

Continuing obligations for Cayman Islands exempted companies

All exempted companies incorporated in the Cayman Islands are subject to the continuing obligations set out in the Companies Act. This guide provides a general summary of some of the on-going obligations of Cayman Islands exempted companies.

Overview

This Guide provides a general summary of some of the on-going obligations of Cayman Islands exempted companies, please see our [guide to Cayman Islands exempted companies](#) for further details about exempted companies and how to set one up.

In addition, those companies which are regulated by the Cayman Islands Monetary Authority (**CIMA**), such as banks, mutual funds, mutual fund administrators, insurance companies, insurance managers, trust companies and others are subject to additional requirements. For detailed regulatory guidance please contact your usual Harneys representative.

Registered office

All exempted companies must have a registered office in the Cayman Islands provided by a regulated service provider. Harneys Fiduciary provides this as a service to all Harneys clients. If you are not already a Harneys Fiduciary client, please visit harneysfiduciary.com for more information.

Name

The company's name must be on display at the registered office (for Harneys Fiduciary clients, this is handled automatically) and at any other place of business maintained by it.

Books of account

All exempted companies must keep proper books of account but these need not be kept at the registered office. The books of account must give a true and fair view of the state of the company's affairs and explain its transactions. Accounts do not need to be audited by law unless the company conducts a regulated activity.

Corporate records

The "minute book" containing the company's principal corporate documents is generally maintained at the registered office. The minute book should contain the following items, those marked with an asterisk are required to be or, by convention, are normally held at the registered office in the Cayman Islands:

- certificate of incorporation*
- memorandum and articles of association*
- minutes of all directors and shareholders meetings and any documents referred to in the minutes*
- written resolutions of the directors and shareholders*
- annual return*
- letters and resolutions relating to the resignations and appointments of directors and officers*
- copies of share certificates issued and the share certificate stubs (although we tend to advise that exempted companies do not issue share certificates as this is not required by the Companies Act)*

- share transfer forms
- audited financial statements, if prepared
- tax exemption certificate*
- register of directors and officers*
- principal or branch register of members of the company
- register of beneficial ownership* (unless an exemption applies, see our [guide to the Cayman Islands beneficial ownership regime](#) for more details) and
- register of mortgages and charges*

Registers

As noted above every exempted company must maintain the following registers. These registers must be kept at the company's registered office in the Cayman Islands, except the register of shareholders which may be kept at any place either in or outside the Cayman Islands but the address at which it is kept must be held by the registered office.

Register of Members

A register of its shareholders with the names and addresses of the shareholders and details of the number of shares held by each, the voting rights of each category of shares, the share certificate number (if any) and the date the shareholder became or ceased to be a shareholder.

Register of Beneficial Ownership

Unless an exemption applies, exempted companies must maintain a register of beneficial ownership with required particulars of the company's registrable persons (as defined in the Companies Act). Information contained in the register of beneficial ownership must be filed regularly by the company's registered office provider with the Cayman Islands competent authority on a confidential basis and is only accessible in limited circumstances pursuant to a proper and lawful request made by certain Cayman government authorities.

Please see our [guide to the Cayman Islands beneficial ownership regime](#) for more details on beneficial ownership registers and exemptions that may apply, for example, for certain regulated companies and their subsidiaries. When an exemption applies, the company must file written confirmation of the exemption with its registered office provider, with instructions to file the written confirmation with the competent authority in the Cayman Islands.

Register of Directors and Officers

A register of officers and directors containing the names and addresses of the company's officers and directors, including alternate directors. Any resignation, removal or appointment of a directors or officers must be filed with the Registrar within 30 days.

Register of Mortgages and Charges

A register of mortgages and charges recording the details of all security interests granted by the company over its property.

Filing requirements

Filings must be made with the Registrar if any of the following actions take place. The registered office provider must handle these filings as the Registrar runs a subscription-only electronic filing system. It is therefore the obligation of the company and the directors to make sure that any of these events are notified to the registered office service provider as soon as possible to avoid penalties being payable to the Registrar.

Change in directors or officers - Updated register of directors and officers must be filed within 30 days.

Change in the authorised share capital of the company - Shareholder resolution and, if required, an updated set of memorandum and articles of association must be filed within 30 days.

Change of name of the company - Shareholder special resolution and, if required, an updated set of memorandum and articles of association must be filed within 15 days.

Alteration of the Memorandum or Articles of Association - Shareholder special resolution and the updated set of memorandum and articles of association must be filed within 15 days.

Change of location of the registered office – A certified copy of the director resolutions authorising the change must be filed within 30 days from the date the relevant resolution was adopted.

Any other shareholder special resolution - Within 15 days.

Other filings are required in other circumstances such as a capital reduction or the winding up of the company.

Annual requirements

In January of each year every exempted company is required to file a notification of their status under the ES Act (see further below) with the Registrar.

Also, in January of each year, every exempted company is required to file and pay an annual return and annual Companies Registry fees with the Registrar. Such filing cannot be made until the above notification under the ES Act has been filed.

The annual return contains a declaration setting out:

- details of changes, if any, to the company's memorandum of association since the last return
- that the operations of the company since the last annual return have been mainly outside the Cayman Islands and
- that in compliance with the Companies Act, the company is not trading within the Cayman Islands except in furtherance of its offshore business

Returns filed after 31 March will incur a penalty fee. If Harneys Fiduciary provides the registered office, we will sign and file the annual returns on behalf of the company.

Seal

An exempted company may, but is not required to, have a seal which is usually kept at the registered office. Where there are documents to be sealed outside the Cayman Islands the company's seal may be used or, alternatively, a copy or 'facsimile' seal can be obtained for use overseas. A facsimile seal may, but is not required to, state on its face the district, territory or place where it is to be used.

Seals are relatively rare but Harneys Fiduciary can order them on request.

Company meetings

Unless required by its Articles, an exempted company is not obliged to hold an annual shareholders' general meeting or an annual meeting of directors. If annual meetings are held voluntarily, the Articles of the company will set out the procedure.

Segregated Portfolio Companies

In addition to the standard annual return and fees for all exempted companies, an exempted company registered as a segregated portfolio company must list each segregated portfolio in existence on 1 January and pay additional fees based on the number of portfolios that it has created.

Categories of regulated companies with additional continuing obligations

Registered Persons

Companies which have registered with CIMA as "Registered Persons" under the Securities Investment Business Act (the SIB Act) and which want to continue to maintain their registration as a Registered Person, must make the necessary

filings with CIMA and pay the annual registration fee before 15 January. Where Harneys Fiduciary provides registered office services, we will send you the relevant CIMA form for completion and signature.

Failure to make the annual filing will result in the company being removed from CIMA's list of Registered Persons which is a breach of the SIB Act and could result in penalties for the company and its directors and officers.

Please see our [guide to Securities Investment Business](#) for further details of regulation under the SIB Act.

Mutual fund or private fund registered with CIMA

Funds registered with CIMA must pay the applicable annual registration fee to CIMA by 15 January. If not paid by then, the fund will be liable for an additional monthly penalty. In addition regulated funds must file annual audited accounts with CIMA within six months of each financial year end and arrange for their auditors to complete and return a report setting out certain key statistical data and other information on the fund.

The vast majority of Cayman Islands investment funds will also be classified as Cayman reporting financial institutions under the Cayman Islands automatic exchange of information legislation and so will have notification, reporting and other ongoing obligations under those laws.

For more information please see our [guide to continuing obligations of a Cayman Islands registered mutual fund](#) and our [guide to continuing obligations of a Cayman Islands private fund](#).

Company licensed by CIMA

Any exempted company licensed by CIMA under any regulatory law must pay the applicable annual licence fee to CIMA by 15 January. In addition annual audited accounts must be filed with CIMA within the prescribed end of each financial year end as well as reports containing key statistical data and other information on the company.

Cayman Islands licensed companies will also be classified as Cayman reporting financial institutions under the Cayman Islands automatic exchange of information legislation and so will have notification, reporting and other ongoing obligations under those laws.

These obligations apply to any exempted company licensed by CIMA as a bank, trust company, fund administrator, company manager, corporate services provider, insurance company, insurance broker or agent, money services provider or to conduct securities investment business.

Economic Substance

The International Tax Co-operation (Economic Substance) Act (**ES Act**) was introduced in the Cayman Islands in response to OECD's Base Erosion and Profit Shifting framework and related EU initiatives in relation to what are known as 'Geographically Mobile Activities'.

The ES Act is supplemented by the Guidance Notes issued by the Cayman Islands Tax Information Authority (**TIA**) on Economic Substance for Geographically Mobile Activities.

Under the ES Act any 'relevant entity' which carries on a 'relevant activity' and receives 'relevant income' in a financial period must satisfy the economic substance test in relation to that activity and make an annual filing with the TIA.

Please see our [guide to economic substance in the Cayman Islands](#) for further details of the ES Act.



For more information and key contacts please visit [harneys.com](https://www.harneys.com)

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