



THE LIMITED LIABILITY COMPANIES LAW IN THE CAYMAN ISLANDS

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The Limited Liability Companies Law, 2016 (“the Law”) was recently enacted in the Cayman Islands. Once in force, the Law will allow a limited liability company (“LLC”) to be established with the combined features of a corporation (e.g. separate legal personality) and a partnership (e.g. allocation of profits and losses to its members and the possibility of a member or manager agreeing to be personally liable for all of the debts of the LLC). This adds to the existing structuring opportunities available to Cayman Islands stakeholders. Some of the new options which might be explored under the Law are described below, none of which has been tested because the Law is not yet in force.

LLC as a general partner in an exempted limited partnership

According to the Law, unless the LLC agreement provides otherwise, a LLC has the power to act as a general partner (sole or otherwise) of an exempted limited partnership. This will allow the members of the general partner (in the form of a LLC) to allocate profits and losses amongst themselves in a manner similar to the exempted limited partnership.

LLC as a management company

In addition to acting as a general partner, a LLC may operate as an investment management company, conducting securities investment business in respect

of Cayman Islands based investment funds. The LLC could therefore receive management fees and/or performance fees earned in respect of the management of other entities.

LLC as a private equity fund

A third use of a LLC might be to raise capital from private sources and invest in start-up companies that have innovative ideas or in growing companies that need capital for expansion. Hopefully, those companies would become immensely profitable or go public, ultimately resulting in returns for the LLC and allocation of profits to its members.

In another scenario, the capital raised may be combined with borrowed money to acquire a much larger, public company which may be experiencing financial or other challenges. With the expertise and new perspectives offered by the members or managers of the LLC, the newly acquired public company could see itself reorganised as a private company, having its management team rejuvenated and policies reformed. If the implementation of these changes results in profits, the LLC may consider making its investment available for sale as a public company once again. This could lead to a big payout for members or managers of the LLC.

How do we get started?

Any one or more persons may form a LLC for any lawful business, purpose or

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activity, whether or not for profit.

A LLC is registered by payment to the Registrar of Limited Liability Companies (the “Registrar”) of a registration fee and filing with the Registrar a registration statement containing:

- the name of the LLC and, if applicable, its dual foreign name together with its translated name;
- the address in the Cayman Islands of the registered office of the LLC;
- the term, if any, for which the LLC is formed (if not formed for an unlimited duration); and
- a declaration that the LLC 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 business of that LLC outside the Cayman Islands as contemplated by the LLC Law.

A certificate of registration will be issued by the Registrar, after which the LLC shall be deemed to be registered as of the date of filing.

Who will run the company after registration?

The member or members of a LLC shall enter into an LLC agreement to regulate the conduct of its business or affairs. Unless otherwise provided in the agreement, its management shall be

vested in its members acting by a majority. However, the LLC agreement may provide for management in whole or part by one or more managers and for specified remedies, sanctions or consequences to apply where a member or manager fails to perform in accordance with, or to comply with the terms and conditions of, the LLC agreement.

Such remedies, sanctions or consequences may include reduction, elimination, forfeiture or sale of the member's LLC interest or any rights of the member under the LLC agreement. These are not entirely new provisions as offending members will be treated in a manner similar to defaulting partners in an exempted limited partnership.

Why you should pay attention to the new legislation?

Once the Law comes into force by an order to be passed by the Cayman Islands government, clients must ensure that they understand their duties, rights and remedies as managers or members of a LLC. This will include taking Cayman Islands legal advice and not simply signing off on documentation purporting to fairly address all rights. After all, each transaction is different and the provisions that will appear in LLC agreements will vary depending on whether legal counsel is representing a manager or a member.

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