

# Cayman Islands limited liability companies

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## Introduction

A Cayman Islands limited liability company (LLC), formed under the Limited Liability Companies Act (as amended, the **LLC Act**), is a hybrid entity which, essentially, combines the characteristics of a **Cayman Islands exempted company** with those of a **Cayman Islands exempted limited partnership**. Like an exempted company, it is a body corporate with separate legal personality, but unlike an exempted company, it does not have share capital. Member liability is limited and capital accounts are permitted, whilst, similar to the freedoms afforded to partners of an exempted limited partnership, the members are free to determine amongst themselves in the LLC agreement how profits and losses are allocated and how and when distributions are made.

The LLC Act allows for existing companies to convert into LLCs, for the merger or consolidation of an LLC with an exempted company or a foreign company, and permits transfers by way of continuation into or out of the Cayman Islands.

The LLC is in many respects similar to a Delaware limited liability company but with modifications to align it with exempted companies and exempted limited partnerships.

## Advantages

The LLC is suitable to act as a private equity or other closed-ended fund vehicle, as an alternative to the exempted limited partnership (which does not enjoy separate legal personality) or the exempted company (which can be constrained by share capital rules and cumbersome in the operation of capital call and default mechanics). As a fund vehicle, the LLC allows for simplified fund administration, with its increased flexibility facilitating easier tracking or calculating of a member's investment in the LLC.

For similar reasons, the LLC is a popular special purpose acquisition vehicle, particularly since lenders benefit from the ability of the LLC to grant security interests over its assets or the members to grant security interests over their membership interests. Equally, the LLC is well-suited to act as a joint venture vehicle on the basis that its members are free to act in their own best interests.

Some key advantages of an LLC include:

- no requirement to keep its register of members open for public inspection;
- no requirement to hold an annual general meeting;
- no requirement for Cayman resident directors;
- capital may be expressed in any currency or in multiple currencies;
- flexibility to transfer the LLC by way of continuation from another jurisdiction to the Cayman Islands and *vice versa*; and
- flexibility to alter the LLC agreement without restriction.

An LLC may also apply for a written undertaking that should taxes ever be introduced in the Cayman Islands, the LLC will remain tax-free for a period of up to 50 years from the date of the undertaking.

### **Prohibitions**

An LLC is prohibited from:

- trading in the Cayman Islands except in furtherance of its business carried on outside of the Cayman Islands unless it holds a licence to carry on business in the Cayman Islands under any applicable law; and
- making any invitation to the public in the Cayman Islands to subscribe for any of its securities unless it is listed on the Cayman Islands Stock Exchange.

### **Management and corporate governance**

The LLC agreement, which need not be filed with the registrar, is the constitutional document regulating the LLC's business and affairs. Although the LLC agreement may provide for different types of membership interests to have different rights or allocations as to profits and losses or in respect of particular assets, the LLC Act does not provide for statutory segregation of assets and liabilities with respect to creditors in the manner of a Cayman Islands segregated portfolio company. In other words, the LLC Act does not offer the 'series' feature permitted under Delaware law.

The considerable flexibility of the LLC Act allows the members to manage the LLC as they see fit. The LLC may be managed by any one or more of its members or the members may, in the LLC agreement, appoint a manager (who need not be a member) or a board of managers to manage the LLC's affairs. In addition, the members or manager may appoint advisory boards or committees in the same way as an exempted limited partnership. There are no statutory restrictions on the minimum or maximum number of managers. Managers need not be resident in the Cayman Islands nor have any other qualifications.

Subject to the LLC agreement, members, managers and board or committee members owe no duty to the LLC or any member except the duty of a manager to act in good faith. A member may, when voting, act in its own best interests even though that may not be in the best interests of the LLC. Board and committee members may, if expressly permitted by the LLC agreement, act in a manner which that person believes to be in the best interests of a particular member or members, even though it may not be in the best interests of all members or the LLC itself.

### **Incorporation**

Any one or more persons may incorporate an LLC for any lawful business, purpose or activity provided that at all times the LLC will have at least one member.

### **Registration statement**

An LLC is registered by paying a registration fee of US\$1,098 and filing with the Registrar of LLCs (the **Registrar**) a statement (the **Registration Statement**) containing the following:

- the name of the LLC;
- the address in the Cayman Islands of the registered office;
- the name and address of the initial members who hold an interest in the LLC at the time of formation;
- the nature of the LLC's business;
- the date of the LLC's financial year end;
- if not formed for an unlimited duration, the term of the LLC; 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 to conduct business exterior to the Cayman Islands.

The information contained in the Registration Statement will be open to inspection by the public for a fee.

## Name

The name may, but need not, contain the words 'Limited Liability Company', 'L.L.C.' or 'LLC'. It must not resemble too closely a name already on the register. It is advisable to check name availability in advance. Certain words are restricted without the requisite regulatory approval, such as 'bank', 'insurance', etc.

## Timing

LLCs can be formed on a same day basis. No prior Government consents or approvals are required. Incorporation documents will usually be returned by the Registrar within five to seven working days, although there is an express service available (for an additional fee) under which documents will be returned within 24 hours.

## Registered office

An LLC is required to maintain a registered office in the Cayman Islands, which fulfils certain statutory functions (see '[Continuing obligations](#)' below). Our affiliate Mourant Governance Services (Cayman) (**MourantGS**) will typically provide the registered office for LLCs we incorporate; this allows easy access to corporate documents when providing legal advice.

Any member of the public shall be entitled to be informed by the Registrar upon request of the location of the registered office of any LLC.

## Continuing obligations

### Registers

**Register of members:** an LLC is required to keep a register of members containing;

- the names and addresses of the members of the LLC;
- the date(s) on which each person became or ceased to be a member;
- information on the interest held by each member of the LLC, including:
  - each group or class, if any, of LLC interest held by the member;
  - whether the LLC interest held by the member confers the right to vote on any matter which is to be voted on;
  - whether the member has the right to vote as a consequence of membership of any group of members or otherwise; and
  - whether such right is conditional.

The register of members must be updated within 21 days of any change. The register of members need not be, but is usually, kept at the registered office. Where the register of members is kept at a place other than the registered office, an LLC must maintain the information contained in the register of members at its registered office. It is only open to inspection by any person expressly provided for in the LLC agreement or permitted by the manager.

**Register of managers:** an LLC must maintain a register of managers at its registered office. A copy of the register of managers must be filed with the Registrar, with any change to be filed within 30 days. The Registrar will maintain a list of the names of current managers of an LLC which is open to public inspection for a fee.

**Register of mortgages and charges:** an LLC must maintain a register of all mortgages and charges over its property at its registered office. This register does not need to be filed with the Registrar.

**Beneficial ownership:** unless an alternative route to compliance is available, an LLC must establish and maintain a beneficial ownership register at its registered office. Further details are set out in '[Beneficial ownership](#)' below.

## Accounts

An LLC is not obliged to have its accounts audited, or to file annual accounts with the Cayman Islands authorities (unless it is a registered fund or otherwise licensed or regulated). However, an LLC is required to keep proper books of account which give a true and fair view of its business and financial condition. The books of account can be held anywhere.

The Banks and Trust Companies Act, Insurance Act, Mutual Funds Act, Private Funds Act and Companies Management Act (each as amended) contain provisions for the filing of audited accounts for entities registered or licensed under those laws. In all other cases, the LLC agreement will usually set out what is required by the LLC in respect of accounts.

## Filings

An LLC must notify the Registrar within 30 days of any changes to its Registration Statement or its directors and officers. In January each year, it must also pay an annual fee and file an annual return stating the nature of the business and certifying that it has complied with the provisions of the LLC Act. As part of its service as registered office provider, MourantGS will attend to any filings required under Cayman Islands laws (provided it is first notified by the LLC of the matter in respect of which the filing is required).

## Beneficial ownership

An LLC is required to identify and report certain particulars of its registrable beneficial owners to its corporate services provider who will use this information to establish and maintain the beneficial ownership register at the registered office.

Certain entities including regulated investment funds, licensed entities and listed entities may, however, opt to utilise an alternative route to compliance, in which case they do not need to maintain a beneficial ownership register. For example, regulated investment funds may opt to appoint a licensed fund administrator or another person licensed or registered with CIMA to act as a contact person responsible for responding to requests for beneficial ownership information which may be received from the competent authority.

Registrable beneficial owners include:

- an individual 'beneficial owner' that (i) holds, directly or indirectly, 25% or more of the shares or voting rights in the LLC; (ii) that otherwise exercises ultimate effective control over the management of the LLC; or (iii) is identified as exercising control of the LLC through other means; or
- a 'reportable legal entity' (other than a foreign entity) which if it were an individual would be a beneficial owner of the LLC and (i) that directly holds a relevant interest in the LLC or otherwise exercises ultimate effective control over the management of the LLC; or (ii) through which any beneficial owner or reportable legal entity indirectly holds a relevant interest in the LLC.

The information contained in the beneficial ownership register may be accessed by certain official bodies or, on approval of an application to the competent authority, by a limited category of persons with a legitimate interest in accessing the information for the purpose of preventing, detecting, investigating, combating or prosecuting money laundering or terrorist financing.

Please see our guide to [The Cayman Islands beneficial ownership regime](#) for further details.

## Economic substance

Every entity incorporated or registered in the Cayman Islands will be required to notify the Cayman Islands Tax Information Authority (TIA) annually, via the General Registry and as a prerequisite to filing the annual return, of whether or not it is carrying on a 'relevant activity' for the purposes of the Cayman Islands economic substance regime. The definition of 'relevant activity' excludes 'investment fund business' (meaning the business of operating as an investment fund), and entities that are tax resident outside of the Cayman Islands. Such entities will still be required to make a corresponding notification to that effect.

Please see our guide on [Economic substance in the Cayman Islands](#) for further details.

## Automatic exchange of financial information

The Cayman Islands has automatic exchange of information regimes in place for reporting under the US Foreign Account Tax Compliance Act (**FATCA**) and the OECD's common reporting standard (**CRS**). Cayman Islands vehicles classified as 'Cayman Reporting Financial Institutions' are subject to registration, reporting, due diligence and administrative obligations.

In addition to the registration and reporting required:

- each 'Cayman Reporting Financial Institution' under CRS is also required to establish, maintain and implement written policies and procedures, even where the performance of CRS obligations has been delegated to a third party;
- each entity required to register with the TIA must appoint a 'principal point of contact' (**PPOC**) for the TIA to communicate with and a person authorised to notify the TIA of any changes to the PPOC; and
- each entity registering with the United States' Internal Revenue Service must appoint a 'Responsible Officer' who provides certifications regarding compliance with FATCA.

## Migration

A foreign entity formed, registered, incorporated or existing in a jurisdiction whose laws permit or do not prohibit the transfer, may become a Cayman Islands LLC by making application to the Registrar. The entity must be constituted in a form or substantially in a form that has separate legal personality. Similarly, an LLC may apply for authorisation to seek continuance as a foreign entity under the laws of another jurisdiction, provided that the transfer is permitted by and has been approved in accordance with the LLC agreement. For more details, see our guides on [Transfer by way of continuation into the Cayman Islands](#) and [Transfer by way of continuation out of the Cayman Islands](#).

## Taxation

There are no forms of direct taxation applicable to LLCs in the Cayman Islands (although stamp duty may be payable on original documents executed in or brought to the Cayman Islands). As noted above, an LLC may apply for an undertaking from the Financial Secretary of the Cayman Islands that the LLC will be exempt for a period of up to 50 years from any legislation imposing taxes on profit, capital gains or inheritance should such legislation be introduced in the Cayman Islands. In practice, the undertaking is usually given for an initial 20 year period which may then be extended.

## Contacts

A full list of contacts specialising in Cayman Islands corporate law can be found [here](#).