

BRIEFING MEMO

Limited Liability Partnerships

Overview

The Cayman Islands recently passed Limited Liability Partnership Law, 2017 (Law) came into force on 5 June 2017, to allow for the establishment and registration of a new Cayman Islands vehicle: the limited liability partnership (an "LLP"). It is anticipated that the Registrar of LLPs in the Cayman Islands will start accepting applications to register LLPs in late 2017.

An LLP combines the flexible features of a general partnership but has the benefit of separate legal personality and affords limited liability status to all its partners. As such, an LLP is likely to become the preferred manner by which professional firms operating in the Cayman Islands structure their businesses.

An LLP's features and flexibility, however, will also provide an additional structuring option for other purposes, including in the financial services industry as, by way of example, a general partner or management vehicle or as a holding or fund of funds partnership.

Nature of an LLP

An LLP is distinct and different from other Cayman Islands partnership vehicles; the general partnership and exempted limited partnership alternatives. The key features and obligations of an LLP are as follows:

KEY FEATURES

- a) An LLP is a separate legal person distinct from its partners and may contract, hold assets and sue and be sued in its own name. An LLP is not a body corporate and, in this respect, differs from a UK LLP which structurally is more comparable to a corporate rather than partnership vehicle;
- b) An LLP affords limited liability to all its partners. The LLP, rather than the partners, is liable for such LLP's debts and losses. A partner may be liable for his / her own negligent acts or omissions where such partner has assumed an express duty of care and acted in breach of that duty;

- c) There is no requirement for an LLP to undertake its business 'with a view to profit', an LLP may be a helpful structuring option for not-for-profit organisations and other social enterprises;
- d) Partners may agree among themselves the internal workings and management arrangements of an LLP, which may be recorded in a partnership agreement (which is not filed with the Cayman Islands Government). Partners are agents of the LLP only and, unlike a general partnership, the partners are not agents of each other;
- e) Each partner's interest represents its rights (including economic, profit sharing and voting rights) and obligations as set out in the partnership agreement or, otherwise, in the LLP Law;
- f) A partner may assign or transfer a partnership interest and such assignee or transferee may, if permitted by the partnership agreement or by unanimous consent of other partners, be admitted as a partner with the attendant rights, benefits and obligations of such assigned or transferred interest;
- g) The LLP Law preserves certain rules of equity and common law, providing a foundation and guide to interpretation which the Cayman Islands courts may draw upon; and
- h) An LLP that submits a declaration that it shall not undertake business with the public in the Cayman Islands will be able to obtain a tax undertaking from the Cayman Islands Government that will provide a 50-year exemption from payment of direct corporate taxes if imposed in the future. Such tax undertaking will be in the same form as those currently available for exempted limited partnerships, exempted companies and limited liability companies.

OBLIGATIONS

- a) An LLP will be required to maintain certain statutory registers, notably a register of partners and register of mortgages. The name and address of each partner must be filed with the Registrar of LLPs in the Cayman Islands. The register of partners and register of mortgages and charges is open to inspection by any person at the registered office of the partnership during normal business hours; and
- b) An LLP will be required to file an annual declaration and pay a prescribed fee to the Registrar of LLPs in the Cayman Islands in January of each year.

LLP Formation Process

The registration of an LLP is simple and straightforward and involves filing a registration statement with the Registrar of LLPs in the Cayman Islands (similar to the requirements of a Cayman Islands exempted limited partnership) and payment of the appropriate fee. The LLP must be established by at least two persons (person defined as natural persons, a body corporate or other partnerships) who may carry on a business in common for any lawful purpose. The statement includes:

- a. The LLP name which must include one of the following suffixes: 'Limited Liability Partnership', 'LLP' or 'L.L.P.';
- b. General business purpose and duration;
- c. Registered address in the Cayman Islands; and
- d. Register of partners including identifying Managing Partner.

General Partnership to LLP Conversion

It is anticipated that a number of Cayman Islands businesses that are currently operating as a general partnership will want to consider restructuring and continuing as an LLP. The LLP Law provides an express regime by which a Cayman Islands general partnership may convert into, and continue with the benefits afforded to, an LLP. The LLP Law also specifies the consequences arising from such general partnership's change in legal status once converted into an LLP. In summary, the conversion process is commenced by the unanimous consent of a general partnership's existing partners and the filing of a registration statement, and payment of the accompanying fee, with the Registrar of LLPs in the Cayman Islands.

How JACOB LAW Can Help

We can provide assistance with LLP formation and advise any company seeking to convert to an LLP. For further information with respect to formations in the Cayman Islands our team is ready to assist, please contact us at: info@jacoblaw.ky +1(345) 926 3377 Suite 647 10 Market Street Camana Bay, Grand Cayman KY1-9005, Cayman Islands

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