

Cayman approves Limited Liability Companies Bill, 2015

News - 06/05/2016

On 6 May 2016, the Limited Liability Companies Bill, 2015 (the **Law**) was approved by the Legislative Assembly of the Cayman Islands. It is expected that accompanying regulations (including fee schedules) will be published soon and that the Law, will come into force by the summer.

Once the Law is enacted (by way of a separate commencement order), a new class of Cayman Islands entity, the limited liability company (LLC), will be available for use by clients seeking to establish fund and corporate structures in the Cayman Islands. The introduction of the LLC is a response to demand from the investment funds and financial services industry and will reinforce the position of the Cayman Islands as the leading jurisdiction for offshore investment funds and offshore corporate and SPV structures.

Characteristics of an LLC

The LLC is based on the Delaware limited liability company, but also draws on some well recognised features of Cayman's successful exempted company and exempted limited partnership. Below we summarise some key characteristics of the LLC.

- An LLC is a body corporate with separate legal personality and limited liability for its members which may be formed for any lawful purpose.
- Only one member is required to register an LLC, which is achieved by filing with the Registrar a registration statement (in a manner similar to the process used to register a Delaware LLC) and payment of the appropriate fee.
- The internal governance and management arrangements of the LLC may be determined by the members amongst themselves, subject to certain statutory provisions. Such arrangements are to be set out in the LLC Agreement. By contrast with the requirement to file the articles of association of a Cayman Islands exempted company, the LLC Agreement is not filed with the Registrar.

- Management of the LLC may be undertaken by one or more managing members or by one or more non-member managers. There is flexibility to determine the scope of duties that will be owed by the manager to the LLC, subject to a minimum duty to act in good faith.
- Members have no duties (fiduciary or otherwise) when exercising their rights or authorities or performing any of their obligations under the LLC Agreement.
- Members have capital accounts and make capital contributions rather than subscribing for shares. Profits and losses are allocated among members in the manner set out in the LLC agreement in a manner consistent with the way a Delaware LLC or a Cayman Islands exempted limited partnership allocates profits and losses.
- There are no capital maintenance requirements to limit the ability to make distributions, only a cash-flow based solvency test.
- An LLC must maintain a register of members, a register of managers, a register of security interests and a register of mortgages and charges. As with the register of directors of an exempted company, the register of managers must be filed with the Registrar. The Registrar must be notified within 60 days of any change of manager.
- The Law permits an existing Cayman Islands exempted company to merge with, consolidate with or convert to an LLC and permits non-Cayman Islands entities to re-register and continue into the Cayman Islands as LLCs.
- An LLC may apply for a 50 year tax undertaking certificate from the Cayman Islands Government on the same terms as currently available to exempted companies, exempted limited partnerships and exempted trusts.
- The Law states that the rules of equity and common law applicable to companies registered in the Cayman Islands will apply to LLCs, save where such rules are inconsistent with the express provisions of the Law or the nature of an LLC. This enables Cayman Islands courts to use existing case law when applying and interpreting the Law and means that there will be a body of helpful common law in place from the outset.

Some possible uses of LLCs

We anticipate that LLCs will be suitable for a range of uses in investment funds and other international structures, and in corporate transactions generally. Some potential uses are set out below.

- Investment fund structures. Currently, where a Cayman Islands exempted limited partnership is used in a fund structure, its general partner is typically either a Delaware LLC or a Cayman Islands exempted company. The Cayman LLC will enable clients who prefer to use an LLC as general partner to keep the mind and management of the exempted limited partnership entirely offshore. Where, in a master-feeder structure, the US feeder is an LLC,

the ability to use an LLC for the Cayman feeder should enable greater ease of administration with consequent cost savings.

- Joint Venture Companies (where the business of the joint venture is outside the Cayman Islands). An LLC enables flexible treatment of profits and losses free from the capital-maintenance rules applicable to companies; potentially favourable pass-through treatment of profits and losses for tax purposes; and, by contrast with a Cayman company, the ability to stipulate, in the LLC agreement, that a person appointed to a board or committee by a particular member may act in the best interests of that member rather than the LLC and increased flexibility to specify the extent of duties of board members.
- Private equity sponsor vehicles. The flexibility of management and economics of an LLC is likely to make it a natural choice for carry vehicles and special limited partners in private equity structures, particularly where participating principals are located outside the US.
- Securitisation SPV. The ability for “orphan status” (whereby the interest in the SPV is held by a purpose trust so that the underlying asset pool being securitised is off balance sheet and not consolidated with the originator) to be achieved by a STAR trust holding a membership interest in an LLC makes an LLC an alternative to the traditional approach of using an exempted company to hold the underlying asset pool with the STAR trust holding shares in the exempted company SPV.
- Holding company. Currently, a Delaware LLC is frequently the vehicle of choice to act as the holding entity of a corporate group. The Cayman Islands has key advantages that contribute to its entrenched status as a leading international financial centre, such as tax neutrality, legal respectability (grounded in the application of common law, with the Privy Council at its apex) and a pro-investment culture. Undoubtedly, there will be circumstances where these advantages make the case for a Cayman LLC to be preferred to a Delaware LLC.

Ogier has worked closely with the Cayman Islands Government and been centrally involved with the development of the Law and we are well placed to assist clients seeking to use LLCs for fund and corporate structures and transactions.

If you have any questions relating to the foregoing and would like to discuss further, please reach out to your usual Ogier contact or one of the Partners listed here.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our

people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

Meet the Author



[Nick Rogers](#)

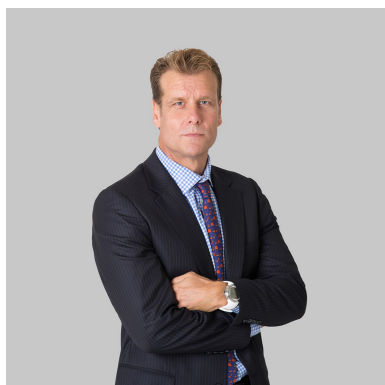
Partner

[Cayman Islands](#)

E: nick.rogers@ogier.com

T: [+1 345 815 1844](tel:+13458151844)

Key Contacts



[James Bergstrom](#)

Partner

[Cayman Islands](#)

E: james.bergstrom@ogier.com

T: [+1 345 815 1855](tel:+13458151855)



Angus Davison

Partner

Cayman Islands

E: angus.davison@ogier.com

T: +1 345 815 1788



Bradley Kruger

Partner

Cayman Islands

E: bradley.kruger@ogier.com

T: +1 345 815 1877



Justin Savage

Partner

Cayman Islands

E: justin.savage@ogier.com

T: +1 345 815 1816



Giorgio Subiotto

Partner

Cayman Islands

E: giorgio.subiotto@ogier.com

T: +1 345 815 1872



Nicholas Plowman 律師

Partner 律師

Hong Kong

E: nicholas.plowman@ogier.com

T: +852 3656 6014



Kate Hodson 律師 . 律師

Partner and Head of ESG (Legal) 律師

Hong Kong

E: kate.hodson@ogier.com

T: [+852 3656 6049](tel:+85236566049)



Joanne Huckle

Partner

Cayman Islands

E: joanne.huckle@ogier.com

T: [+1 345 815 1895](tel:+13458151895)

Related Services

Corporate

Investment Funds

Hedge Funds

Regulatory

Tax

Legal

Related Sectors

Private Equity