

The dawn of Cayman Islands LLCs

May 2016

What has happened?

The Cayman Islands published a bill on 18th December 2015 ([the Bill](#)), which, if ultimately approved by the Cayman Islands Legislative Assembly, will provide for the formation and operation of the Cayman Islands limited liability company (LLC).

What has driven the development of LLCs in Cayman?

The main driver behind the development of Cayman LLCs has been the US funds industry.

Cayman has long been the preferred offshore jurisdiction for US promoters using fund structures and, from an onshore perspective, LLCs (particularly Delaware LLCs) are widely used for both closed ended and open ended funds.

Demand for an equivalent Cayman structure has been strongly voiced by funds participants over a number of years. The ability to use a flexible Cayman LLC incorporating a number of features which are familiar to US fund promoters and their counsel will be of great interest and will assist in keeping Cayman at the forefront of offshore fund structuring both in the US and in other jurisdictions.

In addition to the funds industry, it is also anticipated that the flexibility of LLCs will be useful in a wider context, including group structuring and joint ventures, where provisions such as ease of funds flows and contractual flexibility will be welcomed.

Key features of the Cayman LLC

The LLC is intended to replicate many of the features of a Delaware LLC within the context of Cayman law.

Many of its features combine the flexibility of Cayman exempted limited partnerships (ELPs) with certain features of exempted companies.

Headline features of the LLC include:

- Separate legal personality as a body corporate – unlike ELPs which have no separate legal personality
- No share capital - the LLC Agreement is able to contractually set out flexible profit/loss allocation provisions using partnership- style capital accounts and capital commitments/contractual distribution mechanisms subject to cash-flow solvency (i.e. being able to pay debts as they fall due in the ordinary course of business)
- May be member managed or the LLC Agreement can provide for separate manager(s)
- No requirement for filing the LLC Agreement with the Cayman Registrar (unlike Memorandum and Articles of Association) – there will be a simple registration statement filing requirement similar to ELPs

- Flexible redemption/repurchase provisions subject to cash-flow solvency
- Limited liability of members (to the amount stated in the relevant LLC Agreement)
- Ability to convert from an exempted company to a LLC
- Incorporation of familiar Cayman Companies and ELP Law restructuring provisions to LLCs including mergers /consolidations/migrations in and out/schemes of arrangement/squeeze-outs at 90% in value
- Fiduciary duties owed by members/managers/board and committee members limited to good faith (which may be expanded/restricted by the LLC Agreement)
- Persons serving on boards/committees of the LLC may also act in the interests of a particular member even though it may not be in the best interests of all members or the LLC – a potentially useful departure from the fiduciary duties relating to directors of exempted companies
- Flexible voting provisions (including statutory recognition of negative consent provisions and less than unanimous written resolution provisions)
- Limited claw-back provisions - where members have received a distribution or release from an obligation at a time when the LLC is (cash-flow) insolvent (including where the distribution/release would cause such insolvency) but applying only where they had knowledge of such insolvency
- Tax undertakings for 50 years - confirming the established Cayman tax-free position
- Registers of members/managers/mortgages and charges to be maintained.

What's next?

The Cayman Legislative Assembly still has to approve the Bill, may make further amendments to it, and, after approval, may delay its actual commencement to allow for other consequential legislation to be drafted/implemented.

It is currently anticipated that the Bill will be approved and come into effect in the first quarter of 2016.

Collas Crill will provide a more detailed legal update once the Bill is approved.

In the meantime, if you have any questions on Cayman LLCs please contact Joss Morris, Alan de Saram or your usual Collas Crill contact.