

# Cayman Islands - Migration into Cayman as a Limited Liability Company

## Introduction

The object of this Memorandum is to provide clients of Walkers with information on the process involving migration of limited liability companies ("**LLC**") to the Cayman Islands.

## Migration to the Cayman Islands

Part 10 of the Limited Liability Companies Law (2020 Revision) (as amended) of the Cayman Islands (the "**LLC Law**") permits any foreign entity (the "**Applicant**") to apply to the Registrar of Limited Liability Companies (the "**Registrar**") to be registered by way of continuation as an LLC in the Cayman Islands. A "foreign entity" means a foreign company or a body corporate or corporation of any kind with legal personality, statutory trust, common law trust, any unincorporated business (including a partnership, whether general or limited and whether or not with legal personality) formed, incorporated, created or that otherwise came into being under the laws of any jurisdiction outside the Cayman Islands.

## Pre-conditions to registration

The Applicant must:

1. be formed, registered, incorporated or existing in a jurisdiction whose laws permit or do not prohibit the transfer of the Applicant in the manner provided by the LLC Law (the "**Relevant Jurisdiction**");
2. pay to the Registrar a registration fee of US\$976;
3. have a name acceptable to the Registrar;
4. deliver to the Registrar (including by permitted electronic means) the following documents executed by one or more authorised persons:
  - (a) an **application** for the continuation as a LLC which will need to state:
    - (i) the date on which and jurisdiction where the Applicant was first formed, registered, incorporated, created or otherwise came into being and the dates on which and the jurisdictions to which the Applicant may have been subsequently migrated;
    - (ii) the name of the Applicant immediately prior to the filing of the application for the continuation of a LLC;
    - (iii) the name of the LLC upon registration in the Cayman Islands;
    - (iv) the future effective date or time of the continuation as a LLC if it is not to be effective upon the filing of the application for the continuation of a LLC and the registration statement; and
    - (v) the jurisdiction that constituted the principal place of business or central administration of the Applicant, or any other equivalent thereto under applicable law, immediately prior to the filing of the application for continuation of a LLC; and
  - (b) a **registration statement** (Section 5 statement) containing the following information in respect of the LLC: (i) its name; (ii) the address of its registered office in the Cayman Islands; (iii) the name(s) and address(es) of the initial member(s); (iv) it's the financial year end; (v) the nature of its business; (vi) if the LLC has not been formed for an unlimited duration, the term, if any, for which the LLC has been

formed; and (vi) a declaration that the LLC shall not undertake business with the public in the Cayman Islands other than so far as may be necessary for the carrying on of the business of that LLC outside the Cayman Islands as contemplated by the LLC Law;

- (c) an **undertaking** that notice of the transfer has been or will be given within 21 days to the secured creditors of the Applicant;
- (d) a **voluntary declaration or affidavit** of an authorised person of the Applicant to the effect that, having made due enquiry, the authorised person is of the opinion that the requirements of the following paragraphs have been met or do not apply, and which declaration or affidavit shall include a statement of the assets and liabilities of the Applicant made up to the latest practicable date before making the declaration or affidavit:
  - (i) no petition or other similar proceeding has been filed and remains outstanding or order made or resolution adopted to wind up or liquidate (or to take any analogous steps) the Applicant in any jurisdiction;
  - (ii) no receiver, trustee, liquidator or administrator or other similar person has been appointed in any jurisdiction and is acting in respect of the Applicant, its affairs or its property or any part thereof;
  - (iii) no scheme, order, compromise or other similar arrangement has been entered into or made in any jurisdiction whereby the rights of creditors of the Applicant are and continue to be suspended or restricted;
  - (iv) the Applicant has confirmed that it is able to pay its debts as they fall due;
  - (v) the application for registration is bona fide and not intended to defraud existing creditors of the Applicant;
  - (vi) any consent or approval to the transfer required by any contract or undertaking entered into or given by the Applicant has been obtained, released or waived, as the case may be;
  - (vii) the transfer is permitted by and has been approved in accordance with the charter documents of the Applicant;
  - (viii) the Applicant is formed, registered, incorporated or existing in a Relevant Jurisdiction and the laws of such Relevant Jurisdiction with respect to transfer have been or will be complied with;
  - (ix) the Applicant is constituted in a form that has separate legal personality; and
  - (x) the Applicant will, upon registration hereunder, cease to be formed, registered, incorporated or exist under the laws of the Relevant Jurisdiction.

## Effect of registration

Upon registration of an Applicant, a certificate that the Applicant is registered by way of continuation as a LLC is issued and the Registrar enters in the register the date of registration of the Applicant and may enter such other matters as the Registrar considers appropriate.

From the date of registration, the Applicant shall continue as a LLC for all purposes as if incorporated and registered as a LLC under and subject to the LLC Law the provisions of which shall apply to the Applicant and to persons and matters associated therewith as if the Applicant were so incorporated and registered and:

1. the Applicant shall have, but without limitation to the generality of the foregoing:

- (a) the capacity to perform all the functions of a LLC;
  - (b) the capacity to sue and to be sued and to defend legal proceedings in its name;
  - (c) perpetual succession; and
  - (d) the power to acquire, hold and dispose of property; and
2. the members of the LLC shall have such liability to contribute to the assets of the LLC in the event of its being wound up under the LLC Law,

and in connection with a continuation, rights or securities of, or interests in, the foreign entity that is to be continued as a LLC may be exchanged for or converted into cash, property, rights or securities of, or interests in, such LLC or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another LLC or other entity.

## Amendment of Charter documents

The Applicant is required, within ninety days of registration, to make such amendments, alterations, modifications, variations, deletions and additions, if any, to its charter documents as are necessary to ensure that they comply with the requirements of the LLC Law as they relate to a LLC.

## Notice of registration to be given in Gazette

The Registrar is required to publish in the Cayman Islands Gazette details of the new registration, the jurisdiction under whose laws the Applicant was previously incorporated, registered or existing and the previous name of the Applicant if different from the current name.

## Fees and costs on incorporation

### Legal fees

Our legal fees include preparing the necessary application documents and the first resolutions following registration, as well as any members' resolutions which may be necessary to adopt the new form of charter documents, obtaining the Tax Undertaking Certificate, carrying out the necessary filings with the Registrar and preparing the statutory registers.

All other services in relation to the specific requirements of the client, including special provisions in the LLC Agreement, powers of attorney and bank accounts, will be charged in accordance with our usual billing practices.

### Registration fees

US\$976.

### Miscellaneous disbursements

These are in addition and usually amount to approximately US\$500 and include stamp duty, filing fees, seal, nameplate and notarial fees.

We also advise clients to apply for a Tax Undertaking Certificate for a one-off fee of US\$1,830. Whilst this is optional, it gives clients comfort that no law enacted in the Cayman Islands after the date of the Undertaking imposing tax on profits, income or capital gains will apply to the LLC or its operations, and nor will any tax in the nature of estate duty or inheritance tax apply on or in respect of the shares, debentures or other obligations of the LLC. Although no such taxes currently exist or, to our knowledge, are contemplated, our clients invariably apply for this Undertaking for the additional certainty it provides.

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For further information please refer to your usual contact or:

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