

Collas Crill explains... Continuing a company to the Cayman Islands

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This is part of a series of guides in which we examine areas of Cayman law that frequently arise in practice. To view other guides in the series, click [here](#).

This guide outlines the statutory procedure whereby a body corporate incorporated, registered or existing with limited liability under the laws of any jurisdiction outside the Cayman Islands may apply to be registered by way of continuation as an exempted company under the Companies Act (2021 Revision) (**Companies Act**).

Conditions precedent

Part XII of the Companies Law provides that the Registrar of Companies in and for the Cayman Islands (**Registrar**) shall register an applicant company (**the Registrant**) if:

- (a) the Registrant is a body corporate incorporated, registered or existing with limited liability and a share capital under the laws of a jurisdiction which permits or does not prohibit such transfer;
- (b) the Registrant has paid to the Registrar a fee equal to the fee payable on the incorporation of an exempted company;
- (c) the Registrant has delivered to the Registrar a copy, certified and authenticated (typically by a registrar of companies, or the local equivalent) with the public seal of the country, city or place under whose laws it has been incorporated of the following documents, collectively known as the **Charter Documents**:
 - (i) its certification of incorporation;
 - (ii) its memorandum and articles of association or equivalent constitutional documents defining its constitution (together with a certified translation into English, if necessary);
 - (iii) a certificate of good standing, or if the relevant authority doesn't issue such certificates, a declaration signed by a director as to the Registrant's good standing; and
 - (iv) a list of the names and addresses of its directors;
- (d) the name of the Registrant is acceptable to the Registrar;
- (e) the Registrant has filed with the Registrar notice of its proposed registered office in the Cayman Islands;
- (f) the Registrant has filed with the Registrar a declaration signed by one of its directors that the operations of the Registrant will be conducted mainly outside of the Cayman Islands; and
- (g) the Registrant has filed with the Registrar an affidavit sworn by one of its directors deposing that, having made due enquiry, the director is of the opinion that the requirements specified in section 2 below have been satisfied.

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Requirements to be satisfied

In the affidavit referred to in section 1(g) above, the director must depose that:

- (a) no petition or other similar proceeding has been filed and remains outstanding or order made or resolution adopted to wind up or liquidate the Registrant in any jurisdiction;
- (b) no receiver, trustee or administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the Registrant, its affairs or its property or any part thereof;
- (c) no scheme, order, compromise or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the Registrant are and continue to be suspended or restricted;
- (d) the Registrant is able to pay its debts as they fall due;
- (e) the application for registration is bona fide and not intended to defraud creditors of the Registrant;
- (f) EITHER the Registrant has no secured creditors at the date the affidavit is sworn OR, (and as an additional deliverable), the Registrant has delivered an undertaking signed by a director of the Registrant that notice of the transfer has been or will be given within 21 days to the secured creditors of the Registrant;
- (g) the consent or approval to the transfer required for any contract or undertaking entered into or given by the Registrant has been obtained, released or waived, as the case may be;
- (h) the transfer is permitted by and has been approved in accordance with the Charter Documents of the Registrant;
- (i) the laws of the current jurisdiction of the Registrant with respect to transfer have been or will be complied with;
- (j) the Registrant is constituted in a form or substantially in a form which could have been incorporated as an exempted company limited by shares under the Companies Act;
- (k) the Registrant will, upon registration under the Companies Act, cease to be incorporated, registered or exist under the laws of the current jurisdiction of the Registrant; and
- (l) the Registrant, if it is (or will be when registered by way of continuation) prohibited from carrying on its business in or from within the Cayman Islands unless licensed under any law, has applied for and obtained the requisite licence.

The affidavit is also required to include (normally by way of attachment) a statement of the assets and liabilities of the Registrant made up to the latest practicable date before the date of such affidavit.

Licensing

The Registrant, if it is (or will be when registered by way of continuation) prohibited from carrying on its business in or from within the Cayman Islands unless licensed under any law, it must have applied for and obtained the requisite licence prior to registration as an exempt company.

Public interest

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The Registrar must not be aware of any other reason why it would be against the public interest to register the Registrant.

Amendments to Charter Documents

Within 90 days of registration the Registrant should make such amendments, as required, to its memorandum and articles of association by special resolution passed in accordance with the Companies Act to ensure that they comply with the requirements of the Companies Act, as they relate to an exempted company.

Effect of registration

Upon registration, the Registrar will issue a certificate that the Registrant has been registered by way of continuation as an exempted company under the Companies Act and specifying the date of such registration. This certificate is conclusive evidence that compliance has been made with all the requirements of the Companies Act in respect of registration.

From the date of registration, the Registrant shall continue as a body corporate for all purposes and such company shall have:

- (a) the capacity to perform all the functions of an exempted company;
- (b) the capacity to sue and be sued;
- (c) perpetual succession;
- (d) the power to acquire, hold and dispose of property; and

The members of the Registrant shall have such liability to contribute to the assets of the Registrant in the event of its being wound up under the Companies Act as is provided therein.

For the avoidance of doubt, registration by way of continuation under the Companies Act does not operate:

- (a) to create a new legal entity;
- (b) to prejudice or affect the identity or continuity of the Registrant as previously constituted;
- (c) to affect the property of the Registrant;
- (d) to affect any appointment made, resolution passed or any other act or thing done in relation to the Registrant pursuant to a power conferred by any of its constitutional documents or by the laws of the jurisdiction under which it was previously incorporated, registered or existing;
- (e) to affect the rights, powers, authorities, functions and liabilities or obligations of the Registrant or any other person; or
- (f) to render defective any legal proceedings by or against the Registrant; any legal proceedings that could have been continued or commenced by or against the Registrant before its registration under the Companies Act may, notwithstanding such registration, be continued or commenced by or against the Registrant after registration.

Following registration the Registrar is required to publish:

- (a) a notice in the Cayman Islands Gazette specifying that the Registrant has been registered in the Cayman Islands;

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(b) the jurisdiction under the laws of which the Registrant was previously incorporated, registered or existing; and

(c) the previous name of the Registrant (if different, from that of the Registrant in the Cayman Islands).

Provisional registration

The Companies Act also provides for the provisional registration of a company incorporated, registered or existing in another jurisdiction by filing with the Registrar the Charter Documents, a limited affidavit and payment of a prescribed fee. Provisional registration does not constitute continuation as a Cayman Islands company but does provide a mechanism whereby the formalities of continuation are largely completed prior to actual registration. Upon provisional registration of a Registrant the Registrar will issue a certificate that the Registrant is provisionally registered by way of continuation as an exempted company and specifying the date of such provisional registration.

A Registrant that is provisionally registered is required to deliver to the Registrar within 60 days of such registration details of any changes to its constitutional documents or its proposed registered office in the Cayman Islands. The Registrant is also required to file an additional affidavit and pay an annual fee in January of each year following provisional registration.

Further information

We can assist with the registered office requirements mentioned in this guide through our affiliated corporate services team, Collas Crill Corporate Services Limited.

For more information on our corporate services please get in touch with one of the key contacts.

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