

CAYMAN ISLANDS¹

I. Overview of Country

The Cayman Islands is a self-governing British Overseas Territory of the United Kingdom. The Cayman Islands Constitution Order 2009² (the Constitution) features a Bill of Rights that broadly reflects the European Convention of Human Rights. The government is a parliamentary democracy with judicial, executive and legislative branches³, headed by the Governor who is appointed by Queen Elizabeth II to be her representative to the Cayman Islands. The Constitution defines the office, functions and powers of the Governor who is usually appointed for four years. The Governor appoints the majority party's leader to be the Premier.

Cayman Islands law recognizes different types of corporations,⁴ both for-profit and not-for profit: companies, partnerships and trusts. The different types are further discussed below.

According to Section 12 of the Constitution, all persons have the right to enjoy the freedom of peaceful assembly and association. This right can be limited to the extent that is reasonably justifiable in a democratic society (Section 12(b) of the Constitution).

II. Registration Procedures

A. For-Profit Organizations

a. Laws

There are three different types of for-profit organizations recognized in the Cayman Islands: companies, partnerships, and trusts.

1. Companies⁵

Companies may be limited by shares, or limited by guarantees. Companies are governed by Cayman Islands Companies Law 1961 as amended, revised and consolidated from time to time, last in 2013 (Companies Law).⁶

¹ The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.

² The Constitution was downloaded from: http://www.legislation.gov.uk/ukxi/2009/1379/pdfs/ukxi_20091379_en.pdf

³ All applicable laws can be downloaded from the official website of the Gazette : <http://www.gazettes.gov.ky/>

⁴ Official information on the different types of companies in the Cayman Islands are available on the following website: http://www.ciregistry.gov.ky/portal/page?_pageid=3521,1&_dad=portal&_schema=PORTAL

⁵ General information was gathered from the following website: <http://www.lowtax.net/information/cayman-islands/cayman-islands-company-introduction.html>

⁶ The Companies Law is available as Supplement No. 6 published with Extraordinary Gazette No. 82 of 11th October, 2013.

- Pursuant to section 26 (1) of the Companies Law, the memorandum of association and the articles of association , if any, shall be delivered in duplicate to the Registrar of Companies.
- Pursuant to section 27 (1) of the Companies Law, the company shall be deemed to be registered upon filing of its memorandum of association to the Registrar. The Registrar issues a certificate under his hand and seal of office that the company is incorporated with effect from the date of the filing of the memorandum of association
- Exempted Company (Part VII of the Companies Law)
- Ordinary Resident Company (is subject to the terms of the Local Companies (Control) Law of 1995)
- A Non-Resident company is a company which does not, and does not intend to carry out business within the Islands, and is designated as such by the Financial Secretary. The company is issued a certificate of designation as evidence that the company is exempt from the obligations in regards to licensing under the Local Companies Control Law, which is applicable to other companies.
- Exempted Limited Duration Company (Part VII of the of the Companies Law)
- Special Economic Zone Companies (Part VIIIA of the Companies Law). An exempted company may, at any time, apply to the Registrar to be registered as a special economic zone company. The principal statute governing this type of company is the Special Economic Zone Law (SEZ Law)
- Foreign Company (Overseas Companies) (Part VIII B the Companies Law) incorporated outside of the Cayman Islands which establish a place of business in Cayman. A foreign company must register within one month, providing certain corporate information.

Dissolution of a company is regulated under sections 151-153 of the Companies Law, including voluntary dissolution and dissolution by court winding up. Removal of defunct companies is regulated under sections 156-162 of the Companies Law. When the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may strike the company off the register and therefore the company shall thereupon be deemed as dissolved.

A company incorporated and registered under the Companies Law (2009 Revision) of the Cayman Islands may be voluntarily wound up/liquidated as follows:

- When the period, if any, fixed for the duration of the company by its memorandum or Articles of Association expires;
- If the event, if any, occurs, on the occurrence of which the memorandum or Articles of Association provide that the company is to be wound up/liquidated;
- If the company resolves by special resolution that it be voluntarily wound up/liquidated; or
- If the company resolves by ordinary resolution that it be voluntarily wound up/liquidated because it is unable to pay its debts as they fall due.

Once the entity has ceased trading operations, there are two methods by which a Cayman Islands registered company may be dissolved or terminated. These two methods are (1) Voluntary Liquidation and (2) Strike-Off.⁷

The most advisable method of dissolution of a solvent Cayman Islands registered company is by voluntary liquidation. Choosing a voluntary liquidation eliminates the possibility of any potential liability or claims accruing/attaching in the future to the company, the company directors, and/or the company

⁷ The information on the voluntary winding up procedure is available on the following website: <http://www.caymanstandard.ky/caymancompanyvoluntaryliquidation.html>

shareholders, once the company has been liquidated. Voluntary liquidation allows any and all potential creditors a chance to present a claim within a reasonable time, at least 21 days. Any claims filed after the expiration of the 21-day period may no longer be entertained by the company.

Another method of dissolution of a Cayman Islands registered company is to have the company Struck Off from the Register of Companies. To do this, first, the directors receive confirmation that the company no longer has any assets or liabilities. Once confirmation is received that there are no assets or liabilities in the company, the directors pass a resolution advising that the company be Struck Off from the Register. However, striking off can be very risky. It does not terminate or close out the company immediately. Once a company has been struck off, any potential creditor of that company may present a claim and apply to the Cayman Islands Court within the 10-year period from the date of Strike-Off. If the Court thinks fit, the company may be restored to the Register and the claim may be heard. At this point, even though there may no longer be any assets in the company, the directors and/or shareholders will be liable for any credible claim that the Court will allow.

The company itself, a contributory or a creditor (including any contingent or prospective creditors) of a Cayman Islands' company may present a winding up petition at the Grand Court seeking its winding up on the grounds that:⁸

- a special resolution has been passed by the members of the company;
- the company has not commenced its business within a year from its incorporation or has suspended its business for a whole year;
- the period (if any) fixed for the duration of the company by the articles of association expires;
- an event occurs which the articles of association provide that the company is to be wound up;
- the company is unable to pay its debts as they fall due; or
- the Court is of the opinion that it is just and equitable that the company should be wound up.

The Cayman Islands Monetary Authority (CIMA) may present a winding up petition in respect of any company that is carrying on business locally upon the grounds that it is not duly licensed or registered to do so under applicable regulatory or other laws.

2. Trusts⁹

Cayman Islands trusts, which are subject to Cayman Islands law, are primarily influenced by the English common law, which are applied by Cayman courts where appropriate. Not all English judicial decisions will be relevant in the Cayman Islands, as there is also Cayman legislation which takes precedence.

The Cayman Islands trust law legislation includes the Trusts Law (2011 Revision)¹⁰ and the Perpetuities Law (1999 Revision).¹¹ There are no restrictions on the accumulation of income. Trust deeds

⁸ The information is available on the following website:
[http://www.walkersglobal.com/Lists/News/Attachments/151/\(Cayman\)%20Winding%20Up%20a%20Company.pdf](http://www.walkersglobal.com/Lists/News/Attachments/151/(Cayman)%20Winding%20Up%20a%20Company.pdf)

⁹ Information in this section found on the following website:
<http://whoswholegal.com/news/features/article/30855/trusts-cayman-islands> (written by Carlos de Serpa Pimentel of Appleby in November 2013)

¹⁰ The Trusts Law (2011 Revision) was downloaded from the following website:
http://www.gazettes.gov.ky/sites/default/files/gazette-supplements/Gs922011_web.pdf

can allow for fixed or discretionary interests. There are no taxes on trust in the Cayman Islands. There are three types of trusts - the ordinary trust, the exempted trust, and the alternative regime, STAR.

Trust law provisions relating to exempted trusts require that a trust deed be delivered to the Registrar of Trusts. The filed trust documents are open to inspection by the trustee and any other person authorized by the trust, but they are not open for public inspection.

All rights and remedies with respect to a discretionary trust are vested in the Registrar of Trusts and not the beneficiaries.

3. Partnerships¹²

Limited partnerships are governed by the Partnership Law (2002 Revision),¹³ which requires them to be registered with the Registrar of Partnerships. Registration occurs by filing with the Registrar and the gazetting of a declaration by all the general partners, giving the name of the partnership, the nature and principal place of business, names and addresses of all partners, and the amount of capital provided by each limited partner. To operate a business in the Cayman Islands, a partnership requires a license under the Local Companies (Control) Law. Such licenses are granted by the Trade and Business Licensing Board, which has discretionary powers unless the business is 60 percent Caymanian-owned. The Exempted Limited Partnership Law (2014 Revision)¹⁴ makes it possible to form limited partnerships for offshore investors.¹⁵ Such a partnership may not undertake business with the public in the Cayman Islands, other than as necessary for the carrying on of business outside of Cayman. A partner may be a general or limited partner, as well as a corporation with or without limited liability. The Registry of Companies is required to maintain a record of each partnership, which is to be kept open to public inspection.

b. Case Law

Relevant case law was not found/assessed.

B. Not-For Profit Organizations

¹¹ Information is partly based on the following book: Cayman Islands Banking & Financial Market Handbook Volume 1 Strategic Information and Regulations, 2013 Edition, Updated Reprint, International Publications, USA, ISBN 1-4330-0598

¹² General Information on partnerships is available on the official website of the Registry of the Cayman Islands under the following website:
http://www.ciregistry.gov.ky/portal/page?_pageid=3521,6697057&_dad=portal&_schema=PORTAL

¹³ The Partnership Law (2002 Revision) can be downloaded from the following website:
http://www.gazettes.gov.ky/sites/default/files/gazette-supplements/Gs552012_web.pdf

¹⁴ The Exempted Limited Partnership Law (2014 Revision) is available as Supplement No. 1 published with the Extraordinary Gazette No. 48 dated 2nd July, 2014, http://www.gazettes.gov.ky/sites/default/files/extraordinary-gazettes-supplements/Es412014_web.pdf

¹⁵ Description of exempted limited partnerships from Walkers is available on the following website from [http://www.walkersglobal.com/Lists/News/Attachments/98/\(\(Cayman\)%20Exempted%20Companies%20v%20Exempted%20Limited%20Partnerships.pdf](http://www.walkersglobal.com/Lists/News/Attachments/98/((Cayman)%20Exempted%20Companies%20v%20Exempted%20Limited%20Partnerships.pdf)

a. Laws

Not-for profit organizations in the Cayman Islands can be formed under section 80 of the Companies Law as companies (and as such need to be registered, see below), or as charitable trusts (Cayman Islands Trust Law).

For the purpose of increasing the transparency of such charitable organizations, the requirements for registration of such companies include a registration fee, an annual fee payable, accounting, etc.. The government is attempting to regulate all organizations seeking to conduct charitable activities within the Cayman Islands under one regulatory regime, the Charities Bill of 2010,¹⁶ but it was withdrawn in 2011 on the base that the local charities expressed concerns that they may not be able to afford the additional expense required to keep records for many years and have annual external audits.

The regulation of the charitable sector in the Cayman Islands is based on a two-tiered framework consisting of (a) legislation and (b) Cabinet Policy Directives stipulated by the Portfolio of Finance and Economics.

1. Legislative Regulation

According to section 80 of the Companies Law, the Governor has discretion in deciding to register a company as a not-for profit organization:

(1) Where any association is about to be formed as a limited company, if it is proved by discretion of the governor to the satisfaction of the Governor that it is to be formed for the purpose of promoting commerce, art, science, religion, charity or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association in promoting its objects, and to prohibit the payment of any dividend to the members of the association, the Governor may, by license under his hand and the Public Seal, direct such association to be registered with limited liability without the addition of the word “limited” to its name, and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to all the obligations by this Law imposed on companies, except that none of the provisions of this Law that require a company to use the word “limited” as any part of its name, or to publish its name, or to send a list of its members, to the Registrar or to pay the fees prescribed by sections 41 and 169, shall apply to an association so registered....(2) The license aforesaid may be granted upon such conditions and subject to such regulations as the Governor may think fit to impose, and such conditions and regulations shall be binding on the association, and shall be inserted or endorsed on the memorandum or Articles of Association.

The provision confers on the Governor the power, on application by an association, to direct that the association not-for-profit be registered as a limited liability company without the addition of the word “limited” to its name if it is proven that the association:

- (a) is formed for the purposes of promoting commerce, art, science, religion, charity or any other useful object;
- (b) intends to apply its profits or other income to promoting its objectives; and
- (c) intends to prohibit the payment of any dividend to the members of the association.

On fulfilling those conditions, the association benefits in that it is not required to:

¹⁶ In Appendix III of the Report of the Law Reform commission : Review of the law regulating charitable organizations in the Cayman Islands (Final Report, 31 March 2010)

- (a) use the word “limited” as any part of its name;
- (b) publish its name;
- (c) send a list of its members, directors or managers to the Registrar; or
- (d) pay the fees prescribed by sections 41 and 188.

2. Cabinet Policy Regulation

The Cabinet, in order to guard against any negative exposure of charitable organizations, introduced measures designed to supplement the legislative framework provided under the Companies Law.

Generally, the current process for registering a section 80 company is set out by the Cabinet and is in two stages: the first is to obtain a license from the Governor and the second is to register the company with the General Registry.

Application requirements are:

- (a) a processing fee of KYD 1,000 for registration under section 80;
- (b) copies of the proposed memorandum and Articles of Association of the organization (to include the names, addresses and description of subscribers and founding members);
- (c) a list of the names, dates of birth, occupation, nationality, immigration status, (if not Caymanian) and addresses of the members of the board of directors/executive committee;
- (d) a letter addressed to the Minister of Finance on the source of funds for the association; and
- (e) an application letter to specify reasons why the association wishes to be registered as a non-profit organization under section 80 of the Companies Law

The Memorandum or Articles of Association requirements are:

- (a) the association is to maintain records of contributions and contributors and how the contributions are to be applied;
- (b) when the association has a gross income of KYD 50,000 per annum or more, the books of accounts are to be the subject of an annual audit review;
- (c) the records required to be maintained by all forms of companies under the Companies Law, the registers of members and directors; proper books of accounts; minutes of all resolutions and proceedings; and a register of mortgages and charges, are to be subject to inspection by the Governor in Cabinet;
- (d) the association is to maintain its primary bank account with a licensed Cayman Islands bank and maintain its registered office in the Cayman Islands; and
- (e) the association is to obtain the prior approval of the Governor in Cabinet for any changes in its board/executive committee and changes to the name of the association, its Memorandum, and Articles of Association. An application fee of KYD 500 is required to give effect to any requested change.

The application is sent to the Ministry of Finance. If there are errors in the application, or questions, these are directed to the applicants. At times, applicants tend to take long periods of time to address issues, possibly due to their volunteer nature and the lack of adequate staff to respond. Some applications have been “on hold” for several months awaiting responses from applicants or their attorneys.

The Memorandum and Articles of Association for each application are referred to the Legal Department for scrutiny. Background checks on suitability of directors are referred to the Cayman Islands Joint Intelligence Unit (JIU) of the Royal Cayman Islands Police Service. Once the Legal Department, JIU, and the General Registry are satisfied of the positive background of the applicant and submission of a complete application, the request for a license is set out in a Cabinet Paper and sent to the Governor in Cabinet for approval. On approval and issuance of the license, the organization must then apply to the General Registry for registration.

b. Case Law

Relevant case law was not found/assessed.

C. Analytical comparison of the legal process of registration

There are some differences that apply to not-for profit organizations under section 80 of the Companies Law regarding registration and reporting requirements, fees payable, and supervision. The registration takes longer, there are more stages, and more supervisory institutions are included. Furthermore, the Governor has additional power with respect to non-profit organizations and the license may be granted upon such conditions and subject to such regulations as the Governor may think fit to impose, and such conditions and regulations shall be binding on the association and inserted or endorsed on the memorandum or Articles of Association.

However, there are also certain benefits a not-for profit organization enjoys. It does not have to send the list of its members, directors, or managers to the Registrar, and it does not have to pay the fees prescribed by sections 41 and 188 of the Companies Law.

III. Tax Laws

A. For-Profit Organizations

a. Laws

There is no direct tax payable by companies in the Cayman Islands (no corporate tax, no personal income tax). Guarantees against the future taxation of exempted companies, exempted limited partnerships, and exempted trusts are available. The Governor in council gives an undertaking that no future law imposing any tax on profits, capital assets, gain, or appreciations will apply to the entity or its operations for a period of 20 to 30 years for an exempted company, and up to 50 years for exempted partnerships and trusts.

The principal indirect taxes from which the government derives its income are stamp duties, customs duties, business licenses, and fees. The Cayman Islands does not have a tax treaty with any country. Income received in the Cayman Islands from abroad may be subject to taxation in the country of origin.¹⁷

¹⁷ Information source is the official website of the Tax Information authority of the Cayman Islands: <http://www.tia.gov.ky/> and <http://www.cayman.com.ky/caymans-tax-free-status>

The Cayman Islands have signed a Tax Information Exchange Agreement (TIEA)¹⁸ with the following countries: Argentina, Aruba, Australia, Canada, China, Curacao, Czech Republic, Denmark, Faroe Islands, Finland, France, Germany, Greenland, Guernsey, Iceland, India, Ireland, Italy, Japan, Mexico, Netherlands, New Zealand, Norway, Portugal, Qatar, Sint Marteen, South Africa, Sweden, United Kingdom, and United States of America.

b. Case Law

Relevant case law was not found/assessed.

B. Not-For Profit Organizations

a. Laws

The same rules apply to for-profit and not-for profit organizations in the Cayman Islands. There is no VAT or GST in the Cayman Islands. There is import duty on many goods with the rates ranging depending on the type of good being imported. The research did not find that not-for profit organizations would be exempted from indirect taxes.

b. Case Law

Relevant case law was not found/assessed.

C. Analytical comparison

The same rules apply to for-profit and not-for profit organizations in the Cayman Islands based on the information found.

IV. Financial Transaction Laws¹⁹

A. For-Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws²⁰

There are no capital or exchange controls in the Cayman Islands. Offshore banking transactions are relatively free from control, subject to precautions against money-laundering. The Cayman Islands applies the principles of the Basle Committee on Banking Supervision and complies with the

¹⁸ The Tax Information Exchange Agreements can be downloaded from the website of the OECD from the following website:
<http://www.oecd.org/tax/transparency/taxinformationexchangeagreementstieascaymanislands.htm>

¹⁹ Information is available on the following website from Baker Tilly International:
<http://www.bakertillyinternational.com/media/443039/doing%20business%20in%20the%20cayman%20islands.pdf>

²⁰ Information is based on the report of KPMG, which is available on the following link:
<http://www.kpmg.com/global/en/issuesandinsights/articlespublications/funds-and-fund-management-survey/pages/cayman-islands-accounting.aspx>

requirements of the G-7 Financial Action Task Force. Large, undocumented cash transactions will be queried. However, confidentiality standards are tight.

Under the Mutual Fund Law 1996 (revised in 2013) (MFL),²¹ investment or mutual funds with more than 15 members must be individually licensed, or must be administered by licensed mutual fund administrators. Licenses are issued by the Governor in Executive Council after scrutiny of the application by the Monetary Authority.

A mutual fund is any company, trust, or partnership either incorporated or established in the Cayman Islands, or if outside the Cayman Islands, managed from the Cayman Islands, which issues equity interest redeemable or repurchase-able at the option of the investor, the purpose of which is the pooling of investors' funds with the aim of spreading investment risk and enabling investors to receive profits or gains from investments.

Note that funds commonly referred to as hedge funds fall within the definition of a mutual fund and are thus covered by the Mutual Funds Law. The MFL gives the Cayman Islands Monetary Authority (CIMA)²² responsibility for regulating certain categories of funds operating in and from the Cayman Islands. The law also provides for the regulation of mutual fund administrators by CIMA.

Not all mutual funds are regulated. The MFL specifies the categories of mutual fund that are exempt from regulation. Funds that meet the criteria set out in section 4(4) of the MFL are exempt. All other mutual funds are regulated.

The ongoing supervision of funds and fund administrators falls under the remit of CIMA's Investments and Securities Division. There does not seem to be any limitations on activities that can be conducted with foreign money.

ii. Political Contribution Laws

The laws regulating the right of assembly and the elections and the formation of political parties are the Cayman Islands Constitution Order 2009 and the Electoral Law 2004.²³ Further information on regulating, limiting, or otherwise pertaining to organizational contributions to political campaigns or political activities was not found.

b. Case Law

Relevant case law was not found/assessed.

B. Not-For Profit Organizations

A not-for profit organization under section 80 of the Companies Law must maintain records of contributions and contributors and how the contributions are to be applied and must maintain its primary

²¹ The Mutual Fund Law (Revision 2013) is to be found in Supplement No. 16 published with Extraordinary Gazette No. 82 of 11th October, 2013

²² Official website of the Cayman Islands Monetary Authority: <http://www.cimoney.com.ky/>

²³ The Electoral Law (2004) was published in Supplement No. 1 published in the Gazette No. 21 of 18 October 2004, <http://www.electionsoffice.ky/downloads/electionslaw2004.pdf>

bank account with a licensed Cayman Islands bank and maintain its registered office in the Cayman Islands.

a. Laws

i. Foreign Investment/Foreign Funding Laws

The same rules apply to for-profit and not-for profit organizations in the Cayman Islands in general, according to the limited information found.

ii. Political Contribution Laws

The same rules apply to for-profit and not-for profit organizations in the Cayman Islands.

b. Case Law

Relevant case law was not found/assessed.

C. Analytical Comparison

According to the limited information found, the same rules apply to for-profit and not-for profit organizations in the Cayman Islands.

V. Auditing/Reporting Requirements

A. For-Profit Organizations

a. Laws

The Companies Law addresses the subject of accounting records, financial statements, auditing, and filing requirements in general for Cayman Islands companies. The law is brief in its discussion and states only that Cayman Islands companies must maintain "proper books of accounts." It makes no mention of specific accounting requirements nor does it mandate any recognized generally accepted accounting principles (GAAP) to be used.

According to section 59 of the Companies Law, every company must keep proper books of account. A company which keeps its books of account at any place other than at its registered office or at any other place within the Cayman Islands shall, upon service of an order or notice by the Tax Information Authority pursuant to the Tax Information Authority Law (2013 Revision), make available, in electronic form or any other medium, at its registered office copies of its books of account, or any part or parts thereof, as are specified in such order or notice; and if the company fails to comply with the order or notice without reasonable excuse, the company shall incur a penalty. The books of account to be kept and retained for a minimum period of five years from the date on which they are prepared.

A company that knowingly and willfully contravenes with the aforementioned bookkeeping requirements shall be subject to a penalty of KYD 5000 and a further penalty of 100 dollars for every day during which non-compliance continues. The law states, however, that proper books of accounts shall not be deemed to be kept "...if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions." Additionally, there are no statutory requirements for filing of financial information with any government body. The Companies Law makes no requirement that financial statements should be audited but states that the accounts may be audited.

The preparation of financial statements and any specifics of the method of preparation, as well as the auditing thereof, is generally embodied in the Articles of Association of the Company.

Further reporting requirements for when companies have to report to the Registrar) are:

- changes in the name of a company
- alterations to the Memorandum or Articles of Association
- any other special resolution passed by the shareholders
- changes of location of the registered office
- changes in directors or officers
- increases in the authorized capital of the company

However, if a corporation is regulated by CIMA, which includes: banks, trust companies, insurance companies, corporate managers, mutual fund administrators and regulated mutual funds, it must have its financial statements audited annually and lodged with CIMA by its auditors, under the Mutual Funds Law.

For trusts, there are no statutory accounting and reporting requirements. However, case law requires trustees to maintain records of trust property and the preparation of accounts is generally a requirement built into the Trust Deed. Auditing of the accounts may be required in the trust deed, but it is not a statutory requirement.

Partnerships must maintain books and records at the partnership's place of business, and each partner must have access to the books and records pursuant to the Partnership Law. The partners, however, may agree otherwise. For exempted limited partnerships, each limited partner may demand to be presented the financial condition of the partnership from the general partner. There is no express requirement in the law for the exempted limited partnership to prepare financial statements. However, the general partner is required to produce the financial condition of the partnership upon demand of limited partners and prudent commercial practices would seem to compel maintenance of accounting records. The laws do not require or even suggest specific accounting practices or principles and does not require that the accounts, if prepared, be audited.

b. Case Law

See the information above regarding trusts. Otherwise, relevant case law was not found/assessed.

B. Not-For Profit Organizations

a. Laws

According to Cabinet Policy regulation, when a not for profit organization under section 80 of the Companies Law has a gross income of KYD 50,000 per annum or more, the books of accounts are to be subject to annual audit review.

Furthermore the following reporting obligations are imposed on not-for profit organizations:

- (a) the association is to maintain records of contributions and contributors and how the contributions are to be applied;

- (b) the records required to be maintained by all forms of companies under the Companies Law, including registers of members and directors, proper books of accounts, minutes of all resolutions and proceedings, and a register of mortgages and charges, are to be subject to inspection by the Governor in Cabinet;
- (c) The association is to maintain its primary bank account with a licensed Cayman Islands bank and maintain its registered office in the Cayman Islands; and
- (d) The association is to obtain the prior approval of the Governor in Cabinet for any changes in its board/executive committee and changes to the name of the association, its Memorandum, and Articles of Association. An application fee of \$500.00 (five hundred dollars) is required to give effect to any requested change.

b. Case Law

Relevant case law was not found/not assessed.

C. Analytical Comparison

According to Cabinet Policy regulation, certain not-for profit companies' books of accounts are subject to annual audit review, whilst companies under the Companies Law do not have auditing requirements. However, there are also certain benefits, a not-for-profit organization enjoys. It does not have to send the list of its members, directors or managers to the Registrar and does not have to pay the fees prescribed by sections 41 and 188 of the Companies Law.

VI. Penalties for Non-Compliance

A. For-Profit Organizations

a. Laws

i. Civil

According to Section 77 (General Penalty) of the Companies Law, where a duty is imposed by the law on any company, director or officer of any company and no special penalty or fine has been provided for the breach of such duty, then any such company director or officer responsible for such breach commits an offence and is responsible for such breach commits an offence and is liable on conviction to a fine of 5,000 dollars.

A Certificate of Good Standing cannot be obtained for a company with outstanding fees or returns after January 1st.

A company which has not filed its annual return or paid its annual return fee within 12 months of its due date is liable to be struck off the Register and any assets held by the company will then vest in the Cayman Islands Government.

The Companies Law provides for daily penalties for non-compliance with a number of requirements (e.g., filing deadlines, requirement to have a registered office). There are statutory time constraints, either 15 or 30 days, for due notification. For this reason, it is important to provide the information to the registered office promptly to avoid fines or penalties which will be levied pursuant to the Companies Law 1961.

All companies must maintain proper books of account, although they need not necessarily be kept at the registered office. The books of account must be such as are necessary to give a fair and true view of the state of the company's affairs and explain its transactions. All books of account must be maintained for a minimum of five years from the date on which they are prepared. Failure to do so may result in a penalty of KYD 6097,56.

ii. Criminal

The Penal Code of the Cayman Islands (Law 12 of 1975, revised in 2013)²⁴ provides that whoever, being an officer of a body corporate or unincorporated association, with intent to deceive members or creditors of the body corporate or association about its affairs, publishes or concurs in publishing a written statement or account which to his knowledge is or may be misleading, false or deceptive in a material particular, is guilty of an offence and liable to imprisonment for seven years.

The Proceeds of Crime Law of 2008²⁵ contains a number of money laundering offences of which the directors should be aware. The offences, the penalty for which is a fine and/ or imprisonment, include assisting another to retain the benefit of criminal conduct, the acquisition, possession or use of property representing the proceeds of criminal conduct, and concealing or transferring proceeds of criminal conduct. The Financial Reporting Authority²⁶ (known by its counterparts worldwide by its computer call sign "CAYFIN") is a Financial Intelligence Unit (FIU) created by the Proceeds of Crime Law (2008), which came into force on 30th September 2008. It is the Cayman Islands' national agency responsible for receiving, and as permitted, requesting, analyzing, and disseminating disclosures of financial information concerning proceeds of criminal conduct, in order to counter money laundering, terrorism, the financing of terrorism or suspicions of any of those crimes.

C. Not-For Profit Organizations

a. Laws

According to the limited information available, the same rules apply to for-profit and not-for-profit organizations in the Cayman Islands.

i. Civil

According to the limited information available, the same rules apply to for-profit and not-for-profit organizations in the Cayman Islands.

ii. Criminal

²⁴ The Penal Code of the Cayman Islands (2010 Revision) can be found in Supplement No. 3 published with Gazette No. 24 of 22nd November, 2010. http://www.gazettes.gov.ky/sites/default/files/gazette-supplements/Gs1122010_web.pdf

²⁵ The Proceeds of Crime Law 2008 can be found in the Supplement No. 2 published with Extraordinary Gazette No. 23 dated 21 August, 2008, can be downloaded from the website of the official Gazette or from the website of CIMA under the following link: http://www.cimoney.com.ky/regulatory_framework/reg_frame_law_reg.aspx?id=372

²⁶ Official website of the Financial Reporting Authority is available under the following link: <http://www.fra.gov.ky/contents/page/1>

According to the limited information available, the same rules apply to for-profit and not-for profit organizations in the Cayman Islands.

D. Analytical comparison

According to the limited information available, the same rules apply to for-profit and not-for profit organizations in the Cayman Islands.

E. Statistics on actual penalties for each group (if available)

Statistics on actual penalties was not found/ not assessed.

OVERVIEW CHART

Although not exhaustive of all the similarities and differences discussed in the above sections, the following highlights some of the biggest differences or similarities.

Issue	For-Profit Organizations	Not-For Profit Organizations	Similarities
Registration Procedures	<p>Main governing law is the Cayman Islands Companies Law 1961, which governs non-profit organizations as well.</p> <p>The registration is done by the Registrar of Companies who is appointed by the Governor.</p>	<p>Main governing law is the Cayman Islands Companies Law 1961, which governs non-profit organizations as well.</p> <p>There are some differences applying to not for profit organizations under section 80 of the Companies Law regarding to registration and reporting requirements, fees payable and in the supervision. the registration takes longer, there are more stages, more supervisory institutions included.</p>	<p>Main governing law is the Cayman Islands Companies Law 1961, which governs nonprofit organizations as well.</p> <p>The same rules apply to nonprofit organizations as for- profit companies with slight differences in the use of the organization`s name.</p>
Tax Laws	There is no direct tax law payable by companies.	There is no direct tax law payable by companies.	There is no direct tax law payable by companies.
Financial Transaction Laws	There are no capital or exchange controls in Cayman. Offshore banking transactions are relatively free from	There are no capital or exchange controls in Cayman. Offshore banking transactions are relatively free from	There are no capital or exchange controls in Cayman. Offshore banking transactions are relatively free from

	control, subject to precautions against money-laundering.	control, subject to precautions against money-laundering.	control, subject to precautions against money-laundering.
Auditing/Reporting Requirements	No auditing requirements in the Cayman Islands for companies in general (but proper books of account must be kept. However, regulated mutual funds and mutual fund administrators to have their accounts audited annually by an auditor approved by CIMA.	Non-profit organizations do have to provide annually audited financial accounts..	
Penalties	There are both civil and criminal penalties. The criminal penalties are charged on the directors of a company.	According to the limited information available on the internet, the same rules apply to profit and not-for profit organizations in the Cayman Islands.	According to the limited information available on the internet, the same rules apply to profit and not-for profit organizations in the Cayman Islands.