

Continuing Requirements of Limited Liability Companies

Pursuant to the Limited Liability Companies Act of the Cayman Islands

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Preface

This publication has been prepared to assist those who are considering the operation of limited liability companies in the Cayman Islands (an “**LLC**”) pursuant to the Limited Liability Companies Act. It provides a broad overview in terms of the requirements under Cayman Islands law and is not intended to be exhaustive but merely to provide brief details and information which we hope will be helpful to our clients. We recommend that our clients and prospective clients seek legal advice in the Cayman Islands on their specific proposals before taking steps to implement them.

Before proceeding with the registration of an LLC in the Cayman Islands, individuals are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

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

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1. INTRODUCTION

The Limited Liabilities Companies Act (the “**Act**”) imposes continuing obligations on limited liability companies (“**LLCs**”). Those companies which carry on business as trust companies, banks, company managers, insurance companies, insurance managers, mutual fund administrators and mutual funds, as applicable, 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 or affairs without having a registered office in the Cayman Islands incurs a penalty payable to the Registrar for every day during which the LLC carries on its business or affairs.

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 for every day during which the contravention occurs or continues. Additionally, 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 (the “**ES Act**”) applies to a defined class of relevant entities including exempted companies and exempted partnerships, foreign companies and foreign partnerships registered in Cayman, limited liability companies, general partnerships (other than local partnerships) and limited liability partnerships 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 by companies, partnerships, exempted limited partnerships and foreign limited partnerships 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**”). As general partnerships are not registered through CAP, the Department of International Tax Compliance (the “**DITC**”) has advised that general partnerships must file an ESN in the form of a spreadsheet to registered

office service providers for submission to the DITC's Economic Substance Team at DITC.EScompliance@gov.ky.

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 case it 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 will be 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 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.

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 time and date of receipt of any notice received by the LLC charging the members' interests. Information must also be provided in relation to each group or class of LLC interest and whether such member interests confer voting rights (and whether such rights are 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.

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 pursuant to the Tax Information Authority Act. A failure to comply with an order or notice of the Tax Information Authority without reasonable excuse will result in a further penalty and an additional penalty 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. In addition, if the Registrar is satisfied that a breach has been knowingly and wilfully authorised or permitted, an LLC shall incur a penalty and every manager of the company to which the breach relates shall incur a penalty as well as a further penalty 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.

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 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 Tax Information Authority, make such records available, in electronic form or any other medium, at its registered office.

5.6. Beneficial Ownership Register

Unless an alternative route to compliance is available by, for example, being listed or licensed under a Cayman regulatory law, each LLC's corporate service provider ("CSP") has an obligation to establish and maintain a register of its beneficial owners to be kept at its registered office. Each LLC is required to take reasonable steps to identify any registrable beneficial owners which include individual beneficial owners of the company and all Cayman incorporated, formed or registered legal entities that would be beneficial owners if they were individuals ("reportable legal entities").

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.

There are significant financial penalties for failure to establish or maintain a beneficial ownership register. Administrative fines apply to 'in-scope' entities that fail to take reasonable steps to identify beneficial owners and reportable legal entities, fail to ensure their beneficial ownership register remains up to date and/or fail to provide particulars of registrable beneficial owners to their CSPs or certain notices to their registrable beneficial owners. Entities that rely upon an alternative route to compliance are not required to maintain a beneficial ownership register but may still be in breach if they fail to provide written confirmation of their alternative route to compliance and instructions to file the information required to satisfy the alternative route to compliance, or if they incorrectly seek to rely upon an alternative route to compliance that is not available to the entity. Of particular note, Cayman Islands LLCs whose beneficial ownership register indicates a status of 'Enquiries pending' for three uninterrupted months will be presumed to be in breach and liable to administrative fines. There are a number of other technical breaches for which LLCs and/ or their CSPs may be fined. The Registrar may strike an 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 so 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, such as the name or dual foreign name and translated name, the registered office address and the term of the LLC, 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 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 is subject to a penalty.

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 in accordance with the Act.

The name of the LLC must be displayed outside the LLC's Registered Office and every other place of business maintained by it.

9. ON-GOING 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.

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.

10. TRANSFER BY WAY OF CONTINUATION

In the event an LLC wishes to transfer out of the Cayman Islands to another jurisdiction and provided that the LLC Agreement expressly provides for the transfer, the LLC can apply to be de-registered with the Registrar and then transfer by way of continuation to another jurisdiction as a body corporate or any the relevant form of entity as provided by the laws of that jurisdiction. However, prior to the LLC transferring out the Cayman Islands, the LLC must ensure that all of its on-going regulatory and statutory obligations are satisfied prior to its transfer out of the Cayman Islands.

The LLC Act also permits a non-Cayman entity to re-register and continue into the Cayman Islands as a LLC registered as a foreign entity in the Cayman Islands. Once registered in the Cayman Islands, this entity will also have to comply with the applicable Cayman Islands law as long as it is in existence in the Cayman Islands.

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.