

Cayman Islands New Fund Vehicle (LLC) and Common Reporting Standard Update

The Cayman Islands Publishes a Bill to Introduce a Limited Liability Company

The Cayman Islands Government has published a “green bill” for a Law to provide for the formation and registration of Limited Liability Companies: and to provide for incidental and connected purposes (the “**LLC Bill**”) when enacted into law this will create a new type of Cayman Islands vehicle, the limited liability company (an “**LLC**”). The LLC Bill has been developed by Government and the Cayman Islands regulator, the Cayman Islands Monetary Authority, in consultation with representatives from industry bodies, including Campbells. This new vehicle will be of interest to promoters of investment funds and their service providers.

The LLC Bill is expected to be enacted into law during the first half of 2016. Hence the LLC vehicle is not available yet.

The full LLC Bill can be found by [clicking here](#).

Advantages

While current Cayman Islands fund vehicles (exempted companies, exempted partnerships and unit trusts) will continue to serve the industry and its promoters well, an LLC will offer some flexibility which is not currently present in certain Cayman Islands structures. An LLC should allow (1) for more flexible and straightforward administration of the tracking and calculation of a member’s investment in a fund, without the need to reference shares and the rigidity of share capital; (2) certain flexibility in corporate governance concepts; and (3) for a closer synergy between the legal frameworks for onshore vehicles and offshore vehicles, particularly useful in a master/feeder structure with a parallel Delaware onshore feeder (usually an LLC) to the Cayman Islands offering.

LLC

An LLC is a versatile entity with the combined benefits of the two main vehicles used in fund formation being an exempted company and the exempted limited partnership; it will essentially be a hybrid of the two. An LLC, in common with an exempted company (but unlike a limited partnership), will be a body corporate with a separate legal personality. However, an LLC may maintain the accounting, contractual and record keeping flexibility of an exempted limited partnership because it is not constrained by being limited by shares or by guarantee. Further, unlike a limited partnership, an LLC will not need to have its mind and management in a separate general partner

entity as it will have its management vested in a ‘manager’ who may, or may not be, a member of the LLC.

An LLC will be easy to register and registration is similar to the registration of an exempted limited partnership with only the initial registration statement needing to be filed. The LLC must have at least one member, its member(s) benefit from limited liability and it may be formed for any lawful business, purpose or activity. An LLC may be managed by one or more managers who may or may not be a member. The LLC will need to maintain certain registers (being a register of members, managers and mortgages and charges) and may, but need not, include “Limited Liability Company”, “LLC” or “L.L.C.” in its name.

The members have substantial contractual freedom to agree the management and mechanics of the LLC vehicle in a written operating agreement (defined in the LLC Bill as the “LLC agreement”) which must be governed by Cayman Islands law. Appropriate minimal safeguards and a framework are set out in the LLC Bill (such as minimum statutory duties for members/managers, record keeping requirements and insolvency provisions). The LLC Bill allows for the conversion of a Cayman Islands exempted company into an LLC and also the migration into the Islands of foreign entities to register as an LLC.

The LLC will be a new vehicle and, as such, there is no Cayman Islands jurisprudence on LLCs. Therefore, the LLC Bill expressly states certain key features of an LLC to provide clear guidance to promoters and their service providers alike. To the extent that they are relevant to an LLC, the LLC Bill seeks to preserve the rules of equity and common law which are applicable to exempted limited companies and exempted limited partnerships.

Further details will follow about the specifics of an LLC when the LLC Bill is enacted into law.

Common Reporting Standard (“CRS”) – Government Issued Industry Advisory

Further to our previous CRS advisories, the Cayman Islands Department for International Tax Cooperation (“DITC”) has issued an updated industry advisory on the implementation of the CRS in the Islands. Implementation has been effective from 1 January 2016 with reporting to the Cayman Islands Tax Information Authority (“TIA”) (which falls under the DITC) to begin at the end of May 2017.

A link to the advisory can be found by [clicking here](#).

CRS participating jurisdictions and US FATCA

The industry advisory contains a link to the TIA’s list of CRS participating jurisdictions which now numbers 96. This list of countries notably excludes the USA and the advisory confirmed that the USA is a non-participating CRS jurisdiction and, as such, the US FATCA legislative framework implemented in the Cayman Islands will continue to operate as normal.

US FATCA was implemented in the Cayman Islands through a non-reciprocal intergovernmental agreement (an “IGA”) signed in November 2013 between the US and the Cayman Islands with the TIA’s first data transmissions to the US internal Revenue Service taking place in September 2015.

Updated Self-Certification Forms

The advisory attaches updated templates of the “Entity Self-Certification Form” and the “Individual Self-Certification Form” which have been amended to reflect CRS by the Cayman Islands FATCA/CRS Working Group. Links to such templates can be found on the advisory at the above link.

Notably the advisory stated that these self-certifications should be obtained for all new accounts from 1 January 2016. The validation of the self-certification forms should be carried out as quickly as possible but it is permitted to be completed within 90 days of account opening.

Non-Reporting Financial Institution List

The TIA has stated that the only entity excluded from CRS reporting is a Limited Life Debt Investment Entities (“LLDIEs”) in existence on or before 17 January 2013. The definition of an LLDIE is also at the above link.

UK FATCA – Transition to CRS

UK FATCA was implemented in the Cayman Islands by an IGA between the Cayman Islands and the UK in November 2013 (the “UK IGA”). However, the UK is now a CRS participating jurisdiction and is transitioning to CRS. The UK has indicated that for 2016 Cayman Islands Financial Institutions will need to comply with both the UK IGA and CRS. The advisory confirmed that UK FATCA would be phased out by 2017.

The method of reporting for UK FATCA and CRS will be advised by the Cayman Islands Government in due course.

CRS Regulations and Guidance

As previously advised, Cayman Islands specific guidance notes on CRS will be published in the first quarter of 2016. Such guidance will be limited to practical aspects of the CRS which are specific to Cayman as many issues are addressed on the OECD’s official CRS commentaries which can be found on the OECD’s automatic exchange portal which gives comprehensive information about the OECD and tax transparency, a link to which can be found [here](#).

The second tranche of CRS Regulations addressing compliance and enforcement is expected in the first quarter of 2016.



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