

GUIDE TO LIMITED LIABILITY PARTNERSHIPS IN THE CAYMAN ISLANDS

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PREFACE

This Guide is a summary of the law and procedures relating to Limited Liability Partnerships 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 Department, using the [contact information](#) provided at the end of this Guide.

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1. INTRODUCTION

Limited liability partnerships (**LLPs**) became available in the Cayman Islands for the first time in June 2017 when the Limited Liability Partnership Law, 2017 (**Law**) came into force. An LLP is governed by an agreement among its partners (**LLP agreement**), much like a limited partnership. However, while in the case of a limited partnership only the limited partners enjoy limited liability (provided they are not deemed to have participated in management), all the partners in the LLP enjoy limited liability. The Law imposes few formalities and affords investors in an LLP great flexibility in how they wish their LLP to be governed, with the Law deferring in many instances to the LLP agreement.

2. NATURE OF AN LLP

The LLP is a statutory entity with limited liability and legal personality (other than a body corporate separate) which is separate and distinct from the partners of the LLP. Unless otherwise provided in its LLP agreement, an LLP is capable of exercising all the functions of a natural person of full capacity irrespective of any question of benefit. An LLP 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. The LLP's independent legal personality is the key feature that distinguishes an LLP from a limited partnership registered under one of the Cayman Islands' other partnership statutes.

3. REGISTRATION

In order to have the benefit of the Law and, in particular, achieve limited liability for its partners, the initial partners will need to file a registration statement with the Registrar of Limited Liability Partnerships (**Registrar**) along with the prescribed fee. The registration statement sets out the LLP's name (which must contain "Limited Liability Partnership", "LLP" or "L.L.P."), the address in the Cayman Islands of its registered office, the general nature of its business, the name and address (which may be a business address) of each person who is to be a partner in the LLP, identifying any partner who is to be a managing partner (if any), and the term, if any, for which the LLP is to exist (failing which the LLP shall be considered to have unlimited duration). The name of the LLP should be checked with the Registrar in advance of filing the registration statement.

With reference to "Tax and Exchange Controls" below, if the LLP wishes to qualify for a tax undertaking, the LLP's application for the undertaking must be accompanied by the LLP's written declaration that the LLP shall not undertake business with the public in the Cayman Islands other than so far as may be necessary for the carrying on of the LLP's business outside the Islands. Subject to this restriction (and subject to any restriction that may be imposed under its LLP agreement), an LLP 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 the applicable fee, the Registrar will issue a certificate of registration.

4. PARTNERS

While in the case of a limited partnership, applicable law distinguishes between general partners and limited partners, in the case of an LLP, the Law makes no such distinction.

An LLP must have at least two partners at all times. There are no residency requirements for partners in an LLP.

After registration, a person may only be admitted as a partner in accordance with the LLP agreement or by unanimous agreement of the partners. Subject to these requirements, after registration a person would become a partner in the case of:

- the acquisition of a limited liability partnership interest in the LLP (**LLP interest**) from the LLP or from a transferor;
- the conversion of a partnership into an LLP; or
- the continuation of a foreign limited liability partnership into the Cayman Islands as an LLP under the Law.

LLP interest means the interest of a partner in an LLP in respect of profit, capital and voting or other rights, benefits or obligations to which the partner is entitled or subject pursuant to the LLP agreement or the Law.

Partners' Interests

Unless otherwise provided in the LLP agreement:

- each partner in an LLP has an LLP interest and in the LLP property; and
- a partner may transfer or assign the whole or part of the partner's LLP interest and may create a mortgage over the whole or part of the LLP interest (in which case the mortgagee shall not be entitled, as against the other partners, during the continuance of the LLP to interfere in the management or administration of the business or affairs of the LLP or to require any accounts or to inspect the books of the LLP, but shall be entitled only to any proceeds representing any payment or other distribution in respect of that partner's LLP interest and any sum due to the partner by way of repayment of a loan).

Partners' Contributions

The liability of a partner to contribute to the assets of an LLP is limited:

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

Dealings by Partners with the LLP

Subject to the terms of the LLP agreement, the Law permits a partner in an LLP to enter into any transaction with the LLP, including lending money to and borrowing money from the LLP.

5. ALLOCATIONS AND DISTRIBUTIONS

Any profits of the business of an LLP shall be divided between the partners or otherwise as set out in the LLP agreement.

Subject to the provisions of the LLP agreement and except as otherwise provided by the Law, a distribution may only be made if the LLP is solvent, meaning that it is able to pay its debts as they fall due in the ordinary course of business (including where a distribution would cause the LLP to be unable to pay its debts in the ordinary course of business). If a partner receives a distribution knowing that the LLP is

insolvent, the partner will be liable for the amount of the distribution (see “Liability for Debts, Obligations and Liabilities of the LLP” below).

6. **MANAGEMENT**

An LLP may have one or more managing partners with the responsibilities specified in the Law and under the LLP agreement. If the LLP agreement does not provide for management by managing partner(s), for the purposes of the Law all of the partners will be managing partners.

The rights and duties of the partners in an LLP shall, as between themselves, be determined by the LLP agreement. Unless otherwise provided in the agreement, every partner is the agent of the LLP and the acts of a partner in the partner’s capacity as such shall bind the LLP (except where the partner is not acting as a partner or is acting without authority and the person with whom the partner is dealing knows or should know that to be the position).

While the Law provides that a partner or former partner in an LLP shall not be liable for the debt or loss of the LLP, including any debt of or loss caused by the act or omission of another partner or former partner in the LLP, this provision does not affect any liability of a partner or former partner for any loss caused by the negligent act or omission of that partner or former partner where that partner or former partner assumed an express duty of care to a person and acted in breach of that duty.

7. **LLP AGREEMENT**

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

The Law does not require that the LLP agreement be governed by Cayman Islands law, that it be filed with the Registrar or that it be made available for inspection by any person.

8. **LIABILITY FOR DEBTS, OBLIGATIONS AND LIABILITIES OF THE LLP**

The Law stipulates that nothing in the LLP agreement may deprive the partners of the benefit of the section of the Law that provides that a partner or former partner shall not be liable for any debt or loss of the LLP, including any debt of or loss caused by the act or omission of another partner or former partner in the LLP, subject to the exceptions described below. This stipulation is not to be construed as limiting the ability of the partners in an LLP, as between the partners, to indemnify any of the partners or any former partner in respect of any debt or loss.

Exceptions to the above stipulation occur if:

- (a) a partner or former partner in the LLP assumed an express duty of care to a person, acted in breach of that duty and caused any loss by a negligent act or omission; or
- (b) a partner receives a distribution from, or is released from an obligation owed to, the LLP and at the time that the distribution is made or the release is effected (i) the LLP was unable to pay its debts in the ordinary course of business (including where the distribution or release would cause the LLP to

be unable to pay its debts in the ordinary course of business); and (ii) the partner had actual knowledge that the distribution or release violated (i);

then for a period of six months commencing on the date of that distribution or release, the partner would be liable to return to the LLP the amount of the distribution or the due performance of the released obligation to the extent the return or performance, respectively, is necessary to discharge any debt or loss of the LLP (less any amount previously recovered from the partner under this provision).

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

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

An LLP must maintain at its registered office, among other things:

- a register of partners showing the name and address (which may be a business address) of each partner and indicates if any partner is a managing partner (which register is to be updated within 30 days of any change in the particulars in the register); and
- a register of mortgages showing all mortgages specifically affecting the LLP property, including in respect of each mortgage a short description of the property mortgaged, the amount of the mortgage and the names of the mortgagees or persons entitled to the mortgage.

Both registers shall be open for inspection by any person during normal business hours.

The Law also imposes on an LLP the obligation to cause to be kept proper books of account so as to give a true and fair view of the business and financial condition of the LLP and to explain its transactions. These books of account must be retained for at least five years from the date on which they are prepared. Subject to any express or implied term of the LLP agreement, each partner is entitled to demand and receive from the LLP true and full information regarding the state of business and financial condition of the LLP. Unless it is a requirement under the LLP agreement or any regulatory laws applicable to the LLP, an LLP need not appoint an auditor or have the LLP's accounts audited.

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

The Law permits a general partnership to make application to the Registrar for conversion to (and registration as) an LLP.

11. **CONTINUATION FROM ANOTHER JURISDICTION UNDER THE LAW AND CONTINUATION OUT OF THE CAYMAN ISLANDS**

A foreign limited liability partnership may apply to the Registrar to be registered as an LLP under the Law by way of continuation.

If permitted to do so under its LLP agreement, an LLP may apply to the Registrar for de-registration for the purpose of continuing outside the Cayman Islands in a jurisdiction which permits (or does not prohibit) the transfer of the applicant as provided in the Law.

12. **WINDING UP, DISSOLUTION AND STRIKE-OFF**

The Law provides for the winding up of an LLP either voluntarily (if termination of registration is permitted under the terms of the LLP agreement) or compulsorily by the Court. The retirement, death, liquidation or the occurrence of any other event that causes a partner to cease to exist does not affect the existence of

the LLP, except where that event is an event of dissolution in the LLP agreement or where the event would result in the LLP not having at least two partners (in which case the LLP would be wound up automatically).

Except to the extent that the provisions are inconsistent with the Law (in which case the Law will prevail), and subject to any express provisions of the Law to the contrary, the provisions of Part V of the Companies Law (2016) Revision) and the Companies Winding Up Rules 2008 shall apply to the winding up of an LLP. The Law includes a “waterfall” provision for the distribution of LLP property, in order of priority, on a winding-up.

Where the Registrar has reasonable cause to believe that an LLP is not carrying on business or is not in operation, the Registrar may strike the LLP off the register in which case the LLP is dissolved upon being struck. Any property that is held or considered to be held by an LLP that is struck off the register and not otherwise restored to the register in accordance with the Law within two years or such longer period not exceeding ten years as Cabinet may allow shall upon the expiry of this deadline vest in the government of the Cayman Islands.

13. **TAX AND EXCHANGE CONTROLS**

There is no Cayman Islands taxation on the profits, income or dividends of an LLP, nor is there any capital gains tax, estate duties or inheritance tax under Cayman Islands law. An LLP 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 LLP or any partner of the LLP in respect of the LLP’s operations or assets or the LLP interest of any partner. 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 LLP or the LLP interest of a partner.

In order to qualify for the tax undertaking, the LLP’s application must be accompanied by the LLP’s written declaration that the LLP shall not undertake business with the public in the Cayman Islands other than so far as may be necessary for the carrying on of the LLP’s business outside the Cayman Islands.

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.

14. **USES OF AN LLP**

We expect the LLP structure will be popular with professional service firms in the Cayman Islands, which have traditionally been established as general partnerships. However, the Law has been drafted broadly enough for LLPs to be used for international financial services transactions as an alternative to companies or limited partnerships.

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

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).