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LOCAL LICENSING IN THE CAYMAN ISLANDS

INTRODUCTION

The purpose of this memorandum is to provide a summary of those areas relating to local licensing which are most commonly encountered. It is not intended to be an exhaustive interpretation of the legislation.

A business is usually conducted by a company, a partnership or an individual.

COMPANY

In order for a local company, local strata corporation or foreign company registered to do business in the Cayman Islands, to carry on business in the Islands, at least **sixty** percent (60%) of the total voting rights in such company must be exercisable by a Caymanian, unless that company has obtained a special licence under the **Local Companies (Control) Law (Revised)**. A licence under this law is granted at the Immigration Board's ('the Board') discretion. It is also a requirement that at least **sixty** percent (60%) of the Board of Directors of such company be Caymanian.

The Local Companies (Control) Law (Revised) has anti-avoidance provisions which, inter alia, include:

- a) no shares shall be deemed to be beneficially owned by a Caymanian if that Caymanian is in any way under any obligation to exercise any right attaching to that share at the instance of, or for the benefit of, any person who is not a Caymanian; and
- b) if effective control is either directly or indirectly or by reason of any arrangement, artifice or device vested or permitted to pass to persons who are not Caymanian the company shall not be deemed to be Caymanian controlled.

The following are exceptions to the general rule, and are not deemed to constitute carrying on business in the Cayman Islands:

- a) a company carrying on, from a principal place of business in the Islands, business exterior to the Islands;
- b) a company doing business in the Islands with any persons, 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, debenture stock, 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 reasonable, 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, foreign partnership or a resident corporation incorporated abroad;
- g) a company licensed under the Insurance Law (2004 Revision);

- h) a company licensed under the Banks and Trust Companies Regulation Law (2003 Revision);
- i) a company operating under a Government franchise;
- j) an exempted company (under the Companies Law (2004 Revision));
- k) a company declared to be non-resident by the Financial Secretary;
- l) an ordinary non-resident company owning and leasing up to two parcels of property located in the Cayman Islands.

If the investor cannot find Caymanian participation and wants to make an application under the Local Companies (Control) Law for a licence to carry on business with less than sixty percent (60%) Caymanian participation the Board will consider the application in the light of the following matters:

- a) the economic situation of the Islands and the protection of Caymanian persons already engaged in business in the Islands;
- b) the nature and previous conduct of the company and the persons having an interest in that company whether as directors, shareholders or otherwise;
- c) the advantage or disadvantage which may result from that company carrying on business in the Islands;
- d) the desirability of retaining in the control of Caymanians the economic resources of the Islands; and
- e) the effort made by the company to obtain Caymanian participation.

The licence, if granted, is for a minimum period of twelve (12) years subject to an annual renewal fee of CI\$200. Periods in excess of twelve (12) years are granted if the size and nature of the investment warrant it. Licences are issued for specific business activities, and conditions may be attached thereto. The Local Companies (Control) Law contains provisions for companies to apply to have existing licences amended. However, the granting of amendment applications is discretionary and subject to the same considerations outlined above.

It should be noted that even if investors are investing in a business which already possesses a Local Companies (Control) Law licence, such licence cannot be transferred without the consent of the Board and in effect will be treated by the Board as a new application. Please note such consent will also be required even where a minority of shares are being transferred or issued.

It is possible to apply for a Local Companies Control Licence in principle. This will allay the fears of some clients who may not wish to go to the expense of incorporation or registration without some indication as to whether the company will obtain the appropriate licence.

PARTNERSHIPS

In a partnership at least one partner must be resident and, if the resident partner is non-Caymanian, he will require a work permit before he can gainfully engage in an occupation. Following that, the partners must apply for the appropriate trade and business licence. Work permits are normally granted for a period of only twelve (12) months and are renewable.

INDIVIDUALS

If the individual is non-Caymanian, he will require a work permit before he can gainfully engage in an occupation. It should be noted that self-employed permits are difficult to obtain. It should be noted however, that the Company must have the appropriate Trade & Business Licence before submitting an application for a work permit.

ADDITIONAL LICENSING REQUIREMENTS

Trade and Business Licence

The Trade and Business Licensing Law is a revenue raising measure covering the licence of all business premises. A company holding a licence under the Local Companies (Control) Law requires a licence under the Trade and Business Licensing Law for each of its premises according to the nature of the business being conducted therefrom. Providing the company is appropriately licensed, however, a business licence under the Trade and Business Licensing Law is a formality and is granted on request.

This licence is renewable annually on the anniversary of the licence date. Annual fees are payable in accordance with a standard schedule of fees laid down in the Immigration Regulations and vary based on the type of business being conducted. A standard fee schedule is available upon request.