



CLO Migration from the Cayman Islands to Bermuda



The Companies Act 1981 of Bermuda (the “Companies Act”) permits a body corporate incorporated as a Cayman Islands exempted company (the “Cayman company”) to migrate to Bermuda by way of continuation as a Bermuda exempted company under the Companies Act (the “Registrant”).

Pre-conditions to registration

The Registrant must:

1. obtain all necessary authorisations, if any, required under the laws of the Cayman Islands in order to enable it to continue as an exempted company registered in Bermuda;
2. make an application to the Bermuda Monetary Authority (the “BMA”) accompanied by:
 - (a) a statement of the proposed business of the exempted company;
 - (b) information concerning the beneficial owners of the exempted company; and
 - (c) a legal opinion of foreign counsel in the jurisdiction from which the Registrant is discontinuing, and
3. provide financial statements prepared for a period ending within twelve months of the proposed date of continuance.

The BMA will grant the relevant consent where these conditions are met. Walkers has agreed an expedited process with the BMA allowing for same day consent to be granted with respect to the migration of any Cayman CLO vehicle.

Process of continuation to Bermuda

On satisfaction of the pre-conditions to registration, the Registrant must make an application for registration accompanied by:

1. the original signed memorandum of continuance; and
2. the relevant government fee and filing fee to the Registrar of Companies in Bermuda (the “Registrar”).

The Registrar will register the memorandum of continuance and issue a certificate of continuance if it is satisfied that the Registrant is in compliance with the Companies Act. As with the BMA, Walkers has agreed an expedited process with the Registrar allowing for same day registration upon the migration of a CLO issuer from the Cayman Islands.

The Registrant should forward a copy of the certificate of continuance to the competent authority in the Cayman Islands.

Effect of continuation in Bermuda

The registration of the continuance of a Cayman company will not be deemed to create a new legal entity or prejudice or affect the continuity of the body corporate which was formerly a Cayman company and has now become an exempted company continued in Bermuda. For example:

1. The property of the Cayman company continues to be the property of the continued company.
2. The continued company continues to be liable for its obligations predating its registration as a Bermuda exempted company.



3. Any existing cause of action, claim or liability to prosecution in respect of the Cayman company is unaffected; and any civil, criminal or administrative action or proceeding pending by or against the Cayman company may be continued by or against the continued company.
4. Any conviction against, or any ruling, order or judgment in favour of or against the Cayman company may be enforced by or against the continued company.

Whilst the continued company remains liable for its obligations when it was a Cayman company, the Companies Act is silent on the priority of any secured obligations of the continued company. It would be advisable for any secured party of the continued company to file an application with the Registrar to register any security created in the register of charges as maintained by the Registrar (the "Register of Charges"). Upon filing, that security will have priority over any other security interests which are subsequently registered in the Register of Charges and any unregistered charges in respect of that security.

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