



Economic Substance in the Cayman Islands

WHY CAYMAN?

Only one hour's flight from the United States, the Cayman Islands are an English-speaking British Overseas Territory in the Northwest Caribbean, located at the geographic centre of the Americas. The Islands have long distinguished themselves from many other territories in the region by having a vibrant and sophisticated economy and a diverse and cosmopolitan population. More than 120 nationalities co-exist and work together in this progressive island group with a total population of around 70,000 persons.

The Cayman Islands have no income, property, estate or corporate taxes. The Government generates its revenues through an efficient mechanism of import duties and license fees. Residents are taxed based on their consumption, rather than their earnings.

Unlike some other islands in the region there are no restrictions on the foreign ownership of real estate. The Cayman Islands are increasingly being recognised as an ideal tax-neutral hub from which to conduct international business. Further, citizenship (including full British citizenship) can be acquired on the basis of residence in the Cayman Islands.

The Government of the Islands is particularly receptive to inward investment and this nascent "Singapore of the Americas" is undergoing a period of significant expansion in the size, nature and sophistication of business being conducted in, and from within, the Islands.

The infrastructure of the Islands is already advanced and supports well established and leading financial services and tourism industries. Other sophisticated industries are establishing and growing. The highest quality of education, healthcare and communications is in place.

The Cayman Islands also boast a high standard of living and a wonderful quality of life. They are increasingly seen as a perfect home for discerning families, retirees and business persons.

Whilst increasing numbers of businesses have established a physical presence in the Islands, a large number of others have operated using offshore vehicles, often without an office or personnel physically located within the Cayman Islands.

This has been cause for some international concern, applied not only to the Cayman Islands, but across most borders. A principle that certain categories of business operating from within the Cayman Islands must be in a position to demonstrate that, relative to the size and nature of their operations, they have sufficient **"economic substance"**.

ECONOMIC SUBSTANCE TEST

Such substance is measured in terms of a demonstrable physical presence, including of the mind, management and control of a relevant organisation.

Through the International Tax-Co-operation (Economic Substance) Law, 2018, the concept of an Economic Substance Test has been introduced. The test applies to any "in scope" businesses and requires that any "relevant entity" carrying on a "relevant activity" must pass a 3 pronged test:

That the relevant entity:

- (a) conducts Cayman Islands core income generating activities in relation to that relevant activity
- (b) is directed and managed in an appropriate manner in the Islands in relation to that relevant activity; and
- (c) having regard to the level of relevant income derived from the relevant activity carries out in the islands –
 - a. has an adequate amount of operating expenditure incurred in the islands;
 - b. has an adequate physical presence (including maintaining a place of business or plant, property and equipment) in the Islands; and
 - c. has an adequate number of full time employees or other personnel with appropriate qualifications in the Islands.

A relevant entity is:

1. A company (other than a domestic company) that is-
 - a) incorporated under the Companies Law (as Revised) or
 - b) an LLC registered under the Limited Liability Companies Law (as Revised).



2. A Limited Liability Partnership that is registered under in accordance with the Limited Liability Partnership Law (as Revised)

3. A foreign company registered in the Cayman Islands under part IX of the Companies Law (as Revised)

Investment Funds or entities which are tax resident outside of the Islands are not considered relevant entities.

An "Investment Fund" is defined as an entity whose principal business is the issuing of investment interests to raise funds or pool investor funds with the aim of enabling a holder of such an investment interest to benefit from the profits or gains from the entity's acquisition, holding, management or disposal of investments and includes any entity through which an investment fund directly or indirectly invests or operates.

A domestic company is a company that is not part of an MNE Group that is:

1. Carrying on business in the islands and which complies with s.4(1) of the Local Companies Control Law (as Revised) i.e. is Caymanian owned and controlled (at least 60% of the board of directors is comprised of Caymanians and at least 60% of the issues shares are held in the names of Caymanians) or holds a valid Trade and Business Licence under the Trade and Business Licensing Law (as Revised), is licensed under the Banks & Trust Companies Law (as Revised) or is otherwise operating under a franchise granted by the Cayman Islands Government.

2. A Company Limited by Guarantee or an "Association not for Profit" under s.80 of the Companies Law (as Revised).

or a subsidiary of such company.

An MNE Group is a Group with annual revenues of at least US\$850m total consolidated group revenue.

"Group" means a collective of two or more enterprises that are tax resident in different jurisdictions and are related through ownership or control such that it is (or would be traded on a public securities exchange) required to prepare Consolidated Financial Statements for financial reporting purposes.

A relevant entity is in scope if it is carrying on one or more of the below relevant activities:

a) Banking business;

i.e. the business of receiving (other than from a bank or trust company) and holding on current, savings, deposit or other similar account money which is repayable by cheque or order and may be invested by way of advances to customers or otherwise.

b) Distribution and service centre business;

i.e. the business of either or both of the following –

- a) purchasing from an entity in the same Group
 - i) component parts or materials for goods; or
 - ii) goods ready for sale, and reselling such component parts, materials or goods outside the islands
- b) providing services to an entity in the same Group in connection with the business outside of the Islands

but does not include any activity included in any other relevant activity except holding company business. For the avoidance of doubt, b) above only falls within the definition in the specific circumstances where the relevant entity is operating as a service centre for entities in the same Group.

c) Financing and leasing business;

i.e. the business of providing credit facilities for any kind of consideration to another person but does not include financial leasing of land or an interest in land, banking business, fund management business or insurance business.

d) Fund management business;

i.e. the business of managing securities as set out in paragraph 3 of Schedule 2 to the Securities Investment Business law (2019 Revision) carried on by a relevant entity licensed or otherwise authorised to conduct business under that Law for an investment fund.

e) Headquarters business;

i.e. the business of providing any of the following services to an entity in the same Group –

- a) the provision of senior management;
- b) the assumption or control of material risk for activities carried out by any of those entities in the same Group; or
- c) the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph b)

but does not include banking business, financing and leasing business, fund management business, intellectual property business, holding company business or insurance business.

f) Holding company business;

i.e. the business of a 'pure equity holding company', which itself is defined to mean 'a company that only holds equity participations in other entities and only earns dividends and capital gains'.

g) Insurance business;

i.e. the business of accepting risks by effecting or carrying out contracts of insurance, whether directly or indirectly, and includes running-off business including the settlement of claims.

h) Intellectual property business; or

i.e. the business of holding, exploiting or receiving income from intellectual property assets and 'intellectual property asset' means an intellectual property right including a copyright, design right, patent and trade mark.

i) Shipping business

Means any of the following activities involving the operation of a ship anywhere in the world other than in the territorial waters of the Islands or between the Islands –

- a) the business of transporting, by sea passengers or animals, goods or mail for a charge;
- b) the renting or chartering of ships for the purpose describe in paragraph a);
- c) the sale of travel tickets and ancillary ticket related services connected with the operation of a ship;
- d) the use, maintenance or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea; or
- e) the functioning as a private seafarer recruitment and placement service

but does not include a holding company business or the owning, operating or chartering of a pleasure yacht.

Given the above, the test can be substantially satisfied through the employment of persons within the Islands to carry out the relevant activity or activities. The Cayman Islands may already have persons with the requisite skills and expertise already resident, but where such skills are unavailable, or if available, are not available in sufficient number, then any required persons can be brought into the Islands from overseas. Such persons can bring with their spouses and children (amongst others) following a well-established immigration regime overseen by a Cayman Islands Government Department, "Workforce Opportunity and Residence Cayman" (WORC).

There are various options through which persons can become resident and be lawfully employed in an enterprise operating within, or from within, the Islands.

ESTABLISHING THE RIGHT TO LIVE AND WORK IN THE CAYMAN ISLANDS

The type of residency which is best suited to a particular individual's needs will in part be dependent on whether or not they are or seek to be able to advance towards any level of citizenship.

Each option has provision for spouses and dependants, and arrangements can also be made for household staff etc. to reside in appropriate circumstances.

All foreign nationals residing in the Cayman Islands are generally required to be able to demonstrate an ability to adequately maintain themselves and their dependants and have in place adequate health insurance. Ability to demonstrate good character, suitable residential accommodation and (if in employment for nine months and of pensionable age) participation in a Government-approved pension scheme is also required.

Children of school age are generally required to be enrolled in private schools, although homeschooling is becoming an increasingly popular option.

In some cases references to United States Dollar (US\$) amounts referred to below are given in general terms only. The actual exchange rate applied is US\$1.00 = CI\$0.82. Some requirements and fees are reduced for persons seeking residence in either Little Cayman or Cayman Brac.

In general terms, the options available for any person who is not already resident in Cayman, but is seeking to become resident, are as follows:



Establish a Business and seek permission for that Business to employ you (and potentially others) pursuant to a work permit

It is perfectly permissible and in many respects even encouraged for persons to create a vacancy for their own employment by establishing a business in the Cayman Islands. Where the proposed business competes in the domestic economy of the Cayman Islands (for example a restaurant or water sports operation) it is likely that Caymanian shareholders and directors will need to be involved (subject to them making any required appropriate investment) under a legislative framework designed and intended to prevent the economic resources of the Islands being owned and controlled by foreign nationals. However, where the proposed business is of particular sophistication (such as a bank) or only engages with customers outside of the Cayman Islands (such as an online retailer or international marketing specialist) then there are no restrictions whatsoever as to the Cayman Islands Immigration status of those in (beneficial) ownership and/or control.

The usual path to follow in respect of this option is to first incorporate a Cayman Islands company. The type of company will often depend on the nature of the business to be transacted. Further details can be provided as appropriate.

Incorporation can be accomplished within 48 hours of receipt of full instructions. The total cost of such incorporation, including the first year's Corporate Maintenance and Registered Office fees, is approximately US\$4,000. Thereafter, an application can be made to the appropriate authority and/or to the Trade & Business Licensing Board for the entity to be licensed. Where there is no competition in the domestic economy and the nature of the business does not require specific regulation (for example, by the Cayman Islands Monetary Authority or the Medical Practitioner's Board) then required permissions will be readily forthcoming within two to three weeks of the completed application.

The cost of a Trade & Business license depends greatly on the precise nature of the business envisaged and (for some industries) the number of persons to be employed. Most licenses, however, cost in the order of US\$1,000 per annum. By way of example, the Trade & Business license fee for an agent or broker is CI\$750 (US\$914.63) for each professional member of the business, whereas for a manufacturer the total fee is CI\$400 (US\$487.80).



Any business not specifically specified in the schedule to the Trade and Business Licensing Law in which a service is offered for reward attracts an annual license fee of CI\$300 (US\$365.85).

Trade & Business license will generally require the rental of an office or other suitable commercial premises. In appropriate circumstances (and in particular where there will be no employees other than the principal, and no customers attending) permission can be sought and obtained to operate such businesses from a residence (whether rented or owned).

Once a Trade & Business license has been obtained, formal residency cannot actually commence until the individual to be employed has been granted a work permit. As the work permit process can take some weeks to complete, an expedited option is available on paying a relatively notional fee and seeking an express Temporary Work Permit. Such work permits are generally available within 48 hours of application.

It follows that the entire process can be accomplished from concept to establishing actual residence in as little as a month in appropriate circumstances. The cost of an initial three-month Temporary Work Permit is between CI\$100 and CI\$1,500 (US\$121.95 and US\$1,829.26) depending on the position being sought and industry. Such a permit can be used in some instances to transition into a full work permit which can be granted for anything between one and in some cases up to five years, and which has an annual cost varying greatly depending on position and industry. Reduced work permit fees are available for persons seeking to reside in either Little Cayman or Cayman Brac.

These permissions can lead to Permanent Residence after eight years in the Islands and, thereafter, further applications can be made towards citizenship and, ultimately, the Right to be Caymanian.

No investment in Cayman Islands real estate is required in order to obtain immediate residency through this route, although investment in property is generally encouraged and provides "points" towards achieving Permanent Residence. This is, therefore, an ideal solution for persons who are seeking to reside in the Cayman Islands but who do not yet wish to make the commitment to (or otherwise are not yet in a position to) acquire real estate while they either gain familiarity or otherwise determine the area in which they will ultimately look to settle.

It is also an ideal potential option for persons who ultimately seek Permanent Residence for Persons of Independent Means (with the Right to Work) but are yet to cross the investment in developed real estate threshold (because, for example, their future property remains under construction).

Establish a Special Economic Zone entity and obtain a SEZ certificate permitting employment in that entity

An alternative to the option of obtaining a Trade & Business license (and/or alternative) and work permit is the option of establishing a business within the Cayman Islands Special Economic Zone, Cayman Enterprise City ("CEC"). Its operations are based on the model of successful free zones in Dubai.

CEC is a private developer which, in an effort to help attract particular types of business to the Cayman Islands, has obtained concessions from the Cayman Islands Government which permit it to offer particular benefits to entities established within their development. Some of these benefits may not be available (or as readily available) in relation to alternative options, and include a waiver of import duties in relation to equipment required by the business.

Special Economic Zone Enterprises, like any other Exempted Company, are not allowed to engage in business in the Islands save in furtherance of their activities overseas. They cannot be operated from a home or from any commercial property which has not yet been designated as part of the Special Economic Zone.

Provided an Enterprise fits within one of the specific proposed business parks (which at present are virtual in nature and can be located in any properly designated commercial office space in the Cayman Islands) it can be accommodated by CEC. The parks at present are: Cayman Internet and Technology Park; the Cayman Media Park; Cayman Commodities & Derivatives Park; the Cayman Biotechnology Park; and the Cayman International Academic Park.

Although establishing a business in CEC still requires the incorporation of a company, and in fact a Trade & Business license and work permit are in effect still required, the cost and most of the administrative burden of both seeking and renewing the Trade & Business license and work permit are wrapped up into what is effectively "office rent" paid to CEC.

Depending on the nature and extent of the proposed business it can cost less or more to operate as a Special Economic Zone entity than the alternative option of operating with a non-Special Economic Zone company in the more mainstream economy. Much will depend on the nature of the business and the scope and origin of employees (actual or anticipated).

The least expensive form of Special Economic Zone presence is achievable through what is known as a FlexiPresence. This will provide a workstation (available when needed) for up to 90 days during a calendar year, together with shared business centre facilities. The pricing for this option can be as little as US\$15,000 per annum.

A DedicatedPresence for use 365 days a year is available for as little as US\$23,250 per annum; whilst a small office for a single person can be obtained for as little as US\$35,000 per annum. More substantial options are available. Fees are paid by CEC on behalf of any tenant to the Cayman Islands Government in respect of work permit fees and business license fees.

Work permits in CEC are available for an initial period of up to five years. The holders of such permits remain the subject of the term limit provisions but can apply for Permanent Residence in effectively the same way as any work permit holder.

Certificate of Direct Investment

This option is amongst those best suited to business investors.

A Certificate of Direct Investment (and resulting right to reside) is available to any person who has made (or proposes to make) an investment equal to or greater than CI\$1,000,000 (US\$1,219,512.19) in any licensed employment generating business or businesses in the Islands. The business or businesses can be already existing or a new venture, and the applicant must or must propose to exercise substantial management control. Applicants must also be able to demonstrate a substantial business track record or entrepreneurial background including specific professional, technical and other knowledge relevant and necessary to carry on the pertinent business or businesses. Further, the applicant must be able to prove the availability of funds to the value of the proposed investment amount, or otherwise to have already invested the minimum prescribed sum of money in a licensed employment generating business in the Islands.

Separate applications need to be made for licensing of the business if licenses are not already in place.

Provided the Director of WORC is satisfied that the applicant and any spouse have clean criminal records, and that the applicant (and any spouse or dependants) are in good health and possess adequate health insurance, then a Certificate of Direct Investment valid for 25 years (is renewable on application and at the discretion of the Director of WORC) will be granted subject only to the payment of prescribed fees.

Holders of such a Certificate are entitled to reside in the Cayman Islands and "work in the business or businesses in which they have invested for the purpose of obtaining the Certificate" in an occupation or occupations approved by the Director of WORC.

An application fee of CI\$1,000 (US\$1,219.51) is payable on application.

A grant fee of CI\$20,000 (US\$24,390.24) is due on issuance, with a further CI\$1,000 (US\$1,219.51) payable in respect of each approved dependant. Thereafter, the dependent fee for each approved dependent is payable annually. In addition, holders of a Certificate of Direct Investment are required to pay an annual fee equivalent to that payable by a work permit holder in the same occupation.

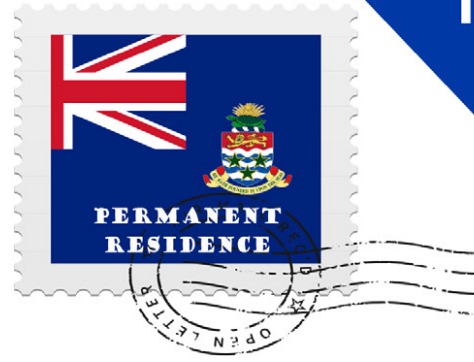
Residency Certificate (Substantial Business Presence)

A person who is or proposes to be legally and ordinarily resident in the Cayman Islands for a minimum period of 90 days in each calendar year, and who owns (or proposes to own) either directly or indirectly a minimum of 10% of the shares in an approved category of business in the Islands, or who is employed in a Senior Management Capacity in such a business can seek a Residency Certificate (Substantial Business Presence). The approved category of business must be one through which the applicant has sought to gain their permission.

The applicant must also demonstrate to the satisfaction of the Director of WORC that they are or will be employed in a Senior Management Capacity in that approved category of business.

Amongst approved categories of business are fund administration, brokerage services, family office, and any entity incorporated as an Exempted Company. A Senior Management Capacity is deemed to be any capacity which would attract an annual work permit fee of CI\$20,925 (US\$25,518.29) or above.

A substantial business presence is generally one where the business in question employs or will employ a minimum of four full-time employees.



HSM

These employees will be legally and ordinarily resident in the Cayman Islands for a minimum of nine months in any calendar year.

Provided the Director of WORC is satisfied that the applicant and any spouse have clean criminal records, and that they and any dependants are in good health and possess adequate health insurance, and that the various other requirements are fulfilled, then the Officer will issue a 25 year Residency Certificate (Substantial Business Presence).

An application fee of CI\$1,000 (US\$1,219.51) is payable on application.

A grant fee of CI\$5,000 (US\$6,097.56) is due on issuance, with a further CI\$1,000 (US\$1,219.51) payable in respect of each approved dependant. The dependant fee of CI\$1,000 per dependant is payable annually. In addition, holders of a Residency Certificate (Substantial Business Presence) are required to pay an annual fee equivalent to that payable by a work permit holder in the same occupation.

Certificate of Permanent Residence for Persons of Independent Means

This is the ultimate permission which can be sought and obtained pursuant to clearly prescribed criteria. It provides an opportunity to acquire Permanent Residence with the Right to Work based on investment, rather than having to wait for eight years before being eligible to apply and even then, being subject to a wide-ranging points system.

Unlike Residency for Persons of Independent Means, this option has no expiry and accordingly qualifies a holder (provided other criteria as to actual physical presence are maintained) to become eligible to apply for naturalisation as a British Overseas Territories Citizen once they have been legally and ordinarily resident in the Cayman Islands for five years. Once a person has been naturalised, they are entitled to a British Overseas Territories (Cayman Islands) passport and can, upon successful application, become registered as a full British Citizen and thereby obtain a British passport with all the rights and privileges that entails. There is no obligation to surrender any existing citizenship. Once a person has been a British Overseas Territories Citizen by virtue of the connection with the Cayman Islands for five years, they are eligible to apply to become Caymanian.

A Person of Independent Means who seeks a Certificate of Permanent Residence in this manner is required to first invest a minimum of CI\$2,000,000 (US\$2,439,024.39) in developed real estate in the Cayman Islands. That threshold amount must be met free from mortgage financing.



They should also have a clean criminal record, possess adequate health insurance, be in good health and demonstrate financial resources that are sufficient to adequately maintain the applicant and any dependants.

Once granted, the Right to Work can be sought and obtained through application to the Caymanian Status and Permanent Residency Board or the Director of WORC to vary the Certificate to add a prescribed occupation or occupations. An application fee of CI\$500 (US\$609.75) is payable on application.

A grant fee of CI\$100,000 (US\$121,951.21) is due on issuance, with a further CI\$1,000 (US\$1,219.51) payable in respect of each approved dependant.

In addition, holders of Permanent Residence with the Right to Work are required to pay an annual fee equivalent to that payable by a work permit holder in the same occupation.

Any obligation to pay ongoing annual fees is extinguished once the holder becomes a Caymanian.

Obtain Permanent Residence (and Employment Rights) through Marriage to a Caymanian

Any person who is married to a Caymanian may, upon satisfying basic requirements, obtain a Residency and Employment Rights Certificate entitling the holder to live and work in the Islands. Such a certificate does not (unlike other types of Permanent Residence), in any way restrict the occupation of the holder, and there is no obligation to either make any annual declaration, or pay any fee.

Obtain the Right to be Caymanian from the Cabinet

In truly exceptional circumstances, the Cayman Islands Immigration Law provides that the Cabinet may grant the Right to be Caymanian to up to four persons in any calendar year. In the last decade, there have been only nine recipients, almost all of whom had previously lived in the Cayman Islands and had made substantial contributions.

SERVICES PROVIDED

As a full service law firm, with a wealth of experience in Immigration work and also in general advocacy, including international law and human rights, we are exceptionally well placed to provide all the legal and administrative assistance needed throughout any residency application process.

We can generally have any option in place (conservatively) within two months of complete instructions and barring any unforeseen problems.

Legal fees can range from anything from US\$2,500 to US\$15,000 depending on the option most amenable to a particular applicant, subject always to the application following a normal and established course and not running into any unforeseen difficulty. We also offer full property and (through a related entity) corporate services to purchasers, developers and prospective investors.

We can manage your application from start to finish, and in particular provide the following services:

- Advising as to the best options given a clients' particular circumstances;
- Determining whether a client is "in scope" or "out of scope" in relation to the Economic Substance Test;
- Establishing a suitable vehicle to act as employer where appropriate;
- Providing and assisting in the completion of all application forms and paperwork;
- Assisting in the collation and submission of evidence and returns;
- Applying for licenses and permits, including preparing detailed cover letters;
- Liaising with business licensing and immigration authorities as the application progresses;
- Ancillary matters as they may arise, including assistance with real estate acquisition, company maintenance, acquiring interests in local businesses; and
- General relocation assistance.

OUR TEAM

Our team of experts in business establishment, substantial presence and relocation include:



Nick Joseph
Partner
Tel: +1-345-815-7425
njoseph@hsmoffice.com



Peter de Vere
Head of Corporate and Commercial
Tel: +1-345-815-7360
pdevere@hsmoffice.com



Samantha Bartley
Immigration Services Manager
Tel: +1-345-815-7424
sbartley@hsmoffice.com



Lisa Shemwell
Corporate Services Manager
Tel: +1-345-815-7440
lshemwell@hsmoffice.com

This publication is intended only to provide a summary of the subject matter covered. It does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this publication without first obtaining specific professional advice. Alternative solutions also exist which may better suit the requirements of a particular individual or entity. Revised May 2019.