

LEGAL ALERT

Cayman Islands introduce Limited Liability Companies as new corporate vehicle

Introduction

The Cayman Islands have now brought into effect the long-awaited Limited Liability Companies Law, 2016 (the "**LLC Law**") which introduces a new Cayman Islands limited liability company (an "**LLC**"). The LLC Law was published on 8th June 2016 but had not been brought into effect until 8th July 2016 in order to provide the Companies Registry with sufficient time to implement internal systems for dealing with registration of new LLCs. The Companies Registry is currently undertaking pilot testing of its internal systems and has advised that it expects to be able to accept registration applications for new LLCs before 15th July 2016.

Key Features of Cayman LLCs

- An LLC formed under the LLC Law will be similar in structure to that of the Delaware LLC as the LLC Law is broadly based on the Limited Liability Company Act in the State of Delaware. However the LLC Law has also preserved the broad legal principles applicable to Cayman Islands companies and the rules of equity and common law. Section 3 of the LLC Law expressly states that: ***"The rules of equity and of common law applicable to companies registered in the Islands, as modified by the Companies Law and any other Laws in force in the Islands applicable to such companies, shall apply to a limited liability company, except in so far as such rules and law or modifications thereto are inconsistent with the express provisions of this Law or the nature of a limited liability company"***.
- An LLC is a corporate entity which has separate legal personality to its members.
- Formation of an LLC is straightforward. It requires the filing of a registration statement with the Companies Registry and payment of the requisite Government fee.
- An LLC must have at least one member. It can be member managed (by some or all of its members) or the LLC agreement can provide for the appointment of persons (who need not be members) to manage and operate the LLC.
- The liability of an LLC's members is limited. Members can have capital accounts and can agree amongst themselves (in the LLC agreement) how the profits and losses of the LLC are to be allocated and how and when distributions are to be made (similar to a Cayman Islands exempted limited partnership).
- An LLC may be formed for any lawful business, purpose or activity and it has full power to carry on its busi-

ness or affairs unless its LLC agreement provides otherwise.

- An LLC may (but is not required to) use one of the following suffixes in its name: "Limited Liability Company", "LLC" or "L.L.C."
- The following statutory registers are required to be maintained for an LLC but, similarly to the requirement for a Cayman Islands exempted company, only an LLC's register of managers is required to be filed with the Companies Registry:
 - a. a register of members;
 - b. a register of managers; and
 - c. a register of mortgages and charges.

The register of managers and register of mortgages and charges are required to be maintained in a manner similar to the register of directors and register of mortgages and charges for a Cayman Islands exempted company.

- Subject to any express provisions of an LLC agreement to the contrary, a manager of the LLC will not owe any duty (fiduciary or otherwise) to the LLC or any member or other person in respect of the LLC other than a duty to act in good faith in respect of the rights, authorities or obligations which are exercised or performed or to which such manager is subject in connection with the management of the LLC provided that such duty of good faith may be expanded or restricted by the express provisions of the LLC agreement.

Expected Benefits of the New LLC Vehicle

Under the LLC Law, it is now possible to:

- Form and register a new LLC;
- Convert an existing Cayman Islands exempted company into an LLC;
- Merge an existing Cayman Islands exempted company into an LLC; and
- Migrate an entity formed in another jurisdiction (e.g. Delaware) into the Cayman Islands as an LLC.

It is expected that the new Cayman Islands LLC structure will be attractive for general partner entities and other carried interest distribution vehicles. It may also prove attractive for management company entities and possibly for offshore funds in order to align the rights of investors between onshore and offshore investment funds in a master/feeder structures.

For specific advice on Cayman Islands limited liability companies, please contact either of:

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