

GUIDANCE NOTE

THE COMPANIES LAW AND CONTINUING
REQUIREMENTS OF A CAYMAN ISLANDS COMPANY



STUARTS WALKER HERSANT HUMPHRIES



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The Companies Law (2013 Revision) of the Cayman Islands (the "**Law**") contains a number of requirements applicable to all categories of company. Banks, trust companies, building societies, money services businesses, credit unions, insurance companies, insurance managers, company managers, mutual fund administrators and regulated mutual funds are subject to additional regulation, which is beyond the scope of this memorandum.

The following is a summary of the main requirements.

1 NAME STRIP

The name of the company must be displayed at the registered office.

2 MINUTE BOOK

A minute book should be maintained and, although there is no requirement that this be maintained at the registered office, this is generally the case. On the minute book should be placed:

- 2.1 the Certificate of Incorporation and copies of certificates of good standing, if obtained;
- 2.2 a certified copy of the Memorandum and Articles of Association;
- 2.3 originals, or duplicate originals of minutes of board and members' meetings and any attachments referred to in the minutes;
- 2.4 originals or duplicate originals of written resolutions of the directors or members;
- 2.5 the annual return (in the case of an exempted company) or the annual list of members and summary required by section 41 of the Law (in the case of ordinary companies);
- 2.6 the resignations of directors and officers;
- 2.7 copies of share certificates as issued and the original share certificate stubs;
- 2.8 share transfer forms and the company's registers (see section 3 below);
- 2.9 copies of financial statements, if prepared;
- 2.10 originals, duplicate originals or copies of any Powers of Attorney granted by the Company; and
- 2.11 the tax concessions undertaking (in the case of an exempted company).

It is important from the perspective of corporate governance to ensure that all relevant information and paperwork is provided to keep the minute book up to date.



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3 COMPANY REGISTERS

The registers referred to above are:

- 3.1 The register of mortgages and charges specifically affecting the property of the company. If any mortgage or other form of security interest is granted, full particulars must be provided immediately and the register written up. This register can be inspected by any member or creditor of the company. It is required by the Law to be maintained at the registered office. It should be noted carefully that security documents should not be executed in or thereafter brought to the Cayman Islands. If they are, ad valorem stamp duty at the rate of one per cent. of the sum secured may be payable.
- 3.2 The register of members of the company, which contains the names and addresses of the members of the company, the date on which the name of any person was entered on the register as a member and the date on which any person ceased to be a member. In the case of a company having share capital, the register also contains the number of shares held, the distinguishing number(s) (if any) of such shares, the amount paid (or considered as paid) on the shares, the date of issue, the date of transfer and the person to whom the shares are transferred. If the company is an exempted company, the register is not a public document. This register need not be, but usually is, held at the registered office. If the company is an ordinary company, the register must be held at the registered office. A company's register of members cannot be updated until the relevant directors' resolutions and, if applicable, executed share transfer forms are received by us. Since shares are not validly issued or transferred until the appropriate entries are made in the register of members, it is important that we receive these on a timely basis.
- 3.3 The register of directors and officers, which gives their names, addresses, date of appointment and date of resignation. The register is required by the Law to be maintained at the registered office, but is not a public document.

4 SHARE TRANSACTIONS

- 4.1 New shares are usually issued by a resolution of the directors. A copy of the minutes of the meeting at which the resolution is passed should be provided for the minute book.
- 4.2 If existing shares are transferred, a share transfer form must be signed and a copy placed on the minute book. The old share certificate should be returned to the registered office for cancellation. Save in the case of a public company, the directors should normally pass a resolution approving the transfer and issuing a new share certificate. The Articles of Association and minute book must be checked to ensure that restriction on transfer provisions, if any, have been complied with.
- 4.3 If no registrar and transfer agent has been appointed, Stuarts Corporate Services Ltd. will prepare the new share certificate see 3.2 above.
- 4.4 Please note that, in accordance with the Law, when updating the register of members the date of entry as a member in respect of a transfer of



shares and any allotment and issue of additional shares or the appointment of a member of a company limited by guarantee will be the date on which the registered office receives a copy of the signed board minutes, and not the date of the board meeting, if earlier.

5 CHANGES OF DIRECTORS OR OFFICERS

- 5.1 Letters of resignation should be sent to the registered office.
- 5.2 There should be resolutions of the directors or members, as the case may be, appointing new directors and officers; copies should be provided and the register of directors and officers will be amended. The Articles of Association and minute book must be checked to ensure that special provisions, if any, have been complied with.

6 FILING PROCEDURES

The following events should be notified to the registered office in order that the Registrar of Companies may be advised and the appropriate fee paid. There are statutory time constraints, either 15 or 30 days, for due notification and it is therefore important to provide the information to the registered office promptly to avoid imposition of penalties:

- 6.1 change in directors or officers;
- 6.2 increase in the authorised capital of the company;
- 6.3 change in the name of the company;
- 6.4 alteration of the Memorandum or Articles of Association;
- 6.5 change of location of the registered office; and
- 6.6 any special resolution passed by the members.

7 BOOKS OF ACCOUNT

All companies must keep proper books of account, although they need not necessarily be kept at the registered office. The books of account must be such as are necessary to give a fair and true view of the state of the company's affairs and explain its transactions. If the company is not a bank, trust company, building society, money services business, credit union, insurance company, corporate manager, mutual fund administrator or regulated mutual fund, its accounts need not be audited as a matter of Cayman Islands law. Stuarts and Stuarts Corporate Services Ltd. do not provide any accounting or financial advice or assistance and do not prepare books of account for client companies.



8 SEAL

A company may, but is not required to, have a common seal. It is preferable to maintain the company's common seal at its registered office to assist with the filing of all returns with the Registrar of Companies. If it is thought that there will be documents to be sealed outside the Cayman Islands, its common seal may be provided or, alternatively, an official seal can be obtained for use in the appropriate jurisdiction. This is a facsimile of the common seal which may, but is not now required to, carry on its face the district, territory or place where it is to be used.

9 STATUTORY COMPANY MEETINGS

- 9.1 There is no longer a requirement for the directors of an exempted company to hold at least one meeting in the Cayman Islands each year.
- 9.2 The members of an ordinary company must hold an annual general meeting each year but the law does not specify a location. Stuarts Corporate Services Ltd. will deal with this by proxy if required.
- 9.3 If a member or director appoints a proxy or alternate to attend and vote at a meeting on their behalf, the proxy should be delivered to the registered office of the company. Copies of the proxies should be attached to the minutes of the meeting to which they relate.
- 9.4 Notice of all meetings of members, directors or of any committee of the directors should be given to all those entitled to attend and vote at the meetings. The period of notice is specified in the Articles of Association. Notice may be waived by signing the appropriate form.

10 ANNUAL REQUIREMENTS

An annual return (in the case of exempted companies) and an annual list of members and summary of certain specified items relating to share capital (in the case of ordinary companies) must be submitted to the Registrar in the January of the year following incorporation and in each January thereafter, and the appropriate annual fee paid. Where Stuarts Corporate Services Ltd. provides the registered office they will attend to the preparation and filing of the annual returns or annual list and summary and all routine statutory compliance. However, it is the policy of Stuarts Corporate Services Ltd. not to make such filings unless cleared funds for payment of the annual fee have been received from the client. Therefore, to ensure that the company does not fall into default, it is important to settle the firm's account promptly.



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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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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 strive to build and maintain lasting relationships with our clients through the combined legal expertise and business acumen of our practice groups and by providing outstanding service.