

De-Registration of Cayman Islands Companies being Continued in a Foreign Jurisdiction

Preface

This publication has been prepared for the assistance of those who are considering the process of de-registering a Cayman Islands company to a foreign jurisdiction. It deals in broad terms with the requirements of Cayman Islands Companies Law for the process of de-registration. It is not intended to be exhaustive but merely to provide an outline of the rules by which the process of de-registration of a Cayman Islands company for which we hope will be of use to the clients of Conyers Dill & Pearman.

Before proceeding with any process of de-registration in the Cayman Islands, clients are advised to consider the implications in their home jurisdiction and should consult with other professional advisers as appropriate.

We also recommend that our clients seek legal advice in Cayman on their specific proposals before taking steps to implement them.

Conyers Dill & Pearman

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1. INTRODUCTION

The Companies Law (the “Law”) of the Cayman Islands (the “Islands”) provides that an exempted company incorporated and registered with limited liability and a share capital (including a foreign company registered by way of continuation in the Islands) which proposes to be registered by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Islands (an “Applicant”) may apply to the Registrar of Companies (the “Registrar”) to be de-registered in the Islands.

2. CONDITIONS TO BE SATISFIED PRIOR TO DE-REGISTRATION

The Registrar will de-register an Applicant if the following conditions are satisfied:

1. The Applicant proposes to be registered by way of continuation in a jurisdiction which permits or does not prohibit the transfer of the Applicant in the manner provided in the Law (a “Relevant Jurisdiction”).
2. The Applicant has paid the Registrar a fee equal to three times the annual fee that would have been payable in the January immediately preceding the application for de-registration by an exempted company having the same registered capital as the Applicant on the date of the application. To ascertain this fee, an inquiry at the registered office of the company being de-registered will be made to determine what the company’s capital is or will be at the time of its de-registration. It will then be possible to determine the applicable level of government fees to use in this calculation.
3. The Applicant has filed with the Registrar notice of any proposed change in its name and of its proposed registered office or agent for service of process in the Relevant Jurisdiction.
4. No petition or other similar proceeding has been filed and remains outstanding or order made or resolution adopted to wind up or liquidate the Applicant.
5. No receiver, trustee or administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the Applicant, its affairs or its property or any part thereof.

6. No scheme, order or compromise or other similar arrangement has been entered into or made whereby the rights of creditors of the Applicant are and continue to be suspended or restricted.
7. The Applicant is able to pay its debts as they fall due.
8. The application for de-registration is bona fide and not intended to defraud creditors of the Applicant.
9. The Applicant has delivered to the Registrar an undertaking signed by a director that notice of the transfer has been or will be given within twenty-one days to the secured creditors of the Applicant.
10. Any consent or approval to the transfer required by any contract or undertaking entered into or given by the Applicant has been obtained, released or waived, as the case may be.
11. The transfer is permitted by and has been approved in accordance with the memorandum and articles of association of the Applicant.
12. The laws of the Relevant Jurisdiction with respect to transfer have been or will be complied with.
13. The Applicant, if licensed under the Banks and Trust Companies Law, or the Insurance Law or, if so previously licensed and in respect of which such licence is suspended or revoked and not reinstated, has obtained consent of the Governor to the transfer.
14. The Applicant will upon registration under the laws of the Relevant Jurisdiction continue as a body corporate limited by shares.
15. The Registrar is not aware of any other reason why it would be against the public interest to de-register the Applicant.

To satisfy the requirements in paragraphs 4 – 8, 10 – 12 and 14, a voluntary declaration or affidavit of a director of the Applicant to the effect that, having made due enquiry, he is of the opinion that the requirements of those paragraphs have been met must be filed with the Registrar.

The declaration or affidavit must include a statement of the assets and liabilities of the Applicant made up to the latest practicable date before the making of the declaration or affidavit.

A director who makes such a declaration or affidavit without reasonable grounds to is guilty of an offence and is liable on summary conviction to a fine and/or a term of imprisonment.

3. DOCUMENTATION REQUIRED FOR DE-REGISTRATION

The Registrar, once satisfied, will de-register an Applicant on the receipt and completeness of the following documents:

- (a) Affidavit of Directors sworn before a notary or commissioner of oaths annexing a current statement of Assets and Liabilities;
- (b) Undertaking of Directors providing Notice of Transfer to Secured Creditors;
- (c) Directors Certificate regarding the new Registered office/ agent for service in the Relevant Jurisdiction;
- (d) Directors Declaration in support of the application to the Registrar;
- (e) copy of current Memorandum and Articles of Association (to check for provisions relevant to deregistration);
- (f) payment of the applicable fee;
- (g) evidence that the transfer is permitted by, and has been approved in accordance with, the memorandum and articles of association (typically a certified copy of resolutions of directors approving the deregistration and continuation and where shareholder approval is required by the articles of association, a certified copy of the resolutions of the shareholders approving the deregistration and continuation);
- (h) Certificate of Good Standing;

- (i) notice of any proposed change of name (if the company's name will be changed on continuation to new jurisdiction). If the name will be changed prior to deregistration this should (preferably) be dealt before the deregistration application is filed;
- (j) if Conyers Trust Company (Cayman) Limited does not provide the company's Registered Office, an urgent fax to the Registrar authorising the Registrar to deal with Conyers Dill & Pearman and/or Conyers Trust Company (Cayman) Limited in respect of filing and collecting documents from the Registrar in respect of the Applicant's de-registration;
- (k) confirmation as to if the de-registration filing will be an express or normal route. The express route is 24-36 hour turn-around by the Registrar. The normal route turn-around is approximately 3 to 5 business days, though the effective date of discontinuation will be the date the application is submitted;
- (l) confirmation as to whether the Applicant requires any certified copies of the Certificates of Deregistration, as certified by the Registrar; and
- (m) filing fee.

4. PROCESS OF DE-REGISTRATION

Once all the paperwork is filed with the Registrar's office the Applicant company will be de-registered and the certificate of de-registration will be issued within approximately 3-5 business days. As mentioned earlier, the Applicant may apply for express de-registration by making the request in the application and paying the prescribed express fees. An express de-registration and certificate is obtained within 24-36 hours of submitting the relevant documents and fee to the Registrar's office.

On the de-registration the Registrar will issue a certificate under his hand and seal of office to the effect that the Applicant has been de-registered as an exempted company and specifying the date of such de-registration. The Registrar is also required to enter the date of de-registration in the register of companies. The Registrar will also give notice in the Cayman Gazette of the de-registration of the Applicant, the jurisdiction

under the laws of which the Applicant has been registered by way of continuation and the name of the Applicant, if changed.

From the date of the de-registration certificate, the Applicant ceases to be a company for all purposes under the Law and continues as a company under the laws of the Relevant Jurisdiction. Note however, that de-registration will not operate:-

- (a) to create a new legal entity;
- (b) to prejudice or affect the identity or continuity or of the Applicant as previously constituted;
- (c) to affect the property of the Applicant;
- (d) to affect any appointment made, resolution passed or any other act or thing done in relation to the Applicant pursuant to a power conferred by the memorandum and articles of association of the Applicant or by the laws of the Islands;
- (e) except to the extent provided by or pursuant to this part of the Law, to affect the rights, powers, authorities, functions and liabilities or obligations of the Applicant or any other person; or
- (f) to render defective any legal proceedings by or against the Applicant, and any legal proceedings that could have been continued or commenced by or against the Applicant before its de-registration may, notwithstanding the de-registration, be continued or commenced by or against the Applicant after de-registration.

5. PROCEEDING TO THE NEXT STEP

Conyers Dill & Pearman is well placed to act on the de-registration of Cayman Islands companies. In order to proceed, we will require instructions together with a modest retainer to cover the de-registration fees and other disbursements. Any excess will be held on account of our professional legal fees. A specific estimate of costs can be provided upon request.

This publication is not intended to be a comprehensive statement of relevant laws in the Cayman Islands affecting a potential Applicant. Legal advice should be sought before commencing the de-registration/continuation process.

This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

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