

Key Facts

Limited Liability Companies

The Limited Liability Companies (Jersey) Law 2018 (LLC Law), has been debated and approved by the Jersey government, and is expected to come into force in late January 2021.

As well as the Jersey LLC providing a further addition to Jersey's comprehensive tool kit of wealth management and capital structuring vehicles, it is anticipated that it will be a particularly attractive and familiar product offering to US-based investors and intermediaries.

Concept and Characteristics

The Jersey LLC has special features that distinguish it from a Jersey company. It could be described as a hybrid entity, combining characteristics of a Jersey company with that of a statutory partnership, providing limited liability protection to investors with the flexibility of a partnership, including the ability to draft the terms of its relationship and constitution in the form of an LLC agreement.

Key Features

- Separate legal personality
- Limited liability for the member(s) of the LLC (akin to shareholders of a company)
- Governed by the terms of an LLC agreement, which is binding on the LLC, each member and manager (if applicable) whether or not they are a party to it
- The LLC agreement is a private document compared to the publicly available Memorandum and Articles of Association of a Jersey company

- Pursuant to the LLC agreement, manager(s) (akin to directors of a company) may be appointed, or by default the member(s) will provide the management of the LLC (akin to partners of a partnership)
- May be formed with a sole member
- Member(s) may also be appointed as manager(s)
- Neither a member nor a manager need be Jersey resident
- Must appoint a secretary who is a Jersey resident and expected to be provided by a licensed trust and corporate service provider, such as Trident
- Corporate entities may be utilised for the various LLC roles but will be required to be licensed and regulated with the JFSC as a trust and corporate services provider, such as Trident
- Must maintain a registered office in Jersey

Management of the Jersey LLC

Absent appointment of a manager, the LLC will be managed by its member(s), each with an LLC interest. Such interests will include an interest in the LLC's profits, losses, rights to distributions and other rights or obligations as specified in the LLC agreement.

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Members' Rights, Obligations and Default Duties

Subject to the terms of the LLC agreement, members may be admitted without a contribution or acquiring any interest.

Another feature of the Jersey LLC that will be attractive to US-based service providers and intermediaries, will be the intention to bring the duties of the LLC's member(s) into line with other jurisdictions such as Delaware and Cayman.

A manager will not owe any fiduciary duties to the LLC or any other member in exercising its rights or performing its obligations, other than to act in good faith with respect to the management of the Jersey LLC. A breach of that duty may, subject to the terms of the LLC agreement, be authorised or ratified provided that the Jersey LLC is solvent on a cash-flow test basis after the act or omission which constituted the breach.

Secretary

Similarly, the key duties of the secretary of an LLC will be less onerous although they will include record-keeping requirements such as those in relation to accounts and completion of statutory filings.

Beneficial Ownership

Similar to a Jersey company, the identity of the ultimate beneficial owners of a Jersey LLC will be required to be disclosed to the Jersey Companies Registry at the time of formation, though this information will not be a matter of public record. The Companies Registry will have to be notified within 21 days of any subsequent changes.

Group or Umbrella Structures and Segregation of Assets

Proposals within the current consultation on the Jersey LLC will include the ability to segregate or ring fence assets, for example within a Group structure, by establishing one or more designated

series (with its own members and managers (if applicable)) each having its own separate legal personality, business purpose or investment objective, as well as having its own assets and liabilities.

Tax Treatment

An important feature that will be distinct to the Jersey company will be the flexibility in tax treatment of a Jersey LLC. Designed to be a transparent entity for tax purposes and analogous to the US LLC and its check-the-box regime, the Jersey LLC will be able to make similar elections of classification as either a partnership or a company for tax and accounting purposes, depending on underlying tax analysis and advice.

Why Use a Jersey LLC?

As highlighted, one of the key intentions behind the introduction of the Jersey LLC is its anticipated attraction to those utilising US-style LLC vehicles, such as US-based investors, fund managers and other businesses familiar with its management, operation and administration features.

Combining this with Jersey's internationally recognised secure and stable regulatory, judicial and political environment, it is anticipated that this latest Jersey product offering will reinforce its reputation as the "go to" financial services centre for the provision of funds and corporate services.

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