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## **CAYMAN ISLANDS COMPANIES**

### **INTRODUCTION**

Companies may be registered in the Cayman Islands as exempted, ordinary (subdivided into resident and non-resident) and foreign. There were approximately 76,000 companies registered in the Cayman Islands at the end of 2004 of which 73% were exempted, 18% ordinary non-resident, 7% ordinary resident and 2% foreign. This memorandum is intended to be an introductory summary only and focuses primarily on exempted companies. It is not intended to be a substitute for legal advice, which should always be obtained prior to incorporating any type of company.

The governing legislation is the Companies Law, Cap.22 (as revised and amended) (the "Companies Law") of the Cayman Islands, which was originally modeled on the United Kingdom Companies Act, 1948 but has been modified over the years to accommodate the evolving requirements of international clients.

### **EXEMPTED COMPANIES**

The exempted company is a highly flexible vehicle and is widely used in structuring international transactions and holding offshore assets. Common uses of exempted companies include:

- Hedge funds and other investment vehicles
- General partners of exempted limited partnerships
- Special purpose vehicles in asset backed financing transactions
- Joint venture companies
- Holding companies for international groups
- Banks, trust companies, insurance companies, mutual fund administrators and other licensees engaged in offshore business

In addition to the basic company there are two sub-categories of exempted companies known as exempted segregated portfolio companies and exempted limited duration companies, which are described below.

### **PRINCIPAL CHARACTERISTICS OF EXEMPTED COMPANIES**

The features of an exempted company which distinguish it from an ordinary company are as follows:

- an exempted company may obtain a government undertaking safeguarding it against the imposition of any future taxation in the Cayman Islands for a period of twenty years.



- an exempted company may but is not required to use “Limited” or “Ltd.” in its name.
- an exempted company is not required to file an annual return of shareholders with the Registrar or hold an annual general meeting of shareholders.
- an exempted company may keep its register of members anywhere in the world and the register is not open to public inspection.
- a corporate entity registered under the laws of another jurisdiction may, if so permitted under those laws, be registered by way of continuation as an exempted company under the laws of the Cayman Islands.
- an exempted company may register by way of continuation in another jurisdiction thereby changing its place of domicile.
- an exempted company may be incorporated as or be converted into an exempted segregated portfolio company or an exempted limited duration company.
- an exempted company may issue no par value, negotiable or (subject to certain restrictions) bearer shares.
- an exempted company that is not listed on the Cayman Islands Stock Exchange is prohibited from making any invitation to the public of the Cayman Islands to subscribe for any of its shares or other securities.
- an exempted company may not trade in the Cayman Islands with any person, firm or corporation except in furtherance of its business outside of the Cayman Islands although this does not prevent an exempted company from effecting and concluding contracts in the Cayman Islands and exercising in the Cayman Islands all of its powers necessary for the carrying on of its offshore business.

#### **EXEMPTED SEGREGATED PORTFOLIO COMPANIES**

The Companies Law provides for the registration of a sub-category of exempted company known as the exempted segregated portfolio company (“SPC”). An SPC is a company that may create one or more segregated portfolios in order to segregate or “ring fence” the assets and liabilities held within or on behalf of a particular segregated portfolio from the assets and liabilities held within or on behalf of any other segregated portfolio or from the general assets and liabilities of the company. The SPC is a single legal entity and any segregated portfolio created by it does not constitute a legal entity separate from the company.

Although an SPC may be used for any of the activities generally associated with exempted companies, it is most commonly used for:

- captive insurance companies, normally in relation to “rent-a-captive” or variable life annuity business.
- multi-class “umbrella” mutual funds and investment vehicles.

The legislation relating to SPCs is complex and beyond the scope of this memorandum.

#### **EXEMPTED LIMITED DURATION COMPANIES**

The Companies Law provides for the registration of a sub-category of exempted company known as the exempted limited duration company (“LDC”). Although an LDC may be used for any of the activities generally associated with exempted companies, it was created primarily to



satisfy the need for an offshore vehicle which is “see through” for United States taxation purposes and may be taxed in the United States as a partnership.

The principal features of an LDC which distinguish it from a basic exempted company are as follows:

- the duration of an LDC is limited to thirty years or less and is taken to have automatically commenced voluntary winding up and dissolution at the end of such period.
- the articles of association (bylaws) of an LDC may, but need not, provide that:
  - (i) the management of the company is vested in its members either equally per capita or in proportion to their ownership interest or in such other manner as may be specified in the articles of association and, if such is the case, the members of the company are considered to be its directors;
  - (ii) the transfer of any share or other interest of a member of the company requires the unanimous resolution of all the other members.
- an LDC must have at least two members and its name must include the words “Limited Duration Company” or “LDC”.

#### **NON-RESIDENT ORDINARY COMPANIES**

An ordinary company may, on application to the Financial Secretary of the Cayman Islands, be designated as “non-resident” if the Financial Secretary is satisfied that the company does not, and does not intend to, carry on business within the Cayman Islands. Such designation is evidence that the company is exempt from the licensing obligations under the Local Companies Control Law normally applicable to ordinary companies conducting business in the domestic Cayman Islands market.

#### **FOREIGN COMPANIES**

Companies incorporated outside of the Cayman Islands which establish a place of business or commence carrying on business in the Cayman Islands within the Cayman Islands are required to be registered in accordance with the Companies Law. Carrying on business includes, but is not limited to, the sale by or on behalf of a foreign company of its shares or debentures and offering, by electronic means, and subsequently supplying, real or personal property, services or information from a place of business in the Cayman Islands or through an internet service provider or other electronic service provider located in the Cayman Islands. In addition foreign companies are often registered in the Cayman Islands for the purpose of:

- acting as general partner for a Cayman Islands exempted limited partnership



- taking security over land situated in the Cayman Islands pursuant to the Registered Land Law.

#### **LEGAL ADVICE AND COMPANY INCORPORATION**

Charles Adams Ritchie and Duckworth (“CARD”) have experienced corporate and commercial lawyers available to advise on all aspects of company incorporation and corporate transactions. Company incorporation and the provision of registered office and secretarial services is provided by CARD Corporate Services Ltd. (“CCS”), which has a company management licence issued pursuant to the Companies Management Law.

Fees for incorporation and company management services provided by CCS are generally charged on a fixed tariff and legal advice provided by CARD is charged a time spent basis at prevailing rates. Details of all fees together with advice in connection with incorporation procedures and legal issues associated therewith are available on request.

**This article is intended to provide a limited overview of the subject matter and is not a substitute for proper legal advice in relation to a particular transaction or proposal.**