

# Cayman Limited Liability Companies – one of the most significant legislative developments of 2016

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One of the most significant pieces of legislation introduced in the Cayman Islands last year was the Limited Liability Companies Law, 2016 which was enacted in June 2016 and commenced on 8 July 2016. In Asia, the limited liability company (“LLC”) hasn’t been flying off the shelves just yet but gradually we are seeing more and more interest. Practitioners would be well placed to understand some of the advantages of the LLC so as to be able to present this option to clients when appropriate to do so.

In a nutshell, an LLC is a hybrid entity incorporating characteristics of a partnership and a company. Unlike a partnership, it has separate legal personality. The members of an LLC, like the shareholders of an exempted company, will have limited liability and will not be required to make any contribution to the LLC exceeding the amount such member has undertaken to contribute pursuant to the LLC Agreement constituting the LLC. It is similar, but not the same, as its Delaware counterpart.

Given its hybrid nature it has far greater flexibility than a company, particularly in two key areas: in respect of its management and organisation and in the manner in which it can allocate profits and losses.

Unlike an exempted company, an LLC will not have a share capital. Instead, members will be issued interests or classes of interests. This will allow for flexible internal accounting and record keeping whereby an LLC member may have a capital account and make capital contributions in accordance with the LLC Agreement (in a manner similar to a partnership).

The members of an LLC may agree amongst themselves how the profits and losses of the LLC are to be allocated and how and when distributions are to be made, which may be on a non-pro rata basis. This might be useful where, for example, the LLC Agreement provides for tax distributions which would be on a non-pro rata basis given that distributions are made at

different times to meet tax liabilities of the members. This is difficult to mirror in a corporate structure where distributions on shares of the same class would need to be made pro rata.

The agreement by which an LLC is governed, the “LLC Agreement”, can provide for classes or groups of managers with differing rights, powers and duties and managers may be permitted to act in the best interests of a particular member. Therefore the LLC can be extremely useful for joint venture arrangements and might prove a favourable choice when establishing the manager or general partner of a fund.

Whether a Cayman LLC will be tax transparent or tax opaque will be a matter for the relevant onshore jurisdiction. There may be a degree of flexibility under the onshore jurisdiction’s tax law to treat a Cayman LLC as either depending on the drafting of the LLC Agreement. It will be necessary to check with relevant tax advisors that the desired tax treatment will apply.

The introduction of the law demonstrates the continued ability of the Cayman Islands to be flexible and responsive to market needs and should reinforce the Cayman Islands’ position as a domicile of choice for offshore investment funds and structuring vehicles.

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