

BRIEFING NOTE

De-Registration of a Cayman Islands Exempted Company and Transfer by Way of Continuation

Introduction

Under the Companies Act (As Revised) of the Cayman Islands (the "**Companies Act**"), the Registrar of Companies (the "**Registrar**") will de-register a Cayman Islands exempted company incorporated with limited liability and with a share capital (the "**Applicant**") which proposes to be registered by way of continuation as a body corporate limited by shares under the laws of any jurisdiction outside the Cayman Islands (the "**Relevant Jurisdiction**") if:

- 1.1 the Applicant proposes to be registered by way of continuation in a jurisdiction which permits or does not prohibit the transfer of the Applicant;
- 1.2 the Applicant has paid to the Registrar a fee equal to three (3) times the annual fee that would have been payable in the January immediately preceding the application for de-registration; and
- 1.3 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.

Transfer Procedure

In order to be effective, the transfer must be approved in accordance with the Applicant's Memorandum and Articles of Association. Usually, a special resolution of the shareholders of the Applicant will be required. Depending on the terms of the Applicant's Articles of Association, it may even be necessary to amend the Applicant's Memorandum and Articles of Association to permit de-registration. The directors of the Applicant must approve the de-registration and transfer by way of continuation.

An affidavit must be sworn by a director of the Applicant. The director must swear that, having made due enquiry, he or she is of the opinion that:

- i. 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 in any jurisdiction;
- ii. 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;

- iii. no scheme, order, 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;
- iv. the Applicant is able to pay its debts as they fall due;
- v. the application for de-registration is bona fide and not intended to defraud creditors of the Applicant;
- vi. 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;
- vii. the transfer is permitted by, and has been approved in accordance with, the Memorandum and Articles of Association of the Applicant;
- viii. the laws of the Relevant Jurisdiction with respect to transfer have been or will be complied with; and
- ix. once re-registered the Applicant will continue as a body corporate limited by shares under the laws of the Relevant Jurisdiction.

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

The Applicant must deliver to the Registrar an undertaking signed by a director that notice of the transfer has been or will be given within 21 days to the secured creditors of the Applicant (if there are no secured creditors an appropriate negative statement to that effect may be included in the director's affidavit).

The Registrar is required to publish in the Cayman Islands Gazette details of the de-registration, the jurisdiction under whose laws the Applicant will be registered or existing and the name of the Applicant if changed from the current name.

In so far as it is possible, it is advisable that the re-registration of the Applicant in the Relevant Jurisdiction is co-ordinated with its de-registration in the Cayman Islands so that both events take place on the same day. If not, there could be a period in which the Applicant is not registered in any jurisdiction (or is registered in two at the same time).

The Registrar, if she is not aware of any other reason why it would be against public interest to de-register the Applicant, will issue a de-registration certificate under her hand and seal of office stating that the Applicant has been de-registered as an exempted company and enter into the Register of Companies the date of de-registration.

Effect of De-Registration

From the date of the de-registration the Applicant shall cease to be an exempted company under and subject to the Companies Act.

From the date of de-registration the Applicant shall continue as a company under the laws of the Relevant Jurisdiction provided that this shall not operate to:

- i. create a new legal entity;
- ii. prejudice or affect the identity or continuity of the Applicant as previously constituted;
- iii. affect the property of the Applicant;
- iv. 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 Article of Association of the Applicant or by the laws of the Cayman Islands;
- v. affect the rights, powers, authorities, functions and abilities or obligations of the Applicant or any other person; or
- vi. render defective any legal proceedings by or against the Applicant any legal proceedings that could have been continued or commenced by or against the Applicant before its de-registration may, notwithstanding re-registration, be continued or commenced by or against the Applicant after de-registration.

This Briefing Note is not intended to be a substitute for specific legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide an overview and general guidance on the de-registration and transfer by way of continuation of Cayman Islands exempted companies. For more specific advice on the de-registration and transfer by way of continuation of Cayman Islands exempted companies, please refer to your usual Loeb Smith contact or:

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