



Exempted Companies

Wednesday July 7th, 2021

Exempted companies are the most common form of offshore company in the Cayman Islands and are incorporated or registered under the Companies Act (2021 Revision) (“**Companies Act**”). 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. The constitution of an exempted company is contained in the memorandum of association and the articles of association. The registered office of the exempted company must be provided by a service provider licensed for such purpose in the Cayman Islands.

An exempted company may be registered 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. The subscriber is required, as part of the incorporation process to provide a declaration to this effect to the Registrar of Companies.

An exempted company may not own land in the Cayman Islands without the consent of the Financial Secretary of the Cayman Islands and is prohibited from making any invitation to the public in the Cayman Islands to subscribe for any of its shares or debentures.

Advantages of using an Exempted Company

Exempted companies are frequently used to facilitate offshore financial and trust business. They have a number of advantages over companies incorporated in other jurisdictions. These include:

- minimal annual reporting requirements;
- no requirement for Cayman resident directors or shareholders;
- the register of shareholders 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 need not end in the word "Limited" or "Ltd.";
- **an ability to deregister from the Cayman Islands and be reregistered in another jurisdiction.**

Incorporation

The company is incorporated with a memorandum of association and articles of association (together the “**Memorandum and Articles**”). The Memorandum and Articles set out the respective rights, powers and obligations of the directors and shareholders and the procedures for corporate governance. It usually takes 3-5 business days for the Registrar of Companies (the “**Registrar**”) to register an exempted company if using the standard incorporation service. Upon payment of an express incorporation fee a company may be registered in 1-2 business days.

Management of the Company

The exempted company is required to have at least one director and one shareholder. The day-to-day management of the company is undertaken by the board of directors. Unless the articles of association states otherwise, the shareholders are not involved in the day-to-day management of the company.

The quorum for a meeting of the board of directors is governed by the articles of association and may be one or any greater number specified or determined by the articles of association.

Registers

Every exempted company must maintain:

- a register of members with the names and addresses of each member of the Company, the number and category of shares held, whether shares are fully paid, the serial number (if any) allocated to each share, the date of issue, confirmation of whether the shares carry voting rights, the date of transfer/ repurchase/redemption and, where applicable, the person to whom the shares are transferred;
- a register of beneficial owners (unless exempt) which identifies any registrable persons as defined in the Companies Act.
- a register of officers and directors containing the names and addresses of the company's officers and directors, including alternate directors; and
- a register of mortgages and charges recording the details of all mortgages and charges granted by the Company over its property.

Accounts and Audits

Under the Companies Act, every company is required to keep proper books of account, including 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. An exempted company may specify any date for its financial year end.

Exempted Companies are not required to prepare or file audited accounts under the Companies Act. However, they may be required to prepare or file audited accounts if they are regulated under other Cayman Islands laws, such as the Mutual Funds Act (2021 Revision).

No Taxes

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.

Additionally, the company has the power to apply for a Tax Exemption Undertaking from the Cayman Islands Government exempting it from any taxes which may be imposed in the future or a period of up to 20 years which may be extended to 30 years on special applications.

Availability of information to the 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 (i.e. an exempted or an ordinary company); and
- the location of its registered office.

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 is not publicly available in the Cayman Islands.

The Register of directors is available for inspection by any person upon the payment of a fee to the Registrar.

Winding-up an exempted company

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 articles of association has expired; or (iii) because a specific event has occurred, on the occurrence of which its articles of association 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.

An alternative to liquidation is striking off. An exempted company may apply to the Registrar to be struck off on the basis that the company has never

traded or has been inactive for a number of years with no assets, no liabilities and no creditors (i.e. no longer trading). 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.

Contact Jo-Anne.Stephens@bransens.com or Francine.Bryce@bransens.com for further information.

Please note that this briefing is intended to provide a very general overview of the matters to which it relates and is not intended as legal advice and should not be relied upon as such.

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