



PORTCULLIS TRUSTNET

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COOK ISLANDS LLC – TAKING IT A STEP FURTHER COOK ISLANDS - LIMITED LIABILITY COMPANIES ACT 2008

Welcome to the newly introduced Cook Islands Limited Liability Companies Act 2008 (“the Act”).

As a complement to the successful Cook Islands asset protection trust laws, the Cook Islands has passed a legislation which provides for a limited liability company (“LLC”) with many innovative features which include; allowing the owner (‘member’) of the LLC to determine how the LLC is structured, and how it conducts its business by way of an operating agreement.

Summary of Benefits of a Cook Islands LLC

- Flexibility in terms of how the business can be managed and operated
- Simplicity in terms of reporting requirements
- Limited liability for owners and limited remedies for creditors
- Confidentiality in terms of access of information

Benefits in the Management of the LLC

1. Flexibility in Business Management and Operations via an Operating Agreement

An operating agreement governs the rights and duties of the members and managers of the LLC (Section 8 of the Act). The only limitations to the operating agreement and matters that it may cover are that it needs to be consistent with the provisions stated in Section 8(1) of the Act. This allows greater flexibility to those considering an LLC when it comes to determining rights and duties of managers and members, including determining who the manager(s) are.

Please note that the information contained herein is not intended to be exhaustive with respect all issues or matters arising directly or indirectly out of the Cook Islands Limited Liability Companies Act 2008 or the law as it relates to the Cook Islands. It is provided as a general guide or reference point and is in no way intended and should not be relied upon as legal advice.



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There are however mandatory provisions for the operating agreement that include ensuring that the members have access to records, and that the duty of care remains with the manager (Section 8(2) of the Act).

2. Simplicity in Reporting Requirements

Annual reporting requirements for the LLC are kept to a minimum (Section 20 of the Act). Unlike other corporate entities, there is no requirement for an annual general meeting of the board of directors.

As for tax reporting, there is no Cook Islands tax reporting requirement for the LLC.

Individuals, companies and trusts can be members of the LLC, and membership can be assigned or transferred according to the terms of the operating agreement (Section 44 of the Act).

3. Limited Liability for Owners and Limited Remedies for Creditors

Creditor's Remedies

Remedies for creditors are limited under the Act (Section 45 of the Act). A 'creditor' is defined by the Act as any person whose judgment is issued or recognised by the High Court of the Cook Islands, against a member of the LLC or any person who claims to have a general assignment of a members property, whether arising from intestacy, bankruptcy or otherwise of the member (Section 45(1) of the Act). The sole remedy available to the creditor in respect of a members membership rights, is a charging order remedy (Section 45(6) of the Act). There are further provisions in the Act that clarify how a charging order is construed and the rights of members holding membership interest, subject to a charging order (Section 45(7) of the Act).

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A person in whose favour a charging order has been issued, shall have no right to interfere in the manager's management of the LLC, to liquidate or seize assets of the LLC, to restrict the business of the LLC or to cause the dissolution of the LLC (Section 45(8) of the Act). Also, punitive damages are not recoverable under the charging order (Section 45(5) of the Act).

4. Confidentiality in Accessing Information

Privacy

To ensure the privacy for those who choose an LLC, **confidentiality** is covered for in the Act making it an offence for any person to divulge or attempt to divulge any information in relation to the LLC, including, membership of or beneficial ownership of the LLC, and the identity of any member and the assets or liabilities of the LLC (Section 72(4) of the Act).

Redomiciliation

According to the Act, any foreign LLC, can be transferred to the Cook Islands, so long as the laws of the foreign domicile do not expressly prohibit such a transfer (Section 60 of the act). All property owned by the redomiciling foreign LLC, is vested in the LLC without further act or deed. All debts, liabilities and other obligations of the foreign LLC will continue as obligations of the LLC (Section 65 of the Act).

Non Recognition of Foreign Judgments

No foreign interlocutory order including injunctions, order for discovery or interrogatories against an LLC relating to a claim by a creditor, are recognised by the Cook Islands High Court (Section 45(13) of the Act). No proceedings in relation to the enforcement of a foreign judgment obtained in jurisdiction other than the Cook Islands against a members membership rights, will be enforced by the court to deprive a member of any membership rights (Section 45(14) of the Act).

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Conclusion

The beneficial features of a limited liability company in the Cook Islands, include asset protection and would sit comfortably within a Cook Islands asset protection trust. Even as a stand alone entity, the LLC has enough benefits and advantages to appeal to a wide range of discerning clients.

For further discussion on any aspect of forming a LLC in the Cook Islands, please do not hesitate to contact your usual Portcullis TrustNet representative for assistance.

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