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Converting an existing Cayman Islands exempted company into a Cayman Islands LLC

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Introduction

This factsheet is intended to provide a summary of the benefits and process of converting an existing Cayman Islands exempted company (an **"Exempted Company"**) into a Cayman Islands limited liability company (a **"Cayman LLC"**) under The Limited Liability Companies Law, 2016 (the **"LLC Law"**).

What is a Cayman LLC?

A Cayman LLC is essentially a hybrid between an Exempted Company and a Cayman Islands exempted limited partnership (an **"ELP"**). It combines features afforded to partners of ELPs - for example, the flexibility to structure certain aspects of the business (including the allocation of profits and capital accounting), with a number of beneficial characteristics of Exempted Companies, such as separate legal personality.

Cayman Islands LLCs take inspiration from and indeed are intended, within the context of Cayman Islands law, to replicate many of the features of a Delaware limited liability company (a **"Delaware LLC"**).

Why convert?

The LLC Law permits an existing Exempted Company to re-register as a Cayman LLC. At present no mechanism for conversion exists for segregated portfolio companies or ELPs. However, it is anticipated that the LLC Law will be extended to include the conversion of these entities in the future.

Our previous update "Key Features of Cayman LLCs" details many of the benefits of Cayman LLCs; however, in addition, Cayman LLCs have the following advantages over Exempted Company structures:

- **Confidentiality** - There is no requirement to file the Cayman LLC's limited liability company agreement (the **"LLC Agreement"**) with the Cayman Islands Registrar of Limited Liability Companies (the **"Registrar"**); unlike an Exempted Company which must file its constitutional documents – the memorandum and articles of association with the Cayman Islands Registrar of Companies.
- **Flexible Governance** – The LLC Law affords considerable flexibility to its members, allowing a majority of them in number or managers appointed by such members, to operate the Cayman LLC as they see fit and in a way that meets the needs of investors. Furthermore, unless prescribed in the LLC Agreement, neither a member nor a manager of a Cayman LLC owes any duty (fiduciary or other) to the Cayman LLC or to any

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member other than the duty to act in good faith. Whilst this statutory duty of good faith cannot be eliminated, it can be expanded or restricted by the terms of the LLC Agreement. In addition, managers sitting on a board or committee may, if expressly permitted to do so by the LLC Agreement, act in the interests of their appointing members (even though it may not be in the best interests of all members or the Cayman LLC), unlike directors of an Exempted Company who are subject to fiduciary duties and must always act in the Exempted Company's best interests. Lastly, given that the LLC Law does not grant the Cayman LLC, voting by its members, quite as many statutory powers as an Exempted Company, the managers will have more flexibility to make changes to the structure without concern for common law principles that might constrain, due to a fettering of discretion, an Exempted Company.

- **Cost** – Annual fees payable to the Registrar for Cayman LLCs (US$975.61) are similar to those for Exempted Companies (US$853.66 (for those with authorised share capital of US$50,000 or less)) and are significantly lower than those of an ELP (US$1,463.41 plus the annual costs of maintaining a general partner entity).
- **Familiarity for US investors and managers** – As a Cayman LLC is similar to a Delaware LLC, US investors and managers will require less education as a result of their familiarity with the structure. In addition, if a manager wishes to use a Delaware LLC feeder structure, closer synergies between the onshore and offshore feeder funds can be obtained as the LLC Agreement can, save for a few Cayman nuances, practically mirror the agreement of its Delaware counterpart.
- **Simplified fund administration** – A Cayman LLC does not have share capital, and instead it issues "LLC interests". As such, managers and administrators of Cayman LLCs will no longer have to deal with more rigid share capital maintenance rules and structures. The result is simplicity in (a) how distributions are made to members, and (b) tracking of members' investments and capital accounts. •
- **Incentive and Carry Structures** – Further to the issue of fund administration, carry interests which were previously distributed by a Delaware LLC and subject to US tax may now be distributed by a Cayman LLC. Accordingly, a Cayman LLC may be a more appropriate vehicle to use for certain carry mechanics that apply to closed-ended private equity funds.
- **Continuity** – Conversion of an Exempted Company to a Cayman LLC will not create a new legal entity or affect the continuity of the converting Exempted Company or its property. In addition, appointments made, resolutions passed or any other act or thing done by the Exempted Company prior to its re-registration, will not be affected, nor will any legal proceedings conducted by or against the Exempted Company, or which could have been commenced by or against the Exempted Company prior to its re-registration, be rendered defective. Note however, that upon the conversion of the Exempted Company into a Cayman LLC, any tax concession certificate held will no longer be valid. Instead, the Cayman LLC will need to apply for a new certificate (US$1,829.27 and an additional US$152.44 for a Certificate of Re-Registration) which will now protect the Cayman LLC from the imposition of any future Cayman Islands tax for a period of 50 years, and not the 20 years which is usually afforded to Exempted Companies.

Process

To re-register an Exempted Company as a Cayman LLC, the converting Exempted Company is required to:

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- prepare a form of LLC Agreement or operating agreement that conforms with the requirements of the LLC Law;
- pass a special resolution of its members approving the conversion of the Exempted Company into a Cayman LLC and the adoption of a registration statement;
- prepare and execute the limited liability company registration statement and an application for re-registration;
- obtain a letter of consent from its registered office, and if licenced or registered with the Cayman Islands Monetary Authority, from such authority; and
- submit the necessary re-registration fee to the Registrar, together with the special resolution, registration statement, application form and consent letter(s).

If the Registrar is satisfied that the Exempted Company may be re-registered as a Cayman LLC, it will issue a Certificate of Re-registration. The Exempted Company converts into a Cayman LLC by virtue of the issuance by the Registrar of the Certificate of Re-registration and upon the date of its issue, the LLC Agreement adopted in the special resolution takes effect as the constitutional document of the newly converted Cayman LLC, replacing, in its entirety, the memorandum and articles of association. In addition, all statutory registers of the newly converted Cayman LLC will need to be revised to conform with the requirements of the LLC Law.

Registrar Fees

The fee payable to the Registrar for re-registering an Exempted Company as a Cayman LLC is US$975.61. If the Certificate of Re-registration is required on the day in which the application to re-register is submitted, an additional US$487.80 is payable. Subsequent to the year of re-registration, the Registrar also imposes on all Cayman LLCs an annual fee of US$975.61.

In addition to the re-registration and annual fees, certain ancillary fees, for example, for the filing the register of managers and the provision of a registered office, will also be payable by the Cayman LLC.

Ongoing obligations of Cayman LLCs

As is the case with Exempted Companies, there are a number of obligations imposed on a Cayman LLC after its re-registration. The LLC Law requires, amongst others, a Cayman LLC to file an annual return and to maintain its statutory registers. Collas Crill Corporate Services Limited, a licensed companies management provider, services such obligations on behalf of a wide range of Cayman Islands companies.

For the reasons discussed above and in our update "Key Features of Cayman LLCs", we expect that there will be a sizable uptake in the registration and re-registration of Cayman LLCs for use in investment fund and private equity structures, in particular, due to the flexible nature of the Cayman LLC vehicle and its governing law.

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If you wish to discuss the re-registration of an Exempted Company into a Cayman LLC, please feel free to contact us.

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