

Cayman Islands



MARBURY



Redomiciliation into the Cayman Islands

In many jurisdictions the process of moving a business from one jurisdiction to another involves a complex set of manoeuvres involving share exchanges and asset swaps that are costly to organise, create inconvenience for shareholders and third parties, and may lead to adverse tax consequences. High profile cases include WPP relocation of its HQ to Dublin, Royal Dutch Shell to The Hague and now Unilever's selection of Rotterdam as its new home.

Moving a business from one country to another could help alleviate overly onerous operational requirements under the current companies' laws, reflect the changing nature of the business, offer administrative simplification for a business, or deal with unexpected regulatory or tax consequences arising from changes in law or the growth of the business.

The Cayman Islands, Bermuda, the British Virgin Islands and Singapore, to name a few, offer a solution to many of the legal and administrative hurdles posed by making a move from one country to another. This update deals specifically with options available under the Cayman Islands Companies Law (Revised) (the **Law**).

Simply put, a company incorporated outside the Cayman Islands may apply to be registered by way of continuation as an exempted company limited by shares under Section 201 of the Law. Section 201 is available to such a company where:

- it is incorporated with limited liability and has a share capital
- it is incorporated, registered or existing in a jurisdiction which permits such a transfer
- its charter documents permit such a transfer
- it is constituted in a form which could have been incorporated as an exempted company under the Law, and
- the Registrar of Companies in the Cayman Islands (the **Registrar**) is not aware of any reason of public interest why it should not be registered.

A number of steps need to be taken prior to registering:

- if the business of the Company will require a licence under the laws of the Cayman Islands, a licence must be obtained prior to registering

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- the requisite corporate actions required by the charter documents must be taken (such as a shareholder resolution and/or a board resolution)
- the proposed name of the incoming company should be checked with the Registrar. If it is unacceptable it will have to be changed within 60 days of registration; and
- a number of documents relating to the state of the company and its existence, as well as its operations, solvency and affairs need to be filed with the Registrar by way of a Director's Declaration. The company would need to provide full details of its new status as a Cayman Islands exempt limited company.

The Registrar will grant the registration as of the date the documents are filed, provided that all documents are in order and will usually revert with confirmation within three to five business days of receipt of the documentation.

Within 90 days of registration, the company is required to pass a special resolution of its shareholders adopting memorandum and articles of association which comply with the provisions of the Law relating to exempted companies. Until such filing is made, section 203(4) provides that the Company's charter documents will be deemed to be effective, as amended in order to comply with the Law. As this could lead to difficulties of construction and interpretation or to unwanted results, it is preferable for the Company to adopt a fully amended and restated memorandum and articles of association as soon as possible after registration rather than to wait the full 90 days allowed under the Law.

The Law also includes provisions for provisional registration, which may be useful in certain circumstances for companies who require interim comfort that approval will be forthcoming in due course.

Upon registration, the company is continued as a body corporate in all respects; it is not a new legal entity. All contracts, debts, obligations, rights and relationships enjoyed by the original company continue to be enforceable in the same entity. Assets and liabilities of the company remain. Because it is the same entity, it is our experience (although it should be verified on a case by case basis) that shareholders are also unaffected by the redomiciliation.

Many countries permit a foreign company to register locally in order to do business effectively, such as Hong Kong for example (which permits the registration of foreign companies under the Companies Ordinance) where the majority of listed companies are in fact Cayman Islands, British Virgin Islands or Bermuda companies, allowing governance under flexible statutes such as the Law, but having the benefits of operating in the choice of location. This is indeed the mechanism employed by WPP when it moved its listing and headquarters to Dublin.

For more information about the advantages and process of redomiciliation, please liaise with your usual Marbury advisor or contact us via info@marburys.com.

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