

# GUIDE TO LIMITED LIABILITY COMPANIES IN THE CAYMAN ISLANDS

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## PREFACE

This Guide is a summary of the law and procedures relating to limited liability companies in the Cayman Islands.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the Corporate Team, using the [contact information](#) provided at the end of this Guide.

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## 1. **LIMITED LIABILITY COMPANIES**

Limited Liability Companies (**LLCs**) became available in the Cayman Islands in 2016. An LLC is a hybrid form of business entity with characteristics of both a limited partnership and a company. An LLC is governed by an agreement among its members (LLC agreement), much like a limited partnership. However, like a company, its members enjoy limited liability. The Limited Liability Companies Law, 2016, as amended (Law) imposes few formalities and affords investors in an LLC great flexibility in how they wish their LLC to be governed, with the Law deferring in many instances to the LLC agreement. This flexibility is perhaps the LLC's most attractive feature.

## 2. **FORMATION AND REGISTRATION**

In order to form an LLC, the initial member (or members) will need to file a registration statement with the Registrar of Limited Liability Companies. The registration statement sets out the LLC's name (along with any dual foreign name and its translation), the general nature of its business, the address in the Cayman Islands of its registered office and its term (or, if formed for unlimited duration, a statement to that effect). It also contains a declaration that the LLC will not undertake business with the public in the Cayman Islands other in furtherance of its business outside the Islands as contemplated by the Law. Subject to this restriction (and subject to any restriction that may be imposed under its LLC agreement), an LLC may carry on any lawful business, purpose or activity, whether or not for profit.

Upon the filing of the registration statement meeting the statutory requirements and the payment of a fee the Registrar will issue a certificate of registration.

## 3. **NATURE OF A LIMITED LIABILITY COMPANY**

The LLC is a body corporate with legal personality separate from that of its members. It is capable of exercising all the functions of a natural person of full capacity irrespective of any questions of corporate benefit. An LLC has perpetual succession, the capacity to sue and to be sued and defend legal proceedings in its name, and the power to acquire, hold and dispose of property.

## 4. **MEMBERS**

An LLC must have at least one member at all times. After registration, a person may be admitted as a member in the case of:

- the acquisition of a limited liability company interest in the LLC (LLC interest) from the LLC or from a transferor;
- a merger or consolidation approved in accordance with the Law that results in a person acquiring an LLC interest in a surviving or resulting LLC;
- the continuation of a foreign entity as an LLC in the Islands; or
- the conversion of an exempted company to an LLC.

Subject to any express provisions of the LLC agreement to the contrary, a member does not owe any duty (fiduciary or otherwise) to the LLC or any member in exercising any of its rights or authorities in respect of the LLC or in performing any of its obligations under the LLC agreement. Where a member is exercising any vote, consent or approval right in respect of its LLC interest, it may do so in its own best interests and as it sees fit even though it may not be in the best interests of the LLC.

### Member's Interests

Unless otherwise provided in the LLC agreement:

- a person admitted to the LLC as a member may receive an interest in or be granted other rights in respect of the LLC without making a contribution or being obligated to make a contribution to the LLC, subject to any provisions of the LLC agreement or the Law requiring amounts to be paid or property to be returned by the member to the LLC;
- a member has no pre-emptive right to subscribe for any issue of LLC interests or for any other interest in the LLC;
- a member's interest in the LLC may (but need not) be evidenced by a certificate of the LLC;
- a member may grant a security interest to a third party (secured party) in respect of any or all of that member's LLC interest and any such security interest does not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member (other than those rights or powers which are the subject of the security interest, which security interest has become enforceable and in respect of which the LLC has received express notice at its registered office, such notice being signed by each of the secured party and that member) unless that member transfers all of the member's LLC interest to the secured party in accordance with the provisions of the Law; and
- an LLC may acquire, by purchase, redemption or otherwise, an LLC interest or other interest of a member in the LLC, provided that immediately following such acquisition, the LLC is able to pay its debts as they fall due in the ordinary course of business.

The Law prohibits the issue of bearer LLC interests, bearer certificates or bearer coupons.

### Member's Contributions

The liability of a member to contribute to the assets of an LLC is limited:

- to the amount that the member has undertaken to contribute to the assets of the LLC;
- to making such other payments or performing such services as are expressly set out in the LLC agreement or as have otherwise been agreed between the member and the LLC; and
- to such other amounts as may be required to be paid or property required to be returned by the member to the LLC pursuant to the LLC agreement or the Law.

The contributions of a member to an LLC may be in cash, property, other assets, services rendered or other obligation to contribute cash or property or assets or to perform services.

If so provided in an LLC agreement, a person may be admitted as a member of an LLC with an entitlement to receive distributions from the LLC or having such other rights as a member as may be set out in the LLC agreement without having to make any contribution to the LLC, subject to any provisions of the LLC agreement or the Law requiring amounts to be paid or property to be returned by the member to the LLC.

## 5. ALLOCATIONS AND DISTRIBUTIONS

The profits and losses of an LLC are allocated (and distributions of cash or in kind by the LLC are made or paid) among the members, and among classes of LLC interests or groups of members (if any), in the manner provided in the LLC agreement. If the LLC agreement does not so provide, profits and losses are allocated (and distributions are made or paid) on the basis of the agreed value (as stated in the

records of the LLC) of the contributions made by each member to the extent they have been received by the LLC and have not been returned.

Subject to the provisions of the LLC agreement and except as otherwise provided by the Law, a dividend may only be made if the LLC is solvent, meaning that it is able to pay its debts as they fall due in the normal course of business. If a member receives a dividend knowing that the LLC is insolvent, the member will be liable for the amount of the distribution.

## 6. **MANAGEMENT**

Unlike a company, an LLC does not have a board of directors. Instead, unless otherwise provided in the LLC agreement, the management of an LLC is vested in its members acting by a majority in number. If an LLC agreement provides for the management, in whole or in part, of the LLC by one or more managers, the management of the LLC, to the extent so provided, is vested in the managers. If permitted by the LLC agreement, a manager may also be a member.

The rights and duties of the members and managers in an LLC shall, as between themselves, be determined by the LLC agreement and, unless otherwise provided in the agreement, each member and manager has the authority to bind the LLC. An LLC agreement may provide for classes or groups of managers having such relative rights, powers and duties as that agreement may provide and may make provision for the future creation of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established.

Subject to any express provision of the LLC agreement to the contrary, a manager does 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 or member is subject in connection with the management of the LLC.

## 7. **LIMITED LIABILITY COMPANY AGREEMENT**

The LLC agreement is of critical importance to an LLC in that it fleshes out the bare bones of the Law, setting out the rights and duties of members, as between themselves, the procedures for being admitted to or retiring from the LLC and transferring or encumbering members' interests, the making and treatment of members' contributions, the allocation of profits and losses and distributions, the appointment of managers, the duties and liabilities of the managers, the execution of documents on behalf of the LLC, procedures for calling and holding meetings of managers or members, winding-up provisions, and so on.

While the members have great flexibility in deciding what to provide for in their LLC agreement (as long as any provision does not contravene the Law or any other law of the Islands applicable to the LLC) the Law expressly states that an LLC agreement may, among other things:

- provide for classes of LLC interests or groups of members having such relative rights, powers and duties as the LLC agreement may provide;
- provide for the taking of an action, including amendment of the LLC agreement or the creation under the provisions of the LLC agreement of a new class of LLC interest or group of members, without the vote or approval of any member or class or group of members;
- provide that any member or class of LLC interests or group of members have no voting rights;

- grant to all or certain identified members or a specified class of LLC interest or group of members the right to vote separately or with all or any class of LLC interest or group of the members or managers, on any matter (with voting by members on a per capita, number, financial interest, class, group or any other basis); and
- provide that the vote, consent or approval of a member is deemed to have been obtained or given to a matter where:
- the member is given notice of the matter in accordance with the provisions of the LLC agreement;
- the LLC agreement requires that, should the member not wish to vote in favour of or otherwise consent to or approve the matter, the member give notice to the LLC of such within a particular period of time; and
- the member does not give notice, in accordance with the LLC agreement, to the LLC that it does not wish to vote in favour of or otherwise not consent to or approve the matter within the particular period of time.

The Law stipulates that the LLC agreement must be governed by Cayman Islands law.

## 8. **LIABILITY FOR DEBTS, OBLIGATIONS AND LIABILITIES**

The debts, obligations and liabilities of an LLC (whether arising in contract, tort or otherwise) are solely the debts, obligations and liabilities of the LLC and no member or manager of an LLC is obligated personally for any debts, obligations and liabilities of the LLC solely by reason of being a member or acting as a manager of the LLC. However, a member or manager may agree (under the LLC agreement or under any other agreement) to be personally liable for any or all of the debts, obligations and liabilities of the LLC.

## 9. **REGISTERED OFFICE, REGISTERS AND BOOKS OF ACCOUNT**

An LLC must have and maintain a registered office in the Cayman Islands. The registered office service provider must be licensed.

An LLC must maintain:

- a register of members which contains the name and address of each person who is a member of the LLC, the date on which that person became a member and the date on which he ceased to be a member (which register is to be updated within 21 days of any change in the particulars in the register);
- a register of security interests which contains the time and date of receipt of any notices validly served at the registered office pursuant to section 11(5) of the Law (which register is to be updated within 21 days of receipt of a validly served notice);
- a register of managers which contains the name and address of each person in whom management of the LLC is vested; and
- a register of mortgages and charges.

The Law imposes on an LLC the obligation to cause to be kept proper books of account, including a record of the contributions of, and distributions to, each member.

**10. CONVERSION TO A LIMITED LIABILITY COMPANY**

The Law permits an exempted company that is not a segregated portfolio company to make application for conversion to (and re-registration as) an LLC.

**11. WINDING-UP OF A LIMITED LIABILITY COMPANY**

The Law provides for the winding up of an LLC either voluntarily or compulsorily by the Court. The death, retirement, withdrawal, expulsion, bankruptcy, liquidation or dissolution of any member or the occurrence of any event that terminates the continued membership of any member does not cause an LLC to be voluntarily wound up, except where that event is an event of dissolution in the LLC agreement or where the event would result in the LLC having no members.

**12. TAX AND EXCHANGE CONTROLS**

There is no Cayman Islands taxation on the profits, income or dividends of an LLC, nor is there any capital gains tax, estate duties or inheritance tax under Cayman Islands law. An LLC may apply to the Financial Secretary at the Ministry of Finance & Economic Development of the Cayman Islands for a written undertaking that should a law ever be enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciations, that law shall not apply to the LLC or any member of the LLC in respect of the LLC's operations or assets or the membership interest of any member. This undertaking may be granted for up to 50 years from the date of the undertaking, but is normally granted for a shorter period in the first instance. The undertaking may also provide that these taxes and any tax in the nature of estate duty or inheritance tax shall not be payable in respect of the obligations of the LLC or the interests of members therein. There are no exchange controls in the Cayman Islands, which allows free transfer of funds in and out of the Islands, in any currency, with equal freedom to open and maintain accounts in any currency.

**13. CONCLUSION**

The limited liability company as a form of business entity has become very popular in the United States as well as in many other countries, albeit under different names (for example, Germany's GmbH, the Netherlands' B.V. and the S.à.r.l. of France and Luxembourg). As such, we expect that Cayman Islands LLCs will be very attractive vehicles for many clients. While LLCs are still relatively new to the Cayman Islands, we are already seeing them being used for joint ventures, group restructuring entities, general partners, carried interest vehicles, asset holding, special purpose vehicles and investment management companies.

For more specific advice on limited liability companies in Cayman Islands, we invite you to contact:

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