

Guidance Note

Registration and Continuing Obligations of a
Virtual Asset Service Provider

Guidance Note

Setting up a Cayman Islands Company

Introduction

The following information relates to the formation of an exempted company as provided by the Companies Act (as Revised) of the Cayman Islands (the “Companies Act”).

Government Fees on Formation

The government fees payable upon registration of a Cayman Islands exempted company and at the end of each calendar year are based on the authorised, not the issued, share capital of the company. These fees are set out below:

Authorised Capital	Incorporation Fee US\$	Annual Fee US\$
Exceeding US\$50,000	731.71	853.66
Between US\$50,001 and US\$1,000,000	1,097.56	1,219.51
Between US\$1,000,000 and US\$2,000,000	2,297.56	2,419.51
Above US\$2,000,000	3,009.76	3,131.71

Economic Substance

The International Tax Co-operation (Economic Substance) Act (as Revised) requires certain companies undertaking any of the below relevant business activities to establish a physical presence in the Cayman Islands, please see the attached guidance note and advise us if this will apply to your activities:

- a) fund management, which means the business of managing securities as set out in paragraph 3 of Schedule 2 to the Securities Investment Business Act (as Revised) carried on by a relevant entity licensed or otherwise authorised to conduct business under that Act for an investment fund (this definition does not currently cover those companies who have registered as Excluded Persons under this Act);
- b) banking, which has the meaning given to that expression by section 2 of the Banks and Trust Companies Act (as Revised);
- c) insurance, which has the meaning given to that expression by section 2 of the Insurance Act (as Revised);
- d) finance and leasing, which means the business of providing credit facilities for any kind of consideration to another person but does not include financial leasing of land or an interest in land, banking business, fund management business or insurance business;
- e) distribution and service centre business,



- f) headquarters business, means the business of providing any of the following services to an entity in the same group of entities:
 - i. the provision of senior management;
 - ii. the assumption or control of material risk for activities carried out by any of those entities in the same group of entities; or
 - iii. the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph (f)(ii), but does not include banking business, financing and leasing business, fund management business, intellectual property business, holding company business or insurance business;
- g) intellectual property business, which means the business of holding, exploiting or receiving income from intellectual property assets;
- h) shipping, which means any of the following activities involving the operation of a ship anywhere in the world other than in the territorial waters of the Cayman Islands or between the Cayman Islands:
 - i. the business of transporting, by sea, passengers or animals, goods or mail for a charge;
 - ii. the renting or chartering of ships for the purpose described in paragraph (h)(i);
 - iii. the sale of travel tickets and ancillary services connected with the operation of a ship;
 - iv. the use, maintenance or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea;
 - v. the management of the crew of a ship; or
 - vi. holding company business, which means the business of a pure equity holding company, and “pure equity holding company” means a company that only holds equity participations in other entities and only earns dividends and capital gains.



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Structuring

Assuming that the Cayman Islands company is not carrying on banking business, the issued share capital can be entirely nominal. It is usual for a representative of Stuarts Humphries to be a subscriber to the Memorandum of Association and Articles of Association and to agree to take the minimum of one share.

After formation all the issued share capital can be held by one shareholder of record and the subscriber's one share will be repurchased automatically.

Subject to applicable requirements to comply with economic substance, it is not necessary that any of the shareholders, directors or officers be resident in the Cayman Islands.

The Board of Directors can be comprised of such number of persons as may be desired, although it is usual for the Board of Directors to consist of at least two persons (please also note that companies regulated or registered with the Cayman Islands Monetary Authority may be required to appoint at least two directors). No officers are required by law, although it is sometimes convenient for a company secretary to be appointed. Where required Stuarts Humphries can appoint a representative to act as company secretary and director.

It is not necessary for an exempted Cayman Islands company to hold an annual general meeting of its shareholders, although one can be held either within or outside the Cayman Islands if desired.

There is no requirement that any meetings of the Board of Directors be held in the Cayman Islands.

It is not necessary that the company have its accounts audited annually, or that its accounts be filed with the authorities in the Cayman Islands (please note that a company registered or licensed with the Cayman Islands Monetary Authority may be required to file audited accounts). However, under Section 59 of the Companies Act, the company is required to keep books of account which give a true and correct view of its affairs. The books of account can be held anywhere in the world.

Registered Office

It is necessary that a Cayman Islands company maintains a registered office in the Cayman Islands, which Stuarts Corporate Services Ltd. can provide. In certain cases where the company is subject to additional regulations under other legislation, e.g. banks, trust companies, insurance companies and funds etc., an additional fee may be applied. In addition, the register of directors and officers (a copy of which must also be filed with the Registrar of Companies) and the register of mortgages and charges are held at the registered office. It is not a legal requirement that the register of shareholders be held at the registered office, but this is often the case. The minute books of the Company may be held at the registered office or, elsewhere. If they are held elsewhere, Stuarts Humphries will normally keep a duplicate set so that it can be kept informed of the Company's affairs and ensure ongoing compliance with the laws of the Cayman Islands.

The ongoing statutory requirements under the Companies Act are relatively simple. A Cayman Islands company must notify the Registrar of Companies of any changes to its memorandum of association and articles of association or its directors and officers. It must also file a short declaration each January at the time of paying the annual fee, which return simply confirms that the company has notified the Registrar of any changes to its memorandum or articles of association and has not conducted any local business within the Cayman Islands. As part of its services in cases where it maintains the registered office, Stuarts Corporate Services Ltd. attends to the necessary filing requirements under the laws in the Cayman Islands.



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Late Filings

Please note that the deadline for notifying the Registrar of Companies of any changes to the Registered Office address, or the Register of Directors and Officers is 30 days from the change. This will be deemed to be the date of the resolutions or earlier in the case of a resignation if the resignation predates the resolutions. Failure to notify the Registrar within this time period will result in penalties being incurred of US\$12.20 per day the company remains in default. This penalty fee may be capped at US\$610 at the discretion of the Registrar.

The same period and penalties will also be incurred if the Registrar of Companies is not informed of any changes in authorized share capital within 30 days.

The Registrar of Companies will also require notification for any change of company name, any alterations to the Memorandum and/or Articles of Association or any special resolutions passed by the company within 15 days of the date of the resolution.

Company Secretary

Stuarts Humphries can supply a secretary or assistant secretary to the company.

Duties

There are no forms of relevant direct taxation in the Cayman Islands whatsoever, although stamp duty may be payable on documents executed in or subsequently brought to the Cayman Islands in original form, unless exempt.

The above information relates to "exempted" companies. A Company designated as "ordinary non-resident" may also prove a suitable vehicle. The exempted company may apply to the Governor in Council for (and expect to obtain) an undertaking that the company will be exempted for a period of twenty years from issue from payment of taxation on profit, capital gains or inheritance should such legislation be introduced in the Cayman Islands. This is at present of academic interest as no such taxation is currently levied in the Cayman Islands. Further information on ordinary non-resident companies is available on request.

It should be noted that Stuarts Humphries do not advise on matters other than in respect of the laws of the Cayman Islands and do not advise with respect to the securities, tax and other relevant regulations in other jurisdictions.



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Guidance

This publication is for general guidance and is not intended to be a substitute for specific legal advice. Specialist advice should be sought about specific circumstances. If you would like further information, please contact:

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Stuarts Humphries is a leading Cayman Islands legal practice with international reach. Offering a full range of corporate and commercial legal advice together with a constant client focus, our experienced attorneys assist our clients on their most significant and challenging commercial transactions, structures, liabilities and obligations.

Our proven track record in advising leading international Law Firms, Investment Managers, Investment Companies and High-Net-Worth individuals is a result of the deep understanding of our markets.

At Stuarts, we build and maintain enduring relationships with our clients through the combined legal expertise and business acumen of our practice groups and by providing outstanding service.



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