
BODDEN CORPORATE SERVICES LTD

802 Grand Pavilion Commercial Centre, P O Box 10335 APO, Grand Cayman, Cayman Islands
Tel: 345 945 0400 - Fax: 345 945 0345 - Email: info@bcsl.ky - Website: www.bcsl.ky

INCORPORATION OF COMPANIES IN THE CAYMAN ISLANDS

The purpose of this memorandum is to provide information on the different types of companies available in the Cayman Islands, some particular features of each type and the formalities associated with their incorporation.

FORMATION OF A COMPANY

Companies in the Cayman Islands are incorporated or registered under The Companies Law (2004 Revision), as amended ('the Companies Law'). A company may be either unlimited or limited, and a limited company may be either limited by shares or limited by guarantee. Bodden Corporate Services Ltd (hereinafter referred to as 'BCSL') incorporates only companies limited by shares and in the remainder of this memorandum the term 'company' refers to such a company.

TYPES OF COMPANY

A company is either an **ordinary** company or an **exempted** company. Ordinary companies will be either **ordinary resident** (sometimes called 'local') or **ordinary non-resident**. Each type of company is examined briefly below.

WHICH TYPE OF COMPANY IS APPROPRIATE?

Exempted Company

An **exempted** company is the most common offshore company. A company may apply to be registered as exempted if its objects are to be carried out mainly outside the Islands. An exempted company may not trade in the Islands with any person, firm or corporation except in furtherance of the business of the exempted company carried on outside the Islands, nor may an exempted company own land in the Islands without the consent of the Financial Secretary.

It should be noted that these restrictions do not prevent an exempted company effecting and concluding contracts in the Islands holding bank accounts or brokerage accounts in the Islands, leasing property from which to conduct its business and exercising in the Islands all of its powers necessary for the carrying on of its business outside the Islands.

The minimum number of shareholders is one. The details of shareholders of the company are confidential. Details of an exempted company's Directors and Officers are also confidential but must be furnished to the local Registrar of Companies. The Annual Return required to be filed by an exempted company contains no details of its shareholders.

Exempted companies must maintain their registered office in the Cayman Islands and by law their Board of Directors must meet locally once per annum. Exempted companies usually overcome this practical problem of having local Directors by the use of Alternate Directors for this Statutory Meeting.

The word 'Limited' or its abbreviation 'Ltd' need not form a part of the name of an exempted company but the other restrictions common to ordinary companies apply.

An exempted company is entitled to apply under The Tax Concessions Law (1995 Revision) for an undertaking that no law enacted in the Islands after the date of the undertaking imposing any tax to be levied on profits, income, gains or appreciations shall apply to the company or its operations, and that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable on or in respect of the shares, debentures or other obligations of the company or by way of withholding in whole or in part on any dividend payment or other distribution of income or capital by the company to its members or to a payment of principal or interest or other sums due under a debenture or other obligation of the company.

The undertaking may be for a period not exceeding thirty (30) years from the date of approval of the application and, in practice, the undertaking is normally given for twenty (20) years.

An exempted company may **not** either directly or indirectly own land in the Cayman Islands without the permission of the Financial Secretary.

Ordinary Non-Resident Company

An **ordinary non-resident** company will normally be appropriate where a company would not qualify to be registered as exempted (usually because its objects are not to be carried out mainly outside the Islands - see above) but will not be carrying on business in the Islands (as defined above).

Every ordinary company, whether local or non-resident, must hold an Annual General Meeting of shareholders. The company must, within twenty-one (21) days after the Annual General Meeting, make up a list of all persons who, on the fourteenth day after the Annual General Meeting are members of the company and those who have ceased to be members of the company since the last list was made. The list must also contain details of the company's share capital. That list must be filed with the Registrar of Companies in January of each year, together with the appropriate annual fee.

Ordinary non-resident companies must maintain at their registered office and open for public inspection, a register of their past and present shareholders.

Most ordinary non-resident companies incorporated by BCSL have been incorporated to own Cayman properties or transact local banking business. Ordinary non-resident companies may make application to convert to ordinary resident companies or exempted companies.

Ordinary Resident Company

An **ordinary resident** company is the appropriate corporate vehicle for carrying on business in the Cayman Islands. Such a company must, unless it is licensed under certain other laws (such as the Insurance Law) be at least sixty percent (60%) Caymanian owned and controlled or licensed under The Local Companies (Control) Law. The expression 'carrying on business in the Islands' is defined in that law as including a business of any kind or type, except:

- a) a company carrying on from a principal place of business in the Islands, business exterior to the Islands;
- b) company doing business in the Islands with any person, firm or corporation in furtherance of the business of that company carried on exterior to the Islands;
- c) a company buying or selling or otherwise dealing in shares, bonds, debentures, obligations, mortgages or other securities issued or created by an exempted company, foreign partnership or a resident corporation incorporated abroad;

- d) a company transacting banking business in the Islands through a licensed bank;
- e) a company effecting or concluding contracts in the Islands and exercising in the Islands all other powers, so far as may be necessary for the carrying on of the business of that company exterior to the Islands;
- f) the business of an exempted company with another exempted company, a foreign partnership or a resident corporation incorporated abroad; and
- g) the administration of mutual funds by a person licensed as a mutual fund administrator under the Mutual Funds Law; or
- h) business carried on by a mutual fund, as defined by the Mutual Funds Law, in the course of the acquisition, holding, management or disposal of investments.

It should be noted that if an ordinary resident company intends to conduct banking and / or trust business then it must obtain a licence under the Banks and Trust Companies Regulations (2003 Revision); Companies administering mutual funds are to be licensed under the Mutual Funds Law (2003 Revision); Companies engaging in the insurance business must obtain a licence under the Insurance Law (2004 Revision) and individuals wishing to operate a company management must obtain a licence under the Companies Management Law (2003 Revision).

Ordinary resident companies must maintain at their registered office and open for public inspection, a register of their past and present shareholders.

Ordinary resident companies may hold land in the Cayman Islands as defined in the Companies Law (2004 Revision).

CONSTITUTIONAL DOCUMENTS

The constitution of a company is contained in two documents, the Memorandum of Association and the Articles of Association.

Memorandum of Association

The Memorandum of Association contains the following items:

a) The Company Name

The name of an ordinary company, whether resident or non-resident, must end in the word 'Limited' or the abbreviation 'Ltd'.

The Registrar will not register a company the name of which is identical to the name of an existing company or which so nearly resembles that name as to be calculated to deceive. There are certain other words which are restricted by law and in some cases, may not be included in a company's name at all and, in other cases, require the consent of the Registrar.

b) The Location of the Registered Office

It should be noted that the address should include the physical location of the office as well as the Post Office Box number. The registered office of a company may be changed by resolution of its Directors.

c) Objects and Powers

In our standard Memorandum of Association no objects are listed. A company incorporated by BCSL will have full power and authority to carry out any object not prohibited by law.

d) Declaration of Limited Liability

The liability of the shareholders is stated to be limited to the amounts from time to time unpaid on such shareholders' shares.

e) Details of the authorised share capital

This will state the aggregate amount of the authorised share capital, together with details of the number of shares into which it is divided and the par value of those shares. The share capital and the par value of the shares may be expressed in any one or more currencies. Companies are allowed to maintain foreign currency bank accounts from which withdrawals can be made without restriction. There are no exchange controls in the Cayman Islands.

An exempted company may have a capital divided into shares of no par value, but may not have a capital divided into shares some of which have a par value and some of which do not.

Articles of Association

The Articles of Association govern the administration of a company. Typically they contain details of the rights attaching to the shares and the manner in which those rights can be exercised. The appointment and removal of the Directors, the powers and duties of the Directors, the proceedings of the Directors, declaration and payment of dividends and rights on dissolution.

PROCEDURE FOR INCORPORATION

Prior to incorporating a company and / or acting as the registered office of a company, BCSL requires references on the beneficial owners as detailed in our Due Diligence Questionnaire and to be satisfied as to the proposed activities of the company.

We reserve the right to refuse to incorporate any company for which we have not been given adequate instructions or for which we are not satisfied of the activities of the company or the source of funds for the capitalisation.

There must be submitted to the Registrar in relation to any company the signed original Memorandum of Association and Articles of Association, together with copies for stamping and returning as certified copies, and a cheque for the appropriate incorporation fee.

For an **exempted** company, there must also be submitted a declaration made by a proposed Director of the company that the operation of the proposed exempted company will be conducted mainly outside the Islands.

For an **ordinary non-resident** company, a covering letter should confirm that the company will not be carrying on business in the Islands, and requesting that the company be designated non-resident.

Clients and their advisors are particularly asked to note that we are not in a position to advise them about the laws or legality of incorporating or owning Cayman Islands companies in respect of any other jurisdiction. Tax and other advice should be given only by counsel qualified in the country of the client's residence and / or domicile.

PUBLICLY AVAILABLE INFORMATION

The only information which may be obtained by a member of the public from the Registrar of Companies in relation to any company is the type of company, (ie ordinary or exempted) and the location of its registered office. No other information is required to be made available to the public by an exempted company, although its register of mortgages and charges may be inspected by any shareholder or creditor of the company. An ordinary company is required to make its register of shareholders available for inspection by the public, and its register of mortgages and charges may also be inspected by any shareholder or creditor.

The Confidential Relationships Preservation Law makes it a criminal offense for a professional to disclose any confidential information regarding a customer without his consent in writing. However, the confidentiality laws of the Cayman Islands do not apply to money laundering and activities which would be judged criminal in the Cayman Islands.

Bodden Corporate Services performs the services of incorporating Cayman companies for clients who have taken a decision to incorporate a Cayman Islands company. We do not provide legal or tax advice on the benefits or otherwise of incorporating companies and would recommend that you seek local legal counsel regarding these matters.