

Cayman Islands limited liability companies

The Cayman Islands limited liability company (**LLC**) is a corporate vehicle closely aligned with the Delaware limited liability company. This guide sets out the key features of LLCs and how they can be formed under the Limited Liability Companies Act (**LLC Act**).

Overview

An LLC is a body corporate, with limited liability, which may be formed for any lawful purpose. LLCs are capable of exercising all the functions of a natural person.

Under the LLC Act, and unlike the position in Delaware, the member(s) must have an LLC agreement. However, the good news is that although the LLC Act contains numerous default positions which apply in the absence of express agreement, it also provides great flexibility to members of an LLC to regulate their relationship in their LLC agreement. Unless its LLC agreement provides otherwise, an LLC has the power to do all things necessary or convenient to carry on its business.

Uses of LLCs

LLCs are proving to be popular for investment fund and private equity structures, as well as corporate transactions, including joint ventures, special purpose vehicles and holding companies. As noted in this guide, the LLC Act gives great flexibility to the members of an LLC to regulate their relationship through the LLC agreement and in that respect is very similar to an exempted limited partnership. The LLC structure therefore lends itself particularly well to situations where a corporate vehicle would be preferred but the parties want the flexibility that would ordinarily only have been offered with exempted limited partnerships. LLCs are of particular interest to US based clients who want to establish offshore vehicles that mirror their current onshore Delaware LLCs, for example general partners of limited partnerships.

As an LLC's member operators or manager(s) do not owe any fiduciary duties to the LLC (apart from the manager's duty of good faith), the LLC is also attractive to the private equity industry, private wealth and family offices and venture capital promoters who are looking for an alternative corporate structure where the participants can operate a structure whose responsibility and liability can be determined by express agreement without the traditional burden of fiduciary responsibilities and associated liabilities of the directors of a company.

Please see our [guide to mutual funds in the Cayman Islands](#) and our [guide to private funds in the Cayman Islands](#) for more information about LLCs which are established as mutual funds or private equity funds.

Establishment of an LLC

Registration

An LLC can be registered by paying a fee and filing a registration statement with the Registrar of LLCs (the **Registrar**), signed by the person(s) forming the LLC and setting out:

- the name of the LLC
- the address of its registered office in the Cayman Islands
- the names and addresses of the initial members
- the nature of business of the LLC
- the date of the financial year end of the LLC
- if the LLC is not formed for an unlimited duration, the term for which it is formed
- a declaration that the LLC will not undertake business with the public in the Cayman Islands other than as necessary for carrying on its business outside Cayman

On registration, the Registrar will issue a certificate of registration for the LLC. Any amendments to the details set out on the registration statement must be filed with the Registrar within 30 days of the change together with the applicable filing fee.

Name

An LLC may, but is not required to, include in its name the words “Limited Liability Company”, “LLC” or “L.L.C.”. The name may also be preceded by or followed with a dual foreign name. No other company or entity registered under the Cayman Islands Companies Act may use these words or abbreviations in its name, unless it is registered as a foreign company under the Companies Act or is an existing entity that is currently using one of these words or abbreviations in its name.

LLC agreement

As noted above, members are required to enter into an LLC agreement governed by Cayman Islands law to regulate the conduct and business of the LLC. Members are free, however, to agree amongst themselves the internal rules and regulations, subject to appropriate minimum safeguards. The LLC agreement is not required to be filed or registered with the Registrar and LLCs do not have to sign the LLC agreement, although they are bound by its terms.

If a third party signs the LLC agreement, they are not deemed to be a member of the LLC if they executed the agreement solely to take the benefit of a provision of, or assume an obligation under it, or where, on proper construction of the LLC Agreement, the parties did not intend that person to be a member of the LLC.

Features of an LLC

Separate legal personality

A key feature of LLCs is that, like Cayman Islands exempted companies but unlike Cayman Islands exempted limited partnerships, an LLC has separate legal personality from its members. An LLC must have at least one member and there are no Cayman Islands residency requirements for members.

Taxation

LLCs are exempt from any Cayman Islands income or gains taxes and can obtain a tax undertaking certificate from the Cayman Islands government guaranteeing no change to their tax status for a period of up to 50 years from the date of the undertaking.

Application of related Cayman Islands laws

The LLC Act provides for the application of other Cayman Islands laws to LLCs, so that LLCs are automatically incorporated into:

- the Mutual Funds Act, allowing an LLC to be structured as a mutual fund
- the Private Funds Act, allowing an LLC to be structured as a private fund
- the Exempted Limited Partnership Act, so that an LLC can be formed to act as a general partner of an exempted limited partnership
- the Securities Investment Business Act so that an LLC can be formed to act as an investment manager or investment advisor to a mutual fund or general partner of an exempted limited partnership

The LLC Act also preserves the rules of equity and common law, to the extent they are consistent with the LLC Act.

Members and classes of interests

There must be at least one member of an LLC at all times.

An LLC may issue an LLC interest to a proposed member in accordance with the terms of the LLC agreement, or if the LLC agreement is silent then with the consent of all members and on the member’s admission being reflected in the records of the LLC. Unless the LLC agreement provides otherwise, members have no pre-emptive right to subscribe for LLC interests on further issues. The LLC Act also provides for the creation of classes of member/interest, with varying rights, powers and duties.

LLC interests may be transferred, on the terms set out in the LLC agreement or, if the LLC agreement is silent, the assignee may become a member with the approval of all of the members of the LLC. Subject to the LLC agreement, a member's right to receive any payments or distributions of an LLC interest are also capable of assignment.

An LLC may, but does not have to, issue a certificate of LLC interests to its members. As is the case with exempted companies, bearer interests cannot be issued.

Subject to the terms of the LLC agreement, any matter to be voted on by members may be approved by consent in writing signed by members having sufficient votes necessary to authorise the matter at a meeting of the members. Unless otherwise provided in the LLC agreement or the LLC Act, votes of members are passed by a simple majority in number of the members entitled to vote on the matter.

Negative consent

The LLC Act also allows LLC agreements to include negative consent mechanisms under which a member is deemed to have consented to a matter if notice with sufficient detail of the matter has been given to the member and the member does not respond.

Limited liability

The liability of a member to contribute to the assets of an LLC is limited to the amount that the member has agreed to contribute to the LLC's assets, any other payments as set out in the LLC agreement and such other payments or return of property as are required under the LLC agreement or the LLC Act (see *Distributions* below).

Distributions

The LLC agreement may provide for distributions to be paid in cash or in kind. An LLC may not declare or pay a distribution to a member or release a member from any obligation to the LLC to the extent that at the time of the distribution the LLC is unable to pay its debts as they fall due in the ordinary course of business, including where the distribution would cause the LLC to be unable to pay its debts.

A member who receives a distribution from an LLC in breach of this provision and who had actual knowledge that the distribution would be in breach, is liable to the LLC for the amount of the distribution or for performance of the obligation released.

Redemptions and repurchases of LLC interests

Unless the LLC agreement provides otherwise, an LLC may acquire or redeem an LLC interest of a member, provided that immediately following the acquisition, the LLC shall be able to pay its debts as they fall due in the ordinary course of business.

Withdrawal of interests

Subject to the terms of the LLC agreement or with the consent of all the other members, LLC interests are capable of withdrawal on demand by notice from members.

Just as is the case with other forms of Cayman Islands vehicles, if an LLC is set up for the purpose of pooling investor money and issues interests which are capable of withdrawal by investors on demand, then it will potentially be subject to regulation as a 'mutual fund' under the Mutual Funds Act and may be required to register as such with the Cayman Islands Monetary Authority. Please see our [guide to mutual funds in the Cayman Islands](#) for more information about mutual funds.

Management

The LLC Act provides for management powers to be vested in members acting by a majority in number or alternatively in one or more managers, as set out in the LLC agreement. As is the case for members, there are no Cayman Islands residency requirements for managers. The members or manager(s) do not owe any fiduciary duties to the LLC or any member or other person except, in the case of manager(s), a duty of good faith, which can be expanded or restricted by the express provisions of the LLC agreement.

A manager of an LLC may also, but is not required to, be a member of the LLC and the LLC agreement may provide for different classes of managers with varying rights, powers and duties, with voting allowed on a per capita, number, financial interest, class, group or any other basis.

Ongoing obligations of an LLC

Annual requirements

In January of each year every LLC is required to file a notification of their status under the ES Act (see further below) with the Registrar.

Also in January of each year, every LLC is required to make an annual return to the Registrar confirming compliance with the LLC Act and to pay an annual return fee. The annual return will generally be signed on behalf of the LLC by the registered office service provider. Such filing cannot be made until the above notification has been filed.

Statutory registers

An LLC must maintain:

Register of members

The register of members must contain the name and address of each member and the date on which they became and ceased to be a member. The register must be updated within 21 days of any change. If the register is not kept at the registered office, the LLC must maintain (at the registered office address) a record of the address where it is held and update that record within 21 days of any change. The register is open to inspection by those persons expressly allowed in the LLC agreement and as otherwise permitted by the manager and the LLC must also make it available to the Cayman Islands Tax Information Authority (*TIA*), on notice.

Register of beneficial ownership

LLCs must maintain a register of beneficial ownership with required particulars of the LLC's registrable beneficial owners (as defined in the Beneficial Ownership Transparency Act). Information contained in an LLC's register of beneficial ownership will be filed by the LLC's registered office provider with the Cayman Islands competent authority on a confidential basis and is only accessible in limited circumstances pursuant to a proper and lawful request made by certain government authorities. Certain regulated or listed LLCs may follow alternative compliance routes rather than maintaining a full register of beneficial ownership.

Please see our [guide to the Cayman Islands beneficial ownership regime](#) for more details on beneficial ownership registers and alternative routes to compliance.

Record of contributions

The record of contributions must contain a record of the amount and date of the contribution of each member and the amount and date of any payment representing a distribution or return of all or any part of the contribution. The record must be updated within 21 days of any change. If the record is not kept at the registered office, it must be made available to the TIA at the registered office, on notice.

Register of managers

The register of managers must be maintained at the LLC's registered office in the Cayman Islands and must contain the name and address of each manager. The register itself is not open to public inspection, however the names of the current managers of the LLC are available through a database search at the Registrar upon payment of a search fee. The register must be updated and filed with the Registrar within 30 days of any change to the details set out in it.

Register of security interests

Any security interest that a member grants over its LLC interest (subject to relevant consents as may be required in the LLC agreement) has priority according to the time that the written notice of the security interest, signed by each of the secured party and the relevant member, is validly served at the registered office of the LLC. The notice must specify the agreement under which the security was granted, including its date and parties, the identity of the grantor and grantee of the security interest and the LLC interest or part interest that is subject to the security.

The register of security interests must be maintained at the LLC's registered office and must contain details of any notice of security interest granted over an LLC interest. The register does not need to be filed with the Registrar and must be updated within 21 days of receipt of a notice and is open to inspection by any person expressly allowed in the LLC agreement or permitted by the manager.

Register of mortgages and charges

The register of mortgages and charges over LLC property must be maintained at the LLC's registered office and must include a short description of the property mortgaged or charged, the amount of charge created and the name of the person entitled to the charge and must be updated as soon as a new security, mortgage or charge is created over the LLC's property. The register does not need to be filed with the Registrar and is open to inspection by any creditor or member of the LLC at all reasonable times.

Accounts

An LLC must maintain accounts, including, where relevant, underlying documentation including contracts and invoices, with respect to all sums of money received and paid by the LLC, all sales and purchases of goods by the LLC and the assets and liabilities of the LLC. The accounts must give a true and fair view of the business and financial condition of the LLC and explain its transactions and be kept for at least five years. Copies of the accounts must be made available to the TIA at the LLC's registered office, on notice, if they are not maintained at the registered office.

Availability of information to the general public

The following information about a Cayman Islands LLC is publicly available from the Registrar upon payment of the applicable search fee(s):

- the names of the current managers of the LLC
- the name of the LLC
- the location of its registered office
- details of the initial members
- the nature of business
- the date of company financial year end
- the term for which it is formed

Inspection rights

Unless the LLC agreement provides otherwise, each member and manager has the right to inspect the following information, from time to time for any purpose reasonably related to the member's/manager's interest, by notice in writing to the LLC:

- true and full information on the state of the business and financial condition of the LLC
- the name and last known address of each manager
- a copy of the LLC agreement, registration statement, certificate of registration and all amendments made
- true and full information on the amount of cash and agreed value of any other property or services contributed / agreed to be contributed by each member and the date such member became a member

A manager also has the right (subject to the terms of the LLC agreement) to keep confidential from members or managers of other classes of LLC interests, any information which the manager reasonably believes is a trade secret or the disclosure of which the manager in good faith believes is not in the best interests of the LLC to disclose or which the LLC is required by law or agreement with a third party to keep confidential.

Transfers in and out of the Cayman Islands

Cayman Islands LLCs may apply to transfer out of the jurisdiction to another jurisdiction by way of continuation. The new jurisdiction must accept transfers in by way of continuation. Please see our [guide to transfers out of the Cayman Islands](#) for more information.

Overseas companies can also transfer into the Cayman Islands by way of continuation. Please see our [guide to transfers into the Cayman Islands](#) for more details.

Mergers and consolidation

The LLC Act provides mechanisms for exempted companies to convert into LLCs (provided the company is not a segregated portfolio company).

The LLC Act also provides for reconstructions and amalgamations by LLCs and mergers and consolidation of LLCs with other LLCs, with exempted companies (other than segregated portfolio companies) and with foreign entities which have separate legal personality, in each case in a similar manner to the equivalent provisions for exempted companies under the Companies Act.

Please see our [guide to Cayman Islands mergers and consolidations](#) for more details.

Winding up an LLC

An LLC may be wound up voluntarily:

- When the term, if any, fixed for the duration of the LLC in its LLC agreement expires
- A specific event has occurred, on the occurrence of which the LLC agreement provides that the LLC shall be wound up
- At any time when the LLC has no members, note however that the death of the sole or last member of an LLC does not cause the LLC to be wound up and the personal representative is deemed to be a member
- On the vote or written consent of at least two-thirds in number of the members of the LLC, provided that the LLC agreement may expressly disapply this requirement or provide for an alternative vote or written consent

An LLC may also be wound up compulsorily by the Grand Court of the Cayman Islands or under the court's supervision.

Economic Substance

The International Tax Co-operation (Economic Substance) Act (the **ES Act**) was introduced in the Cayman Islands in response to OECD's Base Erosion and Profit Shifting framework and related EU initiatives in relation to what are known as 'Geographically Mobile Activities'.

The ES Act is supplemented by the Guidance Notes issued by the TIA on Economic Substance for Geographically Mobile Activities.

Under the ES Act any 'relevant entity' which carries on a 'relevant activity' and receives 'relevant income' in a financial period must satisfy the economic substance test in relation to that activity and make an annual filing with the TIA.

Please see our [guide to economic substance in the Cayman Islands](#) for further details of the ES Act.

Funds regulation and AML compliance

If an LLC is established as an open-ended investment fund and falls within the definition of a “mutual fund” under the Mutual Funds Act, or if it is a closed ended fund and falls within the definition of a “private fund” under the Private Funds Act, it may be regulated by CIMA and will also have to comply with Cayman Islands anti-money laundering legislation.

Please see our [guide to mutual funds in the Cayman Islands](#) and [guide to private funds in the Cayman Islands](#) or contact your usual Harneys representative for more information about LLCs which are established as mutual funds or private funds.



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