

Cayman Islands exempted company: Ongoing obligations

MARCH 2018

Exempted companies incorporated or registered under the Cayman Islands Companies Law (2016 Revision) (**Companies Law**), are the most common form of offshore structure. This memo provides a general summary of some of the continuing obligations exempted companies are subject to.

Registered Office and Display of Company Name

All exempted companies must have a registered office provided by a regulated service provider in the Cayman Islands. In addition, the company's name must be on display at the registered office (a service which Collas Crill Corporate Services Limited (CCCS) provides to all of its clients) and at any other place of business maintained by the company.

Shares

The issuance of new shares is determined by the provisions of a company's articles of association (Articles) which usually require the prior approval by the directors. The register of members is prima facie evidence of legal title to shares in an exempted company.

Where existing issued shares are to be transferred between holders, subject to any restrictions or special provisions contained in the articles, a share transfer instrument must be signed and approval should be obtained from the directors. Where in issue, old share certificates should be returned to the registered office for cancellation, whereupon new certificates may be issued.

Company Meetings

An exempted company is not obliged to hold an annual general meeting or an annual meeting of directors unless stipulated by its Articles. Notice of all meetings of shareholders or directors (including any committee of the directors) should be given to all those entitled to attend and vote at the meetings. The Articles will set out the procedure to call such meetings, including, amongst others, the requisite notice periods.

Changes to the Board of Directors

The company's Articles dictate the means by which directors are appointed and removed from the board. In order for a resignation to be effective the relevant documents (for example, a letter of resignation) must be signed by the retiring director and delivered to the company. For an appointment to the board, generally, a motion of approval is required by the directors or shareholders. Copies of any resolutions and relevant documents should be sent to the registered office and be included in the minute book. In addition, the register of directors and officers must be updated and filed with the Registrar of Companies

Regulatory | Real estate | Private client and trusts | Insolvency and restructuring | Dispute resolution | Corporate | Banking and finance

in the Cayman Islands (Registrar) within 60 days of the date of the appointment or removal. Any default in complying with this requirement shall incur a financial penalty. The register of directors and officers is not a public record.

Maintaining Records

The company's key corporate documents are generally kept at the company's registered office. The documents are contained in a minute book, which should comprise the following:

- The constitutional documents (being the certificate of incorporation, the memorandum of association and Articles (together, **M&A**), the register of directors and officers, the register of members and the register of mortgages and charges)
- Register of beneficial ownership (unless an exemption applies)
- The minutes of directors and shareholders meetings (or any written resolutions passed in lieu) and any documents referred to in the minutes
- Any notifications (including letters) relating to the resignations and appointments of directors and officers
- Where issued, copies of share certificates and the share certificate stubs
- Share transfer forms
- The annual return
- Financial statements (if prepared)
- The tax exemption certificate (if obtained by the company)

Accounting

Books of account which give a true and fair view of the state of the company's affairs and explain its transactions must be kept by all exempted companies. Unless the company conducts a regulated activity, accounts need not, under law, be audited.

Annual Return

In January of each year after the year of its incorporation, each exempted company is required to submit to the Registrar an annual return together with the appropriate filing fee which, in the case where CCCS act as registered office provider, is invoiced annually on or around October of each year. Returns filed after 30 March will incur a penalty fee.

Requirements for Filing

The Registrar is required to be notified if there has been:

- A change in directors or officers. An updated register of directors and officers must be filed within 60 days of such change
- A change in the authorised share capital of the company. Within 30 days, the shareholder resolution and, if adopted, the amended M&A must be filed
- A change of name of the company. The shareholder resolution and, if adopted, the amended M&A must be filed within 15 days

- An alteration of the M&A. Within 15 days, the shareholder resolution and, if adopted, the amended M&A must be filed
- A change of location of the registered office. The board resolution should be filed immediately (noting that the change only takes effect on filing)
- Any other shareholder resolution passed as a special resolution should be filed within 15 days

In certain circumstances such as a capital reduction or the winding up of the company additional filings will be required. All filings made with the Registrar are private and are not a matter of public record.

As the Registrar runs an electronic filing system accessible only by way of subscription, CCCS (or the company's registered office) must handle all filings. It is the obligation of the company and the directors to make sure that any changes are notified to CCCS (or the company's registered office) as soon as possible in order to avoid penalties being payable to the Registrar.

Register of Beneficial Ownership

Exempted companies, unless they fall within an exemption, are required to maintain a register of beneficial ownership (**BO Register**) which includes particulars of the company's registrable persons (as defined in the Companies Law). The BO Register will be filed monthly by CCCS with the Cayman Islands competent authority. The BO Register is confidential and is accessible only in limited circumstances in accordance with a proper and lawful request made by certain Cayman government authorities. Where an exemption applies, a BO Register is not required, however the company must notify CCCS or its registered office provider of the particulars of its exemption as these must also be filed with the competent authority.

Segregated Portfolio Companies

An exempted company registered as a segregated portfolio company is required, each year, to list each segregated portfolio in existence on 1 January and pay, in addition to the annual return and fees for exempted companies, supplementary fees based on the number of portfolios that it has established.

Additional Obligations

Duties of Directors

It is important to note that directors owe ongoing fiduciary duties to the company itself. These duties include remaining loyal to and acting in the best interests of the company, avoiding conflicts, acting fairly between different shareholders and not making secret profits from a position as director, amongst others. Where a director breaches his duties, he may be held personally liable to the company.

In addition, companies regulated by the Cayman Islands Monetary Authority (**CIMA**) are subject to additional requirements, a number of which are set out below.

SIBL Excluded Persons

In order to maintain their registration, companies registered with CIMA as “excluded persons” under the Securities Investment Business Law (**SIBL**) must make the necessary filings with CIMA and pay the annual fee on or before 31 January. In the event that the company fails to submit the annual filing and requisite fee, the company will be removed from CIMA's list of "excluded persons" and, in the event that it continues to carry out securities investment business, will be in breach of SIBL which will result in penalties for the company and its directors.

Funds registered with CIMA

Mutual funds registered with CIMA are required to pay an annual registration fee by 15 January; with those that miss the deadline being subject to a monthly penalty. Regulated funds are also required to file annual audited accounts with CIMA within six months of each financial year end and a report setting out certain key statistical data and other information on the fund, which is often completed by the fund's auditors.

Investment funds in the Cayman Islands are also likely to be classified as reporting financial institutions under the Cayman Islands Automatic Exchange of Information legislation which imposes notification, reporting and other ongoing obligations.

For more information on mutual funds, please see our [Cayman Islands Mutual Funds factsheet](#), and for more information on certain additional duties of fund directors, please see our [Corporate Governance – Best Practice for Hedge Funds factsheet](#).

For more information please contact:



Chantelle Day

Partner | Cayman

t: +1 345 914 9623 | **e:** chantelle.day@collascrill.com