

HOW WILL THE LLC IMPACT CAYMAN?

MATT MULRY, PARTNER OF DILLON EUSTACE, EXAMINES THE DECISIVE FEATURES OF THE LIMITED LIABILITY COMPANIES BILL AND WHAT IT MEANS FOR THE CAYMAN ISLANDS



Matt Mulry is a partner of Dillon Eustace and has worked in the offshore investment funds industry for over 15 years. He covers private equity, hedge fund, compliance, regulatory and general commercial work and has been involved a number of major transactions for leading onshore law firms and investment managers.

HFMWeek (HFM): What is the Limited Liability Companies Bill (LLC)?

Matt Mulry (MM): The bill, when enacted, will provide for the introduction of a new Cayman legal vehicle, the Cayman Limited Liability Company. The draft legislation is closely based upon the equivalent United States' Delaware LLC legislation with the intention of appealing to the US market. This is a significant development for Cayman and will represent an entirely new corporate form for managers and investors to use in their Cayman fund structuring. The bill has been through a wide consultation process both within the Cayman financial services industry and the wider international industry with input being sought from leading investment funds professionals who have used Cayman hedge and private equity funds since its inception.

HFM: Why have the Cayman Islands created a new vehicle?

MM: The motivation for creating the new vehicle comes from a drive within the Cayman Islands government and profession to remain at the forefront of the offshore investment funds market and also represents an acknowledgement of the needs of US-based managers

and their US legal teams. The LLC has been a common vehicle for US managers to use in establishing their own businesses, those of their investment advisors and their general partners and is also a common vehicle for trading entities and holding entities in fund structures.

The bill has been drafted so that the Cayman LLC can be used for similar purposes but also with the expectation that the Cayman LLC will become a popular corporate form for the investment fund vehicles themselves. It should be noted that whilst the bill envisages that a Cayman LLC can be established with members only, so that it has no equivalent of a board of directors. Where a Cayman LLC is used as an investment fund registered with the Cayman Islands Monetary Authority it will need to appoint managing members who will have an equivalent role to the directors of a registered investment fund structured as an exempted limited company. In this way the Cayman corporate governance principles applicable to its registered investment funds as popularised through the Weaving judgments and related statements of guidance will also apply to the LLC where it is set up as a Cayman registered investment fund.

The LLC is the most commonly used corporate vehicle in the US and could well become the most popular corporate vehicle in Cayman.

HFM: How will the LLC set the Cayman Islands aside from competitors?

MM: Cayman is leading the field among the investment fund focused offshore jurisdictions in providing for the establishment of LLCs. Only a handful of offshore jurisdictions currently offer an LLC structure and none of them are significant jurisdictions in the offshore investment funds market.

The introduction of the Cayman LLC is likely to have a big impact in Cayman and among those managers and professional advisers who use the Cayman Islands for their hedge fund and private equity fund structures. It is likely to gain immediate recognition with US lawyers and US fund managers and to have an immediate application in US master feeder structures, but is also likely to be popular with the wider international financial services market.

HFM: What key features will the LLC implement and how will the LLC be used?

MM: The Cayman LLC will have the structural flexibility of a limited partnership, but unlike a Cayman exempted limited partnership, the LLC will have a legal personality





separate from its members. The fact that it has a legal personality and a flexible capital account structure is likely to assist with international tax and regulatory structuring, which will drive the particular uses to which the Cayman LLC will be put.

The draft legislation provides for the conversion of exempted companies to a Cayman LLC, for the merger of exempted companies into a Cayman LLC and for the redomiciliation of foreign entities into Cayman as a Cayman LLC. This anticipates a wide use of the LLC in new and in existing Cayman structures as well as in non-Cayman structures looking to redomicile to Cayman. Wide flexibility will be available to craft the constitutional document of a Cayman LLC to allow bespoke terms to be created to meet the needs of investors and managers. The LLC will be operated on the capital commitment and contribution model used in a limited partnership structure and so will lend itself well to use in private equity funds. Although, hedge funds will also find benefits in using the Cayman LLC particularly in the more straightforward valuation and administration of a corporate entity which represents its investor's interests in a capital account rather than a fixed number of shares.

Cayman exempted limited partnership funds have traditionally used exempted limited companies as their general partners and the exempted limited company has generally been the popular choice for Cayman domiciled investment management and advisory companies. This may change with the introduction of the Cayman LLC, particularly for US fund structures where the Delaware LLC is a common vehicle for use

as the general partner in both the US and Cayman limited partnerships in a master feeder structure.

The use of trading companies is still relevant within Cayman fund structuring, despite the introduction of the Cayman segregated portfolio company, and the LLC will provide an attractive vehicle for an underlying trading company where such a structure is preferred. Holding entities used in Cayman investment fund structures, whether as a vehicle for investors or for structuring long-term illiquid or side pocket investments, have historically taken the form of the Cayman exempted limited liability company and the LLC is also likely to provide an attractive alternative vehicle in these situations.

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HFM: What effect will the Cayman LLC have on the position of the Cayman Islands as an offshore market leading financial centre?

MM: The availability of a new corporate form in the Cayman Islands, particularly one that is already familiar to US managers and investors, can only improve the position of the islands as a financial centre. By introducing the LLC legal vehicle, Cayman is demonstrating that it is actively supporting the needs of those involved in the international funds industry. It's likely that the wider offshore funds market will follow suit with the introduction of LLCs in the smaller offshore funds jurisdictions, expanding and developing the range of vehicles available in international offshore fund structuring. As the premier offshore investment funds jurisdiction, Cayman is rightly taking the initiative with this important offshore structuring development and leading the way for its offshore competitors. ■