cayman Islands a company may seek to transfer and be continued as an exempted company in the Cayman Islands
- an entitlement to receive from the Cayman Islands Government, a renewable “Tax Exemption Undertaking”, exempting it from any future Cayman Islands taxes for a period of up to 20 years, which may be extended to 30 years on special application

## Establishment of an exempted company

An exempted company is incorporated by the subscription (signature) of the initial shareholder(s) to the memorandum of association. Traditionally, the incorporating agent or law firm provides a nominee subscriber for the initial incorporation, who signs the memorandum of association and articles of association (which govern the management of the company) to allow the company to be incorporated. An incorporation fee is payable to the Registrar of Companies (**Registrar**), which varies depending on the authorised share capital of the company.

## Declaration by subscriber as to business outside the Cayman Islands

An exempted company may not carry on business within the Cayman Islands, except in furtherance of its business carried on outside the Cayman Islands, unless it holds a licence to carry on business in the Cayman Islands under any applicable law. A declaration signed by the subscriber to that effect must be submitted to the Registrar as part of the application to register an exempted company.

## Certificate of incorporation

On filing the memorandum and articles of association, the declaration described above and payment of the incorporation fee, the Registrar will issue a certificate of incorporation. The certificate of incorporation is conclusive evidence that the requirements of incorporation and registration under the Companies Act have been met at that date.

## Appointment of first directors and first meeting of directors

The subscribers to the memorandum of association appoint the first director(s) of the company, who are usually representatives of the incorporation agent or law firm and who will hold a meeting or pass resolutions to deal with initial organisational matters which will include appointment of client nominated directors.

## The memorandum and articles of association

The memorandum and articles of association (**M&A**) together form an effective contract between the shareholders of the company, and between them and the company itself. The M&A set out the respective rights and obligations and the procedures of corporate governance to be followed, within the overall framework of the Companies Act, other relevant Cayman Islands statutes and common law principles.

## Memorandum of association

The memorandum of association contains:

- the name of the company
- the location of the company's registered office in the Cayman Islands
- the objects of the company
- a declaration regarding the liability of the shareholders
- details of the authorised share capital of the company
- for an exempted company with shares without nominal or par value, the memorandum of association must detail the aggregate amount for which those shares may be issued. An exempted company may not have shares of both par value and shares of no par value at the same time
- the date of the financial year end of the company

## Articles of association

The articles of association (**Articles**) of an exempted company establish the internal governance of the company. An exempted company may adopt the standard or default articles of association in the form of “Table A” set out in the Companies Act or, more typically, adopt customised Articles in the usual form of the incorporation agent or incorporating law firm.

## Registered office

Every exempted company must maintain a registered office in the Cayman Islands to which communications and notices may be sent. The location of the registered office is a matter of public record, notified to and published by the Registrar.

## Management of an exempted company

The day-to-day management of an exempted company is delegated by its shareholders to its board of directors and, subject to any express provisions in the Articles, the authority of the shareholders in the day-to-day operation of the company is limited to their power to appoint and remove the directors.

## Shareholders' meetings

Exempted companies are not required to hold annual (general) meetings of shareholders.

The Articles set out the voting rights and procedural requirements for shareholder meetings, but in the absence of such provisions in the Articles, the Companies Act specifies that every shareholder shall have one vote, a meeting may be called on five days' notice and three shareholders may summon a general meeting of the company.

## Directors and officers

An exempted company must have a minimum of one shareholder and one director. The appointment of officers is optional. There is no requirement for Cayman resident directors or officers. The quorum for a meeting of the board of directors is governed by the Articles and may be one or any greater number specified in the Articles.

Please see our [guide to directors' duties and obligations under Cayman Islands law](#) for further details of the ongoing obligations and duties of a director of an exempted company.

## The company seal

A Cayman Islands exempted company may have a company seal and, if authorised by its Articles, may have duplicate seals overseas. The Companies Act does not require a physical seal to be affixed to documents which are executed under seal. Any contract which is expressed to be executed by the company as, or makes clear on its face that it is intended to be, a deed is deemed by the Companies Act to be executed as if made by deed or under seal. The use of a seal is becoming increasingly uncommon and is not required under Cayman Islands law.

## Cayman Islands government fees

The incorporation and annual fees charged by the Cayman Islands Government for the incorporation and maintenance of Cayman Islands companies are based on the authorised share capital. Please contact us for further details of the current incorporation and annual fees.

## Tax

The Cayman Islands has no corporation tax, income tax, capital gains tax, inheritance tax, gift tax, wealth tax or any other tax applicable to an exempted company conducting offshore business. Stamp duty is payable on certain documents, generally at a nominal rate. Exempted companies are also entitled to apply for a Tax Exemption Undertaking, as described above.

## Exchange control

The Cayman Islands have no exchange control laws. There is therefore no restriction on the movement of funds in or out of the Cayman Islands either by residents or non-residents of the Cayman Islands. Bank accounts may be kept in the Cayman Islands or any other jurisdiction in the world in any currency and an exempted company's share capital may also be expressed in any currency.

## Shares and dividends

The Companies Act is flexible on the form or classes of shares which may be issued by an exempted company. The Articles typically provide that shares may be issued on approval of a resolution of the directors.

## Share premium

When a company issues shares at a premium to par share capital value, whether for cash or otherwise, a sum equal to the aggregate amount of the value of the premiums on those shares is deemed to be transferred to the share premium account. So, for example, if a share with a US\$1 par value is issued for a subscription price of US\$1,000, this results in a net credit of US\$999 to the share premium account. The share premium account is a notional account created under the Companies Act with meaning only in the context of share distributions by Cayman Islands companies. Funds credited to the share premium account do not have to be placed in a separate account, nor does the term have any specific Cayman Islands accounting implications. Amounts standing to the credit of the share premium account are notionally reduced to the extent that a company funds any dividend, redemption or repurchase amount from such account.

## Redeemable shares

Subject to compliance with the Companies Act, if authorised by its Articles, an exempted company may issue redeemable shares, which are redeemable at the option of the company or the shareholder (or convert shares issued as non-redeemable into redeemable). Care should be taken when creating redeemable shares as most collective investment vehicles issuing redeemable shares are typically subject to additional requirements and regulation in the Cayman Islands (see our [guide to mutual funds in the Cayman Islands](#) for details and our [guide to private funds in the Cayman Islands](#)).

For the protection of shareholders, the Companies Act imposes a number of requirements for the redemption or purchase by the company of its own shares, including:

- only fully paid (up to par value) shares may be redeemed
- redemption or purchase of shares may be effected in such manner and on such terms as may be authorised by the company's Articles or as approved by shareholders' resolution
- shares may be redeemed out of any of the profits of the company, share premium account, a fresh issue of shares or out of capital provided that following the redemption or purchase the company will remain solvent. Solvency in the Cayman Islands is generally satisfied by a cash flow test only (rather than on a balance sheet basis) and the company must remain able to pay its debts as they fall due in the ordinary course of business following the making of the relevant payment
- there must be established a capital redemption reserve to avoid reducing the amount of the company's authorised capital

Fully paid shares may also be surrendered for no consideration.

## Treasury shares

Shares which have been redeemed, repurchased or surrendered may be kept by a Cayman Islands company as treasury shares which can subsequently be cancelled or sold by the company.

## Issuing shares at a discount to par value

A company may only issue shares of any class at a discount to their par value subject to an authorising resolution of the company, the approval of the Cayman Islands Grand Court and provided the company has been in existence for at least one year. It is rare for exempted companies to issue shares at a discount.

## Bearer shares

Following an amendment to the Companies Act in May 2016, bearer shares (ie shares represented by a certificate which does not record the owner's name and which are transferable upon delivery of the certificate) can no longer be issued by a Cayman Islands exempted company. All bearer shares in issue in exempted companies had to be converted into registered shares by 13 July 2016 or they will now be void.

## Transfer of shares

The Articles of an exempted company will set out how shares may be transferred, typically requiring the consent of the directors and execution of a share transfer form by the transferor. Legal title to the shares will not be transferred until the register of shareholders is updated and so it is crucial that the register of shareholders of the company is updated as soon as possible to record the transfer. No stamp duty is payable in the Cayman Islands on transfers of shares.

## Dividends

An exempted company may declare and pay a dividend or distribution, in cash or in kind, if it is allowed to do so by its Articles. Payment can be made out of profits (realised or unrealised) or the share premium account. Typically, a dividend is approved by directors' resolution, unless the Articles require shareholder approval. The solvency test referred to above must also be satisfied.

## Ongoing obligations of an exempted company

### Annual filing requirements

In January of each year every exempted company is required to file a notification of their status under the ES Act (see further below) with the Registrar.

Also in January of each year, every exempted company is required to file and pay an annual return and annual Companies Registry fees with the Registrar. This will be dealt with by the registered office provider. Such filing cannot be made until the above notification has been filed. The annual return contains a declaration setting out:

- details of changes, if any, to the company's memorandum of association since the last return
- that the operations of the company since the last annual return have been mainly outside the Cayman Islands
- that in compliance with the Companies Act, the company is not trading within the Cayman Islands except in furtherance of its offshore business

Information contained in an exempted company's register of beneficial ownership will also be filed monthly by the company's registered office provider with the Cayman Islands competent authority, on a confidential basis.

Please see our [guide to continuing obligations of Cayman Islands exempted companies](#) for further details of the ongoing requirements that apply.

## Registers

Every exempted company must maintain the following registers. These registers must be kept at the company's registered office in the Cayman Islands, except the register of shareholders which may be kept at any place either in or outside the Cayman Islands but the address at which it is kept must be held by the registered office.

### *Register of members*

A register of its shareholders with the names and addresses of the shareholders and details of the number of shares held by each, the voting rights of each category of shares, the share certificate number (if any) and the date the shareholder became or ceased to be a shareholder.

### *Register of beneficial ownership*

A register of beneficial ownership (unless an exemption applies) with required particulars of the company's registrable persons (as defined in the Companies Act). Please see our [guide to the Cayman Islands beneficial ownership regime](#) for more details on beneficial ownership registers and exemptions that may apply, for example, for certain regulated companies and their subsidiaries. When an exemption applies, the company must file written confirmation of the exemption with its registered office provider, with instructions to file the written confirmation with the competent authority in the Cayman Islands.

### *Register of directors and officers*

A register of officers and directors containing the names and addresses of the company's officers and directors, including alternate directors.

### *Register of mortgages and charges*

A register of mortgages and charges recording the details of all security interests granted by the company over its property.

## Accounts and auditors

The Companies Act requires that every company keep proper books of account, showing details of all receipts, expenditures, purchases, sales and assets and liabilities of the company, reflecting a true and fair view of the state of the company's affairs and explaining its transactions. A Cayman Islands company may specify any date for its financial year end.

There is no statutory requirement under the Companies Act for the filing or auditing of company accounts, and how and to what extent the books of account are made available to the shareholders of the company is generally a matter addressed in the Articles or by the directors.

Audited accounts may be required for companies which are regulated in the Cayman Islands under other laws, such as mutual funds. Please see our [guide to continuing obligations of a Cayman Islands registered mutual fund](#) and [guide to continuing obligations of a Cayman Island private fund](#) or contact us for further details.

## Availability of information to the general public

The following information about a Cayman Islands exempted company is publicly available from the Registrar:

- the name of the company
- the type of company (ie an exempted or an ordinary company)
- the location of its registered office

In addition to the above, the following information about a Cayman Islands exempted company is publicly available from the Registrar upon payment of the applicable search fee(s):

- the names of the current directors of the company

- the company's share capital
- details of the subscribers to the memorandum (which will usually be the incorporation service provider) and the number of shares taken
- dates of the memorandum signature and filing
- the company number
- prescribed information for a company limited by guarantee
- the date of company financial year end

The register of mortgages and charges of an exempted company is open to inspection by shareholders of the company and creditors of the company at the company's registered office.

The register of shareholders and register of beneficial ownership of an exempted company are not publicly available in the Cayman Islands. Information contained in an exempted company's register of beneficial ownership, or details of any exemption that applies, will be filed by the company's registered office provider with the Cayman Islands competent authority on a confidential basis and is only accessible in limited circumstances pursuant to a proper and lawful request made by certain Cayman government authorities. Please see our [guide to the Cayman Islands beneficial ownership regime](#) for more details on beneficial ownership registers.

### Inspection rights

Shareholders holding not less than 20% of a company's issued share capital may apply to the Grand Court in the Cayman Islands to appoint one or more inspectors to examine the affairs of a company and report on them. Inspectors may also be appointed by special resolution of the shareholders.

### Transfers in and out of the Cayman Islands

Cayman Islands exempted companies may apply to transfer out of the jurisdiction to another jurisdiction by way of continuation. The new jurisdiction must accept transfers in by way of continuation. Please see our [guide to transfers out of the Cayman Islands](#) for more information.

Overseas companies can also transfer into the Cayman Islands by way of continuation. Please see our [guide to transfers in to the Cayman Islands](#) for more details.

### Mergers and consolidations

The Companies Act provides a very flexible and user friendly merger and consolidation regime which does not require court approval. Please see our [guide to Cayman Islands mergers and consolidations](#) for more details.

### Termination and winding-up an exempted company

#### Strike Off

This method is best suited to a company that has never traded or has been inactive for a number of years with no assets, no liabilities and no creditors. On request of the company, the Registrar has the power to strike off a company from the register of companies where the Registrar has reasonable cause to believe that the company is not carrying on business or is not in operation. On striking off, the company is then dissolved but the liability of directors, officers and members is not affected and a struck-off company may be reinstated on an application by a shareholder or creditor for a period of up to ten years from the date of dissolution. For this reason, companies that have traded are usually liquidated rather than struck off.

## Winding up

An exempted company may be wound up voluntarily (i) by a special resolution passed by the shareholders of the company; (ii) where the period, if any, fixed for the duration of the company by its M&A has expired; or (iii) because a specific event has occurred, on the occurrence of which its M&A provide that the company shall be wound up.

A company may also be wound up compulsorily by order of the court. On completion of a liquidation, a company is dissolved and cannot be reinstated.

Please see our [guide to the voluntary liquidation of a Cayman Islands company](#) for further details.

## Segregated portfolio companies and limited duration companies

In addition to the standard exempted company there are two further types of exempted companies available under the Companies Act which share the benefits and attributes of typical exempted companies but have further features.

### Segregated portfolio companies

Any exempted company may be registered as a segregated portfolio company (**SPC**), either on incorporation or by a later conversion. An SPC is a single legal entity which is able to create separate segregated portfolios (each a **Portfolio**), with the assets and liabilities of each Portfolio being statutorily ring-fenced from the assets and liabilities of other Portfolios and the general assets and liabilities of the company. The company may issue one or more classes of shares for each Portfolio and the proceeds of those shares are included in and accounted for in the assets of the Portfolio for which they are issued.

The SPC must include the letters "SPC" in its name, or the words, "Segregated Portfolio Company", and each Portfolio is required to be separately identified or designated and must include in its identification or designation, the words "Segregated Portfolio" or the letters "SP" or "S.P.". The SPC may contract on behalf of or for the benefit of its Portfolios but the contract must identify and specify the Portfolio and that the contract is executed in the name of or for the account of that Portfolio.

Please see our [guide to Cayman Islands segregated portfolio companies](#) for further details of the benefits and operation of SPCs.

### Limited duration companies

The limited duration company (**LDC**) is a Cayman Islands corporate vehicle with a limited life, corresponding to the 'Limited Liability Company' in the United States. LDCs do, however, have many aspects of corporate existence, including separate legal personality and limited liability. To be registered as an LDC an exempted company must:

- have a name which ends in "Limited Duration Company" or "LDC"
- have at least two subscribers or shareholders and
- have a provision in its memorandum of association limiting the duration of the company to 30 years or less

An LDC has the option at any time, on payment of a fee, to cease to be an LDC.

At the end of its term an LDC will normally be voluntarily wound up and dissolved. An exempted company may not be converted into an LDC.

## Foreign companies

Overseas companies which establish a place of business or start carrying on business in the Cayman Islands (eg in order to be a general partner of a Cayman Islands exempted limited partnership) must register with the Registrar as a 'foreign company' under the Companies Act. Registration involves a simple filing of specified documents with the Registrar. Please contact us for further details about registering as a foreign company and ongoing requirements which apply.

## Economic substance

The International Tax Co-operation (Economic Substance) Act (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 [guide to economic substance in the Cayman Islands](#) for further details of the ES Act.

## Funds regulation and AML compliance

If an exempted company is established as an open-ended investment fund and falls within the definition of a "mutual fund" under the Mutual Funds Act, or if it is a closed ended fund and falls within the definition of a "private fund" under the Private Funds Act, it may be regulated by CIMA and will also have to comply with Cayman Islands anti-money laundering (**AML**) legislation.

Please see our [guide to mutual funds in the Cayman Islands](#) and [guide to private funds in the Cayman Islands](#) or contact your usual Harneys representative for more information about exempted companies which are established as mutual funds or private funds.



For more information and key contacts please visit [harneys.com](https://www.harneys.com)