

Fiducia by ASIACITI TRUST

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New Zealand Limited Partnerships

In 2008, New Zealand introduced a new Limited Partnership regime which provides a highly effective tool for international tax planning and wealth management structuring in a highly respected and well regulated environment. Outlined below is a brief description of the features, requirements and potential uses of the New Zealand Limited Partnership (“NZ LP”).

Features

The NZ LP is deemed by law to be a separate legal entity from the partners that form the partnership and generally speaking it will have full capacity to carry on any business or activity. However, unlike most separate legal entities, the NZ LP is a fiscally transparent entity for New Zealand tax purposes. This opens up the potential uses of the NZ LP as, in effect, the tax status of the partners will govern the way the partner is taxed in New Zealand. For example, if a person/entity is a non-New Zealand resident, they will not be taxed in New Zealand on any non-New Zealand sourced income. Therefore, any non-New Zealand sourced income of an NZ LP that flows through to a non-New Zealand resident partner will not be taxed in New Zealand.

Requirements

An NZ LP is required to have at least one Limited Partner and one General Partner:

- Limited Partner: provides the capital for the NZ LP, liability is limited to capital contributed provided they do not participate in the management of the NZ LP.
- General Partner: responsible for management and administration of NZ LP, jointly and severally liable for debts and obligations of the NZ LP.

The NZ LP is also required to:

- Have a written Partnership Agreement;
- Maintain a registered office in New Zealand;
- Prepare financial statements;
- Lodge an annual return;
- File a Partnership Income Tax Return.



Wellington Central Business District

Outline of Limited Liability Company Legislation



Avatiu Harbour on the outskirts of Avarua Town, Cook Islands

"A Cook Islands LLC may be formed to conduct any lawful business in any part of the world. A Cook Islands LLC may be incorporated by a single member or by multiple members and is a legal entity separate from its members and managers."

The Cook Islands Limited Liability Companies Act was passed in late June 2008. The Act provides for a modern and innovative Limited Liability Company vehicle with substantial asset protection advantages. The legislation is modelled on the most recent LLC style-legislation in the United States and offshore jurisdictions.

Overview

A Cook Islands LLC may be formed to conduct any lawful business in any part of the world. A Cook Islands LLC may be incorporated by a single member or by multiple members and is a legal entity separate from its members and managers.

Corporations may be Members or Managers of the LLC.

The LLC is exempt from any form of taxation in the Cook Islands.

Incorporation & Operating Agreements

A Cook Islands LLC is incorporated by a trustee company lodging very simple Articles of Organization with the Registrar of LLCs.

The Operating Agreement of the LLC governs the rights, duties, limitations, qualifications and relations among the members and managers of the LLC. An Operating Agreement may be specifically tailored to the particular business requirements of the LLC.

Filings, records and accounts

There is a requirement to file a very simple annual return with the Registrar setting out the name of the LLC and the address of the registered agent.

The registered agent must also keep:

- A current list of the full name and address of each Member and Manager
- A copy of the Articles of Organization and Operating Agreement

Other records may be kept anywhere else in the world.

There is no requirement to prepare accounts or to appoint an auditor

Asset Protection Features

The sole remedy available to a creditor of a Member in respect of the Member's interest in the LLC is a charging order against the Member's interest. A charging order only entitles the creditor to receive any distributions from the LLC if and when made to the Member by the LLC. The Act also specifically states that no membership rights may pass to a creditor of a Member.

The effect of this is that any creditor of a Member is effectively prevented from attacking the assets in the LLC.

Even where a charging order is granted, the Act states that the creditor shall have no right to:

- Interfere with the management of the LLC (including any sale of assets)
- Liquidate or seize the assets of the LLC
- Restrict the business of the LLC in any way
- Dissolve the LLC

Any judgment obtained outside the Cook Islands which affects the rights of Member in the LLC cannot be enforced in the Cook Islands.

Members and Managers of an LLC cannot be personally liable for any debt, obligation or liability of the LLC.

For further information, kindly contact Adrian Taylor at ALTaylor@asiacititrust.com

“Hong Kong Profits Tax—Dealing with IRD enquiry letters”

It is becoming increasingly common for the Hong Kong Inland Revenue Department (“IRD”) to issue “letters of enquiry” to companies filing Profits Tax returns, particularly if such companies report significant amounts of non-taxable earnings. The objective of the enquiry is to seek information to ascertain whether the company has income that is subject to Profits Tax. In particular the enquiry letter will request an explanation of the basis of the company’s claim that its profits are not subject to Profits Tax. Other information that may be requested can include :

- Copy of business organization chart
- Description of company’s trading methodology
- Details of products traded
- Details of representatives and transactions conducted by them
- Purchase & sale transactions

Clients with Hong Kong companies that trade exclusively “offshore” may tend to ignore these enquiry letters on the presumption that they do not carry on business in Hong Kong. This is mistake # 1. Enquiry letters must be taken seriously and dealt with immediately – the IRD require a response within 30 days. Mistake # 2 will be to fail to provide a complete and relevant response to the enquiry. A comprehensive response may put the matter to rest and avoid further enquiry, field audit or investigation.

A second enquiry will be very detailed and may request :

- full details of transactions including airway bills and courier invoices;
- travel itineraries of personnel responsible for trade negotiations, etc;
- personal details of all persons involved in the company’s business activities – job titles, responsibilities, authority levels, etc.

As always, forward planning is the best strategy to deal with such enquiry letters. So what should you do to be prepared for the unwelcome arrival of an IRD enquiry letter?

1. engage the services of a specialised corporate management firm to ensure that proper and adequate accounting and business records are maintained.
2. ensure that all contracts are documented, signed and dated.
3. create and maintain a documented record of all negotiations whether face to face or by phone.
4. retain all documentation that evidences the business methodology conducted by the company.

Should you receive an IRD enquiry letter, immediately contact the company’s corporate manager or accountant. Hong Kong companies, and particularly those companies that are operated from offshore, need to work closely with their Hong Kong corporate managers to ensure that a detailed and appropriate response is provided.

Asiaciti Trust Hong Kong provides trade management, accounting, back office and corporate management services, and is experienced in dealing with Profits Tax related letters of enquiry.

For further information, please contact us at Hongkong@asiacititrust.com



Two International
Financial Centre,
Hong Kong

“Enquiry letters must be taken seriously and dealt with immediately.”

New Zealand Limited Partnerships

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Potential uses in International Arena

It is clear that New Zealand will not tax any non-New Zealand sourced income that is derived by a non-New Zealand resident Partner of an NZ LP. Therefore, if an NZ LP is established with foreign resident Limited Partners, those Limited Partners will not be taxed in New Zealand on any non-New Zealand sourced income derived by the NZ LP.

In addition, there is potential for the NZ LP to work effectively in conjunction with a New Zealand Foreign Trust. As the NZ LP is a flow-through entity for tax purposes, the income derived by the NZ LP will maintain its original character when it is passed through to the Limited Partners. Therefore, if a New Zealand Foreign Trust is one of the Limited Partners, if it receives non-New Zealand sourced income from the NZ LP, that income will retain its non-New Zealand sourced character. As a New Zealand Foreign Trust also benefits from a tax exemption on non-New Zealand sourced income, the New Zealand Foreign Trust will not be taxable on its share of the NZ LP's income.

It is very important to ensure that the management of the NZ LP by the General Partner is structured so that the New Zealand Income Tax rules do not deem that income derived out of New Zealand by the NZ LP has a New Zealand source. For example, if the business of the NZ LP is managed from New Zealand, the New Zealand source rules may deem that income to be New Zealand sourced income (even if it is derived out of New Zealand) and therefore the Partners will be taxable in New Zealand in respect of their share of the income regardless of the tax residency and/or status of the Partners.

For further information please contact Lauren Williams at LWilliams@asiacititrust.com

Recent News

- Samoa undergoes a broadband revolution

On 28 May 2009 SamoaTel (Samoa's government owned Telecommunications Company) launched its new fiberoptic cable which will bring with it a significant improvement to internet speed and telecommunication capability for the country.

The new technology replaces the slower and more expensive satellite technology currently used. Mike Johnstone, Chief Executive Officer of SamoaTel says "Overseas operators will be able to log on instantaneously; Samoan Websites will be more accessible. There will be an inflow internationally into the country encouraged by the greater speed. Services available online such as airline bookings and internet banking will be improved. If you improve the connectivity of the country you will improve its GDP. "

This technology will greatly enhance the Asiaciti Trust Samoa International Company virtual office product. Should you have any questions regarding our virtual office product, please contact us at Samoa@asiacititrust.com.



Albatross Fountain Dusk Illumination

"It is very important to ensure that the management of the NZ LP by the General Partner is structured so that the New Zealand Income Tax rules do not deem that income derived out of New Zealand by the NZ LP has a New Zealand source."

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Upcoming Asiaciti Trust events

Asia Pacific Briefing & Aperó, 21 Sept 2009 - Lugano, Switzerland

Seminar will comprise presentations by Asiaciti Trust executives covering New Zealand foreign trusts and LLP's; Singapore private client structures; Hong Kong trading companies; and Samoa private client entities.

New Zealand Breakfast Briefing, 23 Sept 2009 - Zurich, Switzerland

Seminar focuses on the services and products offered by our New Zealand office. Based upon established revenue policies and recent legislative changes, New Zealand offers a number of tax effective structures that should be of interest to our clients and to professional advisors involved in both private client wealth structuring and international tax planning.

Singapore Breakfast Briefing, 25 Sept 2009 - Geneva, Switzerland

Seminar focuses on the services and products offered by the Singapore international finance centre. Following policy and legislative changes over the past few years Singapore now offers a number of tax effective structures that should be of interest to our clients and to professional advisors involved in both private client wealth structuring and international tax planning.

Register now at www.asiacititrust.com



Bundesplatz
Fountains, Bern

Recent News

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- Cook Islands

First Tax Information Exchange Agreement (TIEA) Signed

Following in the global trend to eliminate harmful tax practices the Cook Islands has signed its first Tax Information Exchange Agreement (TIEA) with New Zealand. The agreement is expected to enable the tax authorities of both countries to gain access to information about income and assets that would-be evaders try to hide in the other country. Other TIEAs are in the pipeline and the goal of the Cook Islands is to be removed from the OECD grey list of unco-operative jurisdictions.

Feedback from Asia-Pacific Group on Anti-Money Laundering

At the recent annual meeting of the Asia-Pacific Group on Money Laundering (APG) in Australia, the meeting endorsed reports evaluating anti-money laundering measures in the Cook Islands. The Cook Islands achieved an assessment of "nil" Non-Compliant ratings. It should be noted that the Cook Islands is one of the few countries in the world to achieve this rating. The Cook Islands assessment is placed in the top 3 in the APG (40 countries) and by far the best in the Pacific.

During the conference, reference was made to the Cook Islands being one of the APG's success stories in having moved from the NCCT list to one of the best in the world regarding AML compliance.

The APG is a collaborative international organization consisting of 40 member countries and a number of international and regional observers including FATF, the IMF, World Bank, and OECD.



The Cook Islands
Parliament House

About Asiaciti Trust Group

Asiaciti Trust is an independent trustee and fiduciary services business group offering specialist services internationally to both private clients and corporations. Established as a corporate identity in 1978, Asiaciti Trust has its foundations in chartered accountancy practices which date back to 1886. Asiaciti Trust is one of the most recognised and professionally respected names in the international fiduciary services industry.

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