

In response to requests from the investment funds industry, the Cayman Islands has recently introduced draft legislation (the "Cayman LLC Legislation") for the establishment of a new type of vehicle – a Cayman Islands Limited Liability Company ("LLC").

Currently, there are three main structures used for fund formation, the exempted company, exempted limited partnerships and unit trusts. The LLC will be similar in concept to the Delaware Limited Liability Company in that it combines features of the exempted limited partnership and a company limited by shares, with the result that the LLC will be a body corporate with separate legal personality with liability of members limited to the amount the member has undertaken to contribute as expressly provided in the LLC agreement or other agreement between the member and the LLC. The proposed LLC structure is expected to have certain characteristics of, and the flexibility to allocate profits and losses to its members in a manner akin to partners in, an exempted limited partnership.

The LLC is aimed at providing a more flexible and compatible vehicle for fund structures.

Main Features

Below is a brief summary of the main features of the LLC.

- Formation – a registration statement will be filed with the registrar of limited liability companies in the Cayman Islands and the requisite filing fee paid.
- Nature of business – an LLC may be formed for any lawful business, purpose or activity, whether or not for profit.
- Membership – in general an LLC must have at least one member at all times. However there are limited circumstances contemplated where the Cayman LLC may have no members.
- Name - unlike an exempted company, there is no requirement for an LLC to include in its name the terms "LLC" or "limited liability company".
- Separate legal personality - from the date of registration, the LLC will be a body corporate, with a legal personality separate from that of its members.
- Limited Liability - generally, the debts and obligations of the LLC are solely the liabilities of the LLC, unless the operating agreement provides that a member or manager is personally liable for all the debts, obligations and liabilities of the LLC.
- Classes of LLC interests - an LLC agreement may provide for classes of LLC interests or groups of members having relative rights and classes or groups of managers having such relative rights, powers and duties as the LLC agreement may provide.
- No Bearer Shares – the LLC is not permitted to issue bearer LLC interests, bearer coupons, or bearer certificates.
- Tax undertaking - the LLC may apply for an undertaking (for up to 50 years) that no tax in the nature of estate duty or inheritance tax shall be payable in respect of the obligations of the LLC and that no tax shall be levied on the profits, income, gains or appreciation of the LLC.
- Statutory Requirements – the LLC must:
 - maintain a registered office in the Cayman Islands
 - maintain a register of members, a register of managers and a register of mortgages and charges
 - cause to be kept proper books of account (for least 5 years) as are necessary to give a true and fair view of the business and financial condition of the LLC and to explain its transactions
- Management – the LLC may be managed by its members (who are free to agree amongst themselves the internal workings of the LLC) or by one or more managers that are not members pursuant to the terms of the operating agreement of the LLC.
- Delegation - unless otherwise provided in the LLC agreement, a manager may delegate his rights and powers to manage and control the business or affairs of the Cayman LLC to various persons.
- Conversions/Transfers of LLC interest – existing Cayman exempted companies may convert to an LLC and foreign limited liability companies may merge or migrate into Cayman as LLCs.
- Exiting as a member of the LLC - a member may exit:
 - generally, upon the happening of a specified event stated in the operating agreement to result in exit
 - upon transfer of the LLC interest (including transfer by a personal representative following the death of a natural person who was a member)
 - unless otherwise provided in the operating agreement, upon purchase or redemption of the relevant LLC member's interest by the LLC
 - upon withdrawal of the member as provided by the terms of the operating agreement or as otherwise provided in the Cayman LLC legislation or with the consent of all of the other members of the LLC

For more information contact:-

Alric Lindsay - alindsay@higgsjohnson.com; Francine Bryce - fbryce@higgsjohnson.com; or

Jo-Anne Stephens - jstephens@higgsjohnson.com

The information contained in this bulletin is provided for the general interest of our readers, but is not intended to constitute legal advice. Clients and the general public are encouraged to seek specific advice on matters of concern. This bulletin can in no way serve as a substitute in such cases. Copyright ©2015 Higgs & Johnson. All rights reserved.