



## Issues Relating To Organizational Forms And Taxation

### CAYMAN ISLANDS Walkers

#### CONTACT INFORMATION

**Walkers**  
Walker House  
7 Mary Street  
George Town  
Grand Cayman KY1-9001  
Cayman Islands  
+1 345 9490100  
[info@walkersglobal.com](mailto:info@walkersglobal.com)  
[www.walkersglobal.com](http://www.walkersglobal.com)

- 1. Identify the forms of organization available in your jurisdiction and discuss the advantages and disadvantages of each (eg., corporation, limited liability company, partnership, limited partnership, co-operative, etc.), describing which type of legal entity is mostly used or is of special interest, namely by foreign investors.**

The responses provided in this questionnaire are generic in nature and should only be used as an indicative guide to the Cayman Islands position. These responses should not and cannot, be used or relied upon as a replacement for specific legal advice on any particular transaction. Further tailored legal advice should be sought on specific transactions as other Cayman Islands legal considerations which have not been the subject of this questionnaire may be relevant and should be considered and advised upon. We are Cayman Islands' Attorneys at Law and express no view and provide no responses as to any laws other than the laws of the Cayman Islands in force and as interpreted at the date of this questionnaire, being 21 July 2010. There are numerous different types of entities in the Cayman Islands. It is, however, beyond the scope of this questionnaire to address all of the legal issues which may arise in the context of transactions effected with all types of entities. Due to word count limitation on certain sections of this questionnaire, it is impossible to provide a full summary of all types of entities and it would be misleading to answer only some of the sections where word count permits relating to, eg, partnerships and trusts, therefore the responses focus only on Cayman

Islands companies. Please contact a Walkers attorney for information and firm memorandum on partnerships, trusts and other forms of entities available.

An exempted company (a "Company") is the most commonly used type of Cayman Islands company for international transactions. Any proposed Company applying for registration under the Companies Law (as amended) of the Cayman Islands (the "Law"), the objects of which are to be carried out mainly outside the Cayman Islands, may apply to be registered as a Company. A Company may not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the Company carried on outside the Cayman Islands. A Company that is not listed on the Cayman Islands Stock Exchange (CSX) is prohibited from making any invitation to the public in the Cayman Islands to subscribe for any of its securities. Certain activities are regulated in the Cayman Islands and a Company may be required to obtain a licence or to register with the Cayman Islands Monetary Authority (CIMA) if it wishes to carry on such activities. These include banking business, trust business, company management, insurance business, mutual fund administration, business of a mutual fund and securities investment business. Part XIV of the Law permits any Company to apply to the Registrar of Companies to be registered as a segregated portfolio company (SPC). Companies regulated by CIMA and also require the permission of CIMA to register as a SPC. Once registered as a SPC, a Company can create and operate one or more segregated portfolios with the benefit of statutory segregation of assets and liabilities between portfolios.

**2. Are there attributes of the form that you consider unique to your jurisdiction?**

The provisions of the Law permitting exempted companies to register as SPCs have created opportunities for the introduction of innovative legal structures across a wide range of business areas. Mutual funds in particular have benefited from the use of SPCs. Standard mutual fund structures such as multi-class hedge funds, umbrella funds and master-feeder structures benefit from the ability to set up a statutory "ring-fence" to protect against cross liability issues relating to the assets and liabilities of the various segregated portfolios within a SPC. Furthermore, the use of a SPC facilitates a more streamlined offering structure for certain mutual funds. This closely follows the use of SPCs by insurers where individual insurance or product lines are segregated in different segregated portfolios thus protecting each from losses arising from the other categories of business written by the insurer. Examples of other uses include multiple tranche debt issue vehicles, property development companies, ship or other fleet owning companies, securitisation and derivative transactions. The advantages over traditional methods of creating legal divisions between accounts (such as setting up underlying special purpose vehicles and negotiating limited recourse provisions with third parties) include reduced complexity and possible cost savings.

**3. Describe the management and governance structure for each organizational form.**

The constitution of a Company consists of a memorandum of association (the "Memorandum") and articles of association (the "Articles"). The Articles will invariably provide that the business of the Company shall be managed by the directors. Shareholders do not generally participate in the management of the Company's business.

**4. Is there a residency requirement for management or owners? In particular, are there restrictions or prohibitions on foreign investors to perform, or have interests in, specific activities?**

No-company

**5. Describe the extent to which management and owners are exposed to liability.**

Directors owe fiduciary duties to the Company. These duties include:

- a) duty of loyalty/duty to act in best interests of the Company;
- b) duty to act for a proper purpose;
- c) duty not to fetter director's discretion;
- d) duty to avoid conflicts;
- e) duty not to make secret profits from the director's position as director;
- f) duty to act fairly as between different shareholders; and
- g) duty to act with skill and care.

These duties are owed to the Company itself, and not generally to individual shareholders. In the event of a breach of duty, the directors may be personally liable to account to the Company.

Liability of shareholders: For a typical Company with limited liability of the members, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable. As most Companies issue shares that are fully paid upon issue, the effect of this provision is that no further sums are payable by the holders of such shares once they have paid for their shares in full. There are certain rare cases where a court will permit the limited liability status of a Company to be pierced, such as where no corporate governance formalities have been observed and a shareholder has treated the Company as its alter ego for the purpose of evading a personal liability.

**6. Ownership interest: (i) how is it represented? (ii) is it transferable?; and (iii) is there a minimum number of owners?**

The transferability of shares will be set forth in the Articles. Commonly, shares may only be transferred with the prior consent of the directors of the Company. Bearer shares are permitted but there are strict limitations on dealings with bearer shares, which may only be issued to a recognised custodian and they are now extremely unusual.

A Company must have a minimum of one shareholder at any time. Unless provided for in the Articles, there is no maximum number of shareholders. A Company must have at least one share in issue, but there is no minimum paid-in capital requirement. Fractional shares may be issued if the Articles so permit.

**7. Is there a minimum capitalization?**

A Company must have at least one share in issue, but there is no minimum paid-in capital requirement.

**8. Is there a security that can be issued to the public?**

A Company can issue equity and/or debt securities to the public however, a Company that is not listed on the Cayman Islands Stock Exchange is prohibited from making any invitation to the public in the Cayman Islands to subscribe for any of its securities.

Consideration may also need to be made, depending on the facts, as to whether any registrations or exemptions from registrations, are required to be made under, but not limited to, the Mutual Funds Law or the Securities Investment Business Law.

Tailored legal advice should be sought on any specific issuance of securities.

**9. Can the form incur debt, or grant security for debt?**

Subject to any restrictions in the Memorandum and Articles, a Company can incur debt and/or grant security for debt. The grant of security, the nature of the security, the nature of the assets secured and registration of such security is a complex area outside the scope of this questionnaire. Further details can be found under the Lex Mundi Bank Finance and Regulation/Security over Collateral Multi-Jurisdictional Survey on the Cayman Islands and you are recommended to seek advice from your regular Walkers Attorney.

**10. What is the duration of the form? Can it be renewed?**

Typically the Company will continue to exist for an unlimited duration. The Memorandum and Articles of the Company may limit the duration or specify an event, which, whenever such event, occurs, such occurrence causes the Company is to be dissolved. Please note that this questionnaire does not discuss the rarely utilised Limited Duration Company or the specific features applicable to such.

**11. Describe the process, customary time period and approximate cost of establishing the form.**

Upon the filing with the Registrar of Companies (the "Registrar") of: 1. the Memorandum and Articles (if any); 2. the appropriate filings fees; and 3. a declaration from the subscriber to the effect that the operation of the Company will be conducted mainly outside the Cayman Islands, a Company shall be deemed to be registered, and the Registrar shall issue a Certificate of Incorporation. The Certificate of Incorporation will generally be issued within five working days, or within two working days upon payment of an express government fee.

Registrations costs vary depending upon the amount of the authorised share capital and under current fee schedules of the Registrar (not by express incorporation) the fee is between US\$732 and US\$3,010. This does not include the additional incorporation fees such as legal fees to effect the incorporation, registered office fees, stamps and other incorporation costs. Specific guidance should be sought from your Cayman Islands' attorney.

**12. Are there requirements for the government (central or local) to be part of a project or investment vehicle or receive part of the profits arising therefrom (apart from taxes)?**

Not applicable.

**13. For what taxes is the form liable?**

There is currently no Cayman Islands corporation, income, capital gains, profits, withholding or other taxes (other than import duties, tourism taxes and stamp duties).

**14. What is the tax treatment of payments to foreign owners?**

There is no withholding tax, income tax or capital gains tax in the Cayman Islands.

**15. Is there a tax treatment which would impact foreign owners differently than owners resident in the jurisdiction?**

Not applicable.