

Redomiciling your Cayman Islands Company to Singapore

Singapore amended its companies legislation in 2017 to introduce an inward re-domiciliation regime allowing foreign companies, including companies incorporated in the Cayman Islands, to transfer their registration to Singapore.

While the Singapore regime now provides multinationals with greater flexibility to reorganise their corporate group structures, once a foreign company re-domiciles in Singapore the process is irreversible and there is no ability to continue back out should the company determine that the jurisdiction no longer suits its needs.

In contrast, one of the reasons why the Cayman Islands is a leading offshore jurisdiction is the flexibility of its companies 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.

Which companies can de-register and transfer out of Cayman to Singapore?

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. This type of entity is eligible to redomicile into Singapore.

A Limited Liability Company (**LLC**) registered under the Limited Liability Companies 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. However, under the Singapore Companies Act, only certain types of foreign entities can redomicile to Singapore. A Cayman LLC does not fit the definition of a company under the Singapore Companies Act. As a result, a Cayman LLC cannot redomicile to Singapore as a Singapore company.

Accordingly, this guide looks at the process for transferring Cayman exempted companies (each, a **Cayman Company**) out of the Cayman Islands by way of continuation into Singapore.

Continuation out of the Cayman Islands

The Cayman Islands Registrar of Companies will de-register an applicant that is an exempted company 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 exempted companies, 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 and its proposed registered office or agent for service of process in the jurisdiction it is transferring into;
- no petition or other similar proceeding has been filed and remains outstanding or order made or resolution adopted to wind up or liquidate the applicant in any jurisdiction;
- the applicant has filed a declaration or affidavit by a director confirming that:
 - it is solvent and able to pay its debts as they fall due;
 - the application for de-registration is bona fide and not intended to defraud its creditors (or 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;
- 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**) or any other Cayman governmental authority it has obtained CIMA's or such authority'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; and
- the Cayman Islands 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 makes a declaration without reasonable grounds, they commit an offence and are liable on conviction to a substantial fine and/or five years imprisonment.

In practice exempted companies applying to de-register under the Companies Act must also be in good standing with the Registrar of Companies.

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

Inward re-domiciliation into Singapore

Eligibility to re-domicile into Singapore

The Cayman Company needs to consider whether it meets the criteria for re-domiciliation into Singapore.

In Singapore, the minimum requirements that the Cayman Company seeking to re-domicile must meet are:

- it must be a body corporate that is capable of adapting its legal structure to the companies limited by shares structure under the Singapore companies legislation (which is the reason why a Cayman LLC would not be a suitable candidate);
- it must meet any two of the following:
 - the value of its total assets exceeds S\$10 million;
 - its annual revenue exceeds S\$10 million;
 - it has more than 50 employees;
- it must meet all of the following solvency criteria:
 - there is no ground on which it could be found to be unable to pay its debts;
 - it is able to pay its debts as they fall due during the period of 12 months after the date of the application for re-domiciliation;
 - it is able to pay its debts in full within the period of 12 months after the date of winding up (if it intends to wind up within 12 months after applying for re-domiciliation); and
 - the value of its assets is not less than the value of its liabilities (including contingent liabilities);
- it is authorised to transfer its incorporation under Cayman Islands law (which it is so permitted);
- it has complied with the requirements of Cayman Islands law in relation to its de-registration by way of continuation out of the Cayman Islands;

- the application for re-domiciliation by the Cayman Company is:
 - not intended to defraud its existing creditors; and
 - made in good faith;
- as at the date of the application, its first financial year end in the Cayman Islands has passed; and
- it is not under judicial management, not in liquidation or being wound up etc.

Effect of de-registration from the Cayman Islands into Singapore

Cayman side

On de-registration, the registrar will issue a certificate confirming de-registration as an exempted company 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 the Cayman Islands on the same day as it registered in its new jurisdiction.

From that date a Cayman Company ceases to be a company under the Companies Act and continues as a company under the laws of its new jurisdiction (ie Singapore).

The registrar will give 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 a Cayman company does not operate:

- to create a new legal entity;
- to prejudice or affect the identity or continuity of the applicant as previously constituted;
- to affect the property of the applicant;
- to affect any appointment made, resolution passed or any other act done in relation to the applicant pursuant to a power conferred by its constitutional documents or the laws of the Cayman Islands;
- to affect the rights, powers, authorities, functions and liabilities or obligations of the applicant or any other person; or
- to render defective any legal proceedings by or against the applicant, and any legal proceedings that could have been continued or commenced by or against the applicant before its de-registration may, notwithstanding the de-registration, be continued or commenced by or against the applicant after de-registration.

Singapore side

The position in Singapore is consistent with the Cayman Islands. Under the Singapore legislation the re-domiciliation of a foreign company as a Singapore company does not:

- create a new legal entity;
- prejudice or affect the identity of the body corporate constituted by the foreign corporate entity or its continuity as a body corporate;
- affect its property, or its rights or obligations; or
- render defective any legal proceedings by or against it,

and any legal proceedings that could have been continued or commenced by or against the foreign corporate entity before its re-domiciliation into Singapore may be continued or commenced by or against the company after its re-domiciliation.

Conclusion

The Cayman Islands is a leading incorporation jurisdiction due to the flexibility company law structure. It also provides the flexibility to move your company to another jurisdiction, such as Singapore, should this be necessary for your investment or organisational objectives. The continuation regime, which allows a company to preserve its corporate history, branding and goodwill, provides a valuable alternative to setting up a new subsidiary which may have regulatory, strategic and organisational implications.

When conducting such an exercise, timing of applications in both jurisdictions is critical to ensuring the process runs smoothly. Harneys would be pleased to assist you with re-domiciling your Cayman Company to Singapore (or any other jurisdiction). Harneys will only advise on the Cayman de-registration and you will need to engage Singapore legal counsel to advise on the inward re-domiciliation.



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

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