



## Commencement of the Cayman Islands Limited Liability Companies Law, 2016

8 July 2016

We are delighted to report that the Limited Liability Companies Law, 2016 (“LLC Law”) has commenced today, 8 July 2016, whereby a Cayman Islands Limited Liability Company (“LLC”) will be available for the first time from Wednesday, 13 July 2016.

As noted in our [prior client advisory](#), an LLC will be very similar to a Delaware limited liability company. An LLC will be flexible as it permits the parties to agree the terms applicable to it in the LLC Agreement. This added flexibility delivers greater choices in the structuring of any international transaction. The introduction of the LLC will complement the existing stable of legal vehicles available in the Cayman Islands for international transactions, including exempted companies, exempted limited partnerships and trusts.

Based on consultation with the US financial services industry and other market participants, the expected uses of an LLC are wide ranging and dependent on tax and regulatory considerations. They include using an LLC as (i) holding companies or SPVs, (ii) joint ventures (on the basis that the terms of the joint venture can be contained in the LLC Agreement); (iii) the general partner or carry vehicle for private equity funds; (iv) corporate private equity fund vehicles; (v) offshore feeders in a master-feeder structure for hedge funds; and (vi) risk retention vehicles for CLOs.

The LLC Law is largely based on the current Delaware Limited Liability Companies law, with certain changes for Cayman Islands law and concepts. The key features of a Cayman Islands LLC are:

- » It will be a body corporate with separate legal personality, having at least one member.
- » The liability of a member to make contributions to the LLC will be limited to such amounts as agreed in the LLC Agreement.
- » Registration of the LLC will be effected by the filing of a registration statement with the Registrar of Limited Liability Companies in the Cayman Islands (the “Registrar”). The LLC Agreement is not required to be filed with the Registrar.
- » Members are free to agree among themselves the internal workings of the LLC in the LLC Agreement. This includes agreeing mechanisms such as capital accounting and capital commitments, allocations of profits and losses, allocations of distributions, voting rights (including negative consents) and classes of interests.
- » The management of the LLC shall either vest in its members acting by a majority in number or, if the LLC Agreement provides, by one or more managers. A manager of an LLC is akin to a director of a Cayman Islands company.
- » Subject to the provisions of the LLC Agreement, a manager of a LLC shall not owe any duty (fiduciary or otherwise) to the LLC or any member or any other person except a duty to act in good faith, and such duty of good faith may be expanded or restricted by the express provisions of the LLC Agreement.



- » An LLC shall not make a distribution or release a member from any obligation to the LLC to the extent that the LLC is insolvent at such time. A member who receives a distribution or is purportedly released and who had actual knowledge the LLC was insolvent at the time of the distribution or purported release, shall be liable for the amount of the distribution or for performance of the obligation purportedly released.
- » An LLC shall maintain a register of its members, a register of its managers, a register of mortgages and charges and a register of security interests of LLC interests. The register of managers will need to be filed with the Registrar of Limited Liability Companies (similar to how a Cayman Islands company must file its register of directors with the Registrar of Companies).
- » An existing exempted company can convert into an LLC but not vice versa at this stage. Exempted limited partnerships and segregated portfolio companies will not be able to convert into LLCs at this stage.
- » An LLC may merge or consolidate with exempted companies or any foreign entity with separate legal personality.
- » Transfer by way of continuation into the Cayman Islands and transfer by way of continuation out of the Cayman Islands are also permitted for LLCs.

Walkers is a member of the legislative drafting subcommittee for the LLC Law and has been working extensively with the Cayman Islands government and government authorities (including the Registrar of Companies and the Cayman Islands Monetary Authority) on the commencement and implementation of the LLC Law. We are delighted to be part of such an innovative initiative and would be pleased to discuss any queries that you may have regarding a Cayman Islands LLC.

## Key Contacts

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