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The Legal 500
Doing Business in
Comparative Guide 2024
Cayman Islands

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1. Is the system of law in your jurisdiction based on civil law, common law or something else?

The Cayman Islands is a common law jurisdiction, which is based on the English model. It comprises statute law and binding case precedents. English and British Commonwealth case authorities are generally persuasive, but not binding, on the Courts of the Cayman Islands.

Cayman Islands law is derived from several sources:

- primary legislation – ie, local statutes passed by then Legislative Assembly of the Cayman Islands or its predecessors, and approved by the Governor of the Cayman Islands; for example, the Companies Act (As Revised) of the Cayman Islands (the “**Companies Act**”) and the Private Funds Act (As Revised) of the Cayman Islands;
- secondary legislation – ie, legislation enacted pursuant to local statutes; examples include the Companies Winding-Up Rules (2023 Consolidation) and the Private Funds Regulations (As Revised) of the Cayman Islands;
- statutes passed by the United Kingdom (UK) Parliament that have been expressly extended to the Cayman Islands;
- Orders of His Majesty’s Privy Council that are applicable to the Cayman Islands; and
- any relevant remaining English and British Commonwealth common law and rules of equity established by settlement not having been replaced by local or UK statute.

The Grand Court of the Cayman Islands (the “**Grand Court**”) is the superior court of record of first instance for the Cayman Islands. The caseload of the Grand Court is divided into five divisions: Civil, Family, Admiralty, Financial Services and Criminal. Appeals from the Grand Court are to the Cayman Islands Court of Appeal (which usually sits three times each year). The final court of appeal is the Privy Council in England.

2. What are the different types of vehicle/legal forms through which people carry on business in your jurisdiction?

The Cayman Islands has several types of corporate vehicles or legal structures available for conducting business in or outside of the Cayman Islands. Common types of entities are outlined below.

Exempted companies

Exempted companies are incorporated under the Companies Act (As Revised) of the Cayman Islands (the “**Companies Act**”) and are the most common form of Cayman Islands vehicle used when carrying on business mainly outside of the Islands. They offer a flexible and tax-efficient structure for companies to operate in the global market. The main constitutional documents of an exempted company are its memorandum and articles of association that set out the rules for the governance and operation of the company. The issued share capital of an exempted company can be entirely nominal (for example, a single share) and the liability of the shareholders is typically limited to any amounts unpaid on the shares. There are no restrictions on the number of directors or shareholders that an exempted company may have.

Ordinary non-resident companies and ordinary resident companies

Ordinary companies are incorporated under the Companies Act but, unlike exempted companies, are subject to the LCCA and are required to comply with local licensing, reporting and disclosure obligations in the Cayman Islands.

Ordinary non-resident companies cannot engage in any business activities within the Cayman Islands. Ordinary resident companies may conduct business in the Cayman Islands. Ordinary resident and non-resident companies must file a list of shareholders annually with the Registrar of Companies. Ordinary resident companies must also file an annual list of shares held by Cayman Islands residents with the applicable Cayman Islands immigration board to comply with the LCCA requirement that 60% of shares of an ordinary resident company must have Cayman Islands ownership.

Overseas companies

Overseas companies (usually referred to as foreign companies) have been incorporated in a jurisdiction other than the Cayman Islands and intend to carry on business in the Cayman Islands. Overseas companies are required to register with the Registrar of Companies pursuant to Part IX of the Companies Act, which is necessary to enable them to hold land, carry on business in the Cayman Islands, or to act as the general partner of a Cayman Islands exempted limited partnership (for which they are commonly used).

Segregated portfolio companies

A segregated portfolio company (“**SPC**”) is a form of exempted company incorporated under the Companies Act, which is permitted to create one or more segregated portfolios in order to segregate the assets and liabilities of the SPC held within or on behalf of a segregated portfolio from the assets and liabilities of the SPC held within or on behalf of any other segregated portfolio of the SPC. It may also segregate the assets and liabilities of the SPC which are not held within or on behalf of any segregated portfolio of the SPC (called the general assets of the SPC) from the relevant segregated portfolios of the SPC. The segregation of assets and liabilities within segregated portfolios does not create any new legal entity: the SPC is and remains a single legal entity and any segregated portfolio of, or within, an SPC does not constitute a legal entity separate from the SPC itself. This means, for example, that the SPC for the account of one of its segregated portfolios cannot hold shares issued by the SPC in respect of another of its segregated portfolios. They are commonly used for mutual funds and other investment vehicles seeking to segregate assets and liabilities.

Limited liability companies

A limited liability company (“**LLC**”) is formed and registered under the Limited Liability Companies Act (As Revised) of the Cayman Islands (the “**LLC Act**”) and offers a flexible legal structure similar to a Delaware LLC and combines characteristics of an exempted company and an exempted limited partnership (described below). They are corporate entities with separate legal personality and limited liability.

They can be used for a variety of purposes, including as investment vehicles where there is a need to have separate legal personality and flexibility, in particular with regard to its operation and management, the rights and responsibilities of its members, and the profit sharing between the members.

Exempted limited duration companies

An exempted limited duration company (“LDC”) is a form of exempted company incorporated under the Companies Act. An LDC exists for a fixed period of time specified in its memorandum of association, which must not exceed 30 years and it must have at least two members. It is generally very uncommon to use an LDC. However, it could be used, for example, where a particular project or venture must be completed within a certain timeframe. Following the expiration of the fixed time period, the LDC will be deemed to have automatically commenced voluntary winding up and will dissolve with its assets being distributed accordingly.

Exempted limited partnerships

An exempted limited partnership (“ELP”) is a partnership that is registered under the Exempted Limited Partnership Act (As Revised) of the Cayman Islands (the “ELP Act”) and is the most common type of partnership structure in the Cayman Islands, which provides a flexible vehicle for investors to pool capital and conduct investment activities outside of the Cayman Islands. It is frequently used as a private equity fund, hedge fund or feeder fund for international investors. The respective rights and obligations of the general partner and limited partners are set out in an exempted limited partnership agreement. Limited partners benefit from limited liability with all management responsibility vesting in the general partner who is liable for the debts and liabilities of the ELP in the event that the assets of the ELP are inadequate.

Limited liability partnerships

A limited liability partnership (“LLP”) is a partnership that is formed and registered under the Limited Liability Partnership Act (As Revised) of the Cayman Islands. It is the preferred structure used by professional firms to operate and organise their business in the Cayman Islands due to having a separate legal personality and affording limited liability status to all its partners. An LLP is not a body corporate and, in this respect, differs from a UK LLP which structurally is more akin to a corporate rather than partnership vehicle. The LLP, rather than the partners, is liable for such LLP’s debts and losses. A partner may be liable for their own negligent acts or omissions where such partner has assumed an express duty of care and acted in breach of that duty (ie, in the context of providing professional services advice). An LLP must be established by at least two persons who may carry on a business in common for any lawful purpose. Any person, including natural persons, a body corporate or other partnerships, may be a partner in an LLP. As there is no requirement for an LLP to undertake its business “with a view to profit”, an LLP may be a helpful structuring option for not-for-profit organisations and other social enterprises.

Foundation companies and companies limited by guarantee

A foundation company is incorporated under the Foundation Companies Act (As Revised) of the Cayman Islands (the “Foundation Companies Act”) as a body corporate with a legal personality distinct from that of its members, beneficiaries, directors, officers, supervisors and founder. Accordingly, it has capacity to sue and be sued and to hold property. Uniquely it is possible for a foundation company not to have any members; provided that its constitution so permits and it continues to have one or more supervisors. A foundation company may be formed for any lawful object, which need not be beneficial to other persons and must be limited by shares or by guarantee with or without share capital. It is a highly flexible vehicle and can, if so desired, include features of a common law trust within a corporate framework. They are typically used for wealth management, estate planning, and asset protection. If used in a private wealth context foundation companies are often incorporated as companies limited by guarantee, which avoids the need for probate to be obtained where shares are issued and one or more shareholders die.

A company limited by guarantee is a Cayman company (whether exempt or ordinary) that instead of having shareholders has members. Typically, the liability of members of a company limited by guarantee is limited under its constitution to US\$1.00. A Cayman company limited by guarantee has many of the same features as a Cayman company limited. It is a body corporate with a legal personality distinct from that of its members, directors and officers. Accordingly, it has capacity to sue and be sued and to hold property. Companies limited by guarantee are rarely incorporated for purely commercial purposes, rather they are more typically used for nonprofit club scenarios where there is no expectation of profits passing to the members.

Trusts (including unit trusts)

In contrast to the most of the vehicles described above, a trust does not have separate legal personality and so a trust itself cannot hold property in its own name. Rather, legal title to property held upon the terms of the trust is vested in the trustees of the trust and it is the trustees who enter into transactions in that capacity and who can sue and be sued. Trusts can be established for a wide range of objectives similar to those for which a foundation company can be incorporated – for example, for wealth management, estate planning, philanthropic endeavours and employee incentivisation schemes. Cayman permits the establishment of non-charitable purposes trusts (known as STAR Trusts), the purposes of which may be to benefit or carry out, as the case may be, a mixture of persons and purposes so long as they are lawful and not contrary to public policy.

It is also possible to establish a trust for use as an investment vehicle. Such a structure would usually take the form of a unit trust under which the investors (the unitholders) contribute assets to the trustee to be managed and invested in accordance with the terms set out in the trust deed and any accompanying contractual documents.

3. Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?

If an entity incorporated/formed in a jurisdiction other than the Cayman Islands intends to carry on business in or from within the Cayman Islands, it will need to register in the Cayman Islands. See "Overseas companies" above.

4. Are there any capital requirements to consider when establishing different entity types?

The Cayman Islands currently has no rules in relation to capital requirements. However, the level of authorized capital for Exempted/Ordinary Resident/Ordinary Non-Resident Companies/Other Companies may affect the fee charged for its annual renewal.

5. How are the different types of vehicle established in your jurisdiction? And which is the most common entity/branch for investors to utilise?

It is necessary to engage a licensed corporate services provider to assist with the incorporation process.

Exempted/ordinary resident/ordinary non-resident companies/other companies

In order to incorporate a company, the corporate services provider will prepare and file the memorandum and articles of association with the Registrar of Companies, together with the appropriate filing fees. In the case of exempted companies only, a statement is also required to be filed, which confirms that the operations of the company will be conducted mainly outside of the Cayman Islands. The initial subscriber shareholder will typically be an affiliate of the corporate services provider and the subscriber will transfer the subscriber share to the shareholder of record after incorporation or shall be automatically repurchased by the company following the issuance of any further shares. Once the Registrar of Companies has processed the incorporation documents, the company will be deemed to have been incorporated and a Certificate of Incorporation will be issued.

Exempted limited partnerships

In order to register a Cayman Islands partnership as an ELP, the corporate services provider, on behalf of its general partner, must submit to the Registrar of Exempted Limited Partnerships in the Cayman Islands a statement setting out certain prescribed information and pay the appropriate filing fees. A Certificate of Registration issued by the Registrar of Exempted Limited Partnerships is conclusive evidence that the requirements of the ELP Act have been complied with in respect of the formation and registration of an exempted limited partnership.

Limited liability companies

In order to form and register an LLC, a registration statement must be submitted by the corporate services provider to the Registrar of Limited Liability Companies in the Cayman Islands

which sets out basic information regarding the limited liability company and the appropriate filing fees. A Certificate of Registration issued by the Registrar of Limited Liability Companies is conclusive evidence that the requirements of the LLC Act have been complied with in respect of the formation and registration of an LLC.

Timing

The registration and issue of a Certificate of Incorporation (exempted/resident/non-resident companies) or Certificate of Registration (exempted limited partnerships, limited liability companies) generally takes three to five business days but can be expedited by paying an express fee so that the certificate can be provided within one business day.

6. How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?

Companies

Companies are generally managed by a board of directors who are responsible for the overall management and decision-making of the company. Subject to the provision of the memorandum and articles of association for the company, the board of directors: (i) may be appointed by the shareholders and the existing board of directors can appoint additional or replacement directors; (ii) can delegate certain powers to committees or individual directors; and (iii) may also appoint officers, such as a vice-president, secretary or chief executive officer, to handle the day-to-day operations of the company.

The approval of the company's shareholders is required for certain matters, including:

- changing the name of the company;
- amending the memorandum and articles of association;
- approving a merger or consolidation in relation to the company;
- altering the company's share capital;
- approving a transfer by way of continuation to another jurisdiction; and
- winding up the company on a voluntary basis.

The process by which the board of directors holds board meetings (eg, notice, quorum) will be set out in the articles of association of the company and generally decisions are made by way of a simple majority of the directors present at a meeting. The articles also typically provide that the board may take action by way of a unanimous written resolution of the directors in lieu of a meeting, which is considered effective on the date which the last director signs.

Limited liability Companies

LLCs are typically managed by their members, or by nonmember managers appointed by the members, who shall undertake and have exclusive responsibility for the management, operation and administration of the business and affairs of the LLC, subject to the terms of its LLC agreement.

Exempted limited partnerships

The management and operation of an ELP will typically be set out in its exempted limited partnership agreement entered into between its general partner and limited partner(s). An ELP must have at least one general partner who is responsible for the management and operation of the ELP. Limited partners are typically passive investors and may lose the benefit of their limited liability if they engage in the conduct of the business of the exempted limited partnership (subject to certain “safe harbour” exceptions, which expressly state that certain actions taken by a limited partner will not be construed as taking part in the management of the partnership).

7. Are there general requirements or restrictions relating to the appointment of (a) authorised representatives/directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

Other than in respect of local operating businesses (as discussed below), there are no local residency or nationality requirement and:

Companies

Companies are generally required to have at least one director and one shareholder.

Limited liability companies

LLCs are generally required to have at least one manager (which may be a managing member) and one member.

Exempted limited partnerships

ELPs are generally required to have at least one general partner and one limited partner.

8. Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade/commercial agents, resellers and are there any specific rules to be observed?

Beyond compliance with the local operating businesses restrictions (as discussed below), there may be additional rules applicable to certain types of business (for example, engaging in marketing and/or selling securities in or from within the Islands) which will need to be considered on a case by case basis once the scope of the business operation is understood.

9. Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.

The Cayman Islands currently has no rules relating to corporate governance codes.

10. What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.

There are no restrictions in the Cayman Islands in relation to methods by which a Cayman Islands entity may raise working capital (be it debt, equity, a hybrid, or anything in between). The offering of securities to the public in the Cayman Islands may be regulated and, in practice, is often restricted in the terms of any offering of securities by a Cayman Islands entity.

11. What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.

Companies can return value to their shareholders in several ways, as set out below. As a general rule, companies are bound by maintenance of capital rules and can only return value to their shareholders in certain situations.

Dividends

Although it ultimately depends on the relevant provisions of the memorandum and articles of association of a Company (the “**Articles**”), it is customary for directors of a Company to be able to pay dividends to its shareholders without having to obtain shareholder consent. Dividends are therefore usually paid pursuant to a resolution of the board of directors passed either by way of written resolution or at a board meeting.

Dividends may be paid out of “profits” (determined in accordance with common law principles) or “share premium” (as defined in the Companies Law).

Profits – There is no statutory definition of “profits” under Cayman Islands law. Based on Cayman Islands common law principles, profits may result from income as well as realised and unrealised gains. Profits do not include share capital (i.e. amounts equal to the par value of the Shares in issue) or amounts credited to the “share premium account” (as defined below).

Share premium – under the Companies Law, where a Company issues Shares at a price higher than the par value of such Shares, a sum equal to the difference between the issue price and the par value must be transferred to an account called the “share premium account”. It is important to note that where a Company issues Shares without a par value, the entire share price is considered to form part of the share capital of the Company and accordingly cannot be used to pay dividends. For this reason, Companies with Shares of no par value are not popular in the Cayman Islands. A Company may use amounts in the share premium account to pay dividends to its members provided that, immediately following payment of any dividend out of the share premium account, the Company is able to pay its debts as they fall due in the ordinary course of business (the “**Solvency Test**”).

Unlawful payment of dividends – under the companies law, the Company and any director who knowingly and wilfully

authorises or permits any dividend to be paid out of the share premium account where the Solvency Test is not satisfied commits an offence and is liable on summary conviction to a fine of approximately US\$18,000 and up to five years' imprisonment. Under Cayman Islands common law, a director may be personally liable to repay an unlawful dividend. A shareholder who receives an unlawful dividend is not generally liable to return the dividend unless it knew that the dividend was unlawful. However, this is a complicated area of the law and so specific legal advice should be sought in cases where a dividend may have been paid unlawfully.

Repurchase and redemption of share

It is necessary to consult the provisions of the Articles to ascertain the manner in which a Company may repurchase or redeem its Shares. Often the Articles require the directors to obtain shareholder approval for the repurchase or redemption.

The statutory rules for the repurchase and redemption of Shares are as follows:

- no Share may be repurchased or redeemed unless its par value is fully paid up;
- a Company may not repurchase or redeem any of its Shares if, as a result of the repurchase or redemption, there would no longer be any issued Shares (Treasury Shares are not counted as issued Shares for this purpose);
- the repurchase or redemption of Shares may be effected in such manner and upon such terms as may be authorised by or pursuant to the Articles (including, for example, on such terms as the directors may approve);
- Shares may only be redeemed if they are issued as redeemable Shares or if their terms are varied in accordance with the Articles to make them redeemable;
- if the Articles do not authorise the manner and terms of a repurchase, a Company may not repurchase any of its Shares unless the manner and terms of purchase have first been authorised by a shareholder resolution; and
- a payment out of capital by a Company for the redemption or repurchase of its Shares is not lawful unless immediately following any such payment the Solvency Test is satisfied.

Payment for repurchased and redeemed shares – subject to satisfying the Solvency Test, Shares may be repurchased or redeemed out of share capital, out of profits, out of the share premium account or out of the proceeds of a fresh issue of shares made for the purposes of the repurchase or redemption. Unless classified as Treasury Shares, any redeemed or repurchased Shares are deemed to be cancelled and are immediately available for re-issue by the Company. Unlawful repurchase or redemption shares – under the Companies Law, the Company and any director who knowingly and wilfully authorises or permits any redemption or repurchase to be paid out of share capital where the Solvency Test is not satisfied commits an offence and is liable on summary conviction to a fine of approximately US\$18,000 and to five years' imprisonment. A shareholder who receives a payment in respect of an unlawful repurchase or redemption of Shares is not generally liable to return payment unless it

knew that the repurchase or redemption was unlawful. However, this is a complicated area of the law and so specific legal advice should be sought in cases where a repurchase or redemption may have been effected unlawfully.

Capital reductions

A reduction of capital occurs where a company reduces the amount of its share capital. This may be an option when the company has capital that is surplus to its requirements and that it wishes to return to shareholders.

The amount arising on a capital reduction is treated as a realised profit and, unless otherwise specified, will be credited to the profit and loss reserve of the company. The company may then be able to take further steps to return that value to its shareholders. The company may also opt to return the amount arising on the reduction directly to the shareholders. This is known as a direct payment capital reduction and either cash or non-cash assets may be returned.

Bonus issue

A bonus issue is an issue of new shares (bonus shares) by a company to holders of existing shares in the company, generally in proportion to their existing holdings. No payment is required from shareholders as the bonus shares are paid up using the company's existing profits or reserves. This procedure can be used to return value to shareholders by subsequently redeeming or repurchasing the bonus shares.

Before a company can carry out a bonus issue, the Articles should be checked to ensure that the directors have authority to capitalise the relevant profits or reserves and issue bonus shares. The company's directors must also have the necessary authority to allot the bonus shares.

Loans

It is also possible for a company to loan cash to its shareholders. The terms of such a loan should be considered to ensure they do not give rise to any issues (e.g. made in the best interest of the Company). The loan may then be waived at a later date provided this is done in accordance with the fiduciary duties of the directors.

12. Are specific voting requirements/percentages required for specific decisions?

There are two types of resolution which may be put to a general meeting or in certain circumstances be passed as written resolutions: an ordinary resolution and a special resolution. Ordinary resolutions require a simple majority and special resolutions require a two-thirds (66.67%) majority of the shareholders as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting, and includes a unanimous written resolution. The Articles may impose higher percentages than these usual ones.

Corporate actions that require an ordinary resolution include:

- increases to its share capital by the creation of new shares;
- consolidate, or consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;

- subdivide its shares, or any of them, into shares of a smaller amount than is fixed by the Memorandum;
- cancel any shares which, at the date of the passing of the resolution, have not been taken, or agreed to be taken, by any person and diminish the amount of its share capital by the amount of the shares so cancelled; and
- appointing a director to, or removing a director from, office.

Corporate actions that require a special resolution include:

- amending the company's articles;
- changing the company's name;
- altering or adding to the Memorandum with respect to any objects, powers or other matters specified therein;
- approving a reduction of capital or any capital redemption reserve; and
- commence a voluntary winding up.

There are also other approvals set out in the Companies Act which require a special resolution (e.g. the approval of a merger).

13. Are shareholders authorised to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?

Shareholders of a company generally have the overall power to appoint and remove directors and therefore, if a director does not act in a way the shareholders agree to, they can change the directors.

Additionally, a company's articles of association usually provide for shareholders' to provide directions to the company's directors. Any such direction must be given in the form of a special resolution which can be general in nature, but sufficiently clear and specific to enable the directors to know how they are to act.

14. What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

The Labour Act (As Revised) (the "**Labour Act**") of the Cayman Islands establishes minimum employment standards but does not preclude an employer from setting terms and conditions which are above the minimum. It also establishes remedies for unfair dismissal and entitlement to severance pay, prohibits discrimination and regulates the health, safety and welfare of employees.

The Labour Act requires employers to:

- register the workplace by written notice to the Director of Labour in the Cayman Islands;
- furnish each employee with a written statement of working conditions containing specific information;
- provide reasonable training to employees during their probationary period;

- maintain prescribed employee work accounts where there are ten or more employees;
- safeguard the health, ensure the safety, contribute to the welfare and provide special protective measures for employees as specified;
- notify the Director of Labour of major industrial accidents and any occupational disease involving employees;
- not discriminate; and
- provide certain minimum entitlements for employees including:
 - a. a minimum wage of KYD6.00 (USD7.32) per hour;
 - b. paid vacation leave (the amount depends on length of service);
 - c. public holiday pay;
 - d. up to ten paid sick leave days per year;
 - e. paid maternity and adoption leave;
 - f. at least 24 consecutive hours of rest in each seven consecutive days;
 - g. overtime pay for hours worked in excess of a standard work day/week; and
 - h. specified advance notice of termination of employment except for certain good causes.

Redress for unfair dismissal may be sought before the Labour Tribunal pursuant to the provisions of the Labour Act. An employee is not precluded from bringing an action at common law (for damages) before the courts of the Cayman Islands. Any compensatory award made by the Labour Tribunal would be deducted from any award for damages made by the court.

The Workmen's Compensation Act (As Revised) provides for the payment of compensation by the employer to any workman who suffers personal injury by accident arising out of and in the course of employment. This is an insurable risk and is normally covered by an employer's insurance.

15. On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

Unless the contract of employment is for a fixed term, or the dismissal is for good cause, misconduct, or failure to perform duties in a satisfactory manner, every employer must give advance written notice to an employee whose employment it intends to terminate:

- In the case of an employee still serving a probationary period, at least 24 hours' notice must be given.
- In all other cases, the period of notice must be at least equal to the interval between pay days (for example, if paid every two weeks then two weeks' notice must be given). However, notice need not exceed 30 days in any circumstances, unless the employment contract provides for longer notice.

Once the appropriate advance notice is given, the employer may terminate the employment prior to the effective date so long as the employee is paid an amount equal to that which he/she would have been paid had he/she worked throughout the period. This, however, is subject to the provisions regarding severance pay and unfair dismissal dealt with below.

An employee whose employment is terminated by the employer for any reason shall receive payment for each day of unused vacation leave accrued at the time of termination.

16. Does your jurisdiction have a system of employee representation/participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?

The Cayman Islands currently has no form of employee representation legislation.

17. Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?

Yes. The Anti-Corruption Act (As Revised) ("ACL") of the Cayman Islands provides generally for four categories of corruption offences:

- Bribery (both domestic and foreign).
- Fraud on the Government.
- Abuses of public or elected office.
- Secret commissions.

There are also ancillary offences for failure to report an offence. The ACL also creates and empowers the AntiCorruption Commission (AC Commission).

Under the ACL, there is an offence of bribery for local public officials and foreign public officials.

Cayman Islands legislation currently does not have extraterritorial reach.

18. What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

In certain circumstances, there may be an obligation to report money laundering to the relevant law enforcement agency. In general terms, the obligation applies to individuals and organisations operating in certain regulated sectors, such as banks, law firms, accountancy practices, and financial services.

19. How is money laundering and terrorist financing regulated in your jurisdiction?

In common with other financial centres in the world, the Cayman Islands has enacted legislation that is aligned with international principles in preventing and detecting money laundering (AML) and combating terrorist and proliferation

financing (CFT and CPF respectively) and breaches of applicable sanctions regimes.

The legislation is also contained principally in the Misuse of Drugs Act (As Revised) of the Cayman Islands, the Proceeds of Crime Act (As Revised) of the Cayman Islands (PCA), the Terrorism Act (As Revised) of the Cayman Islands and the Proliferation Financing (Prohibition) Act (As Revised) of the Cayman Islands. These statutes create a number of offences in relation to activities involving the laundering of the proceeds of crime.

The Anti-Money Laundering Regulations (AMLRs) apply to anyone carrying out "relevant financial business in or from the Cayman Islands", forming a business relationship or carrying out a one-off transaction. What constitutes "relevant financial business" is set out under Section 2 of the PCA and includes, among others, the following activities:

- banking or trust business carried out by a person who is licensed under the Banks and Trust Companies Act (As Revised);
- insurance business and the business of an insurance manager, an insurance agent, or an insurance broker within the meaning of the Insurance Act (As Revised);
- mutual fund administration or the business of a regulated mutual fund within the meaning of the Mutual Funds Act (As Revised); and
- various other investment, financial, trading and lending activities falling within Schedule 6 of the PCA.

As a general rule, entities that are registrable under FATCA/ CRS will also be subject to the AML Regime.

20. Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?

The Cayman Islands currently has no rules relating to supply chain compliance.

21. Please describe the requirements to prepare, audit, approve and disclose annual accounts/ annual financial statements in your jurisdiction.

All companies must keep proper books of account, including, where applicable, material underlying documentation including contracts and invoices. The books of account must be such as are necessary to give a true and fair view of the state of the company's affairs and explain its transactions. The books of account must be retained for a minimum of five years from the date on which they are prepared. A company that knowingly and willfully contravenes these requirements will be subject to a penalty of USD6,100. The books of account need not necessarily be kept at the registered office, but a company must provide to its registered office, annually or with such other frequency and within such time as may be prescribed, information regarding its books of account. If a company fails to comply with this requirement without a reasonable excuse, it

shall incur a penalty of USD610 and a further penalty of USD122 for every day during which such non-compliance continues. 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 fund, its accounts need not be audited as a matter of Cayman Islands law.

22. Please detail any corporate/company secretarial annual compliance requirements?

In January of each year after the year of its registration, each exempted company must furnish to the Registrar a return that must be in the form of a declaration, which states that:

- since the previous return or since registration, as the case may be, there has been no alteration in the memorandum, other than an alteration in the name of the company or the objects, powers or matters set out in the memorandum, and already reported;
- the operations of the exempted company since the last return or since registration, as the case may be, have been mainly outside the Islands; and
- the company has not traded in the Islands with any person, firm or corporation except in furtherance of the business of the exempted company carried on outside the Islands.

Should an exempted company fail to furnish to the Registrar the return, the company will incur a penalty and be liable to being struck off the register.

Companies must also indicate in their returns whether or not they are exempted from the Cayman Islands' economic substance regime.

23. Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?

Every ordinary company, whether local or non-resident, must hold an Annual General Meeting of shareholders. Within 21 days after the Annual General Meeting, the company must file an annual return listing the names and addresses and shares held by all members of the company on the 14th day after the Annual General Meeting, and those who have ceased to be members of the company since the last list was made. The annual return must also contain details of the company's share capital. The annual return must be filed with the Registrar in January of each year, together with the appropriate annual fee which varies (depending on whether the company is classed as "resident" or "non-resident" and on the authorised share capital).

24. Are there any reporting/notification/disclosure requirements on beneficial ownership/ultimate beneficial owners (UBO) of entities? If yes, please briefly describe these requirements.

On 31 July 2024, the Cayman Islands Beneficial Ownership Transparency Act, 2023 ("BO Act") and the accompanying

Beneficial Ownership Transparency Regulations, 2024 ("BO Regulations") were brought into force. At the same time, Guidance on Complying with Beneficial Ownership Obligations in the Cayman Islands ("BO Guidance Notes") was published on the General Registry's website. The updated requirements ("New BO Regime") set out in the BO Act, BO Regulations and BO Guidance Notes replace the existing requirements to maintain a beneficial ownership register ("BO Register"), which were set out in the separate entity statutes.

The New BO Regime expands its scope to include all registered Cayman Islands entities, including limited partnerships. Overseas entities registered as foreign companies or foreign limited partnerships, as well as Cayman Islands trusts, remain out of scope.

The scope of persons that may fall within the definition of "beneficial owner" has been expanded outside the chain of legal ownership and control to include individuals who exercise control in practice. Additionally, where no individual beneficial owner can be identified, entities must now include details of a senior managing official.

Exemptions have generally been removed, and in some cases replaced with an alternative route to compliance. These changes will most significantly affect Cayman Islands investment funds and other entities within a fund structure, such as general partners, carry vehicles and SPVs. The alternative route to compliance (i.e. notification of certain required particulars rather than maintaining a beneficial ownership register) will only be available for:

- entities or subsidiaries of entities listed on the Cayman Islands Stock Exchange or another approved stock exchange;
- entities licensed under a Cayman Islands regulatory law; and
- mutual funds or private funds regulated by the Cayman Islands Monetary Authority ("CIMA").

25. What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?

The Cayman Islands currently has no form of income, corporate or capital gains tax and no estate duty, inheritance tax or gift tax.

On 1 July 2021, 130 members of the OECD/G20, including the Cayman Islands, signed an historic agreement for a "two pillar solution" to address the tax challenges arising from globalisation and the digitisation of the economy ("Two Pillar Solution").

As the name suggests, the Two Pillar Solution is a two-prong approach, which aims to bring about "a fairer distribution of profits and taxing rights among countries and jurisdictions with respect to the world's largest Multinational Enterprises (MNEs)".

In short, Pillar One (the first prong) would provide a new right to tax large multinationals in the jurisdictions in which they operate ("**Pillar One**"), while Pillar Two (the second prong) would introduce a new global minimum effective tax rate of 15%, ensuring that large multinationals pay a minimum level of tax in those jurisdictions ("**Pillar Two**").

Since July 2021, the Inclusive Framework on Base Erosion Profit Shifting (BEPS) has been working towards the implementation of the Two Pillar Solution. While Pillar One is still being developed, Pillar Two is starting to take shape.

On 11 July 2023, an Outcome Statement was agreed by 138 members of the OECD/G20 Inclusive Framework on BEPS (again, including the Cayman Islands), which recognises the significant progress made to date towards achieving the Two Pillar Solution ("**Outcome Statement**").

As regards Pillar Two, the Outcome Statement states:

"The global minimum tax under Pillar Two establishes a floor on corporate tax competition which will ensure a multinational enterprise (MNE) is subject to tax in each jurisdiction at a 15% effective minimum tax rate regardless of where it operates, thereby ensuring a level playing field. This global minimum tax framework under Pillar Two is already a reality, with over 50 jurisdictions taking steps towards implementation."

While the Cayman Islands was one of the initial signatories to the agreement for a Two Pillar Solution, Pillar Two has not yet been adopted and there has yet to be a public announcement regarding the introduction of a minimum effective tax rate within the Cayman Islands.

26. Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)

See question 25. Under the terms of the relevant legislation, it is possible for all types of Cayman Islands vehicles – companies, unit trusts, limited partnerships and LLCs – to register with and apply to the government for a written undertaking that they will not be subject to various descriptions of direct taxation, for a minimum period, which in the case of a company is usually 30 years, and in the case of a unit trust, limited partnership and an LLC, 50 years.

27. Are there any impediments/tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

See question 25.

28. Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

Stamp duty may be payable in connection with the documentation executed in or thereafter brought within the jurisdiction of the Cayman Islands (perhaps for the purposes of enforcement). In most cases, this duty is of a relatively de

minimis fixed amount except in limited circumstances, such as when security is being granted over property in the Cayman Islands.

29. Are there any public takeover rules?

The Cayman Islands has a stock exchange (the "**CSX**") and a Code on Takeovers and Mergers and Rules Governing Substantial Acquisitions of Shares, which applies to all companies listed on the CSX apart from open-ended mutual funds. If a company is listed on the CSX and is subject to primary regulations governing takeovers and mergers by a recognised stock exchange (as defined in the CSX listing rules) or other applicable law, those primary regulations generally govern the conduct of the takeover.

30. Is there a merger control regime and is it mandatory/how does it broadly work?

The Cayman Islands has merger control legislation in respect of the following markets and sectors that are operating and providing services within the Cayman Islands (together, the "**Utilities Markets and Sectors**"):

- electricity markets, including the generation, transmission, distribution and supply of electricity;
- fuels markets;
- information and communications technology markets, including broadcasting and content services; and
- water sector, including the production, distribution, supply and treatment of water.

The Utility Regulation and Competition Office (OfReg) is a body that has been established pursuant to the Utility Regulation and Competition Act (As Revised) (URCA), and it has the following responsibilities:

- to promote appropriate, effective and fair competition;
- to protect the short- and long-term interests of consumers in relation to utility services and in so doing:
 - a. supervise, monitor and regulate any service provider providing any of the utility services referenced above;
 - b. ensure that utility services are satisfactory and efficient and that charges imposed in respect of utility services are reasonable and reflect efficient costs of providing the services; and
 - c. publish information, reports and other documents relating to utility services (ie, to keep the public informed in respect of the different utilities service providers);
- to promote innovation and facilitate economic and national development.

The utilities service provider will have to notify OfReg prior to the merger transaction taking place. The utilities service provider will have to provide OfReg with a description of the transaction together with all corporate and financial due diligence documents of the entities involved in the merger transaction and any beneficial owners in the transaction that hold 15% or more voting interest in the entities involved in the transaction.

For the purpose of approving any merger transaction, OfReg will have to consider whether such merger transaction would have material adverse effects on the consumer and citizens of the Cayman Islands.

If the merger transaction will not have a material adverse effect, OfReg is required under URCA to consent to the merger transaction.

If the merger transaction would have adverse effects, OfReg has the option to:

- declare the merger incompatible and deny its consent;
- give consent, subject to an order that certain conditions must be satisfied to avoid or eliminate such material adverse effects; or
- give consent without issuing an order if OfReg is satisfied that the efficiencies put forward by the parties to the merger transaction outweigh any potential harm to consumers and citizens of the Cayman Islands.

31. Is there an obligation to negotiate in good faith?

The Cayman Islands currently has no rules governing unilateral conduct or economic dependency.

The Cayman Islands has anti-competitive legislation in respect of the utilities markets and sectors. The URCA prohibits the entry into agreements by service providers in the utilities markets and sectors that prevent, restrict or distort competition.

32. What protections do employees benefit from when their employer is being acquired, for example, are there employee and/or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

The Cayman Islands currently has no specific rules governing employee protections.

33. Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and/or approvals required for corporate acquisitions.

Foreign investments in the Cayman Islands

Local operating business

Approval from the Cayman Islands authorities may be required if foreign investors are investing in a Cayman Islands company that conducts local business (ie, with businesses and individuals located in the Cayman Islands) (a "**Local Company**"). This is necessary where it is contemplated that a foreign investor will hold greater than 40% voting or economic interest in a Local Company. The Local Companies (Control) Act (As Revised) of the Cayman Islands ("**LCCA**") has protective provisions therein that provide that a Local Company must have 60% Caymanian shareholders and directors, who maintain 60% of the economic and voting control of the

company. An application would have to be made to the Trade and Business Licensing Board (the "**Board**"), which has been established pursuant to the Trade and Business Licensing Act (As Revised) of the Cayman Islands ("**TBLA**"), to obtain a special licence under the LCCA or waiver of the provisions of the LCCA to have greater than 40% foreign ownership and control of the Local Company.

Entities registered or incorporated in the Cayman Islands operating to further their business outside the Cayman Islands

There is no prohibition on foreign investors investing in Cayman Islands entities that do not fall within the category of a Local Company – ie, entities that are registered or incorporated in the Cayman Islands but are not doing business with businesses and individuals in the Cayman Islands.

Certain categories of entities, such as entities registered under the Mutual Funds Act (As Revised) of the Cayman Islands, may require minimum investment thresholds. However, while there may be minimum investment thresholds, there are no restrictions regarding foreign investors making an investment in a Cayman Islands mutual fund.

Property in the Cayman Islands

There are no restrictions on foreign investors purchasing real property in the Cayman Islands.

34. Does your jurisdiction have any exchange control requirements?

The Cayman Islands currently has no rules governing exchange control.

35. What are the most common ways to wind up/liquidate/dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.

Winding-up/liquidation/dissolution in the Cayman Islands is primarily governed by:

- the Companies Act;
- the Companies Winding up Rules, 2018; and
- with respect to exempted limited partnerships, the ELP Act.

Voluntary liquidation

The shareholders of a company can resolve by ordinary resolution that the company be wound up voluntarily because it is unable to pay its debts as they fall due, or by special resolution that the company be wound up voluntarily.

On the appointment of the voluntary liquidator, all of the powers of the directors cease, except so far as the company in general meeting or the liquidator sanctions their continuance. Any person, including a director or officer of the company, may be appointed as its voluntary liquidator.

The voluntary liquidator must apply to the Court for an order bringing the voluntary liquidation under the Court's supervision unless, within 28 days of the commencement of the voluntary liquidation, the directors swear a declaration of solvency stating that the company will be able to pay its debts in full (with interest) within a period not exceeding 12 months after the

commencement of the liquidation. Creditors and contributories of the company can also apply to the Court for a supervision order if the company is or is likely to become insolvent, or the Court's supervision will facilitate a more effective, economic or expeditious liquidation in the interests of the creditors and contributories. If a supervision order is made, the liquidation will proceed in the same manner as an official liquidation.

Official liquidation

A company may be placed into official liquidation by the Court making a winding up order upon a petition by the company, a creditor, any shareholder, or the Cayman Islands Monetary Authority. The Court will appoint official liquidators over the company, and their primary duty will be to collect in the company's assets and distribute them to the company's creditors, with any surplus assets distributed to the company's shareholders.

The powers of the company's directors cease upon the appointment of official liquidators, who will control the company's affairs subject to the Court's supervision.

On the making of a winding up order, an automatic stay is imposed prohibiting any suit, action or other proceeding from being proceeded with or commenced against the company without the leave of the Court. However, secured creditors are not prohibited from enforcing any valid security interest without reference to the liquidator.

The length of the liquidation process varies on a case by case basis and will largely depend on the nature and complexity of the company's business and the issues required to be dealt with in winding up the company's affairs. There is no timeframe within which an official liquidation must be completed.

Strike-off

The strike-off process is undertaken by the directors of the company or the general partner on behalf of a partnership. The entity must have been dormant – no trading, name change or other activity. An application is made to the Registrar for the entity to be removed from the register.

The strike-off procedure is typically completed more quickly than a liquidation. However, a claimant emerging after dissolution can make an application to restore a company that has been struck off and can potentially pursue the directors personally. Furthermore, any assets of the company, present or future, are deemed to be 'bona vacantia' and vest in the Crown.

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Dylan has extensive experience in all aspects of corporate work, including joint ventures, IPOs, mergers and acquisitions, equity and debt capital markets and structured finance transactions, including credit-linked and equity derivative trades, preference share financings, arbitrage and other tax structured transactions, index-linked and credit-linked note issues and structured repo and stock lending transactions. Dylan maintains a strong focus on public company work, private equity, financial services, and energy spheres.

He has spent many years advising clients on complex cross-border transactions across a wide range of jurisdictions and has a demonstrable track record of success in mitigating risk and delivering results. Commercially astute, Dylan is a transactional lawyer with a reputation for implementing complicated deals in a straightforward manner.



PLEASE NOTE

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