

Transfers out of the Cayman Islands

One of the reasons why the Cayman Islands is a leading offshore jurisdiction is the flexibility of its companies and partnership legislation. This includes the ability of Cayman entities to transfer out of the Cayman Islands and move to another jurisdiction, by following the relevant procedure. This Guide looks at the process for transferring exempted companies, limited liability companies (**LLCs**) and exempted limited partnerships out of the Cayman Islands by way of continuation.

Which entities can de-register and transfer out of Cayman?

Under the Companies Act, an exempted company incorporated in the Cayman Islands, with limited liability and a share capital, can apply to be de-registered from the Cayman Islands and transfer to another jurisdiction by way of continuation.

An LLC registered under the Limited Liability Companies Act (**LLC Act**) which proposes to be registered by way of continuation as a foreign entity in a jurisdiction outside the Cayman Islands, can apply to be de-registered from the Cayman Islands.

The general partner of an exempted limited partnership under the Exempted Limited Partnership Law (**ELP Act**) which proposes to be registered by way of continuation as a partnership, body corporate or any other form of entity under the laws of a jurisdiction outside the Cayman Islands, may apply to be de-registered as an exempted limited partnership in the Cayman Islands.

What is the process?

The process is very similar for exempted companies, LLCs and exempted limited partnerships. The Cayman Islands Registrar (**Registrar**) will de-register an applicant if:

- it proposes to be registered by continuation in a jurisdiction which permits or does not prohibit the transfer
- the application fee of three times the applicant's annual fee is paid. For an exempted company, the level of annual fees depends on the authorised share capital of the company (please contact us for details of the current government fees)
- the applicant has filed notice of any proposed change in its name, change in the partnership (for an exempted limited partnership) and its proposed registered office in the jurisdiction it is transferring into
- the applicant has filed a declaration or affidavit by a director (for exempted companies)/authorised signatory (for LLCs and exempted limited partnerships) confirming that:
 - it is solvent and able to pay its debts as they fall due
 - the application for de-registration is not intended to defraud its creditors (or creditors and limited partners for exempted limited partnerships)
 - any contractual consent to the transfer has been obtained, waived or released
 - the transfer is permitted by and has been approved in accordance with the applicant's constitutional documents (memorandum and articles of association for an exempted company, LLC agreement for an LLC, partnership agreement for an exempted limited partnership)
 - the laws of the jurisdiction where the applicant is transferring to have been or will be complied with and the applicant will on registration in the relevant jurisdiction continue, and

- if the applicant is licensed or registered with the Cayman Islands Monetary Authority (**CIMA**) it has obtained CIMA's consent to the transfer
- the applicant has filed a statement of the assets and liabilities of the applicant, with the declaration or affidavit, made up to the latest practicable date before making the declaration
- the applicant has filed an undertaking confirming that notice of the transfer has been or will be given within 21 days to its secured creditors, if any
- where the entity is licensed or registered with CIMA, the consent of CIMA has been obtained
- the Registrar is not aware of any other reason why it would be against the public interest to de-register the applicant

Other considerations

If a director/authorised signatory makes a declaration without reasonable grounds, they commit an offence and are liable on conviction to a substantial fine and/or five years imprisonment.

The LLC Act and ELP Act also require that the applicant must be in good standing with the Registrar, having paid all outstanding fees. In practice exempted companies applying to de-register under the Companies Act must also be in good standing with the Registrar.

It is also important to ensure that all the obligations of the entity under the International Tax Co-operation (Economic Substance) Act are discharged prior to making the application.

What happens once de-registration is confirmed?

On de-registration, the Registrar will issue a certificate confirming de-registration as an exempted company/LLC/exempted limited partnership and the date of de-registration. If the application is made on an express basis (and an express fee paid) the certificate can be issued on the same day as the application is made, to provide comfort that the applicant has been de-registered in Cayman on the same day as it is registered in its new jurisdiction.

From that date an applicant which is an exempted company ceases to be a company under the Companies Act and continues as a company under the laws of its new jurisdiction, an LLC ceases to be an LLC under the LLC Act and continues as a foreign entity under the laws of its new jurisdiction and an exempted limited partnership ceases to be such under the ELP Act and continues as a partnership, body corporate or other entity under the laws of its new jurisdiction.

The Registrar gives notice of the de-registration in the Cayman Islands Gazette confirming the jurisdiction that the entity has transferred to and its new name, if it has changed.

De-registration of an exempted company/LLC/exempted limited partnership does not create a new legal entity, affect the property of the applicant, affect any resolutions passed or any rights or obligations it enjoyed while it was an exempted company/LLC/exempted limited partnership in the Cayman Islands or affect any legal proceedings to which it is a party.

Next Steps

As well as compiling and filing the documents described above, good coordination between the lawyers in the entity's proposed new jurisdiction and the Cayman Islands is key to a successful continuation out of the Cayman Islands.



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

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