

CONYERS

Continuing Requirements of Limited Liability Companies

**Pursuant to the Limited Liability Companies Act of the
Cayman Islands**

Preface

This publication has been prepared for the assistance of those who are considering the operation of limited liability companies in the Cayman Islands (“**Cayman**”). It deals in broad terms with the requirements of Cayman Islands law and is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients and prospective clients seek legal advice in Cayman on their specific proposals before taking steps to implement them.

Before proceeding with the registration of a limited liability company in Cayman, persons are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

Persons considering establishing companies to carry on insurance or fund business should request separate memoranda prepared by this Firm on these topics.

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TABLE OF CONTENTS

1.	INTRODUCTION	4
2.	REGISTERED OFFICE	4
3.	NO BUSINESS IN THE CAYMAN ISLANDS	4
4.	ECONOMIC SUBSTANCE	4
5.	CORPORATE RECORDS	6
6.	CHANGE IN REGISTRATION STATEMENT	9
7.	BOOKS OF ACCOUNT	9
8.	NAME	9
9.	FILING REQUIREMENTS	10
10.	ANNUAL REQUIREMENTS	10

1. INTRODUCTION

The Limited Liabilities Companies Act (the “**Act**”) imposes continuing obligations on limited liability companies (“**LLCs**”). Those LLCs that carry on certain regulated activities such as insurance companies, insurance managers, mutual or private funds are subject to additional regulation governing those activities, details of which are available on request.

2. REGISTERED OFFICE

An LLC is required to maintain a registered office in the Cayman Islands for the service of process and to which all notices and communications may be addressed. An LLC may, subject to the terms of the LLC Agreement, change the address of its registered office to another permitted address in the Cayman Islands. The LLC is required to notify the Registrar of Limited Liability Companies (the “**Registrar**”) within thirty (30) days of that change and pay the prescribed fee. An LLC that carries on business without having a registered office in the Cayman Islands incurs a penalty of CI\$200 / US\$244 for every day during which its business or affairs is so carried on.

3. NO BUSINESS IN THE CAYMAN ISLANDS

An LLC shall not carry on business in the Cayman Islands, except in furtherance of the business or affairs of the LLC carried on outside of the Cayman Islands. If an LLC carries on any business in the Cayman Islands in contravention of this requirement then, without prejudice to any other proceedings, the LLC and every manager of the LLC who is responsible for the contravention commits an offence and is liable on summary conviction to a fine of CI\$500 / US\$610 for every day during which the contravention occurs or continues, and the LLC shall be liable to be immediately dissolved and removed from the Register at the discretion of the Registrar.

4. ECONOMIC SUBSTANCE

The International Tax Co-Operation (Economic Substance) Act (2021 Revision) (as amended) (the “**ES Act**”) applies to a defined class of relevant entities including LLCs that are required, subject to what is said below, to maintain economic substance in the Cayman Islands unless they are (i) tax resident outside the Cayman Islands; (ii) an investment fund (including entities through which any such fund invests or operates); or (iii) a not-for-profit company.

The ES Act requires that all Cayman Islands entities notify the Cayman Tax Information Authority (“**TIA**”) of, amongst other things, whether or not it is carrying on a “relevant activity” (as defined in the ES Act and as discussed further below) and, if so, whether or not it is a “relevant entity”. The notification to the TIA is by way of an Annual Economic Substance Notification (“**ESN**”) which must be filed prior to an entity filing its Annual Return with the General Registry’s Corporate Administration Portal (“**CAP**”).

A relevant entity that is an LLC is subject to the ES Act from the date on which it commences a relevant activity unless the entity was in existence prior to 1 January 2019 in which was required to comply with the ES Act by 1 July 2019. Non-compliance with the ES Act will result in significant financial penalties and continued non-compliance may result in an application by the TIA to the Grand Court for an order that the entity is defunct.

4.1. Relevant Activities

Relevant entities are required to meet the economic substance test (“**ES Test**”) in respect of their relevant activities in the Cayman Islands. The categories of relevant activities include the following which are further defined in the ES Act:

- (a) banking business;
- (b) distribution and service centre business;
- (c) financing and leasing business;
- (d) fund management business;
- (e) headquarters business;
- (f) holding company business;
- (g) insurance business;
- (h) intellectual property business; and
- (i) shipping business.

4.2. Economic Substance Requirements

For relevant entities carrying on relevant activities, the ES Act requires that they:

- (a) conduct Cayman Islands core income generating activities (“**CIGAs**”) (see further below) in relation to the relevant activity;
- (b) be directed and managed appropriately in the Cayman Islands related to the relevant activity; and
- (c) with regard to the level of relevant income from the relevant activity carried out in the Cayman Islands, have an adequate:
 - (i) amount of operating expenditure incurred in the Cayman Islands;
 - (ii) physical presence (including maintaining a place of business or plant, property and equipment) in the Cayman Islands; and
 - (iii) number of full-time employees or other personnel with appropriate qualifications in the Cayman Islands.

Relevant entities carrying on the business of a pure equity holding company (one that only holds equity participations in other entities and only earns dividends and capital gains) will have reduced requirements such that they will need to comply with all filing requirements under the Companies Act (2023 Revision) and have adequate human resources and premises in the Cayman Islands for holding and managing equity participations in other entities.

Each relevant entity that is carrying on a relevant activity and is required to satisfy the ES Test will be required to file an annual return with the TIA in respect of their status under the ES Act.

4.3. Core Income Generating Activities

CIGAs are defined in the ES Act to mean activities that are of central importance to a relevant entity in terms of generating income and that are being carried out in the Cayman Islands. CIGAs may be outsourced provided that the relevant entity is able to monitor and control the carrying out of the CIGA.

The TIA will only accept the relevant entity's claim to have satisfied the ES Test by means of domestic outsourcing if the information is verified by the service provider. Such verification must be made within thirty days of the relevant entity providing the same information to the TIA.

Service providers undertaking outsourcing functions are required to register with the DITC so that the DITC can independently verify the engagement and nature of the services provided.

5. CORPORATE RECORDS

The Act prescribes certain documents and records that an LLC must maintain.

5.1. Register of Members

Every LLC must keep a register of members at its registered office or at any place within or outside of the Cayman Islands containing the names and addresses of the members of the LLC, the date on which each person became a member, the date on which each member ceases to be a member and the group of class of LLC interests, whether or not a voting interest and, if so, whether such right is conditional.

Where the register of members is kept at a place other than the registered office of the LLC, the LLC is required to maintain or cause to be maintained at the registered office of the LLC a record of the address at which the register of members is maintained. All changes in particulars to the register of members must be updated within twenty-one (21) days. The register of members or record of the address at which the register of members is maintained shall be open to inspection only by persons as are expressly provided for in the LLC Agreement or as otherwise permitted by the manager. An LLC in default of the above requirements shall incur a penalty of CI\$5,000 / US\$6,098.

An LLC must make available, at its registered office, the register of members as may be required by service of an order or notice by the Tax Information Authority ("TIA") pursuant to the Tax Information Authority Act. A failure to comply with an order or notice of the TIA without reasonable excuse will result in a further penalty of CI\$500 / US\$610 plus CI\$100 / US\$122 for every day during which the non-compliance continues.

5.2. Register of Managers

Every LLC must keep a register of managers containing the names and addresses of its managers (if any). A copy of the register of managers must be sent to the Registrar within sixty (60) days of the first appointment of any manager of the LLC.

Notification of any change to the register of managers must be sent to the Registrar within thirty (30) days of the change taking place.

An LLC in default of complying with the above filing requirements shall incur a penalty of CI\$500 / US\$610. In addition, if the Registrar is satisfied that a breach has been knowingly and wilfully authorised or permitted, an LLC shall incur a CI\$1,000 / US\$1,220 penalty and every manager of the company to which the breach relates shall incur a penalty of CI\$1,000 / US\$1,220 as well as a further penalty of CI\$100 / US\$122 for every day during which the default continues.

The Registrar will maintain a list of the current managers of each LLC and make the same available for inspection by any person upon payment of the prescribed fee.

5.3. Register of Mortgages and Charges

Every LLC must keep a register of mortgages and charges at its registered office. The register of mortgages and charges must include a short description of the property mortgaged or charged, the amount of the charge created and the names of the mortgagees or persons entitled to such charge.

Any manager of the LLC who knowingly and wilfully authorises or permits the omission of such entry, shall incur a penalty of CI\$100 / US\$122.

The register of mortgages and charges must be open to inspection by any creditor or member of the LLC at all reasonable times. If such inspection is refused, any authorised person of the LLC refusing the same, and every manager of the LLC authorising or knowingly and wilfully permitting such refusal, shall incur a penalty of CI\$4 / US\$5 for every day during which such refusal continues and a Judge sitting in chambers may compel an immediate inspection of the register.

5.4. Register of Security Interests

A member may grant a security interest to a third party (the “**Secured Party**”) in respect of any or all of the LLC interests of that member. The granting of such security interest shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member, unless the member transfers all of its LLC interests to the Secured Party in accordance with the Act. Any security interest over the whole or any part of an LLC interest shall have priority according to the time that the written notice of such security interest, signed by each of Secured Party and the relevant member, is validly served at the registered office and such notice shall not be validly given unless it specifies the agreement pursuant to which the security interest is granted, including the date thereof and the parties thereto, the identity of the grantor and the grantee of the security interests and the LLC interest or part thereof that is subject to that security interest.

An LLC must maintain at its registered office a register of security interests over member interests, which shall contain the time and date of receipt of any of such notices validly served at the registered office. The register is required to be updated within twenty-one days of receipt of a validly served notice and the register, or an extract thereof, shall be open to inspection by a person (a) expressly provided for in the LLC agreement; or (b) permitted by the manager.

5.5. Record of Members' Contributions

The LLC must maintain or cause to be maintained, in any country or territory, a record of the amount and date of the contribution(s) of each member, the amount and date of any payment representing a distribution or otherwise and a return of the whole or any part of the contribution of any member. The LLC must update such record within twenty-one (21) days of the date of any change in the particulars therein.

Where the records of members' contributions or books and records are kept at a place other than the registered office of the LLC, the LLC must, upon service of an order or notice by the TIA, make such records available, in electronic form or any other medium, at its registered office.

5.6. Beneficial Ownership Register

Unless exempted by, for example, being listed or regulated, each LLC has an obligation to maintain a register of its beneficial owners (the "**Register**") to be kept at its registered office.

Beneficial owner details are uploaded to the General Registry via its Corporate Administration Platform ("**CAP**") system. The information is encrypted upon submission and further encrypted upon receipt. The data is then deleted from CAP and goes to a non-internet facing, offline server only accessible by a Government authorised competent authority.

If an LLC becomes aware of a relevant change with respect to a registrable person whose required particulars are entered in its Register, the LLC must give notice to the registrable person, as soon as reasonably practicable after it learns of the change or first has reasonable cause to believe that the change has occurred, requesting confirmation of the change. If the person to which the notice is sent confirms the change, the LLC must record the details of the change and instruct the registered office provider, to enter in its Register (a) the details of the relevant change confirmed by the LLC; (b) the date on which the change was made; and (c) whether there are further alterations to the Register that should be made.

Significant penalties apply for non-compliance with the beneficial ownership legislation. Where an LLC or legal entity is guilty of an offence, and it is proved that the offence was committed with the consent or connivance of, or was attributable to wilful default on the part of a manager or other officer concerned in the management of the LLC or legal entity, the manager or other officer is guilty of the same offence and liable to the same penalty as the LLC or legal entity. The Registrar also has the power to impose fines for a number of breaches under the Administrative Fines Regime. Penalties under the Administrative Fines Regime apply to 'in-scope' entities that fail to take reasonable steps to identify beneficial owners and relevant legal entities, fail to ensure their Register remains up to date and/or fail to provide particulars of registrable persons to their corporate services providers or certain notices to their registrable persons. Entities exempted from the primary obligations of the beneficial ownership regime may still be in breach if they fail to provide written confirmation of their exemption and instructions to file such exemption, or if they incorrectly report that they are an exempted entity. Of particular note, Cayman Islands LLCs whose Register indicates a status of 'Enquiries pending' for three uninterrupted months will be presumed to be in breach and liable to fines under the Administrative Fines Regime. There are a number of other technical

breaches for which LLCs and/ or their corporate service providers may be fined. The Registrar may strike the LLC from the register if a fine remains unpaid for ninety days.

5.7. Registration Statement

LLC registration statements are required to include the LLC name, registered office, names and addresses of members, the nature of business, the financial year end, the term of the LLC, and a declaration that the LLC will not undertake business with the public in the Cayman Islands other than as far as may be necessary for the carrying on of business of the LLC outside the Cayman Islands. The Registrar will make the registration statement available for inspection by any person upon payment of a fee of CI\$50/US\$61.

6. CHANGE IN REGISTRATION STATEMENT

If, during the continuance of the LLC, any change is made or occurs in any of the LLC's particulars filed with the Registrar in the LLC's registration statement, the LLC must file a certificate of amendment to the registration statement with the Registrar specifying the nature of the change and provide such statement to the Registrar within thirty (30) days of the change.

Any LLC that is in default of the requirement to provide notice of the change in particulars will incur a penalty of CI\$200 / US\$244 dollars for each day that the default continues which penalty shall be a debt due to the Registrar.

7. BOOKS OF ACCOUNT

Every LLC is required to keep proper books of account including, where applicable, material underlying documentation including contracts and invoices, with respect to:

- (a) all sums of money received and expended by the LLC and matters in respect of which the receipt and expenditure takes place;
- (b) all sales and purchases of goods by the LLC; and
- (c) the assets and liabilities of the LLC.

Proper books of account shall not be deemed to be kept if there are not kept such books as are necessary to give a true and fair view of the business and financial condition of the LLC and to explain its transactions. Such records shall be retained for a minimum period of five years from the date on which they are prepared. Where the LLC fails to keep proper books of account for the retention period, the LLC will be subject to a penalty of CI\$5,000 / US\$6,098.

The records need not be kept in the Cayman Islands, but will need to be made available at the registered office if an order or notice for production under the Tax Information Authority Act is made.

8. NAME

The name of the LLC must be displayed outside the LLC's registered office and every other place of business maintained by it. An LLC may have a dual foreign name in non-Roman script.

If through inadvertence or otherwise, an LLC on its first registration or on its registration by a new name or new translated name is registered by a name or a translated name which is in contravention of the Act, or which, in the opinion of the Registrar is misleading or undesirable, then the LLC may, with the sanction of the Registrar, change its name or its translated name and shall if the Registrar so directs, change its name or translated name within six weeks of the date of such direction or within such longer period as the Registrar may think fit. An LLC which defaults in complying with a direction is liable to a fine of two hundred dollars for every day during which the default continues.

9. FILING REQUIREMENTS

On the occurrence of certain events, a notice is required to be sent to the Registrar. There are statutory time constraints for such notifications to be filed. These are indicated in brackets below.

- (a) Change in managers or managers' details (30 days);
- (b) Change to the registration statement (30 days);
- (c) Change of location of the registered office (30 days);

Significant penalties apply in the event of failure to file an update to the Registrar on time.

10. ANNUAL REQUIREMENTS

An annual return must be submitted to the Cayman Islands Government in January of every year together with the prescribed fee. A current listing of the annual government fees is available upon request.

Significant penalties apply for failure to file the annual return on or before 31 March in any year. Where an LLC fails to file an annual return in accordance with the Act, the LLC shall be deemed to be a defunct company and can, subject to a six months' notice period, be treated as a defunct company and struck off by the Registrar.

This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

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