



The Cayman Islands – A Busy Start To 2017.

As a leading offshore financial centre, the Cayman Islands strives both to meet the varied and changing needs of those who utilise the jurisdiction as well as ensuring it maintains appropriate levels of regulation.

Notable legislation which has come into effect during 2017 has included the Limited Liability Partnership Law, which allows for the registration of a new type of partnership vehicle (the “LLP”); the Non-Profit Organisations Law which formally governs the formal registration and record-keeping in respect of non-profit organisations (“NPOs”); requirements for certain Cayman Islands corporate entities to maintain beneficial ownership registers for very limited purposes (the “Beneficial Ownership Regime”); and legislation aimed at modernizing Cayman’s intellectual property regime, including the Patents and Trade Marks (Amendment) Law, the Trade Marks Law and the Design Rights Registration Law. Further information is provided below.

LIMITED LIABILITY PARTNERSHIP LAW

An LLP is similar to a general or exempted limited partnership, with the key difference that an LLP is established as an entity with legal personality that is separate and distinct from its partners. Accordingly, it is the LLP rather than the individual partners that will be liable for any debts or losses of the LLP. Whilst partners may actively manage the operation of the LLP’s business, they will not be personally liable either jointly and/or severally, provided that such debts or losses are not caused by a negligent act or a breach of duty of care (where such an express duty has been assumed). Whilst LLPs may be used for any lawful purpose, it is expected that they will be of most interest to professional businesses such as accounting or law firms. Existing general partnerships can be converted into LLPs and foreign LLPs may be continued into Cayman.

NON-PROFIT ORGANISATIONS LAW

This law is part of Cayman’s ongoing commitment to increased transparency and the global fight against corruption, money laundering and terrorism. It provides for the establishment of a registration system to deal with the regulation and monitoring of NPOs operating in Cayman and to provide for the investigation into the operations of funds flowing through those NPOs.

The definition of NPO is broad and includes a company or body of persons, whether incorporated or unincorporated or a trust established primarily for the promotion of charitable, philanthropic, religious, cultural, educational, social or fraternal purposes or other activities or programmes for the public benefit or a section of the public within Cayman or elsewhere, which solicits contributions from the public or a section of the public within Cayman or elsewhere.

The law requires all NPOs (through their “controller” – trustee, director or other person who has established the NPO) to apply to the Registrar of Non-Profit Organisations for registration. Soliciting or raising contributions from the public within Cayman or elsewhere is prohibited unless the NPO is so registered. Once registered, certain information will be recorded on the register including the name, Cayman address, telephone number, the NPO’s purposes and activities and the person who owns, controls or directs the NPO. This register will be open for public inspection but financial information and the names and personal information of the controllers/senior officers will not be available. The Registrar may refuse to register an NPO if its activities do not fall within the definition, if it has been established for illegal purposes, does not have a connection with Cayman or if the information in the application is manifestly incorrect. The NPO may also have its registration cancelled if it engages in wrongdoing or contravenes the law.

The law requires the controller to keep proper financial statements in respect of money received and ex-

pended. An NPO with gross annual income of over US\$250,000 that remits 30% or more overseas must have its financial statements reviewed by a qualified accountant in accordance with international standards. There are a range of penalties for non-compliance.

THE BENEFICIAL OWNERSHIP REGIME

The principal purpose of this legislation is to make beneficial ownership information normally held by corporate service providers readily accessible in response to proper and lawful requests from specified law enforcement agencies (currently Cayman and the United Kingdom). Unless exempted, companies must create and maintain a register of beneficial owners; the information in the register will be encrypted and stored on a secured standalone search platform.

Exemptions are available for entities or subsidiaries of one or more legal entities which are (a) listed on the Cayman Islands Stock Exchange or another approved stock exchange; (b) registered or licensed under a Cayman Islands regulatory law; or (c) managed, arranged, administered, operated or promoted by an approved person as a special purpose vehicle, private equity fund, collective investment scheme or investment fund or a general partner of such a vehicle, fund or scheme. If the law applies, an individual is a beneficial owner of a company if he holds, directly or indirectly, more than 25% of the shares or voting rights, or the right to appoint or remove a majority of the Board. If no individual satisfies those requirements, an individual will be a beneficial owner if they have the legal right to exercise or actually do exercise significant direct or indirect influence or control over the company including through any trust or partnership (other than solely in the capacity of a director, manager, professional advisor or professional manager).

There is a 12 month period in which to ensure compliance after which there are significant penalties for failure to comply.

TRADE MARKS LAW

This law makes provision for the direct registration of collective marks and certification marks and estab-



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lishes a new stand-alone trade mark registry. The existing system which required trade marks to be first registered in the UK has been abolished resulting in a quicker, more cost-effective process.

PATENTS AND TRADE MARKS (AMENDMENT) LAW

This law maintains the previous practice of enabling proprietors of United Kingdom (“UK”) patents to automatically extend their registered patents into the Cayman Islands whilst stripping out the provisions relating to trade marks which are now regulated under the Trade Marks

Law. The law includes a provision which will prevent the “assertion of patent infringement in bad faith”. Such “anti-patent trolling” provisions will mean that the Court will not recognize, enforce, or give effect to an estoppel based on an assertion of patent infringement made in bad faith.

DESIGN RIGHTS REGISTRATION LAW

This law allows owners of UK registered designs and registered community designs to extend their registered design rights to the Cayman Islands. Once registered, such design rights will have the same duration and afford the owner with all the equivalent rights and remedies available to them in the UK or EU.

Applications need to be made to the Registrar of Design Rights via a registered agent in the Cayman Islands. It is thought that most applications will be accepted on the basis that they have been previously registered in either the UK or EU and that particulars will be checked to determine whether the design right consists of or contains (a) national flags, insignia or royalty, insignia or international organisations and national emblems or the design of such flags, insignia or emblems; or (b) words, letters or devices likely to lead persons to think that the applicant either has or recently has had Government patronage or authorization.

For further information in respect of any of the above-mentioned laws please contact the author or your usual contact(s) at Conyers Dill & Pearman.