

The Patents And Trade Marks Law, 2011

The Cayman Islands Legislature passed the Patents and Trade Marks Law, 2011 on 7 December, 2011 repealing the prior Patents and Trade Marks Law (2007 Revision) and making important changes to the practice of patents and trademarks in the Cayman Islands.

On 7 December, 2011 the Cayman Islands legislature passed the Patents and Trade Marks Law, 2011 (the "Law") which introduces some significant changes into the practice of patents and trademarks in the Cayman Islands, as detailed below.

The Law repeals and replaces the previous law. It does not materially alter the rights arising from registered patents and trademarks (so owners essentially enjoy the same rights and privileges as they did under the prior Law), provided that annual fees are paid when due, and also preserves any existing applications by providing that they will be treated as if they were made under the new Law. However, it makes important changes to the process of filing and renewing trademarks as follows:-

- From now on, only a local registered agent can conduct business on clients' behalf with the local Patents and Trademarks Registry. Hence, only a registered agent can apply for registration of, amend the terms of or renew a patent or trade mark or have any other dealings with the Patents and Trade Marks Registry.
- The local registered agent has to be legally and ordinarily resident in the Cayman Islands and must be licensed by the Patents and Trade Marks Registry. Campbells can provide the service of acting as registered agent for patent and trade mark owners in the Cayman Islands.
- The registered agent, once instructed by the owner of a patent or trademark, will be responsible for registration, renewal, payment of annual fees and any other dealings as instructed by the owner.
- If a registered agent resigns with respect to a patent or trade mark, the record of such patent or trademark will be cancelled unless a new registered agent is appointed within 60 days of the date the Registrar was notified of the registered agent's resignation.
- After the year of initial recording, annual fees are payable in January of each year. Failure to make payment of annual fees by 31st March will cause the protected rights to be in abeyance until such time as the annual fee and penalty fee (CI\$100/US\$121.95) has been paid. Default in payment of annual fees and penalties for more than 12 months may render a patent or trademark liable for cancellation by the Registrar. The owner of a

cancelled patent or trademark must reapply for recording again as though it was being recorded for the first time if he wishes to reinstate a cancelled patent or trademark.

- The owner of a recorded patent or trademark, through its authorised agent, shall notify the Registrar if it is to be abandoned and the Registrar will then record it as inactive. During the period of inactivity, the payment of annual fees is suspended. However, the registered agent can apply to reactivate the patent or trademark on payment of the reactivation fee (CI\$150/US\$182.93) and payment of annual fees owed for the suspension period.
- There is provision in the new law for the Registrar to issue a certificate of good standing evidencing that a patent or trademark has been recorded and all fees have been paid. The fee for the certificate of good standing is CI\$100/US\$121.95.
- A penalty fee (CI\$100/US\$129.95) has been introduced if a renewal application is filed more than 2 months after the expiry date.
- If there has been a change in particulars of registration in the United Kingdom or European Community which is not reported within 2 months to the Patents and Trade Marks Registry, this will have the effect of causing the rights to be in abeyance as against the person in default, the period running from the date the change was recorded in the UK or European Community until such date the Registrar is notified of such changes and the relevant fee is paid. Hence, the registered agent should be informed of any such changes in a timely manner.

This advisory has been prepared as a summary of the law as at December 2011 and is for general guidance only. It is not intended to be, nor should it be used for, a substitute for specific legal advice on any particular transaction or set of circumstances.

Should you have any queries regarding the above, or if we can be of any assistance, please do not hesitate to contact your usual Campbells contact or any of the following:



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