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# GUIDANCE NOTE

THE LICENCING OF LOCAL  
BUSINESSES IN THE CAYMAN ISLANDS



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## **THE LICENCING OF LOCAL BUSINESSES IN THE CAYMAN ISLANDS**

### **Establishing a Business**

The purpose of this guidance note is to provide a summary of the process in setting up a new business in the Cayman Islands, including the legal formalities, the licensing requirements and registration.

### **The Benefits**

The Cayman Islands offer a well-regulated and internationally respected, tax-neutral, offshore business environment. The type of Cayman structure required or best suited for a particular endeavour will depend largely on the type of business and whether it will be conducting its affairs locally or in a jurisdiction outside of the Cayman Islands. If the business is operating in another country, advice from that country's legal and tax counsel will be important in understanding the benefits that can be derived from setting up a business in Cayman. A fully operational physical office with locally based staff, as opposed to a nominal presence through a registered office address, can be an essential component in ensuring compliance with many international and local reporting requirements.

The Cayman Islands is a small yet sophisticated jurisdiction with a stable government, a well developed common law system based on English law and a proliferation of world class corporate, legal and other service companies. Often however, the dominant factor in deciding to establish a business in the Cayman Islands is that there is no direct taxation on income or profits in the Cayman Islands.

### **Types of Entity**

A business in the Cayman Islands may operate as a sole trader, a partnership or a limited company. The main distinction is that sole traders and general partners have unlimited liability to third parties doing business with them, whereas the shareholders of a limited company have only limited liability to third parties doing business with the company.

#### **Sole Trader**

Typically, small owner operated businesses with few liabilities might consider operating as a sole trader with a trade name. There are few formalities for formation and few annually repeating fees. However, the sole trader is personally responsible for any debts the business incurs.

Due to immigration requirements and the rules governing the grant of a T&B Licence (as defined and detailed below), in practice only a Caymanian Status holder will be able to operate a business as a sole trader. A sole trader is able to start his/her business without any formalities by simply offering services or goods in return for payment. A sole trader can employ people to work in the business but the sole trader is personally responsible for all the liabilities of the business e.g. rent, T&B Licence fees, salaries and benefits of employees although he or she is also entitled to all the profit of the business.



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### Partnership

Where two or more people want to go into business together but wish to avoid all the formalities and expense of a company, they can use a partnership structure. Professionals such as lawyers and accountants have traditionally used a partnership structure for their businesses. A partnership has less legislative governance than a company and can be more flexible in its treatment of the partners' responsibility for liabilities and share of profits. Partners are also personally liable for any debts the business incurs including the debts incurred by the other partners.

In a Cayman 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. The partnership must obtain the appropriate Trade and Business License ("**T&B Licence**").

### Company

A company can be used where the owners and operators of the business want to have only limited liability for the debts and other liabilities of the business. Companies are very commonly used for all sorts of businesses from one man operations to multi-million dollar, multi-national businesses. There are more formalities and fees associated with forming and operating a company than with a partnership or sole trader business but using a company does have the benefit of limited liability.

The main characteristic of a limited liability company is that the company is treated in law as a legal person able to enter into contracts and own property as well as incur liabilities. An individual who is a shareholder in a company has a liability to the company limited to the amount unpaid on the shares the individual owns and, unless a fiduciary as well, cannot be liable for the liabilities of the company itself. The company may distribute profits to shareholders by paying dividends and a shareholder can only get their investment in the company back by selling or redeeming the shares they have or on a winding up. Company formation and operation is governed by the Companies Law (2011 Revision). Formation of a company is fast and straight forward.

Types of company:-

The categories of company that may be formed in the Cayman Islands include:-

- > Ordinary Resident Companies are generally formed by those wishing to conduct business within the Cayman Islands. However you must ensure at least 60% Caymanian shareholder participation or obtain a LCCL Licence (as defined and detailed below).
- > Exempted Companies are utilised by those wishing to conduct business outside the Cayman Islands. There are no restrictions on the nationality of the directors or shareholders of an exempted company and an exempted company is not required to hold an annual shareholders meeting.



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- > Limited Duration Companies and Limited Life Companies are types of exempted companies which were created as an equivalent to the U.S. limited liability company.
- > Segregated Portfolio Companies were first developed for the Cayman Islands insurance industry. They are now available for general use but are not normally suitable for a business supplying goods and/or services in the Cayman Islands.

### Trade and Business Licence and Local Companies Control Licence

#### Trade and Business Licence

In order to operate a business in the Cayman Islands, a T&B Licence will be needed. 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 Trade & Business Licensing Law (2007 Revision) (the “**T&B Law**”) and vary based on the type of business being conducted. A standard fee schedule is available upon request.

The T&B Licence fee is payable every year and the application for renewal must be made at least 28 days before the anniversary of the grant of the T&B licence. It is an offence to operate a business without a valid T&B Licence.

#### Local Companies Control Licence

For a business not wholly or at least 60% owned and controlled by a person or persons with Caymanian Status (which term includes Caymanians), in addition to requiring a T&B Licence a Local Companies Control Licence (“**LCCL Licence**”) issued under the Local Companies (Control) Law (2007 Revision) (the “**LCCL**”) is also needed unless the business is otherwise exempted from this requirement.

The grant of an LCCL Licence is a matter of discretion for the Trade & Business Licensing Board (the “**Board**”) which will consider, amongst other things, the benefit such business will bring to the Islands, the extent to which Caymanian participation has been sought (which will ordinarily include a requirement for public advertising) and whether the proposed business will compete with local Caymanian owned businesses.

Businesses whose activities are carried on mainly outside the Cayman Islands are in most cases outside the parameters of the LCCL due to the fact that they are not considered to be “doing business in the Islands” as that term is defined in such law. Therefore, although they would require a T&B Licence to set up a physical presence locally, they would not require a LCCL Licence or minimum 60% ownership by a Caymanian Status holder. It should be noted that banks, trust companies, company managers and a number of other businesses are exempted from requiring both T&B Licences and LCCL Licences although they still need to secure appropriate licensing/regulation from the Cayman Islands Monetary Authority.

In order for a resident company 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 LCCL. A licence under this law is granted at the Board's discretion. It is also a requirement that at the majority of the Board of Directors of such company be Caymanian.



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The LCCL 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 (2008 Revision);
- (h) a company licensed under the Banks and Trust Companies Law (2009 Revision);
- (i) a company operating under a Government franchise;
- (j) an exempted company incorporated pursuant to the Companies Law (2011 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 an investor wishes to establish a business without Caymanian participation and wants to make an application under the LCCL for a licence to carry on business



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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.

If granted, the licence is normally for a minimum period of twelve (12) years subject to an annual renewal fee of CI\$2,500.00 (US\$3,048.78). 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 LCCL 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 an LCCL 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. Such consent will also be required even where a minority of shares are being transferred or issued.

It is possible to apply for an LCCL Licence in principle. This may 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.

### **Other Formalities**

#### Work Permits

All businesses will require work permits and/or other relevant permissions for any staff engaging in gainful occupation in the Cayman Islands who are not Caymanian Status holders.

#### Employee Entitlements

The Cayman Islands Labour Law sets out the minimum entitlements that must be provided by an employer to its employees including annual vacation, maternity and sick pay and severance pay entitlements. The Health Insurance Law and National Pensions Law provide for health insurance and pension entitlements, respectively.



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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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