

Legal Briefings

Advantages of Using Cayman Islands Exempted Companies for Investment Purposes and to Facilitate Finance Transactions

The Cayman Islands exempted company (including the segregated portfolio company) is the corporate vehicle of choice for series financing, mergers utilizing the Cayman merger regime, banking and finance transactions, investment funds, and other corporate transactions. The popularity of the exempted company is principally as a result of the Cayman Islands being rightly recognized as a stable jurisdiction which promotes legal and commercial certainty to control reputational risk for both the Cayman Islands and its business partners.

Flexibility

The flexibility of the structure of the Cayman Islands exempted company is one of its main appeal. For example, Cayman Islands' companies law does not require any director or officer of the company to be resident in the Cayman Islands. The register of shareholders and minute books are not required to be held in the Cayman Islands and can be held in another jurisdiction. The company is not required to hold an annual general meeting of shareholders (unless this is required under a regulatory law). There is no Cayman Islands law requirement for an exempted company to undertake an annual audit (unless this is required under a regulatory law).

Incorporation

The incorporation procedure for an exempted company is simple, incorporation fees are low and no regulatory authority approval is required. Exempted companies can be incorporated within 5-7 business days on a standard basis and on a twenty-four (24) hours "express" basis.

Financial Assistance

There is no statutory prohibition on an exempted company providing financial assistance with regard to the acquisition of its own shares. The directors of the exempted company owe a fiduciary duty to the company to act in good faith in the best interests of the company in agreeing to provide the financial assistance.

Use of Share Premium

The company is permitted to use its share premium account to fund the payment of dividends to shareholders subject to it remaining solvent after such payment.

Stamp Duty on Transfer of Shares

The Cayman Islands does not impose stamp duty on the transfer of shares, other than in relation to the transfer of shares in a company which holds real estate in the Cayman Islands.

Tax

A shareholder is not subject to Cayman Islands taxes with respect to any distribution received from the company (including dividend and other distributions upon liquidation of the company) or with respect to any gain realised upon the sale, redemption or exchange of shares. There is no withholding of taxes with respect to any dividend or other distribution made to a shareholder on the sale, exchange or redemption of shares. No gift, estate or inheritance taxes will arise in the Cayman Islands on the transfer of shares by way of gift by, or on the death of, a person who is not a resident of the Cayman Islands.

Mergers

The exempted company can merge with another corporate entity which can be either another Cayman Islands company or a company from another jurisdiction which has a comparable merger regime. The surviving company from the merger can either be a Cayman Islands exempted company or a company from another jurisdiction. The Cayman Islands merger regime is very popular for completing the “take private” of Cayman Islands companies listed on various stock exchanges including NASDAQ and the New York Stock Exchange.

Commercial Confidentiality

The Cayman Islands legal regime provides a high degree of commercial confidentiality. The Register of Shareholders of exempted companies is not available for inspection by members of the public. There is no Cayman Islands requirement for the accounts or financial statements of the company to be publicly filed.

Legal Framework

The Cayman Islands is a British Overseas Territory. The law of the Cayman Islands is based on English common law, together with local statutes appropriate for both international and local business. The Government has an active agenda to enact legislation to enhance Cayman Islands' position as a leading international offshore financial centre. The jurisdiction is committed to providing a stable, responsible and responsive business environment and therefore takes an aggressive approach to countering money laundering, tax evasion or any other criminal activity. The jurisdiction also operates a business friendly and well-regulated financial system underpinned not only by a belief in proportionate, risk-based regulation and a conviction to integrity and transparency, but also by the belief that appropriate regulation and international cooperation drive commercial success.

Business Climate and Infrastructure

The development of the Cayman Islands as an international financial centre has led to a sophisticated business environment with a full range of services including banks, trust companies, lawyers, accountants, insurance managers, mutual fund managers and fund administrators, and all the expected support services. There are approximately 324 banks and trust companies licensed in the Cayman Islands, including 47 of the 50 largest banks in the world.

Following the conclusion of the most recent plenary on 23 June 2023 of the Financial Action Task Force (the “**FATF**”), the FATF has determined that the Cayman Islands has substantively fulfilled

its action plan to be removed from the list of “jurisdictions under increased monitoring” (the “**Monitoring List**”) subject only to the completion of an on-site visit by the FATF later this year, which forms part of the FATF’s standard process for removing a jurisdiction from the Monitoring List, the Cayman Islands will be delisted. As the EU has previously confirmed that it does not require the Cayman Islands to take additional steps beyond those set out in the FATF’s action plan to facilitate removal from the EU AML List, it is widely expected that the Cayman Islands will also be removed from the EU AML List.

The features set out above continue to enhance the Cayman Islands’ popularity as the leading jurisdiction for structuring international investments and other finance transactions.

Further Assistance

This publication is not intended to be a substitute for specific legal advice or a legal opinion. If you require further advice relating to the formation of a Cayman exempted company or the structuring of finance, corporate or investment transactions using a Cayman exempted company, please contact us. We would be delighted to assist.

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About Loeb Smith Attorneys

Loeb Smith is an offshore corporate law firm, with offices in the British Virgin Islands, the Cayman Islands, and Hong Kong, whose Attorneys have an outstanding record of advising on the Cayman Islands’ law aspects and BVI law aspects of international corporate, investment, and finance transactions. Our team delivers high quality Partner-led professional legal services at competitive rates and has an excellent track record of advising investment fund managers, in-house counsels, financial institutions, onshore counsels, banks, companies, and private clients to find successful outcomes and solutions to their day-to-day issues and complex, strategic matters.



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